S.B. 709 (Effective immediately)
S.B. 728 (Effective immediately)
S.B. 819 (Effective August 30, 1993)
S.B. 1302 (Effective immediately)

(May 23, 1993)

S.B. 6 (Effective September 1, 1993)
S.B. 291 (Effective September 1, 1993)
S.B. 330 (Effective immediately)
S.B. 362 (Effective August 30, 1993)
S.B. 419 (Effective September 1, 1993)
S.B. 594 (Effective immediately)
S.B. 1388 (Effective immediately)
H.B. 183 (Effective immediately)
H.B. 241 (Effective immediately)
H.B. 247 (Effective immediately)
H.B. 691 (Effective August 30, 1993)
H.B. 1170 (Effective September 1, 1993)
H.B. 1173 (Effective immediately)
H.B. 1335 (Effective September 1, 1993)
H.B. 1666 (Effective August 30, 1993)
H.B. 1780 (Effective August 30, 1993)
H.B. 2050 (Effective August 30, 1993)

(May 24, 1993)

S.B. 1379 (Effective immediately)

SEVENTY-SIXTH DAY
(Tuesday, May 25, 1993)

The Senate met at 10:30 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, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

A quorum was announced present.

Bill M. Smith, retired minister of Lakeway Community Church, Austin, offered the invocation as follows:

> Almighty God, our heavenly Father, we pray that You will behold and bless Your servants, the Senators of the State of Texas, here assembled. Grant them wisdom, strength, and discernment to know and to do Your will. We pray that law and order, justice

and peace may prevail here in this place to the glory of Your holy name. Amen.

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

CO-SPONSOR OF HOUSE BILL 1886

On motion of Senator Lucio and by unanimous consent, Senator West will be shown as Co-sponsor of **H.B. 1886.**

CO-SPONSOR OF HOUSE BILL 2107

On motion of Senator Rosson and by unanimous consent, Senator Montford will be shown as Co-sponsor of **H.B. 2107.**

CO-SPONSOR OF HOUSE BILL 2111

On motion of Senator Whitmire and by unanimous consent, Senator Nelson will be shown as Co-sponsor of **H.B. 2111.**

CO-SPONSOR OF HOUSE BILL 2178

On motion of Senator Whitmire and by unanimous consent, Senator Nelson will be shown as Co-sponsor of **H.B. 2178.**

CO-SPONSOR OF HOUSE BILL 2179

On motion of Senator Whitmire and by unanimous consent, Senator Nelson will be shown as Co-sponsor of **H.B. 2179.**

CO-SPONSOR OF HOUSE BILL 2206

On motion of Senator Whitmire and by unanimous consent, Senator Nelson will be shown as Co-sponsor of **H.B. 2206.**

MESSAGE FROM THE HOUSE

House Chamber
May 25, 1993

Mr. President: I am directed by the House to inform the Senate that the House has passed the following:

The House has concurred in Senate amendments to **H.B. 2626** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2180** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2005** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 2458** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 923** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 957** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1009** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1193** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1273** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1285** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1302** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1309** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1395** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1498** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1687** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1691** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1713** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1969** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1652** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1660** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 560** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 779** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 161** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 198** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 452** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 24** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 84** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 85** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 158** by a non-record vote.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1181**. The House conferees are: Representatives Marchant, Chair; Gutierrez, McCoulskey, Patterson, and Black.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1132**. The House conferees are: Representatives Saunders, Chair; Bomer, Cuellar of Hidalgo, Erickson, and Turner of Coleman.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1077**. The House conferees are: Representatives Cain, Chair; Berlanga, Maxey, Coleman, and Delisi.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 1062**. The House conferees are: Representatives Cain, Chair; Berlanga, Coleman, Delisi, and Glaze.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 673**. The House conferees are: Representatives Counts, Chair; Cain, Black, Berlanga, and Harris.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 642**. The House conferees are: Representatives A. Smith of Harris, Chair; Linebarger, Delco, Oliveira, and Davis.

The House has granted the request of the Senate for the appointment of a conference committee on **S.B. 89**. The House conferees are: Representatives Berlanga, Chair; Brady, McDonald, Coleman, and Glaze.

The House refused to concur in Senate amendments to **H.B. 2511** and has requested the appointment of a conference committee to consider the differences between the two Houses. The conferees are: Representatives Hilbert, Chair; Goodman, Eckels, Turner of Harris, and Denton.

The House refused to concur in Senate amendments to **H.B. 1704** and has requested the appointment of a conference committee to consider the differences between the two Houses. The conferees are: Representatives Johnson, Chair; Patterson, Turner of Coleman, Hightower, and Rabuck.

The House refused to concur in Senate amendments to **H.B. 1630** and has requested the appointment of a conference committee to consider the differences between the two Houses. The conferees are: Representatives Goodman, Chair; Thompson, Schechter, Cook, and Hartnett.

The House refused to concur in Senate amendments to **H.B. 1493** and has requested the appointment of a conference committee to consider the differences between the two Houses. The conferees are: Representatives Place, Chair; Gray, Hightower, Telford, and Turner of Harris.

The House refused to concur in Senate amendments to **H.B. 977** and has requested the appointment of a conference committee to consider the differences between the two Houses. The conferees are: Representatives Oakley, Chair; Hightower, Stiles, McCall, and Blackwood.

The House refused to concur in Senate amendments to **H.B. 850** and has requested the appointment of a conference committee to consider the differences between the two Houses. The conferees are: Representatives Rodriguez, Chair; Coleman, McDonald, Puente, and Solis.

The House has adopted the conference committee report on **H.B. 259** by a non-record vote.

The House has adopted the conference committee report on **H.B. 965** by a non-record vote.

The House has adopted the conference committee report on **H.B. 997** by a non-record vote.

The House has adopted the conference committee report on **H.B. 2058** by a non-record vote.

The House has adopted the conference committee report on **S.B. 82** by a non-record vote.

The House has concurred in Senate amendments to **H.B. 1657** by a non-record vote.

S.B. 511, Relating to the student loan program administered by the Texas Higher Education Coordinating Board. (As amended)

S.B. 1477, Relating to the creation, administration, powers, duties, operation, and financing of the Edwards Aquifer Authority and the management of the Edwards Aquifer; granting the power of eminent domain; providing civil and criminal penalties; and validating the creation of the Uvalde County Underground Water Conservation District. (As substituted and amended)

H.C.R. 151, Paying tribute to the life of Roy Walton Johnson.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RESOLUTIONS ON FIRST READING

The following resolutions were introduced, read first time, and referred to the committees indicated:

S.C.R. 102 by Haley Administration
Granting the Alabama-Coushatta Indian Tribe of Texas permission to sue the State of Texas.

S.R. 1039 by Madla Administration

Resolving that **S.B. 696** and **H.B. 2490** be withdrawn from consideration and that the Texas Legislature commend and applaud all parties involved in crafting this highly constructive compromise which will benefit all citizens of Texas.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 997 ADOPTED

Senator Montford called from the President's table the Conference Committee Report on **H.B. 997**. The Conference Committee Report was filed with the Senate on Saturday, May 22, 1993.

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 510 ADOPTED

Senator Moncrief called from the President's table the Conference Committee Report on **S.B. 510**. The Conference Committee Report was filed with the Senate on Saturday, May 22, 1993.

On motion of Senator Moncrief, the Conference Committee Report was adopted by a viva voce vote.

CAPITOL PHYSICIAN

The President recognized Senator Henderson, who presented Dr. Jack Haley of Houston as the "Doctor for the Day."

Dr. Haley, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was made welcome by the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 2058 ADOPTED

Senator Truan called from the President's table the Conference Committee Report on **H.B. 2058**. The Conference Committee Report was filed with the Senate on Saturday, May 22, 1993.

On motion of Senator Truan, the Conference Committee Report was adopted by a viva voce vote.

SENATE RESOLUTION 1026

The President laid before the Senate the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, That Rule 12.03, Rules of the Senate, 73rd 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 **H.B. 259**, relating to the creation and administration of a linked deposit program to encourage lending to historically underutilized businesses and small businesses in distressed communities, to successfully conclude the committee's deliberations, by

authorizing the conferees to consider and take action on the following specific matter:

(1) Senate Rule 12.03(1), is suspended to permit the committee to insert "or a historically underutilized business" before the period in Section 481.191(1), Government Code.

This action is necessary to clarify that a historically underutilized business may be an eligible borrower for purposes of a loan under the linked deposit program.

(2) Senate Rule 12.03(1) is suspended to permit the committee to strike "historically underutilized businesses and small businesses in distressed communities" in Section 481.193(a), Government Code, and substitute "small businesses in distressed communities and historically underutilized businesses".

This action is necessary to clarify that a historically underutilized business is not required to be located in a distressed community to participate in the program.

WEST

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

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 259 ADOPTED

Senator West called from the President's table the Conference Committee Report on **H.B. 259.** The Conference Committee Report was filed with the Senate on Saturday, May 22, 1993.

On motion of Senator West, the Conference Committee Report was adopted by the following vote: Yeas 31, Nays 0.

SENATE BILL 155 WITH HOUSE AMENDMENTS

Senator Turner called **S.B. 155** from the President's table for consideration of the House amendments to the bill.

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

Amendment No. 1

Amend **S.B. 155** as follows:

On page 2, line 19, add a new Sec. 71.003 as follows:

"Sec. 71.003. COMPLIANCE WITH LAWS. The commission is subject to:

(1) the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(2) the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(3) the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments."

Renumber all subsequent sections accordingly.

Amendment No. 2

Amend **S.B. 155** as follows:

On page 4, line 1, by adding a new Subsection (f) as follows:

(f) For each item in the proposal that is developed as required by Subsection (a) and for each goal found in Subsections (b), (c), (d), (e), the commission shall study and include comprehensive information relating to the impact of the proposals on the parent-child relationship and include proposals that strengthen the family unit.

Renumber all subsequent sections accordingly.

Amendment No. 3

Amend **S.B. 155** as follows:

On page 4 by striking lines 1 through 6.

Renumber the subsequent sections.

Amendment No. 4

Amend **S.B. 155** as follows:

On page 4 by adding a new Sec. 71.007:

"Sec. 71.007. FINANCIAL ACCOUNTING. The commission shall file with the governor, the presiding officer of each House of the Legislature and the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission not later than December 15, 1994."

Renumber all subsequent sections accordingly.

Amendment No. 5

Amend **S.B. 155** as follows:

On page 4, lines 19 through 20, and inserting "the lieutenant governor, the speaker of the house of representatives and the legislature not later than December 1, 1994."

Amendment No. 6

Amend **S.B. 155** as follows:

1) On page 2, line 16, strike "and"

2) On page 2, insert the following between lines 16 and 17:

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

3) Renumber Subsection (12) as Subsection (13) (on page 2, line 17)

The amendments were read.

Senator Turner moved to concur in the House amendments to **S.B. 155.**

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

SENATE BILL 76 WITH HOUSE AMENDMENTS

Senator Turner called **S.B. 76** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **S.B. 76** as follows:

(1) In Section 3, on page 3, following line 11, insert a new Subsection (b) to read as follows:

"(b) This act shall not apply to any matters in litigation prior to the effective date of the act."

(2) Reletter Subsection (b) of Section 3 as Subsection (c).

Committee Amendment No. 2

Amend **S.B. 76** on page 2 by striking lines 5 through 7 and substituting the following:

"Sec. 51.015. COSTS OF APPEAL. In the case of an appeal brought pursuant to Section 51.014(6), if the order appealed from is affirmed, the court of appeals shall order the appellant to pay all costs and reasonable attorneys' fees of the appeal; otherwise, each party shall be liable for and taxed its own costs of the appeal."

The amendments were read.

On motion of Senator Turner and by unanimous consent, the Senate concurred in the House amendments to **S.B. 76** by a viva voce vote.

SENATE BILL 113 WITH HOUSE AMENDMENT

Senator Brown called **S.B. 113** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **S.B. 113** as follows:

1. On page 2, line 8, insert the following between "submitted" and "by": "to it".

2. On page 2, lines 11-14, delete "one person appointed by the commission representing a state agency that is undertaking a substantial construction project at the time of appointment;" and substitute: "one person appointed by the commission representing a state agency that has a substantial ongoing construction program;".

The amendment was read.

Senator Brown moved to concur in the House amendment to **S.B. 113.**

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

SENATE BILL 170 WITH HOUSE AMENDMENTS

Senator Madla called **S.B. 170** from the President's table for consideration of the House amendments to the bill.

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

Amendment No. 1 on Third Reading

Amend **S.B. 170,** on third reading, as follows:

(1) Strike "fences, enclosures, and covers" each place that phrase occurs in the bill and substitute "fences and enclosures".

(2) Strike "enclosure, fence, or cover" each place that phrase occurs in the bill and substitute "enclosure or fence".

Floor Amendment No. 2 on Third Reading

Amend **S.B. 170** by adding new SECTIONS 2 and 3 and renumbering the remaining section of the bill accordingly, to read as follows:

SECTION 2. Subtitle A, Title 9, Health and Safety Code, is amended by adding Chapter 757 to read as follows:

CHAPTER 757. POOL YARD ENCLOSURES

Sec. 757.001. DEFINITIONS. In this chapter:

(1) "Self-closing and self-latching device" means a device that causes a gate to automatically close without human or electrical power after it has been opened and to automatically latch without human or electrical power when the gate closes.

(2) "Doorknob lock" means a lock that is in a doorknob and that is operated from the exterior by a key, card, or combination and from the interior without a key, card, or combination.

(3) "Dwelling" or "rental dwelling" means one or more rooms rented to one or more tenants for use as a permanent residence under a lease. The term does not include a room rented to overnight guests.

(4) "French doors" means double doors, sometimes called double-hinged patio doors, that provide access from a dwelling interior to the exterior, and in which each of the two doors are hinged and closable so that the edge of one door closes immediately adjacent to the edge of the other door with no partition between the doors. "French door" means either one of the two doors.

(5) "Keyed dead bolt" means a door lock that is not in the doorknob, that locks by a bolt in the doorjamb, that has a bolt with at least a one-inch throw if installed after September 1, 1993, and that is operated from the exterior by a key, card, or combination and operated from the interior by a knob or lever without a key, card, or combination. The term includes a doorknob lock that contains a bolt with at least a one-inch throw.

(6) "Keyless bolting device" means a door lock not in the doorknob that locks:

(A) with a bolt with a one-inch throw into a strike plate screwed into the portion of the doorjamb surface that faces the edge of the door when the door is closed or into a metal doorjamb that serves as the strike plate, operable only by knob or lever from the door's interior and not in any manner from the door's exterior, and that is commonly known as a keyless dead bolt;

(B) by a drop bolt system operated by placing a central metal plate over a metal doorjamb restraint which protrudes from the doorjamb and which is affixed to the doorjamb by means of three case-hardened screws at least three inches in length. One half of the central plate must overlap the interior surface of the door and the other half of the central plate must overlap the doorjamb when the plate is

placed over the doorjamb restraint. The drop bolt system must prevent the door from being opened unless the central plate is lifted off of the doorjamb restraint by a person who is on the interior side of the door; or

(C) by a metal bar or metal tube that is placed across the entire interior side of the door and secured in place at each end of the bar or tube by heavy-duty metal screw hooks. The screw hooks must be at least three inches in length and must be screwed into the door frame stud or wall stud on each side of the door. The bar or tube must be capable of being secured to both of the screw hooks and must be permanently attached in some way to the door frame stud or wall stud. When secured to the screw hooks, the bar or tube must prevent the door from being opened unless the bar or tube is removed by a person who is on the interior side of the door.

The term does not include a chain latch, flip latch, surface-mounted slide bolt, mortise door bolt, surface-mounted barrel bolt, surface-mounted swing bar door guard, spring-loaded nightlatch, foot bolt, or other lock or latch."

(7) "Multi-unit rental complex" means two or more dwelling units in one or more buildings that are under common ownership, managed by the same owner, managing agent, or management company, and located on the same lot or tract of land or adjacent lots or tracts of land. The term includes a condominium project. The term does not include:

(A) a facility primarily renting rooms to overnight guests; or

(B) a single-family home or adjacent single-family homes that are not part of a condominium project.

(8) "Pool" means a permanent swimming pool, permanent wading or reflection pool, or permanent hot tub or spa over 18 inches deep, located at ground level, above ground, below ground, or indoors.

(9) "Pool yard" means an area that contains a pool.

(10) "Pool yard enclosure" or "enclosure" means a fence, wall, or combination of fences, walls, gates, windows, or doors that completely surround a pool.

(11) "Property owners association" means an association of property owners for a residential subdivision, condominium, cooperative, town home project, or other project involving residential dwellings.

(12) "Sliding door handle latch" means a latch or lock that is near the handle on a sliding glass door, that is operated with or without a key, and that is designed to prevent the door from being opened.

(13) "Sliding door pin lock" means a pin or rod that is inserted from the interior side of a sliding glass door at the side opposite the door's handle and that is designed to prevent the door from being opened or lifted.

(14) "Sliding door security bar" means a bar or rod that can be placed at the bottom of or across the interior side of the fixed panel of a sliding glass door and that is designed to prevent the sliding panel of the door from being opened.

(15) "Tenant" means a person who is obligated to pay rent or other consideration and who is authorized to occupy a dwelling, to the exclusion of others, under a verbal or written lease or rental agreement.

(16) "Window latch" means a device on a window or window screen that prevents the window or window screen from being opened and that is operated without a key and only from the interior.

Sec. 757.002. APPLICATION. This chapter applies only to:

(1) a pool owned, controlled, or maintained by the owner of a multi-unit rental complex or by a property owners association; and

(2) doors and windows of rental dwellings opening into the pool yard of a multi-unit rental complex or condominium, cooperative, or town home project.

Sec. 757.003. ENCLOSURE FOR POOL YARD. (a) Except as otherwise provided by Section 757.005, the owner of a multi-unit rental complex with a pool or a property owners association that owns, controls, or maintains a pool shall completely enclose the pool yard with a pool yard enclosure.

(b) The height of the pool yard enclosure must be at least 48 inches as measured from the ground on the side away from the pool.

(c) Openings under the pool yard enclosure may not allow a sphere four inches in diameter to pass under the pool yard enclosure.

(d) If the pool yard enclosure is constructed with horizontal and vertical members, and the distance between the tops of the horizontal members is at least 45 inches, the openings may not allow a sphere four inches in diameter to pass through the enclosure.

(e) If the pool yard enclosure is constructed with horizontal and vertical members, and the distance between the tops of the horizontal members is less than 45 inches, the openings may not allow a sphere 1-3/4 inches in diameter to pass through the enclosure.

(f) The use of chain link fencing materials is prohibited entirely for a new pool yard enclosure that is constructed after January 1, 1994. The use of diagonal fencing members that are lower than 49 inches above the ground is prohibited for a new pool yard enclosure that is constructed after January 1, 1994.

(g) Decorative designs or cutouts on or in the pool yard enclosure may not contain any openings greater than 1-3/4 inches in any direction.

(h) Indentations or protrusions in a solid pool yard enclosure without any openings may not be greater than normal construction tolerances and tooled masonry joints on the side away from the pool.

(i) Permanent equipment or structures may not be constructed or placed in a manner that makes them readily available for climbing over the pool yard enclosure.

(j) The wall of a building may be part of the pool yard enclosure only if the doors and windows in the wall comply with Sections 757.006 and 757.007.

(k) The owner of a multi-unit rental complex with a pool or a property owners association that owns, controls, or maintains a pool is not required to:

(1) build a pool yard enclosure at specified locations or distances from the pool other than distances for minimum walkways around the pool; or

(2) conform secondary pool yard enclosures, located inside or outside the primary pool yard enclosure, to the requirements of this chapter.

Sec. 757.004. GATES. (a) Except as otherwise provided by Section 757.005, a gate in a fence or wall enclosing a pool yard as required by Section 757.003 must:

(1) have a self-closing and self-latching device;

(2) have hardware enabling it to be locked, at the option of whoever controls the gate, by a padlock or a built-in lock operated by key, card, or combination; and

(3) open outward away from the pool yard.

(b) Except as otherwise provided by Subsection (c) and Section 757.005, a gate latch must be installed so that it is at least 60 inches above the ground, except that it may be installed lower if:

(1) the latch is installed on the pool yard side of the gate only and is at least three inches below the top of the gate; and

(2) the gate or enclosure has no opening greater than one-half inch in any direction within 18 inches from the latch, including the space between the gate and the gate post to which the gate latches.

(c) A gate latch may be located 42 inches or higher above the ground if the gate cannot be opened except by key, card, or combination, on both sides of the gate.

Sec. 757.005. EXISTING POOL YARD ENCLOSURES. (a) If a pool yard enclosure is constructed or modified before January 1, 1994, and no municipal ordinance containing standards for pool yard enclosures were applicable at the time of construction or modification, the enclosure must comply with the requirements of Sections 757.003 and 757.004, except that:

(1) if the enclosure is constructed with chain link metal fencing material, the openings in the enclosure may not allow a sphere 2-1/4 inches in diameter to pass through the enclosure; or

(2) if the enclosure is constructed with horizontal and vertical members and the distance between the tops of the horizontal members is at least 36 inches, the openings in the enclosure may not allow a sphere four inches in diameter to pass through the enclosure.

(b) If a pool yard enclosure is constructed or modified before January 1, 1994, and if the enclosure is in compliance with applicable municipal ordinances existing on January 1, 1994, and containing standards for pool yard enclosures, Sections 757.003, 757.004(a)(3), and 757.004(b) do not apply to the enclosure.

Sec. 757.006. DOOR. (a) A door, sliding glass door, or French door may not open directly into a pool yard if the date of electrical service for initial construction of the building or pool is on or after January 1, 1994.

(b) A door, sliding glass door, or French door may open directly into a pool yard if the date of electrical service for initial construction of the building or pool is before January 1, 1994, and the pool yard enclosure complies with Subsection (c), (d), or (e), as applicable.

(c) If a door of a building, other than a sliding glass door or screen door, opens into the pool yard, the door must have a:

(1) latch that automatically engages when the door is closed;

(2) spring-loaded door-hinge pin, automatic door closer, or similar device to cause the door to close automatically; and

(3) keyless bolting device that is installed not less than 36 inches or more than 48 inches above the interior floor.

(d) If French doors of a building open to the pool yard, one of the French doors must comply with Subsection (c)(1) and the other door must have:

(1) a keyed dead bolt or keyless bolting device capable of insertion into the doorjamb above the door, and a keyless bolting device capable of insertion into the floor or threshold; or

(2) a bolt with at least a 3/4-inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the doorjamb above the door, and another bolt with at least a 3/4-inch throw installed inside the door and operated from the edge of the door that is capable of insertion into the floor or threshold.

(e) If a sliding glass door of a building opens into the pool yard, the sliding glass door must have:

(1) a sliding door handle latch or sliding door security bar that is installed not more than 48 inches above the interior floor; and

(2) a sliding door pin lock that is installed not more than 48 inches above the interior floor.

(f) A door, sliding glass door, or French door that opens into a pool yard from an area of a building that is not used by residents and that has no access to an area outside the pool yard is not required to have a lock, latch, dead bolt, or keyless bolting device.

(g) A keyed dead bolt, keyless bolting device, sliding door pin lock, or sliding door security bar installed before September 1, 1993, may be installed not more than 54 inches from the floor.

(h) A keyed dead bolt or keyless dead bolt, as described by Section 757.001(6)(A)(i), installed in a dwelling on or after September 1, 1993, must have a bolt with a throw of not less than one inch.

Sec. 757.007. WINDOW AND WINDOW SCREENS. A wall of a building constructed before January 1, 1994, may not be used as part of a pool yard enclosure unless each window in the wall has a latch and unless each window screen on a window in the wall is affixed by a window screen latch, screws, or similar means. This section does not require the installation of window screens. A wall of a building constructed on or after January 1, 1994, may not be used as part of a pool yard enclosure unless each ground floor window in the wall is permanently closed and unable to be opened.

Sec. 757.008. BUILDING IN POOL YARD. Each door, sliding glass door, window, and window screen of each dwelling unit in a residential building located in the enclosed pool yard must comply with Sections 757.006 and 757.007.

Sec. 757.009. INSPECTION, REPAIR, AND MAINTENANCE. (a) An owner of a multi-unit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall exercise

ordinary and reasonable care to inspect, maintain, repair, and keep in good working order the pool yard enclosures, gates, and self-closing and self-latching devices required by this chapter and within the control of the owner or property owners association.

(b) An owner of a multi-unit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall exercise ordinary and reasonable care to maintain, repair, and keep in good working order the window latches, sliding door handle latches, sliding door pin locks, and sliding door security bars required by this chapter and within the control of the owner or property owners association after request or notice from the tenant that those devices are malfunctioning or in need of repair or replacement. A request or notice under this subsection may be given orally unless a written lease applicable to the tenant or written rules governing the property owners association require the request or notice to be in writing. The requirement in the lease or rules must be in capital letters and underlined or in 10-point boldfaced print.

(c) An owner of a multi-unit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall inspect the pool yard enclosures, gates, and self-closing and self-latching devices on gates no less than once every 31 days.

(d) An owner's or property owners association's duty of inspection, repair, and maintenance under this section may not be waived under any circumstances and may not be enlarged except by written agreement with a tenant or occupant of a multi-unit rental complex or a member of a property owners association or as may be otherwise allowed by this chapter.

Sec. 757.010. COMPLIANCE WITH CHAPTER. (a) Except as provided by Subsection (b) and Section 757.011, a person who constructs or modifies a pool yard enclosure to conform with this chapter may not be required to construct the enclosure differently by a local governmental entity, common law, or any other law.

(b) An owner of a multi-unit rental complex or a rental dwelling in a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool may, at his option, exceed the standards of this chapter or those adopted by the Texas Board of Health under Section 757.011. A tenant or occupant in a multi-unit rental complex or a member of a property owners association may, by express written agreement, require the owner of the complex or the association to exceed those standards.

(c) A municipality may continue to require greater overall height requirements for pool yard enclosures if the requirements exist under the municipality's ordinances on January 1, 1994.

Sec. 757.011. AUTHORITY OF TEXAS BOARD OF HEALTH. The Texas Board of Health may adopt rules requiring standards for the design and construction of pool yard enclosures that exceed the requirements of this chapter and that apply to all pools and pool yards subject to this chapter. An owner of a multi-unit rental complex or a rental dwelling in

a condominium, cooperative, or town home project with a pool or a property owners association that owns, controls, or maintains a pool shall comply with and shall be liable for failure to comply with those rules to the same extent as if they were part of this chapter.

Sec. 757.012. ENFORCEMENT. (a) A tenant of an owner of a multi-unit rental complex, a member of a property owners association, a governmental entity, or any other person or the person's representative may maintain an action against the owner or property owners association for failure to comply with the requirements of this chapter. In that action, the person may obtain:

(1) a court order directing the owner or property owners association to comply with this chapter;

(2) a judgment against the owner or property owners association for actual damages resulting from the failure to comply with the requirements of this chapter;

(3) a judgment against the owner or property owners association for punitive damages resulting from the failure to comply with the requirements of this chapter if actual damages to the person were caused by the owner's or property owners association's intentional, malicious, or grossly negligent actions;

(4) a judgment against the owner or property owners association for actual damages, and if appropriate, punitive damages, if the owner or association was in compliance with this chapter at the time of the damaging event but was consciously indifferent to access being repeatedly gained to the pool yard by unauthorized persons; or

(5) a judgment against the owner or property owners association for a civil penalty of not more than $5,000 if the owner or property owners association fails to comply with this chapter within a reasonable time after written notice by a tenant of the multi-unit rental complex or a member of the property owners association.

(b) A court may award reasonable attorney's fees and costs to the prevailing party in an action brought under Subsection (a)(5) of this section.

(c) The attorney general, a local health department, a municipality, or a county having jurisdiction may enforce this chapter by any lawful means, including inspections, permits, fees, civil fines, criminal prosecutions, injunctions, and, after required notice, governmental construction or repair of pool yard enclosures that do not exist or that do not comply with this chapter.

Sec. 757.013. TENANT'S REQUEST FOR REPAIRS. A tenant in a multi-unit rental complex with a pool may verbally request repair of a keyed dead bolt, keyless bolting device, sliding door latch, sliding door pin lock, sliding door security bar, window latch, or window screen latch unless a provision of a written lease executed by the tenant requires that the request be made in writing and the provision is in capital letters and underlined or in 10-point boldfaced print. A request for repair may be given to the owner or the owner's managing agent.

Sec. 757.014. APPLICATION TO OTHER BODIES OF WATER AND RELATED FACILITIES. The owner of a multi-unit rental complex or a

property owners association is not required to enclose a body of water or construct barriers between the owner's or property owners association's property and a body of water such as an ocean, bay, lake, pond, bayou, river, creek, stream, spring, reservoir, stock tank, culvert, drainage ditch, detention pond, or other flood or drainage facility.

Sec. 757.015. EFFECT ON OTHER LAWS. (a) The duties established by this chapter for an owner of a multi-unit dwelling project, an owner of a dwelling in a condominium, cooperative, or town home project, and a property owners association supersede those established by common law, the Property Code, the Health and Safety Code, the Local Government Code other than Section 214.100 of such code, and local ordinances relating to duties to inspect, install, repair, or maintain:

(1) pool yard enclosures;

(2) pool yard enclosure gates and gate latches, including self-closing and self-latching devices;

(3) keyed dead bolts, keyless bolting devices, sliding door handle latches, sliding door security bars, self-latching and self-closing devices and sliding door pin locks on doors that open into a pool yard area and that are owned and controlled by the owner or property owners association; and

(4) latches on windows that open into a pool yard area and that are owned and controlled by the owner or property owners association.

(b) This chapter does not affect any duties of a rental dwelling owner, lessor, sublessor, management company, or managing agent under Subchapter D, Chapter 92, Property Code.

Sec. 757.016. NON-EXCLUSIVE REMEDIES. The remedies contained in this chapter are not exclusive and are not intended to affect existing remedies allowed by law or other procedure.

Sec. 757.017. INTERPRETATION AND APPLICATION. The provisions of this chapter shall be liberally construed to promote its underlying purpose which is to prevent swimming pool deaths and injuries in this state.

SECTION 3. Section 1 of this Act takes effect on September 1, 1993. Section 2 of this Act takes effect on January 1, 1994.

The amendments were read.

On motion of Senator Madla and by unanimous consent, the Senate concurred in the House amendments to **S.B. 170** by a viva voce vote.

SENATE BILL 205 WITH HOUSE AMENDMENTS

Senator Moncrief called **S.B. 205** from the President's table for consideration of the House amendments to the bill.

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

Amendment No. 1

Amend **S.B. 205**, on page 24 by striking lines 7 through 10, and substituting in lieu thereof the following:

(b) A hospital that violates Subsection (a), another provision of this chapter, or a rule adopted or enforced under this chapter is liable for a civil penalty of not more than $1,000 for each day of violation and for each act of violation. A hospital that violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services is liable for a civil penalty of not more than $25,000 for each day of violation and for each act of violation.

Amend **S.B. 205**, on page 25, by striking lines 3 through 6, and substituting in lieu thereof the following:

Sec. 241.058. ADMINISTRATIVE PENALTY FOR MENTAL HEALTH, CHEMICAL DEPENDENCY, OR REHABILITATION SERVICES. (a) The board may impose an administrative penalty against a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter relating to the provision of mental health, chemical dependency, or rehabilitation services.

Amendment No. 2

Amend **S.B. 205** as follows:

Page 73, beginning line 25 through page 74, lines 1-8, delete Section 4.36 ILLEGAL REFERRAL FOR CARE OR TREATMENT.

Amendment No. 3

Amend **S.B. 205**, as follows:

(1) Beginning on page 5, line 23, strike Subsections (c), (d) and (e) and substitute in lieu thereof the following:

(c) A plaintiff who prevails in a suit under this section may recover actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown.

(d) In addition to an award under Subsection (c), a plaintiff who prevails in a suit under this section may recover exemplary damages and reasonable attorney fees.

(e) A suit under this section may be brought in the district court of the county in which:

(1) the plaintiff received care or treatment; or

(2) the defendant conducts business.

(2) On page 21, strike lines 17 through 21 and insert in lieu thereof the following:

Sec. 164.003. DECEPTIVE TRADE PRACTICES. A person may bring suit under Subchapter E, Chapter 17, Business and Commerce Code, for a violation of this chapter and a public or private right or remedy prescribed by that subchapter may be used to enforce this chapter.

The amendments were read.

On motion of Senator Moncrief and by unanimous consent, the Senate concurred in the House amendments to **S.B. 205** by a viva voce vote.

SENATE BILL 226 WITH HOUSE AMENDMENTS

Senator West called **S.B. 226** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **S.B. 226** as follows:

On page 1, line 18 and 19, after "bidding" strike "or competitive sealed proposals" and substitute ".".

Committee Amendment No. 2

Amend **S.B. 226** as follows:

(1) On page 1, between lines 21 and 22, insert a letter (d) to read as follows:

(d) Any construction or engineering contract that falls under this chapter for competitive sealed bidding or competitive sealed proposals shall not include a provision requiring a contractor or an engineering firm to indemnify the municipality for damages arising from negligence of the municipality.

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 226** 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 West, Chair; Harris of Tarrant, Madla, Wentworth, and Shapiro.

SENATE BILL 163 WITH HOUSE AMENDMENT

Senator Carriker called **S.B. 163** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 163** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the protection of buildings and grounds at private institutions of higher education.

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

SECTION 1. Section 51.212, Education Code, is amended by adding Subsection (c) to read as follows:

(c) In this section, "private institution of higher education" has the meaning assigned by Section 61.003(15) of this code.

SECTION 2. Section 51.215, Education Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) An institution of higher education[~~, as defined in Section 61.003 of this code, or a private institution of higher education that is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools,~~] is entitled to obtain criminal history record information pertaining to an applicant for employment for a security-sensitive position. The institution of higher education may deny employment to an applicant for a security-sensitive position who fails to provide a complete set of fingerprints upon request.

(e) In this section, "institution of higher education" means:

(1) an institution of higher education, as defined by Section 61.003(8) of this code; and

(2) a private institution of higher education, as defined by Section 61.003(15) of this code.

SECTION 3. Amend Subchapter G of Chapter 61, Texas Education Code by renaming the subchapter as follows: REGULATION OF PRIVATE POSTSECONDARY EDUCATIONAL [~~DEGREE-GRANTING~~] INSTITUTIONS [~~OF HIGHER EDUCATION~~]

SECTION 4. Section 61.003, Education Code, is amended by adding Subdivision (15) to read as follows:

(15) "Private or independent institution of higher education" includes only a private or independent college or university that is:

(A) organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes);

(B) exempt from taxation under Article VIII, Section 2, of the Texas Constitution and Section 501(c)(3) of the Internal Revenue Code of 1986 (42 U.S.C. Section 501); and

(C) accredited by a recognized accrediting agency.

SECTION 5. Sections 61.302(2), (3), and (9), Education Code, are amended to read as follows:

(2) "Private postsecondary educational institution [~~of higher education~~]" or "institution" means an educational institution which:

(A) is not an institution of higher education as defined by Section 61.003(7) of this code;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has a representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applicable to a degree.

(3) "Agent" means a person employed by or representing a private postsecondary educational institution [~~of higher education~~] who solicits students for enrollment in the institution.

(9) "Educational or training establishment" means an enterprise that would otherwise be a private postsecondary educational institution [~~of higher education~~], except the enterprise does not provide courses or credits alleged to be applicable to a degree.

SECTION 6. Section 61.303(f), Education Code, is amended to read as follows:

(f) A private postsecondary educational institution [~~of higher education~~] may not establish or operate a branch campus, extension center, or other off-campus unit in Texas except as provided by Subsection (g) of this section or as provided under the rules of the board.

SECTION 7. Section 61.304, Education Code, is amended to read as follows:

Sec. 61.304. REQUISITE AUTHORITY TO GRANT DEGREES AND OFFER COURSES. A person may not grant or award a degree on behalf of a private postsecondary educational institution [~~of higher education~~] unless the institution has been issued a certificate of authority to grant the degree by the board in accordance with the provision of this subchapter. A person may not represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or institution except under conditions and in a manner specified and approved by the board. The board is empowered to specify and regulate the manner, condition, and language used by an institution or person or agents thereof in making known that the person or institution holds a certificate of authority and the interpretation of the significance of such certificate.

SECTION 8. Section 61.305(a), Education Code, is amended to read as follows:

(a) A private postsecondary educational institution [~~of higher education~~] that has been in operation for not less than two years may apply to the board for a certificate of authority to grant a degree in a specified program of study on application forms provided by the board.

SECTION 9. Sections 61.308(a) and (d), Education Code, are amended to read as follows:

(a) A private postsecondary educational institution [~~of higher education~~] which desires to renew its certificate of authority shall apply to the board at least 60 days prior to the expiration of the current certificate.

(d) A private postsecondary educational institution [~~of higher education~~] may be granted successive certificates of authority for a period not to exceed the number of years provided by rule of the board. The board rules must recognize that certification by the state is intended to safeguard the public interest until an institution has developed the strength to satisfy appropriate accreditation standards and it is intended that an institution advance from certification status to fully accredited status in due course.

SECTION 10. Section 61.312, Education Code, is amended to read as follows:

Sec. 61.312. HONORARY DEGREES. No person may award an honorary degree on behalf of a private postsecondary educational institution [~~of higher education~~] subject to the provisions of this subchapter unless the institution has been issued a certificate of authority to award such a degree. The honorary degree shall plainly state on its face that it is honorary.

SECTION 11. Section 61.313(a), Education Code, is amended to read as follows:

(a) A person may not use the term "college" or "university" in the official name or title of a private postsecondary educational institution [~~of higher education~~] established after the effective date of this subchapter unless the institution has been issued a certificate of authority to grant a degree or degrees.

SECTION 12. Section 61.314, Education Code, is amended to read as follows:

Sec. 61.314. ADVISORY COUNCIL ON PRIVATE POSTSECONDARY EDUCATIONAL [~~DEGREE-GRANTING~~] INSTITUTIONS [~~OF HIGHER EDUCATION~~]. (a) The board shall appoint an advisory council on private postsecondary educational [~~degree-granting~~] institutions [~~of higher education~~] consisting of six members with experience in the field of higher education and representative of private institutions of higher education as defined by Section 61.003(15) in the state of Texas which are exempt from the provisions of this subchapter. Council members serve for terms of two years from the date of their appointment and are entitled to reimbursement for actual expenses incurred in carrying out the work of the council.

(b) The council shall advise the board on standards and procedures to be used in carrying out the provisions of this subchapter.

SECTION 13. Section 61.317, Education Code, is amended to read as follows:

Sec. 61.317. PENALTIES. (a) Any person who confers or offers to confer a degree on behalf of a private postsecondary educational institution [~~of higher education~~] subject to the provisions of this subchapter which has not been issued a certificate of authority to grant degrees is guilty of a misdemeanor and upon conviction is subject to a fine of not less than $1,000 nor more than $5,000. Each degree conferred without authority constitutes a separate offense.

(b) Any person who establishes a private postsecondary educational institution [~~of higher education~~] and uses the term "college" or "university" in the official name of the institution without first having been issued a certificate of authority to grant degrees for the institution or any person who establishes an educational or training establishment and uses the term "college" or "university" in the official name or title of the establishment is guilty of a misdemeanor and upon conviction is subject to a fine of not less than $1,000 nor more than $3,000.

(c) Any agent who solicits students for enrollment in a private postsecondary educational institution [~~of higher education~~] subject to the provisions of this subchapter without a certificate of registration is guilty of a misdemeanor and on conviction is subject to a fine of not less than $500 nor more than $1,000.

(d) Any operations which are found after due process to be in fraudulent violation of this Act shall be terminated.

SECTION 14. This Act takes effect September 1, 1993.

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 amendment was read.

On motion of Senator Carriker and by unanimous consent, the Senate concurred in the House amendment to **S.B. 163** by a viva voce vote.

SENATE BILL 236 WITH HOUSE AMENDMENTS

Senator Moncrief called **S.B. 236** from the President's table for consideration of the House amendments to the bill.

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

Amendment No. 1

Amend **S.B. 236** as follows:

(1) In SECTION 2, page 2, line 24, strike the word "employ" and substitute the word "appoint", and insert before "The", after the period, "One person shall serve as the court investigator for all statutory probate courts in the county unless the commissioners court has authorized additional investigators."

(2) Strike SECTION 3 and renumber all subsequent sections accordingly.

(3) In SECTION 8, in new Sec. 112B, page 20, line 8, after "services." insert "This section applies to incapacitated persons other than minors."

Amendment No. 2

Amend **S.B. 236** by adding a new section to the bill, appropriately numbered, to read as follows and by renumbering subsequent sections of the bill appropriately:

SECTION ____. (a) The following provisions of this Act do not take effect if this Act and **H.B. 2685**, Acts of the 73rd Legislature, Regular Session, 1993, are enacted and become law:

(1) SECTIONS 7, 9, 10, 11, 14, 15, 22, 25, 26, and 27 of this Act; and

(2) SECTION 8 of this Act, except for:

(A) added Section 111, Texas Probate Code;

(B) added Section 112A, Texas Probate Code; and

(C) added Section 123A, Texas Probate Code.

(b) The following provisions of **H.B. 2685**, Acts of the 73rd Legislature, Regular Session, 1993, do not take effect if **H.B. 2685** and this Act are enacted and become law:

(1) added Section 633, Texas Probate Code;

(2) added Section 672, Texas Probate Code; and

(3) added Section 687, Texas Probate Code.

Amendment No. 3

Amend **S.B. 236** as follows:

(1) In Section 7 of the bill, in added Section 3(mm), Texas Probate Code, between "person" and "who", insert ", other than an attorney or a corporate fiduciary,".

(2) In Section 8 of the bill, strike added Section 108A, Texas Probate Code, and substitute the following:

Sec. 108A. POLICY; PURPOSE OF GUARDIANSHIP. A court may appoint a guardian with full authority over an incapacitated person or may grant a guardian limited authority over an incapacitated person as indicated by the incapacitated person's actual mental or physical limitations and only as necessary to promote and protect the well-being of the person. If the person is not a minor, the court may not use age as the sole factor in determining whether to appoint a guardian for the person. In creating a guardianship that gives a guardian limited power or authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person.

(3) In Section 8 of the bill, strike Section 110, Texas Probate Code, and substitute the following:

Sec. 110. STANDING TO COMMENCE OR CONTEST PROCEEDING. (a) Except as provided by Subsection (b) of this section, any person has the right to commence any guardianship proceeding or to appear and contest any guardianship proceeding or the appointment of a particular person as guardian.

(b) A person who has an interest that is adverse to a proposed ward or incapacitated person may not:

(1) file an application to create a guardianship for the proposed ward or incapacitated person;

(2) contest the creation of a guardianship for the proposed ward or incapacitated person; or

(3) contest the appointment of a person as a guardian of the person or estate, or both, of the proposed ward or incapacitated person.

(4) In Section 8 of the bill, in added Section 110B, Texas Probate Code, strike "an attorney ad litem" and substitute "a guardian ad litem or court investigator".

(5) In Section 8 of the bill, in added Section 110C, Texas Probate Code, in Subsection (c), strike "eight" and substitute "four".

(6) In Section 8 of the bill, in added Section 110D, Texas Probate Code, in Subsection (b), strike "The attorney shall also interview supporting witnesses and other witnesses who will testify at the hearing.".

(7) In Section 8 of the bill, in added Section 111, Texas Probate Code, strike Subsection (e) and substitute the following:

(e) The court clerk, at the applicant's request, or the applicant shall mail a copy of the notice by registered or certified mail, return receipt requested, to the following persons if their whereabouts are known or can be reasonably ascertained:

(1) the spouse, the parents, all siblings, and all children of a proposed ward;

(2) the administrator of a nursing home facility or similar facility in which the proposed ward resides;

(3) the operator of a residential facility in which the proposed ward resides; and

(4) a person whom the applicant knows to hold a power of attorney signed by the proposed ward.

(8) In Section 8 of the bill, in added Section 111, Texas Probate Code, strike Subsection (g) and substitute the following:

(g) The court may not act on an application for the creation of a guardianship until the Monday following the expiration of the 10-day period beginning the date service of notice and citation has been made as provided by Subsections (b), (c), (d), and (f) of this section. The validity of a guardianship created under this chapter is not affected by the failure of the clerk or applicant to comply with the requirements of Subsection (e) of this section.

(9) In Section 8 of the bill, in added Section 112, Texas Probate Code, in Subsection (a), strike "filed with the court" and substitute "provided to the attorney ad litem appointed to represent the proposed ward".

(10) In Section 8 of the bill, in added Section 112, Texas Probate Code, strike Subsection (c) and reletter Subsection (d) as Subsection (c).

(11) In Section 8 of the bill, in added Section 112A, Texas Probate Code, strike Subsections (a) and (b) and substitute the following:

(a) The court may not grant an application to create a guardianship for an incapacitated person, other than a person whose alleged incapacity is mental retardation, unless the applicant presents to the court a written letter or certificate from a physician licensed in this state dated not later than the 120th day before the date of the hearing on the application that:

(1) states that, in the opinion of the physician, the person for whom the appointment of a guardian is sought is incapacitated; and

(2) generally describes the extent of the incapacity.

(b) Except as provided by Subsection (c) of this section, if the court determines it is necessary, the court may appoint the necessary physicians to examine the proposed ward. A physician who examines the proposed ward, other than a physician or psychologist who examines the proposed ward under Subsection (c) of this section, shall make available to an attorney ad litem appointed to represent the proposed ward, for inspection, a report that:

(1) describes the nature and degree of incapacity, including the medical history if reasonably available;

(2) provides a medical prognosis specifying the estimated severity of the incapacity;

(3) states how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the person's physical or mental health;

(4) states whether any current medication affects the demeanor of the proposed ward or the proposed ward's ability to participate fully in a court proceeding;

(5) describes the precise physical and mental conditions underlying a diagnosis of senility, if applicable; and

(6) includes any other information required by the court.

(12) In Section 8 of the bill, add the following new Section 112C, Texas Probate Code, to read as follows:

Sec. 112C. COMPENSATION OF CERTAIN ATTORNEYS. (a) A court that creates a guardianship for a ward under this code, on request of a person who filed an application to be appointed guardian of the proposed ward, may authorize compensation of an attorney who represents the person at the application hearing from available funds of the ward's estate regardless of whether that person is appointed the ward's guardian.

(b) The court may not authorize compensation under this section unless the court finds that the attorney acted in good faith and for just cause in the attorney's representation of the person who filed the application.

(13) In Section 8 of the bill, in added Section 113, Texas Probate Code, in Subsection (a), strike "in the person's best interests" and substitute "necessary".

(14) In Section 8 of the bill, in added Section 113A, Texas Probate Code, in Subsection (a), between "find" and "that", insert "by clear and convincing evidence".

(15) In Section 8 of the bill, in added Section 113B, Texas Probate Code, strike Subsection (d) and substitute the following:

(d) An order appointing a guardian must contain findings of fact and specify:

(1) the information required by Section 184 of this code;

(2) the specific powers, limitations, or duties of the guardian with respect to the care of the person or the management of the person's property by the guardian; and

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to expend for the education and maintenance of the person under Section 236 of this code.

(16) In Section 8 of the bill, in added Section 115A, Texas Probate Code, strike "question the incapacitated person concerning the" and substitute "consider the incapacitated".

(17) In Section 8 of the bill, in added Section 121A, Texas Probate Code, in Subsection (a), between "appointment," and "a", insert "unless the court extends that time period,".

(18) In Section 8 of the bill, strike added Section 124, Texas Probate Code, and substitute the following:

Sec. 124. APPOINTMENT OF SUCCESSOR GUARDIAN. (a) If a guardian dies, resigns, or is removed, the court may, on application and on service of notice as directed by the court, appoint a successor guardian.

(b) A successor guardian has the powers and rights and is subject to all of the duties of the preceding guardian.

(19) In Section 11 of the bill, in added Section 185(b), Texas Probate Code, strike "90" and substitute "120".

The amendments were read.

On motion of Senator Moncrief and by unanimous consent, the Senate concurred in the House amendments to **S.B. 236** by a viva voce vote.

SENATE BILL 452 WITH HOUSE AMENDMENTS

Senator Rosson called **S.B. 452** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **S.B. 452** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation and operation of tow trucks and storage facilities; providing penalties.

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

SECTION 1. Subsection (b), Section 5.05, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If a garagekeeper or storage facility acquires possession of a motor vehicle for a purpose other than repair, the garagekeeper or storage facility is entitled to towing, preservation, and notification charges and to reasonable storage fees, in addition to storage fees earned pursuant to contract, for a maximum of five [~~7~~] days only until notification is mailed to the last known registered owner and all lien holders of record as provided by Subsection (a) of this section. After such notice is mailed, storage fees may continue until the vehicle is removed and all accrued charges are paid. A garagekeeper who fails to report the possession of an abandoned vehicle to the police department within 48 hours [~~7 days~~] after it becomes abandoned may no longer claim reimbursement for storage of the vehicle.

SECTION 2. Subdivision (1), Subsection (a), Section 5i, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5i, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Tow truck" means a motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move [~~disabled~~] motor vehicles.

SECTION 3. Subsection (b), Section 5i, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5i, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department shall design and provide for the issuance of [~~special~~] license plates for commercial motor vehicles used as tow trucks. The license plates shall bear the words "Tow Truck."

SECTION 4. Section 2, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended by amending Subdivision (3) and adding Subdivision (7) to read as follows:

(3) "Vehicle storage facility" means a garage, parking lot, or any type of facility owned by a person other than a governmental entity for storing or parking 10 or more vehicles a year.

(7) "Preservation" means an action taken by or at the direction of the owner or operator of a vehicle storage facility that is necessary to preserve, protect, or service a vehicle stored or parked at the facility.

SECTION 5. Subsections (a) and (c), Section 13, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), are amended to read as follows:

(a) The operator of a vehicle storage facility who receives a vehicle that has been towed to the facility for storage shall, not later than the fifth [~~seventh~~] day but not before 24 hours after the date the operator receives the vehicle, send a written notice to the registered owner and the primary lienholder of the vehicle. The operator of the storage facility may charge the owner of the vehicle a reasonable fee for sending the notice required by this subsection. [~~This subsection does not apply to notice for a vehicle that is removed by the owner before the seventh day after the date the operator receives the vehicle.~~]

(c) A notice is considered to be timely filed if the postmark shows that it was mailed within the five-day [~~seven-day~~] period provided by Subsection (a) of this section.

SECTION 6. Subsection (b), Section 14, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(b) The operator of a vehicle storage facility is entitled to [~~may not~~] charge an owner [~~more than~~] $10 for preservation of a stored motor vehicle.

SECTION 7. Section 15, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 15. USE OF FEES. The commissioner shall remit all fees collected under this article to the State Treasurer for deposit in the State Treasury to the credit of a fund to be used[~~, subject to legislative appropriation,~~] for administering this article.

SECTION 8. Section 17, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 17. OFFENSES; PENALTIES [~~PENALTY~~]. (a) A person commits an offense if the person:

(1) operates a vehicle storage facility that does not have a valid license issued under this article; or

(2) violates any rule adopted by the commissioner under this article.

(b) A person convicted of an offense under this section shall be punished by a fine of not less than $200 and not more than $500 [~~An offense under this section is a Class C misdemeanor~~].

(c) A person commits a separate offense for each day the person acts in violation of this section.

SECTION 9. Subdivision (4), Section 1, Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(4) "Tow truck" means a motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move [~~disabled~~] motor vehicles.

SECTION 10. Subsection (a), Section 2, Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Except as provided by Section 5 and Section 11A of this Act, a person may not operate a tow truck in this state unless the tow truck is registered with the department as provided by this Act.

SECTION 11. Subsection (a), Section 4, Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A [~~To be eligible for registration under this Act, a~~] tow truck covered by this Act must be labeled on both sides of the tow truck with the name, city [~~address~~], and telephone number of the tow truck business of the tow truck owner.

SECTION 12. Section 8, Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. OFFENSES; PENALTIES [~~PENALTY~~]. (a) A person commits an offense if the person:

(1) violates a rule adopted by the commissioner under this Act; or

(2) operates [~~for compensation~~] a tow truck that does not have:

(A) a valid certificate of registration issued under this Act; and

(B) a valid tow truck license plate attached to the rear of the tow truck that is clearly visible from the rear of the truck.

(b) A person convicted of a violation of this section shall be punished by a fine of not less than $200 and not more than $500 [~~An offense under this section is a Class C misdemeanor~~].

(c) A person commits a separate offense for each day the person acts in violation of this section.

SECTION 13. Section 11, Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11. [~~EFFECTIVE DATE FOR REGISTRATION~~] REQUIREMENT OF DRIVER'S LICENSE. (a) A person who holds a valid driver's license or a valid commercial driver's license may not be required by a municipality or political subdivision in this state to obtain a license from the municipality or political subdivision for the operation of a tow truck. A municipality may require a municipal license for a tow truck operator performing private property tows within the boundaries of the municipality without regard to the location of the place of business of the tow truck owner. A license fee may not exceed $15.

(b) In this section:

(1) "Driver's license" has the meaning assigned by Section 1, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), including subsequent amendments to that definition.

(2) "Commercial driver's license" has the meaning assigned by Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), including subsequent amendments to that definition [~~is~~

~~engaged in business as a tow truck owner on September 1, 1987, is not required to obtain a certificate of registration under this Act for that tow truck until February 1, 1988~~].

SECTION 14. Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended by adding Section 11A to read as follows:

Sec. 11A. EXCLUSIONS; EXEMPTIONS. (a) The following vehicles are excluded from regulation under this Act and exempted from registration under this Act:

(1) a tow truck that is:

(A) registered under the motor vehicle registration laws of another state;

(B) operated in connection with and based at a towing business located in another state;

(C) registered with a department or agency of another state;

(D) regulated under the laws of another state that, as to the operation of tow trucks, establish standards that equal or exceed the requirements of this Act; and

(E) operated only temporarily or occasionally on the highways of this state;

(2) a tow truck owned by and used exclusively in the service of the United States, the State of Texas, a county, a city, or a school district;

(3) a light commercial vehicle having a manufacturer's rated carrying capacity of one ton or less to which a chain, strap, or rented tow bar or towing device is affixed and that is operated by an individual not in an automotive-related or motor-vehicle-related business;

(4) a vehicle that is towing a race car, a motor vehicle for exhibition, or an antique motor vehicle and is not being operated as a part of a business or profession;

(5) a recreational vehicle, as defined by the Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), including subsequent amendments to that definition, towing another vehicle for a noncommercial purpose;

(6) a commercial transport vehicle that is capable of hauling four or more motor vehicles;

(7) a vehicle used only for towing motorcycles and incapable of towing any other type of vehicle;

(8) non-tow-truck vehicles or tow devices used by rental car agencies to move vehicles for customer use; and

(9) non-tow-truck vehicles or tow devices used in agricultural operations or for agricultural purposes.

(b) The commissioner shall adopt rules to administer this section.

SECTION 15. Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended by adding Section 11B to read as follows:

Sec. 11B. FEES. Fees collected under this Act shall be remitted to the comptroller for deposit to the credit of an account in the general revenue fund, which shall be designated by the comptroller. Money in the account

may be appropriated only to the department for the enforcement of this Act.

SECTION 16. Subsection (c), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by adding Subdivision (8) to read as follows:

(8) The length limitations of this subsection do not apply to the combination of a tow truck and another vehicle or vehicle combination if:

(A) the other vehicle or vehicle combination cannot be normally or safely driven or was abandoned on a highway; and

(B) the tow truck is towing the other vehicle or vehicle combination directly from its location on the highway to the nearest authorized place of repair, terminal, or destination of unloading.

SECTION 17. (a) This Act takes effect September 1, 1993.

(b) The changes in law made by Sections 8 and 12 of this Act apply only to an offense committed on or after that date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

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.

Amendment No. 1

Amend **C.S.S.B. 452** by striking all below the enacting clause and substituting the following:

SECTION 1. Subsection (b), Section 5.05, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If a garagekeeper or storage facility acquires possession of a motor vehicle for a purpose other than repair, the garagekeeper or storage facility is entitled to towing, preservation, and notification charges and to reasonable storage fees, in addition to storage fees earned pursuant to contract, for a maximum of five [7] days only until notification is mailed to the last known registered owner and all lien holders of record as provided by Subsection (a) of this section. After such notice is mailed, storage fees may continue until the vehicle is removed and all accrued charges are paid. A garagekeeper who fails to report the possession of an abandoned vehicle to the police department within 48 hours [~~7 days~~] after it becomes abandoned may no longer claim reimbursement for storage of the vehicle.

SECTION 2. Subdivision (1), Subsection (a), Section 5i, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5i, Vernon's Texas Civil Statutes), is amended to read as follows:

(1) "Tow truck" means a motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move [~~disabled~~] motor vehicles.

SECTION 3. Subsection (b), Section 5i, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-5i, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The department shall design and provide for the issuance of [~~special~~] license plates for commercial motor vehicles used as tow trucks. The license plates shall bear the words "Tow Truck."

SECTION 4. Section 2, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended by amending Subdivisions (1) and (3) and adding Subdivision (7) to read as follows:

(1) "Commission" [~~"Commissioner"~~] means the Railroad Commission of Texas [~~commissioner of licensing and regulation~~].

(3) "Vehicle storage facility" means a garage, parking lot, or any type of facility owned by a person other than a governmental entity for storing or parking 10 or more vehicles a year.

(7) "Preservation" means an action taken by or at the direction of the owner or operator of a vehicle storage facility that is necessary to preserve, protect, or service a vehicle stored or parked at the facility.

SECTION 5. Sections 4, 5, 6, 7, 8, and 10, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), are amended to read as follows:

Sec. 4. AUTHORITY. (a) The commission [~~commissioner~~] may issue licenses to operate vehicle storage facilities.

(b) The commission [~~commissioner~~] shall adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles.

Sec. 5. PROHIBITION. A person may not operate a vehicle storage facility unless the person holds a current license to operate a vehicle storage facility issued to the person by the commission [~~commissioner~~].

Sec. 6. APPLICATION. (a) The commission [~~commissioner~~] by rule shall determine the types of information to be supplied on an application for a license under this article, but the rules must require that an application be made under oath and list:

(1) each conviction of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding $200, that was obtained against the applicant or a partner or officer of the applicant in the three years immediately preceding the date of the application;

(2) the name and address of each partner, if the applicant is a partnership; and

(3) the name and address of the president, secretary, and treasurer of the corporation, if the applicant is a corporation.

(b) The application of a corporation must be signed and sworn to by the president and secretary of the corporation.

Sec. 7. APPROVAL. The commission [~~commissioner~~] shall approve an application that is submitted as provided by Section 6 of this article for a

license to operate a vehicle storage facility unless the commission [~~commissioner~~] determines that:

(1) the applicant knowingly supplied false or incomplete information on the application;

(2) the applicant, one of the applicant's partners, a principal or the general manager of the applicant, or one of the applicant's officers has been convicted of a felony, or a misdemeanor for which the maximum punishment is by confinement in jail or by a fine exceeding $500, in the three years preceding the date of the application; or

(3) the vehicle storage facility for which the license is sought does not meet the standards for storage facilities established by the rules of the commission [~~commissioner~~].

Sec. 8. NOTICE OF DENIAL. If the commission [~~commissioner~~] denies an application for a license under this article, the commission [~~department~~] shall send written notice of the decision to the applicant, at the address shown on the application, by certified mail, return receipt requested. The notice shall state the reason for the commission's [~~commissioner's~~] decision and that the applicant is entitled to a hearing before the commission [~~commissioner~~] under Section 11 of this article. The notice may state that the decision is temporary pending compliance by the applicant. If the decision is temporary and the applicant complies with the requirements of this article and rules of the commission [~~commissioner~~] before the 15th day after the date the applicant receives the notice, the commission [~~commissioner~~] shall then approve the application.

Sec. 10. SANCTIONS. (a) The commission [~~commissioner~~] shall adopt rules relating to the administrative sanctions that may be enforced against a licensee. If a licensee, a partner of a licensee, a principal in the licensee's business, or an employee of the licensee violates, with the knowledge of the licensee, this article or a rule or order adopted under this article, the commission [~~commissioner~~] may:

(1) issue a written warning to the licensee specifying the violations;

(2) deny, revoke, or suspend an application under this article;

(3) place on probation a person whose license has been suspended; or

(4) assess an administrative penalty in an amount not to exceed $1,000 for each violation, with each violation considered a separate offense.

(b) The commission [~~commissioner~~] may revoke or suspend a license issued under this article or place on probation a person whose license has been suspended if the commission [~~commissioner~~] determines that a licensee, a partner of the licensee, a principal in the licensee's business, or an employee of the licensee has been finally convicted of:

(1) a felony; or

(2) a misdemeanor that:

(A) is punishable by confinement or by a fine that exceeds $500; and

(B) directly relates to a duty or responsibility of an operator of a vehicle storage facility.

(c) If it appears that a person is in violation of or is threatening to violate this article or a rule or order adopted under this article, the commission [~~commissioner~~] or the attorney general at the commission's [~~commissioner's~~] request may institute an action for injunctive relief, to recover a civil penalty not to exceed $1,000 for each violation, or for both injunctive relief and the civil penalty. If the commission [~~commissioner~~] or the attorney general prevails in an action under this subsection, the commission [~~commissioner~~] or the attorney general is entitled to recover reasonable attorney's fees and court costs.

(d) A peace officer or license and weight inspector for the Department of Public Safety may make an arrest for a violation of a rule adopted under this article.

SECTION 6. Subsection (a), Section 11, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(a) A person whose application for a license to operate a storage facility has been denied, whose license has been revoked, or whose application to renew a license has been denied may, before the 15th day after the date the person receives notice of the revocation or denial, request in writing a hearing before the commission [~~commissioner~~] on the revocation or denial.

SECTION 7. Section 13, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 13. NOTIFICATION OF OWNER. (a) The operator of a vehicle storage facility who receives a vehicle that has been towed to the facility for storage shall, not later than the fifth [~~seventh~~] day but not before 24 hours after the date the operator receives the vehicle, send a written notice to the registered owner and the primary lienholder of the vehicle. The operator of the storage facility may charge the owner of the vehicle a reasonable fee for sending the notice required by this subsection. [~~This subsection does not apply to notice for a vehicle that is removed by the owner before the seventh day after the date the operator receives the vehicle.~~]

(b) The notice must be sent by certified mail, return receipt requested, and must contain:

(1) the date the vehicle was accepted for storage;

(2) the first day for which a storage fee is assessed;

(3) the daily storage rate;

(4) the type and amount of all other charges to be paid when the vehicle is claimed;

(5) the full name, street address, and telephone number of the facility;

(6) the hours during which the owner may claim the vehicle; and

(7) the facility license number preceded by "Railroad Commission of Texas [~~Department of Licensing and Regulation~~] Vehicle Storage Facility License Number."

(c) A notice is considered to be timely filed if the postmark shows that it was mailed within the five-day [~~seven-day~~] period provided by Subsection (a) of this section.

SECTION 8. Subsection (b), Section 14, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

(b) The operator of a vehicle storage facility is entitled to [~~may not~~] charge an owner [~~more than~~] $10 for preservation of a stored motor vehicle.

SECTION 9. Section 15, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 15. USE OF FEES. The commission [~~commissioner~~] shall remit all fees collected under this article to the State Treasurer for deposit in the State Treasury to the credit of a fund to be used, subject to legislative appropriation, for administering this article.

SECTION 10. Section 17, Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is amended to read as follows:

Sec. 17. OFFENSES; PENALTIES [~~PENALTY~~]. (a) A person commits an offense if the person:

(1) operates a vehicle storage facility that does not have a valid license issued under this article; or

(2) violates any rule adopted by the commission under this article.

(b) A person convicted of an offense under this section shall be punished by a fine of not less than $200 and not more than $500 [~~An offense under this section is a Class C misdemeanor~~].

(c) A person commits a separate offense for each day the person acts in violation of this section.

SECTION 11. Sections 1, 2, 3, 4, 6, 7, 8, and 11, Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. DEFINITIONS. In this Act:

(1) "Commission" means the Railroad Commission of Texas [~~Commission of Licensing and Regulation~~].

(2) [~~"Commissioner" means the commissioner of licensing and regulation.~~

[~~(3) "Department" means the Texas Department of Licensing and Regulation.~~

[~~(4)~~] "Tow truck" means a motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move [~~disabled~~] motor vehicles.

(3) [~~(5)~~] "Tow truck owner" means a person engaged in the business of using a tow truck to tow, winch, or otherwise move a motor vehicle.

Sec. 2. REGISTRATION REQUIREMENT. (a) Except as provided by Sections [~~Section~~] 5 and 11A of this Act, a person may not operate a tow truck in this state unless the tow truck is registered with the commission [~~department~~] as provided by this Act.

(b) The commission [~~commissioner~~] shall issue a certificate of registration to a tow truck owner whose vehicle meets the registration requirements prescribed by rule of the commission [~~commissioner~~] and who pays the registration fee.

(c) A certificate of registration issued under this Act is not transferable.

(d) Registration fees collected under this Act shall be deposited in a special account in the general revenue fund to be known as the tow truck registration account, which may be appropriated only to the commission for the registration and regulation of tow trucks.

Sec. 3. POWERS AND DUTIES OF COMMISSION [~~COMMISSIONER~~]. The commission [~~commissioner~~] shall adopt rules, in the interest of public safety, that provide requirements for registration and maintenance of registration under this Act. Rules adopted under this section must include [~~regarding only the~~] minimum insurance requirements for the operation of tow trucks and minimum safety standards regarding the operation of tow trucks.

Sec. 4. IDENTIFICATION REQUIREMENT. (a) A [~~To be eligible for registration under this Act, a~~] tow truck covered by this Act must be labeled on both sides of the tow truck with the name, city [~~address~~], and telephone number of the tow truck business of the tow truck owner.

(b) The commission [~~commissioner~~] shall adopt rules relating to the identification requirement imposed under this section.

Sec. 6. RENEWAL. A certificate of registration is valid for the period set by the commission and may be renewed by paying to the commission [~~commissioner~~] the required renewal fee.

Sec. 7. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE. (a) The commission [~~commissioner~~] may deny, suspend, revoke, or reinstate a certificate of registration.

(b) The commission [~~commissioner~~] shall adopt rules establishing the procedures for denial, suspension, revocation, or reinstatement of a certificate of registration for failure to follow the [~~insurance and minimum safety~~] requirements established by the commission [~~commissioner~~].

(c) Proceedings relating to the denial, suspension, or revocation of a certificate of registration issued under this Act are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

Sec. 8. OFFENSES; PENALTIES [~~PENALTY~~]. (a) A person commits an offense if the person:

(1) violates a rule adopted by the commission under this Act; or

(2) operates [~~for compensation~~] a tow truck that does not have:

(A) a valid certificate of registration issued under this Act; and

(B) a valid tow truck license plate attached to the rear of the tow truck that is clearly visible from the rear of the truck.

(b) A person convicted of a violation of this section shall be punished by a fine of not less than $200 and not more than $500 [~~An offense under this section is a Class C misdemeanor~~].

(c) A person commits a separate offense for each day the person acts in violation of this section.

Sec. 11. [~~EFFECTIVE DATE FOR REGISTRATION~~] REQUIREMENT OF DRIVER'S LICENSE. (a) A person who holds a valid driver's license or a valid commercial driver's license may not be required by a municipality or political subdivision in this state to obtain a license from the municipality or political subdivision for the operation of a tow truck.

A municipality may require a municipal license for a tow truck operator performing private property tows within the boundaries of the municipality without regard to the location of the place of business of the tow truck owner. A license fee may not exceed $15.

(b) In this section:

(1) "Driver's license" has the meaning assigned by Section 1, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), including subsequent amendments to that definition.

(2) "Commercial driver's license" has the meaning assigned by Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), including subsequent amendments to that definition [~~is engaged in business as a tow truck owner on September 1, 1987, is not required to obtain a certificate of registration under this Act for that tow truck until February 1, 1988~~].

SECTION 12. Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended by adding Section 11A to read as follows:

Sec. 11A. EXCLUSIONS; EXEMPTIONS. (a) The following vehicles are excluded from regulation under this Act and exempted from registration under this Act:

(1) a tow truck that is:

(A) registered under the motor vehicle registration laws of another state;

(B) operated in connection with and based at a towing business located in another state;

(C) registered with a department or agency of another state;

(D) regulated under the laws of another state that, as to the operation of tow trucks, establish standards that equal or exceed the requirements of this Act; and

(E) operated only temporarily or occasionally on the highways of this state;

(2) a tow truck owned by and used exclusively in the service of the United States, the State of Texas, a county, a city, or a school district;

(3) a light commercial vehicle having a manufacturer's rated carrying capacity of one ton or less to which a chain, strap, or rented tow bar or towing device is affixed and that is operated by an individual not in an automotive-related or motor-vehicle-related business;

(4) a vehicle that is towing a race car, a motor vehicle for exhibition, or an antique motor vehicle and is not being operated as a part of a business or profession;

(5) a recreational vehicle, as defined by the Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), including subsequent amendments to that definition, towing another vehicle for a noncommercial purpose;

(6) a commercial transport vehicle that is capable of hauling four or more motor vehicles;

(7) a vehicle used only for towing motorcycles and incapable of towing any other type of vehicle;

(8) a non-tow-truck vehicle or tow device used by a rental car agency to move vehicles for customer use;

(9) a non-tow-truck vehicle or tow device used in agricultural operations or for agricultural purposes; and

(10) non-tow-truck vehicles or tow devices owned by a licensee of the Motor Vehicle Board of the Texas Department of Transportation in transporting a vehicle owned by the licensee or a customer of the licensee.

(b) The commission shall adopt rules to administer this section.

SECTION 13. Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), is amended by adding Section 11B to read as follows:

Sec. 11B. FEES. Fees collected under this Act shall be remitted to the comptroller for deposit to the credit of an account in the general revenue fund, which shall be designated by the comptroller. Money in the account may be appropriated only to the commission for the enforcement of this Act.

SECTION 14. Subsection (c), Section 3, Chapter 42, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6701d-11, Vernon's Texas Civil Statutes), is amended by adding Subdivision (8) to read as follows:

(8) The length limitations of this subsection do not apply to the combination of a tow truck and another vehicle or vehicle combination if:

(A) the other vehicle or vehicle combination cannot be normally or safely driven or was abandoned on a highway; and

(B) the tow truck is towing the other vehicle or vehicle combination directly from its location on the highway to the nearest authorized place of repair, terminal, or destination of unloading.

SECTION 15. (a) A rule adopted by the Texas Commission of Licensing and Regulation or the commissioner of licensing and regulation under Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), or the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes) before the effective date of this Act remains in effect as a rule of the Railroad Commission of Texas.

(b) A certificate of registration or a license that is valid on the effective date of this Act remains valid until it expires, or until the Railroad Commission of Texas suspends or revokes the registration or license.

(c) A proceeding to suspend or revoke a certificate of registration issued under Chapter 1135, Acts of the 70th Legislature, Regular Session, 1987 (Article 6687b, Vernon's Texas Civil Statutes), or a license issued under the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes) pending before the Texas Commission of Licensing and Regulation on the effective date of this Act is transferred without change in status to the Railroad Commission of Texas on the effective date of this Act.

(d) All records of the Texas Commission of Licensing and Regulation involving the registration of tow trucks under Chapter 1135, Acts of the

70th Legislature, Regular Session, 1987 (Article 6687-9b, Vernon's Texas Civil Statutes), or the licensing of vehicle storage facilities under the Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes) shall be, on the effective date of this Act, transferred to the Railroad Commission of Texas.

SECTION 16. Section 2(2), Vehicle Storage Facility Act (Article 6687-9a, Revised Statutes), is repealed.

SECTION 17. (a) This Act takes effect September 1, 1993.

(b) The changes in law made by Sections 10 and 11 of this Act apply only to an offense committed on or after that date. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

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.

The amendments were read.

On motion of Senator Rosson and by unanimous consent, the Senate concurred in the House amendments to **S.B. 452** by a viva voce vote.

SENATE BILL 207 WITH HOUSE AMENDMENTS

Senator Harris of Tarrant called **S.B. 207** from the President's table for consideration of the House amendments to the bill.

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

Amendment No. 1

Amend **S.B. 207** as follows:

(1) On page 19, line 21, strike "at least quarterly and at".

(2) On page 20, line 13, strike ", admission, or treatment".

Amendment No. 2

Amend **S.B. 207** as follows:

(1) On page 30, delete Subsections (d) and (e), lines 9-21.

The amendments were read.

Senator Harris of Tarrant moved to concur in the House amendments to **S.B. 207.**

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

BILLS AND RESOLUTION SIGNED

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

H.C.R. 106	**H.B. 1198**	**H.B. 2007**
H.B. 113	**H.B. 1206**	**H.B. 2165**
H.B. 447	**H.B. 1208**	**H.B. 2243**
H.B. 641	**H.B. 1269**	**H.B. 2315**
H.B. 644	**H.B. 1377**	**H.B. 2323**
H.B. 832	**H.B. 1494**	**H.B. 2364**
H.B. 859	**H.B. 1656**	**H.B. 2369**
H.B. 866	**H.B. 1674**	**H.B. 2415**
H.B. 933	**H.B. 1766**	**H.B. 2590**
H.B. 944	**H.B. 1793**	**H.B. 2747**
H.B. 986	**H.B. 1826**	**H.B. 2795**
H.B. 1029	**H.B. 1843**	**H.B. 2822**
H.B. 1144	**H.B. 1932**	**H.B. 2829**
H.B. 1165	**H.B. 1938**	**H.B. 2830**
		H.B. 2842

SENATE BILL 1467 WITH HOUSE AMENDMENT

Senator Armbrister called **S.B. 1467** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **S.B. 1467**, Section 1, paragraph (c), page 1, line 20, by striking the following sentence:
"Any such acts, resolutions, orders, instruments, obligations or proceedings, shall not be held invalid because they were not taken, adopted, authorized, issued, entered into or delivered in accordance with law."

Amend Section 1, paragraph (c), page 2, line 5, by inserting the following at the end of said Section 1(c), after "date.":
Any such acts, resolutions, orders, instruments, obligations, or proceedings, may be held invalid if they were taken, adopted, authorized, issued, entered into or delivered with knowledge that the action was illegal or in violation of any criminal law.

The amendment was read.

Senator Armbrister moved to concur in the House amendment to **S.B. 1467.**

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

SENATE BILL 1206 WITH HOUSE AMENDMENTS

Senator Sims called **S.B. 1206** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **S.B. 1206** as follows:

1. Amend Sec. 403.001(a) on page 1, line 7, by deleting "three" and substituting "six".

2. Amend Sec. 3.01 on page 5, line 13, by deleting "three" and substituting "six".

3. Amend 3.04 on page 7, line 1, by deleting "all three" and substituting "at least four".

4. Amend Sec. 7.06 on page 18, line 18, by deleting "four-fifths" and substituting "seven-eighths".

5. Amend Sec. 7.07(2) on page 19, line 17, by deleting "three" and substituting "six".

6. Delete SECTION 2 on page 22, and substitute the following:

SECTION 2. The Governor shall make the initial appointment required by Section 403.001, Health and Safety Code, as added by the Act, by appointing two commissioners to serve a six-year term, two commissioners to serve a four-year term, and two commissioners to serve a two-year term.

Amendment No. 2

Amend **S.B. 1206** by adding to page 22, line 14, between "states" and "of" the following: "or"

The amendments were read.

Senator Sims moved to concur in the House amendments to **S.B. 1206.**

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

Yeas: Armbrister, Barrientos, Bivins, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Leedom, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire.

Nays: Rosson, Zaffirini.

SENATE BILL 671 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 671** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 671** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the requirement that institutions of higher education deposit certain funds and receipts in the state treasury.

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

SECTION 1. Section 51.008, Education Code, is amended by adding Subsection (g) to read as follows:

(g) Revenues collected at institutions of higher education and deposited in the state treasury pursuant to this section and Natural Resources Code Sec. 34.017, and the interest earned thereon, are dedicated

to the institution which collected and deposited the funds irrespective of the year the funds were collected, deposited or earned. These funds may be only used for the support, maintenance and operation of the institution as provided for by law. Section 403.094(h), Government Code, does not apply to funds described in this section.

SECTION 2. This Act takes effect September 1, 1993.

SECTION 3. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The amendment was read.

Senator Montford moved to concur in the House amendment to **S.B. 671.**

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

SENATE BILL 878 WITH HOUSE AMENDMENT

Senator Montford called **S.B. 878** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 878** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the value of certain types of property for purposes of property taxation and to the prepayment of property taxes by certain taxpayers.

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

SECTION 1. Subsection (a), Section 23.12, Property Tax Code, is amended to read as follows:

(a) Except as provided by Section 23.12A of this Code, the [~~The~~] market value of an inventory is the price for which it would sell as a unit to a purchaser who would continue the business. An inventory shall include residential real property which has never been occupied as a residence and is held for sale in the ordinary course of a trade or business, provided that the residential real property remains unoccupied, is not leased or rented, and produces no income.

SECTION 2. Subsection (f), Section 23.12, Property Tax Code, is amended to read as follows:

(f) The owner of an inventory other than an applicable inventory as that term is defined in Section 23.12A of this Code may elect to have the inventory appraised at its market value as of September of the year preceding the tax year to which the appraisal applies by filing an application with the chief appraiser requesting that the inventory be appraised as of September 1. The application must clearly describe the

inventory to which it applies and be signed by the owner of the inventory. The application applies to the appraisal of the inventory in each tax year that begins after the next August 1 following the date the application is filed with the chief appraiser unless the owner of the inventory by written notice filed with the chief appraiser revokes the application or the ownership of the inventory changes. A notice revoking the application is effective for each tax year that begins after the next September 1 following the date the notice of revocation is filed with the chief appraiser.

SECTION 3. The Property Tax Code is amended by adding Section 23.12A. to read as follows:

Sec. 23.12A. SPECIAL INVENTORY: VALUE. (a) In this Section:

(1) "Applicable inventory" means an inventory that is held for resale and that consists of individual units of personal property, each unit of which must, as a matter of law, be titled in the name of the retail purchaser and be registered with the Texas Department of Transportation through the office of the county tax assessor-collector.

(2) "Dealer" means a person who holds a dealer's general distinguishing number issued by the Texas Department of Transportation under the authority of Article 6686, Revised Statutes.

(3) "Excluded inventory" means that part of an applicable inventory that:

(A) is included in a transaction consisting of five or more units sold to a single business entity that has a manufacturer's or distributor's fleet identification number authorizing the entity to make fleet purchases;

(B) is included in a transaction between dealers; or

(C) consists of vehicles classified as medium or heavy duty trucks of 16,000 pounds gross vehicular weight or more.

(4) "Owner" means the person responsible for the payment of property taxes levied against a special inventory.

(5) "Sales price" means the total amount of money paid or to be paid for the purchase of a motor vehicle as set forth in the form entitled "Application for Texas Certificate of Title" promulgated by the Texas Department of Transportation.

(6) "Special inventory" means that part of an applicable inventory that remains after subtracting units included in excluded inventory.

(7) "Total annual sales" means the total of the sales price from every sale of units from a special inventory for a 12 month period, or for that portion of a 12 month period for which the owner of a special inventory is responsible for the payment of property taxes levied against the special inventory.

(b) Except as provided by Subsection (c) of this section, for the purpose of the computation of property tax, the market value of a special inventory on January 1 is the total annual sales from the special inventory for the 12 month period corresponding to the prior tax year, divided by 12.

(c) For the purpose of the computation of property tax, the market value of a special inventory with respect to which sales were not made for the entire 12 month period corresponding to the prior tax year, the chief appraiser may estimate the market value of the special inventory. In

making the estimate allowed by this subsection the chief appraiser shall extrapolate using sales data, if any, generated from the special inventory in the prior tax year.

(d) Excluded inventory described in Subsection (a)(3)(C) of this Section is appraised as provided by Subsection (a), Section 23.12 of this Code.

SECTION 4. The Property Tax Code is amended by adding Section 23.12B. to read as follows:

Sec. 23.12B. PREPAYMENT OF TAXES BY CERTAIN TAXPAYERS. (a) In this Section:

(1) "Chief appraiser" means the chief appraiser for the appraisal district in which is located an applicable inventory.

(2) "Collector" means the county tax assessor-collector in the county in which is located a special inventory.

(3) "County aggregate tax rate" means the combined tax rate of all relevant taxing units in a county.

(4) "Owner" has the meaning given it in Section 23.12A of this Code.

(5) "Relevant taxing unit" means a taxing unit, including the county, authorized by law to levy property taxes against a special inventory.

(6) "Sales price" has the meaning given it in Section 23.12A of this Code.

(7) "Special inventory" has the meaning given it in Section 23.12A of this Code.

(8) "Special inventory tax statement" means the form promulgated by the Comptroller of Public Accounts as required by this Section.

(9) "Total annual sales" has the meaning given it in Section 23.12A of this Code.

(10) "Unit property tax value factor" is one-twelfth of the most recent county aggregate tax rate for the county in which a special inventory is located.

(b) An owner shall assign a unit property tax value to each unit sold from a special inventory. The unit property tax value of each unit is determined by multiplying the sales price of the unit by the unit property tax value factor. On or before the 10th day of each month the owner shall deposit with the collector a sum equal to the total of unit property tax value assigned to all units sold from the special inventory in the prior month. The money shall be deposited by the collector in, or otherwise credited by the collector to, the owner's escrow account for prepayment of property taxes as provided by this Section. An escrow account required by this Section is used to pay property taxes levied against the special inventory and the owner shall fund the escrow account as provided by this Subsection.

(c) The collector shall maintain the escrow account for each owner in the county depository. The collector is not required to maintain a separate account in the depository for each escrow account created as provided by this Section, but shall maintain separate records for each owner. The collector shall retain any interest generated by the escrow account to defray

the cost of administration of the prepayment procedure established by this Section. Interest generated by an escrow account created as provided by this Section is the sole property of the collector, and that interest may be used by no entity other than the collector.

(d) The owner may not withdraw the money in the escrow account.

(e) The Comptroller of Public Accounts shall promulgate a form entitled a Special Inventory Tax Statement. The owner of a special inventory shall complete the form with respect to each unit sold from the owner's applicable inventory and may use no other form for that purpose. The form may include the information the comptroller deems appropriate, but shall include at least the following:

(1) a description of the unit sold;

(2) a statement as to whether or not the unit was sold from the owner's special inventory;

(3) the sales price of the unit;

(4) the unit property tax value of the unit if the unit was sold from the owner's special inventory; and

(5) the reason the unit was excluded from the owner's special inventory, if no unit property tax value is assigned.

(f) On or before the tenth day of each month the owner of a special inventory shall file with the chief appraiser the Special Inventory Tax Statement for each unit sold by the owner from the owner's applicable inventory in the prior month. An owner shall retain documentation relating to the disposition of each unit sold from an applicable inventory, including documentation relating to the exclusion of a unit from special inventory and shall make that documentation available to the chief appraiser upon request.

(g) A relevant taxing unit shall, on its tax bill prepared for the owner of a special inventory, separately itemize the taxes levied against the special inventory. When the tax bill is prepared by a relevant taxing unit for a special inventory, the assessor for the taxing unit, or an entity, if any, other than the collector, that collects taxes on behalf of the taxing unit, shall provide the collector a true and correct copy of the tax bill sent to the owner, including taxes levied against the owner's special inventory. The collector shall apply the money in the owner's escrow account to the taxes imposed and deliver a tax receipt to the owner. The collector shall apply the amount to each relevant taxing unit in proportion to the amount of taxes levied, and the assessor of each relevant taxing unit shall apply the funds received from the collector to the taxes owed by the owner.

(h) If the amount in the escrow account is not sufficient to pay the taxes in full, the collector shall apply the money to the taxes and deliver to the owner a tax receipt for the partial payment and a tax bill for the unpaid amount together with a statement that the owner must remit to the collector the balance of the total tax due.

(i) The collector shall remit to each relevant taxing unit the total amount collected by the collector in deficiency payments. The assessor of each relevant taxing unit shall apply those funds to the taxes owed by the owner. Taxes that are due, but not received by the collector and remitted

by the collector to each relevant taxing unit on or before January 31 are delinquent.

(j) The collector shall annually distribute among the relevant taxing units in proportion to the taxes levied by each against the special inventory, funds, if any, that remain in the escrow account after the payment of all property taxes due.

(k) Not later than February 1 of each year, or, in the case of an owner who was not in business on January 1, not later than 30 days after commencement of business, each owner shall file a special inventory declaration with the chief appraiser and file a copy with the county tax assessor-collector. The declaration is sufficient to comply with this Subsection if it sets forth the following information:

(1) the name and business address of each location at which the owner conducts business;

(2) each of the owner's general distinguishing numbers, if the owner has a general distinguishing number issued by the Texas Department of Transportation;

(3) a statement that the owner is the owner of a special inventory; and

(4) the market value of the inventory for the current tax year as computed under Subsection (b), Section 23.12A of this Code.

(l) An owner who fails to file a special inventory declaration required by this Section commits an offense. An offense under this Subsection is a misdemeanor punishable by a fine not to exceed $500. A fine collected under this Subsection may be used only by the collector to defray the cost of enforcing this Section. Each day during which an owner fails to comply with the terms of this Subsection is a separate violation.

(m) An owner who fails to file a special inventory tax statement as required by this Section commits an offense. An offense under this Subsection is a misdemeanor punishable by a fine not to exceed $100. A fine collected under this Subsection may be used only by the collector to defray the cost of enforcing this Section. Each day during which an owner fails to comply with the terms of this Subsection is a separate violation.

(n) An owner who fails to remit the amounts due as required by Subsection (b) of this Section shall pay a penalty of 5 percent of the amount due. If the amount is not paid within 10 days after the due date, the owner shall pay an additional penalty of 5 percent of the amount due. The county attorney shall enforce the terms of this Subsection, and a penalty collected under this Subsection may be used only by the collector to defray the cost of enforcing this Section. A penalty under this Subsection is in addition to any penalty that may be due if the owner's taxes are not paid in full by January 31.

SECTION 5. This bill is effective January 1, 1994. The market value of a special inventory on January 1, 1994 is one twelfth of total annual sales from the special inventory for tax year 1993.

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 according to its terms, and it is so enacted.

The amendment was read.

Senator Montford moved to concur in the House amendment to **S.B. 878.**

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

SENATE BILL 183 WITH HOUSE AMENDMENT

Senator Barrientos called **S.B. 183** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 183** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the tuition exemption at institutions of higher education for students who are blind or deaf.

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

SECTION 1. Sections 54.205(a)(2) and (3), Education Code, are amended to read as follows:

(2) "Blind person" means a person who is a "blind disabled individual" as defined in Section 91.051(5), Human Resources Code [~~5, Chapter 291, Acts of the 59th Texas Legislature, Regular Session, 1965 (Article 3207c, Vernon's Texas Civil Statutes), and who is eligible for the rehabilitation services of the Texas Commission for the Blind~~].

(3) "Deaf person" means a person whose sense of hearing is nonfunctional, after all necessary medical treatment, surgery, and use of hearing aids, for understanding normal conversation [~~and who is eligible for the services of the Division of Vocational Rehabilitation of the Texas Education Agency~~].

SECTION 2. Section 54.205, Education Code, is amended by amending Subsections (b) and (c) and adding Subsections (d) and (e) to read as follows:

(b) A deaf or blind person who is a resident is entitled to exemption from the payment of tuition fees at any institution of higher education utilizing public funds if he presents:

(1) certification [~~by the appropriate state vocational rehabilitation agency~~] that he is a "blind person" or a "deaf person" as defined in Subsection (a) of this section by the Texas Rehabilitation Commission, Texas Commission for the Blind, or Texas Commission for the Deaf and Hearing Impaired, as appropriate, in a written statement, which certification is considered conclusive;

(2) a written statement of purpose from the person that indicates the certificate or degree program to be pursued or the professional enhancement from the course of study for that certificate or degree

program [~~and is a client of the agency, which certification shall be deemed conclusive~~];

(3) [~~(2)~~] a high school diploma or its equivalent;

(4) [~~(3) proof of good moral character, which may be evidenced by~~] a letter of recommendation from the principal of the high school attended by the deaf or blind individual [~~or, if the high school no longer exists or if the principal cannot be located, a letter of recommendation from the individual's clergyman~~], a public official, or some other responsible person who knows the deaf or blind individual and is willing to serve as a reference [~~attest to his good moral character~~]; and

(5) [~~(4)~~] proof that he meets all other entrance requirements of the institution.

(c) The governing board of an institution may establish special entrance requirements to fit the circumstances of deaf and blind persons. [~~In order to obtain the maximum vocational benefits of their college training, all deaf students applying for a tuition exemption under this legislation shall cooperate with the Commission for Rehabilitation, and all blind students applying for a tuition exemption under this section shall cooperate with the Texas Commission for the Blind. The Commission for Rehabilitation and the Texas Commission for the Blind shall utilize all available and appropriate resources at the institutions of higher education to insure that deaf or blind students receive the maximum benefits from college training for which tuition fee exemptions are claimed under this Act.~~] The Texas [~~Commission for~~] Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf and Hearing Impaired, and the Texas Higher Education Coordinating Board[~~, Texas College and University System,~~] may develop any rules and procedures that these agencies determine necessary for the efficient implementation of this section.

(d) For the purposes of this section, a person is required to present certification that the person is a "blind person" or a "deaf person" as required under Subsection (b)(1) of this section at the time the person initially enrolls at an institution of higher education in the course of study designated by the person under Subsection (b)(2) of this section. The certification is valid for each semester that the person enrolls at that institution in the designated course of study.

(e) A person who qualifies for an exemption under this section is entitled to the exemption for each course in which the person enrolls at an institution of higher education.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Barrientos and by unanimous consent, the Senate concurred in the House amendment to **S.B. 183** by a viva voce vote.

SENATE BILL 393 WITH HOUSE AMENDMENTS

Senator Barrientos called **S.B. 393** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **S.B. 393** as follows:

(1) On page 1, line 13, strike "[~~of $10,000,000~~]" and substitute ", but not less than [~~of~~] $10,000,000,".

(2) On page 1, line 14, between the first and second sentences, insert: "In distributing those funds, preference shall be given to a school district that received funds for a program under Section 21.114 of this code for the preceding school year."

(3) On page 4, line 7, between "mother" and "and", insert ", the father, if the father is of school age and is named on the birth certificate,".

Amendment No. 2

Amend **S.B. 393** as follows:

(1) Insert the following new sections, appropriately numbered:

SECTION ____. Subchapter A, Chapter 11, Education Code, is amended by adding Section 11.2092 to read as follows:

Sec. 11.2092. INVESTMENT CAPITAL FUND. (a) The investment capital fund consists of money transferred to the fund as provided by Section 16.152(m) of this code. The Central Education Agency shall administer the fund. The purpose of this fund is to assist eligible public schools to implement practices and procedures consistent with deregulation and school restructuring in order to improve student achievement and increase parental and community involvement in the schools.

(b) The commissioner of education may make grants from the fund to eligible schools. A school may apply for a grant under rules adopted by the State Board of Education.

(c) A school is eligible to apply for a grant if the school has demonstrated a commitment to campus deregulation and to restructuring educational practices and conditions at the school in partnership with:

(1) school staff;
(2) parents of students at the school;
(3) community and business leaders;
(4) school district officers;
(5) a nonprofit, community-based organization; and
(6) the Central Education Agency.

(d) A grant from the fund shall be made directly to the school and may be used for the training and development of school staff and parents in order that they understand the academic standards and practices necessary for high academic achievement and appropriate strategies to deregulate and restructure the school in order to improve student achievement.

(e) The commissioner of education may make a grant of up to $25,000 each academic year to an eligible school. Campus administration personnel of a school that receives a grant under this section are accountable to the commissioner of education and must demonstrate:

(1) the responsible use of the grant to achieve campus deregulation and restructuring to improve academic performance; and

(2) a comprehensive plan to engage in on-going development and training of teachers, parents and community leaders to:

(i) understand academic standards;

(ii) develop effective strategies to improve academic performance; and

(iii) organize a large constituency of parents and community leaders to hold the school and school district accountable to achieve high academic standards; and

(3) on-going progress in achieving higher academic performance.

SECTION ____. Section 16.152, Education Code, is amended by adding Subsections (m) and (n) to read as follows:

(m) From the total amount of funds appropriated for allotments under this section, the commissioner of education shall, each fiscal year, withhold the amount of $1 million for transfer to the investment capital fund under Section 11.2092 of this code.

(n) After deducting the amount withheld under Subsection (m) of this section from the total amount appropriated for the allotment under Subsection (a) of this section, the commissioner of education shall reduce each district's allotment under Subsection (a) proportionately and shall allocate funds to each district accordingly.

(2) Renumber the existing sections appropriately.

The amendments were read.

Senator Barrientos moved to concur in the House amendments to **S.B. 393.**

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

(Senator Shelley in Chair)

SENATE BILL 371 WITH HOUSE AMENDMENTS

Senator Bivins called **S.B. 371** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **S.B. 371** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the operation of a motor vehicle by certain persons and the return of driver's licenses to those persons.

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

SECTION 1. Subsection (i), Section 13, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(i) If a person convicted of an offense under Article 6701l-1, Revised Statutes, and punished under Subsection (c) or (d) of that article, or of a first or second offense under [~~or~~] Section 19.05(a)(2), Penal Code, is placed on probation, the court may require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle is equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator. If the person is convicted of an offense under Article 6701l-1, Revised Statutes, and punished under Subsection (e) of that article, or of a third or subsequent offense under Section 19.05(a)(2), Penal Code, and the person after conviction of either offense is placed on probation, the court shall require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle is equipped with that device. The court shall require the defendant to obtain the device at his own cost unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall order the device to remain installed on that vehicle for a period not less than 50 percent of the supervision period. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to exceed twice the period of the court's order. The Department of Public Safety shall approve devices for use under this subsection. The provisions of Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), apply to the approval of a device under this subsection and the consequences of that approval. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted.

SECTION 2. Subsection (f), Section 23A, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), as amended by Chapters 473 and 1127, Acts of the 70th Legislature, Regular Session, 1987, is amended to read as follows:

(f) The judge hearing the petition shall enter an order either finding that no essential need exists for the operation of a motor vehicle or enter an order finding an essential need for operating a motor vehicle. In the event the judge enters the order finding an essential need, he shall also, as part of the order, determine the actual need of the petitioner in operating a motor vehicle. The order shall require the petitioner to give proof of a valid policy of automobile liability insurance in accordance with the Texas Motor Vehicle Safety-Responsibility Act (Article 6701h,

Vernon's Texas Civil Statutes). If the person's license has been suspended following a conviction under [~~Article 6701l-1, Revised Statutes, or~~] Section 19.05(a)(2), Penal Code, but only on conviction of a second or subsequent offense under that [~~this article or~~] section, the order shall [~~may~~] restrict the person to the operation of a motor vehicle equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the restricted operator. If the person's license has been suspended following a conviction of an offense under Article 6701l-1, Revised Statutes, for which the person has been punished under Subsection (e) of that article, the order shall restrict the person to the operation of a motor vehicle equipped with that device. The defendant shall obtain the device at his own cost unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall order the device to remain installed on that vehicle for a period not less than 50 percent of the supervision period. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to exceed twice the period of the court's order. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of such driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted. The order shall be definite as to hours of the day, days of the week, specific reasons for travel, and areas or routes of travel to be permitted, except that the petitioner shall not be allowed to operate a motor vehicle more than four (4) hours in any twenty-four (24) consecutive hours. On a proper showing of necessity, however, the court may waive the four-hour restriction and allow the petitioner to operate a motor vehicle for any period determined by the court that does not exceed twelve (12) hours in any twenty-four (24) consecutive hours. An order entered by the court shall extend for the period of the original suspension. A certified copy of the petition and the court order setting out the judge's finding and the restrictions shall be forwarded to the Department. The petitioner may use a copy of the court order as a restricted license for thirty (30) days after the date the order is entered. The Department of Public Safety shall promulgate rules and regulations for the approval of models and classes of devices used under this subsection and Section 25(a) of this Act. The Department by rule shall establish standards for the calibration and maintenance of devices, but the calibration and maintenance of each individual device is the responsibility of the manufacturer of that device. If the Department approves a device, the Department shall notify the manufacturer in writing of that fact. Written notice from the Department to a manufacturer approving a device is admissible in any civil or criminal proceeding in this state. The manufacturer shall reimburse the Department for any cost incurred by the

Department in approving a device under this subsection. The Department may not be held liable in a civil or criminal proceeding arising out of the use of a device approved under this subsection.

SECTION 3. Section 23, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) The Department may not reinstate a license suspended under Section 22(b)(16) of this Act until[~~:~~

[~~(1)~~] the court that filed the report for which the license was suspended files an additional report on final disposition of the case[~~; and~~

[~~(2) the person whose license has been suspended pays to the Department a fee of $25 in addition to any other fees required by law~~].

(d) The Department may not reinstate a license suspended or revoked under Section 22 of this Act unless the person whose license was suspended or revoked makes application to the Department for reinstatement of the person's license and pays to the Department a reinstatement fee of $50. The Department shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund.

SECTION 4. Section 26, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 26. SURRENDER AND RETURN OF LICENSE. The [~~(a) Except as limited by Subsection (b) of this section, the~~] Department, upon suspending or revoking a license, shall require that such license shall be surrendered to and be retained by the Department except that at the end of the period of suspension of such license, the license so surrendered shall be returned to the licensee.

[~~(b) The Department may not return a license or reinstate a privilege to operate a motor vehicle suspended under Section 24(a-1) of this Act, unless the person whose license or privilege was suspended makes application to the Department for reinstatement of the person's license or privilege and, in addition to any other fee required by law, pays to the Department a reinstatement fee of Five Dollars ($5.00).~~

[~~(c) Fees paid under this section shall be deposited in the state treasury to the credit of the Operator's and Chauffeur's License Fund and shall be appropriated only to the Department to administer the provisions of this Act.~~]

SECTION 5. Section 2, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 6701l-5, Vernon's Texas Civil Statutes), is amended by adding Subsection (j) to read as follows:

(j) The Texas Department of Public Safety may not reinstate a license suspended under this section unless the person whose license was suspended makes application to the Texas Department of Public Safety for reinstatement of the person's license and pays to the Texas Department of Public Safety a reinstatement fee of $50. The Texas Department of Public Safety shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund.

SECTION 6. Subsection (h), Section 13, Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(h) If a person convicted of an offense under Article 6701l-1, Revised Statutes, is punished under Subsection (c) of that article and is placed on probation, the court shall require, as a condition of the probation, that the defendant attend and successfully complete before the 181st day after the day probation is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse, the Department of Public Safety, the Traffic Safety Section of the Texas Department of [~~State Department of Highways and Public~~] Transportation, and the community justice assistance division of the Texas Department of Criminal Justice [~~Texas Adult Probation Commission~~] designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the offender's school and work schedule, the offender's health, the distance that the offender must travel to attend an educational program, and the fact that the offender resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a person is required, as a condition of probation, to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's probation. Upon the successful completion of the educational program, the person shall give notice to the probation department. The probation department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the person's driving record. If the department does not receive notice that a person required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the person's driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Section 24(g)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes). The department may not reinstate a license suspended under this subsection unless the person whose license was suspended makes application to the department for reinstatement of the person's license and pays to the department a reinstatement fee of $50. The department shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund. This subsection does not apply to a defendant if a jury

recommends probation for the defendant and also recommends that the defendant's driver's license not be suspended.

SECTION 7. (a) This Act takes effect September 1, 1993.

(b) The changes in law made by Sections 1 and 2 of this Act apply only to probation that is ordered or an occupational driver's license that is approved on or after that date. Probation ordered or a license approved before the effective date of this Act is covered by the law in effect when the probation was ordered or the license was approved, and the former law is continued in effect for those purposes.

(c) The changes in law made by Sections 3, 4, 5, and 6 of this Act apply only to a driver's license that is reinstated on or after that date.

SECTION 8. 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 No. 1 on Third Reading

Amend **C.S.S.B. 371** on third reading as follows:

(1) Insert the following appropriately numbered sections:

SECTION . Subdivision (2), Subsection (a), Article 6701l-1, Revised Statutes, is amended to read as follows:

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a substance or its vapors that contain a volatile chemical, an abusable glue, or an aerosol paint, or a combination of two or more of those substances into the body; or

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

SECTION . Subsection (a), Article 6701l-1, Revised Statutes, is amended by adding Subdivisions (8), (9), and (10) to read as follows:

(8) "Abusable glue" has the meaning assigned by Section 485.001, Health and Safety Code.

(9) "Aerosol paint" has the meaning assigned by Section 485.001, Health and Safety Code.

(10) "Volatile chemical" is a chemical or isomer listed in Section 484.002, Health and Safety Code.

(2) Renumber the remaining sections of the bill.

Amendment No. 2 on Third Reading

Amend **C.S.S.B. 371** on third reading as follows:

(1) In Section 1 of the bill, at the end of the second sentence of amended Subsection (i), Section 13, Article 42.12, Code of Criminal Procedure, add the following:

Before placing on probation a person convicted of an offense under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the person has two or more previous convictions under that article or that section or has one previous conviction

under that article and one previous conviction under that section. If the court determines that the person has two or more such previous convictions, the court shall require as a condition of probation that the defendant not operate a motor vehicle unless the vehicle is equipped with the device described in this subsection.

(2) In Section 2 of the bill, at the end of the fifth sentence of amended Subsection (f), Section 23A, Article 6687b, Vernon's Texas Civil Statutes, add the following:

If the person's license has been suspended following a conviction of an offense under Article 6701l-1, Revised Statutes, or Section 19.05(a)(2), Penal Code, before entering the order, the judge shall determine from criminal history record information maintained by the Department of Public Safety whether the person has two or more previous convictions under that article or that section or has one previous conviction under that article and one previous conviction under that section. If the judge determines that the person has two or more such previous convictions, as part of the order the judge shall require that the petitioner not operate a motor vehicle unless the vehicle is equipped with the device described in this subsection.

The amendments were read.

On motion of Senator Bivins and by unanimous consent, the Senate concurred in the House amendments to **S.B. 371** by a viva voce vote.

SENATE BILL 472 WITH HOUSE AMENDMENTS

Senator Madla called **S.B. 472** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **S.B. 472** as follows:

(1) On page 33, by striking the new Subsection (E), lines 3-5, and replacing it with a new Subsection (E); on page 37, by striking the new Subsection (6), lines 10-11, and replacing it with a new Subsection (6); and, on page 44, by striking the new Subsection (F), lines 5-6, and replacing it with a new Subsection (F), all to read as follows:

"the intended use of the drug unless the practitioner determines the furnishing of this information is not in the best interest of the patient; and."

(2) On page 18, after line 4, add a new Section 4 to read as follows:

"Section 4. Subsection (f), Section 19, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), is amended by striking (f)(4)."

Renumber all subsequent sections of the bill accordingly.

(3) On page 2, after line 22, add a new Subsection (10) to read as follows:

"(10) "Class F pharmacy license" means a license issued to a pharmacy located in a facility licensed under Chapter 142, Health and Safety Code for the purpose of dispensing, distributing, or administering to their patients under physician's orders the following dangerous

drugs: sterile water for injection and irrigation, sterile saline for injection and irrigation, and heparin flush kits for intravenous flushes."

Renumber all subsequent subsections in Section One accordingly.

(4) On page 25, after line 14, add a new Section 10 to read as follows:

"Section 10. Subsection (b) and (c), Section 29, Texas Pharmacy Act (Article 4542a-1, Vernon's Texas Civil Statutes), are amended by adding a new (b)(6) to read as follows:

"(6) Class F."

And, a new (c)(6) to read as follows:

"(6) a Class pharmacy shall be under the continuous supervision of a pharmacist whose services shall be required according to the needs of the pharmacy."

Renumber all subsequent sections of the bill accordingly.

(5) On page 48, after line 3, add a new Section 21 to read as follows:

"Section 21. Section 142.0061, Subchapter A, Chapter 142, Health and Safety Code, is amended to read as follows:

Sec. 142.0061. POSSESSION OF DANGEROUS DRUGS. A home health agency that is licensed as a Class F Pharmacy under the Texas Pharmacy Act (Article 4542a-1), or its employees who are registered nurses or licensed vocational nurses may purchase, store, or transport for the purpose of administering to their home health patients under physician's orders the following dangerous drugs: sterile water for injection and irrigation, sterile saline for injection and irrigation, and heparin flush kits for intravenous flushes."

(6) Renumber all sections of the bill accordingly.

Amendment No. 2

Amend **S.B. 472** as follows:

(1) On page 15, line 14, insert the following language and renumber the subsections accordingly:

"(E) a pharmacist may not administer medications to a patient where the patient resides, except in a licensed nursing home or hospital;"

The amendments were read.

On motion of Senator Madla and by unanimous consent, the Senate concurred in the House amendments to **S.B. 472** by a viva voce vote.

RECORD OF VOTE

Senator Bivins asked to be recorded as voting "Nay" on concurring in the amendments.

SENATE JOINT RESOLUTION 13 WITH HOUSE AMENDMENTS

Senator Lucio called **S.J.R. 13** from the President's table for consideration of the House amendments to the resolution.

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

Amendment No. 1

Amend **S.J.R. 13** as follows:

(1) In SECTION 1, in amended Article VII, Section 17(a), of the Texas Constitution (page 1, lines 16 and 17, Engrossed Bill), strike "and paying for buildings or facilities" and substitute "and paying for acquiring, constructing, or equipping or for major repair or rehabilitation of buildings, facilities, other permanent improvements, or capital equipment".

(2) In SECTION 3, in amended Article VII, Section 17(e), of the Texas Constitution (page 4, line 10, Engrossed Bill), between "materials," and "and", insert "paying for acquiring, constructing, or equipping or for major repair or rehabilitation of buildings, facilities, other permanent improvements, or capital equipment used jointly for educational and general activities and for auxiliary enterprises to the extent of their use for educational and general activities,".

Amendment No. 2

Amend **S.J.R. 13** by inserting a new SECTION 3 to read as follows and renumbering the existing SECTION 3 and subsequent sections appropriately:

SECTION 3. Article VII, Section 17, of the Texas Constitution is amended by adding Subsection (d-1) to read as follows:

(d-1) Notwithstanding Subsection (d) of this section, the allocation of the annual appropriation to Texas State Technical College System and its campuses may not exceed 2.2 percent of the total appropriation each fiscal year.

Amendment No. 3

Amend **S.J.R. 13** in Section 3 of the Resolution, in Subsection (f), Section 17, Article VII, of the Texas Constitution (page 5 line 13 of the House Committee Report), by striking "only".

The amendments were read.

Senator Lucio 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 resolution.

The motion prevailed.

The Presiding Officer asked if there were any motions to instruct the conference committee on **S.J.R. 13** 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 Lucio, Chair; Bivins, Ratliff, Sibley, and Montford.

(President in Chair)

SENATE BILL 95 WITH HOUSE AMENDMENT

Senator Lucio called **S.B. 95** 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 No. 1

Amend **S.B. 95** as follows:

Strike line 23, page 1 and line 1, page 2: "If possible, the principal shall designate the sponsor of the school's Future Teachers of America club as the teacher recruiting officer."

The amendment was read.

On motion of Senator Lucio and by unanimous consent, the Senate concurred in the House amendment to **S.B. 95** by a viva voce vote.

SENATE BILL 251 WITH HOUSE AMENDMENT

Senator Lucio called **S.B. 251** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 251** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the conversion of the McAllen extension center of the Texas State Technical College System to a joint-county junior college.

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

SECTION 1. Subchapter C, Chapter 130, Education Code, is amended by adding Section 130.0311 to read as follows:

Sec. 130.0311. SOUTH TEXAS COMMUNITY COLLEGE. (a) The McAllen extension center of the Texas State Technical College System is converted to a joint-county junior college located in Hidalgo and Starr counties to be known as South Texas Community College.

(b) South Texas Community College's territory consists of the area within the boundaries of Hidalgo and Starr counties.

(c) South Texas Community College is governed by an initial board of trustees composed of seven members appointed by the governor to serve until the earlier of August 31, 2000, or the date that an election is held at which a majority of the votes cast at the election favor the confirmation of the college.

(d) Not later than September 1, 1993, the governor shall appoint at least one member of the initial board of trustees from Hidalgo County and at least one member from Starr County. A trustee shall, during the trustee's term of office, reside in the county from which the trustee was appointed.

(e) A vacancy on the initial board of trustees shall be filled in the same manner as the original appointment for the unexpired term. To be eligible for appointment, the individual must be a resident of the county from which the original appointment was made.

(f) The board of trustees may employ staff to operate South Texas Community College.

(g) Notwithstanding Section 130.003 of this code, South Texas Community College is not required to levy and collect ad valorem taxes, to comply with other laws, rules, and regulations governing the establishment of public junior colleges, or to be certified as a public junior college under Section 61.063 of this code to be eligible for and to receive a proportionate share of the appropriation under Section 130.003 of this code.

(h) Notwithstanding Sections 130.032-130.039 and 130.042-130.044 of this code, the board of trustees of South Texas Community College shall call and hold an election within Hidalgo and Starr counties not later than January 1, 1996, to confirm the creation of the college and to authorize the election of the board of trustees from single-member districts established by the board of trustees, the issuance of bonds, and the imposition of taxes.

(i) Notice of the election shall state the day and places for holding the election and the proposition to be voted on and shall list the appointed board of trustees. The board of trustees shall publish the notice of the election one time in one or more newspapers of general circulation in Hidalgo and Starr counties. The notice must be published before the 35th day before the date set for the election.

(j) The ballot shall specify that if South Texas Community College is confirmed:

(1) the board of trustees must be composed of at least one trustee for each county;

(2) the trustees must be elected from single-member districts;

(3) the board of trustees may contract with The University of Texas—Pan American to provide remedial and lower-level courses; and

(4) the board of trustees may contract with public schools to provide technical preparation courses.

(k) Immediately after the election, the presiding judge of each polling place shall deliver returns of the election to the board of trustees, and the board of trustees shall canvass the returns and declare the result. If a majority of the votes cast at the election favor confirmation of South Texas Community College, the board of trustees shall declare the college confirmed and enter the results in its minutes.

(l) If a majority of the votes cast at the election are against the confirmation of South Texas Community College, the board of trustees shall declare that the confirmation of the college was defeated and shall enter the results in its minutes. If a majority of the voters at the election vote against the confirmation of South Texas Community College, the board of trustees may call and hold additional confirmation elections.

(m) If South Texas Community College is not confirmed in accordance with this section before August 31, 2000, the college is abolished on that date.

(n) This section expires January 1, 2001.

SECTION 2. (a) Not later than the 30th day after the date that a quorum of the initial board of trustees of South Texas Community College has qualified for office, the governing board of the Texas State Technical College System shall transfer the records, contracts and other obligations,

and real and personal property of the McAllen extension center to the initial board of trustees of South Texas Community College.

(b) In contracts or other obligations transferred under this section, the board of trustees of South Texas Community College is substituted for and acts in the place of the governing board of the Texas State Technical College System.

(c) On the date that a quorum of the initial board of trustees of South Texas Community College has qualified for office, the unexpended and unobligated balance of the appropriation for the fiscal biennium beginning September 1, 1993, to Texas State Technical College—Harlingen for the McAllen extension center and the McAllen physical plant is transferred and reappropriated to South Texas Community College to operate the college.

(d) The initial board of trustees of South Texas Community College shall direct the secretary of state to publish in the Texas Register notice of:

(1) the creation of the college;

(2) the date that a quorum of the initial board has qualified for office; and

(3) the abolition of the McAllen extension center of the Texas State Technical College System.

SECTION 3. Subsection (a), Section 135.02, Education Code, is amended to read as follows:

(a) The Texas State Technical College System is composed of:

(1) a system office located in the city of Waco in McLennan County;

(2) a campus located in the city of Amarillo in Potter County;

(3) a campus located in the city of Harlingen in Cameron County;

(4) a campus located in the city of Sweetwater in Nolan County;

(5) an extension center located in the city of Marshall in Harrison County; [~~and~~]

(6) [~~(5)~~] a campus located in the city of Waco in McLennan County;

(7) [~~(6)~~] extension centers in the city of Brownwood [~~McAllen~~] in Brown [~~Hidalgo~~] County and the city of Abilene in Taylor County and an extension program offered through a rural technology center in the city of Breckenridge in Stephens County; and

(8) [~~(7)~~] other campuses assigned to the system from time to time by specific legislative Act.

SECTION 4. (a) Except as otherwise provided by this section, this Act takes effect immediately.

(b) Sections 2 and 3 of this Act take effect on the date that a quorum of the initial board of trustees of South Texas Community College has qualified for office. If a quorum of the initial board of trustees of South Texas Community College has not qualified for office before August 31, 2000, Sections 2 and 3 of this Act have no effect.

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 according to its terms, and it is so enacted.

The amendment was read.

Senator Lucio moved to concur in the House amendment to **S.B. 251.**

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

SENATE BILL 530 WITH HOUSE AMENDMENT

Senator Shelley called **S.B. 530** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 530** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of metropolitan rapid transit authorities.

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

SECTION 1. Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended by adding Section 3B to read as follows:

Sec. 3B. ALTERNATE CITIES. (a) For the purposes of this section, "alternate city" is a city:

(1) with a population in excess of 60,000 according to the most recent federal census;

(2) located in a metropolitan area in which the population of the principal city exceeds 1,200,000 according to the most recent federal census; and

(3) not part of the territory of an existing authority.

(b) Except as provided by Subsection (c) of this section, an alternate city may create a metropolitan transit authority in the same manner as a principal city with a population in excess of 1,200,000 according to the most recent federal census. Except as provided by Subsection (d) of this section, an authority created by an alternate city and confirmed has the same powers and duties as an authority in which the population of the principal city exceeds 1,200,000 according to the most recent federal census.

(c) The governing body of an alternate city shall by ordinance or resolution set a time and a place for holding a public hearing if an authority is proposed under either method provided by Section 3(a) of this Act. The ordinance or resolution must define the boundaries of the areas proposed to be included in the authority. The initial territory in an authority shall include all the territory in the jurisdiction of the alternate city and may include an area that the alternate city completely surrounds and has been designated by the alternate city as an industrial district.

(d) An authority created by an alternate city and confirmed has a board composed of five members who serve for terms of two years. The

members shall be appointed by the mayor of the alternate city subject to confirmation by the governing body of the alternate city. A vacancy shall be filled for the remainder of the term in the same manner as that provided for original appointment. On expiration of a term of office of a member of the board, the member may be reappointed or another person may be appointed to replace the member for a succeeding term. A member of the board is entitled to reimbursement for necessary and reasonable expenses incurred in the discharge of duties as a board member. A board member in an alternate city authority receives no compensation for attending a board meeting. Section 6B of this Act does not apply to authorities created by alternate cities.

(e) An authority created by an alternate city and confirmed and an authority in which the population of the principal city exceeds 1,200,000 according to the most recent federal census may contract for service outside the area of their respective authorities for the purpose of providing access between the two authorities.

SECTION 2. Section 3(a), Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The governing body of a principal city in a metropolitan area may, on its own motion, shall, as provided in Subsection (b) of this section, and shall, upon being presented with a petition so requesting signed by not less than 500 [~~5,000~~] qualified voters residing within such metropolitan area, institute proceedings to create a rapid transit authority in the manner prescribed in this section.

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 amendment was read.

On motion of Senator Shelley and by unanimous consent, the Senate concurred in the House amendment to **S.B. 530** by a viva voce vote.

SENATE BILL 590 WITH HOUSE AMENDMENTS

Senator Shelley called **S.B. 590** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **S.B. 590** as follows:

(1) On page 5, line 9, insert a new Subsection (c) as follows and renumber the existing Subsection (c) as Subsection (d):

(c) Only an interested person who appears at a hearing under this article may appeal and such person must give an oral notice of appeal at the conclusion of the hearing and must post his appeal bond by the end

of the next business day, exclusive of Saturdays, Sundays, and legal holidays.

Floor Amendment No. 2

Amend **S.B. 590** as follows:

(1) On page 6, line 2, delete current SECTIONS 4 and 5 and insert a new SECTION 5 as follows providing an emergency:

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

The amendments were read.

On motion of Senator Shelley and by unanimous consent, the Senate concurred in the House amendments to **S.B. 590** by a viva voce vote.

SENATE BILL 145 WITH HOUSE AMENDMENTS

Senator West called **S.B. 145** from the President's table for consideration of the House amendments to the bill.

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

Amendment No. 1

Amend **S.B. 145** as follows:

(1) Strike Section 2 of the bill (page 1, line 13) and substitute the following:

SECTION 2. Sections 125.001, 125.021, and 125.041, Civil Practice and Remedies Code, are amended to read as follows:

Sec. 125.001. COMMON NUISANCE. A person who knowingly maintains a place to which persons habitually go for the purpose of prostitution or gambling in violation of the Penal Code, for the purpose of reckless discharge of a firearm as described by Section 42.015, Penal Code, or for the delivery or use of a controlled substance in violation of Chapter 481, Health and Safety Code, maintains a common nuisance.

Sec. 125.021. PUBLIC NUISANCE. The habitual use or the threatened or contemplated habitual use of any place for any of the following purposes is a public nuisance:

(1) gambling, gambling promotion, or communicating gambling information prohibited by law;

(2) promotion or aggravated promotion of prostitution;

(3) compelling prostitution;

(4) commercial manufacture, commercial distribution, or commercial exhibition of obscene material;

(5) commercial exhibition of live dances or other acts depicting real or simulated sexual intercourse or deviate sexual intercourse;

(6) engaging in a voluntary fight between a man and a bull if the fight is for a thing of value or a championship, if a thing of value is

wagered on the fight, or if an admission fee for the fight is directly or indirectly charged, as prohibited by law; [~~or~~]

(7) reckless discharge of a firearm as described by Section 42.015, Penal Code; or

(8) delivering or using a controlled substance in violation of Chapter 481, Health and Safety Code.

Sec. 125.041. PUBLIC NUISANCE. For the purposes of this subchapter, a public nuisance is considered to exist at a place if one or more of the following acts occurs at that place on a regular basis:

(1) gambling, gambling promotion, or communication of gambling information, as prohibited by Chapter 47, Penal Code;

(2) promotion or aggravated promotion of prostitution, as prohibited by Chapter 43, Penal Code;

(3) compelling prostitution, as prohibited by Chapter 43, Penal Code;

(4) commercial manufacture, commercial distribution, or commercial exhibition of material that is obscene, as defined by Section 43.21, Penal Code;

(5) commercial exhibition of a live dance or other act in which a person engages in real or simulated sexual intercourse or deviate sexual intercourse, as defined by Section 43.01, Penal Code; [~~or~~]

(6) reckless discharge of a firearm as described by Section 42.015, Penal Code; or

(7) manufacture, delivery, or use of a controlled substance in violation of Chapter 481, Health and Safety Code.

SECTION 3. Sections 125.004(a) and (b), Civil Practice and Remedies Code, are amended to read as follows:

(a) Proof that prostitution or gambling in violation of the Penal Code, that reckless discharge of a firearm as described by Section 42.015, Penal Code, or that the delivery or use of a controlled substance in violation of Chapter 481, Health and Safety Code, is frequently committed at the place involved, or that the place is frequently used for reckless discharge of a firearm as described by Section 42.015, Penal Code, is prima facie evidence that the proprietor knowingly permitted the act.

(b) Evidence that persons have been convicted of gambling, committing prostitution, reckless discharge of a firearm as described by Section 42.015, Penal Code, or delivering or using a controlled substance in violation of Chapter 481, Health and Safety Code, in the place involved is admissible to show knowledge on the part of the defendant that the act occurred. The originals or certified copies of the papers and judgments of those convictions are admissible in the suit for injunction, and oral evidence is admissible to show that the offense for which a person was convicted was committed at the place involved.

SECTION 4. (a) This Act takes effect September 1, 1993.

(b) Section 2 of this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect at the time the cause of action accrued, and that law is continued in effect for that purpose.

(2) Renumber subsequent sections of the bill accordingly.

Amendment No. 2

Amend **S.B. 145** as follows:

On page 1, line 9, strike "Class B" and add "Class A".

On page 1, line 8, strike the period after "municipality" and add "having a population of 100,000 or more, according to the most recent federal census".

The amendments were read.

On motion of Senator West and by unanimous consent, the Senate concurred in the House amendments to **S.B. 145** by a viva voce vote.

SENATE BILL 16 WITH HOUSE AMENDMENTS

Senator Brown called **S.B. 16** from the President's table for consideration of the House amendments to the bill.

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

Amendment No. 1

Amend **S.B. 16** as follows:

Strike Section 3 of the bill and renumber the subsequent sections appropriately.

Amendment No. 2

Amend **S.B. 16** as follows:

Strike Section 1(b) and replace it with the following:

(b) The minimum term of confinement or imprisonment for an offense and the maximum fine for an offense under Sections 481.112, 481.113, 481.114, 481.119, or 481.120 are doubled if it is shown on the trial of the offense that the offense was committed:

(1) in, on, or within 1,000 feet of the premises owned, rented, or leased by a school, institution of higher learning, or a playground; or

(2) in, on, or within 300 feet of the premises of a public or private youth center, public swimming pool, or video arcade facility.

Amendment No. 3

Amend **S.B. 16** by adding the following new section to the bill, appropriately numbered, and renumbering existing sections of the bill accordingly:

SECTION ____. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.135 to read as follows:

Sec. 481.135. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution under Section 481.134, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of drug-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance

approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 481.134; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Criminal Evidence.

Amendment No. 4

Amend **S.B. 16** by adding the following new sections to the bill, appropriately numbered, and renumbering existing sections of the bill accordingly:

SECTION ____. Chapter 46, Penal Code, is amended by adding Section 46.13 to read as follows:

Sec. 46.13. PENALTY IF OFFENSE COMMITTED WITHIN WEAPON-FREE ZONE. (a) Except as provided by Subsection (b) of this section, the punishment prescribed for an offense under this chapter is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that the offense was committed:

(1) within 1,000 feet of a primary or secondary school subject to or eligible for accreditation by the Central Education Agency;

(2) in, on, or within 1,000 feet of the premises of an institution of higher education; or

(3) in, on, or within 300 feet of the premises of a playground, public or private youth center, public swimming pool, or video arcade facility.

(b) This section does not apply to an offense under Section 46.04 (a)(1) of this code.

Amendment No. 5

Amend **S.B. 16** as follows:

SECTION ____. Chapter 46, Penal Code, is amended by adding Section 46.14 to read as follows:

Sec. 46.14. MAPS AS EVIDENCE OF LOCATION OR AREA. (a) In a prosecution under Section 46.13, a map produced or reproduced by a municipal or county engineer for the purpose of showing the location and boundaries of weapon-free zones is admissible in evidence and is prima facie evidence of the location or boundaries of those areas if the governing body of the municipality or county adopts a resolution or ordinance

approving the map as an official finding and record of the location or boundaries of those areas.

(b) A municipal or county engineer may, on request of the governing body of the municipality or county, revise a map that has been approved by the governing body of the municipality or county as provided by Subsection (a).

(c) A municipal or county engineer shall file the original or a copy of every approved or revised map approved as provided by Subsection (a) with the county clerk of each county in which the area is located.

(d) This section does not prevent the prosecution from:

(1) introducing or relying on any other evidence or testimony to establish any element of an offense for which punishment is increased under Section 46.13; or

(2) using or introducing any other map or diagram otherwise admissible under the Texas Rules of Criminal Evidence.

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 16** 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 Brown, Chair; Whitmire, Ellis, Sibley, and Sims.

HOUSE BILL 1016 ON SECOND READING

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

H.B. 1016, Relating to the date for filing ad valorem tax rendition statements and property reports.

The bill was read second time.

Senator Leedom offered the following committee amendment to the bill:

Amend **H.B. 1016** in SECTION 1 by striking Section 22.23(b) in its entirety and substituting in lieu thereof the following:

(b) For [~~Upon written request by a property owner the chief appraiser shall extend a deadline for filing a rendition statement or property report until April 30, provided, however, that for~~] good cause shown in writing by the property owner, the chief appraiser may [~~further~~] extend a deadline for filing a rendition statement or property report by written order to a date not later than April 30 [~~an additional 15 days but in no event may he extend the filing deadline beyond May 15~~]. However, if the property that

is the subject of the rendition is regulated by the Public Utility Commission of Texas or the Railroad Commission of Texas, the chief appraiser, upon written request by the property owner, shall extend the filing deadline until April 30, and may further extend the deadline an additional 15 days upon good cause shown in writing by the property owner.

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

On motion of Senator Leedom and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1016 ON THIRD READING

Senator Leedom moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1016** be placed on its third reading and final passage.

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

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

COMMITTEE SUBSTITUTE HOUSE BILL 2662 ON SECOND READING

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

C.S.H.B. 2662, Relating to standards for long-term care insurance policies.

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

COMMITTEE SUBSTITUTE HOUSE BILL 2662 ON THIRD READING

Senator Leedom moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2662** be placed on its third reading and final passage.

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

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1326 WITH HOUSE AMENDMENT

Senator Parker called **S.B. 1326** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 1326** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation, administration, powers, and authority of the Chambers County Improvement District No. 1; granting the authority to issue bonds.

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

SECTION 1. CREATION; LEGISLATIVE DECLARATION. (a) There is created a special district to be known as the Chambers County Improvement District No. 1. The district is a governmental agency, a body politic and corporate, and a political subdivision of the state.

(b) The name of the district may be changed by resolution of the board of directors of the district at any time so long as the name is descriptive of the location and the principal powers of the district.

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

(d) The legislature finds, determines, and declares that the creation of the district is necessary to:

(1) diversify the economy of the state;

(2) promote, develop, expand, encourage, and maintain employment, commerce, economic development, and the public welfare;

(3) promote the control, treatment, storage, and distribution of water;

(4) protect, preserve, and restore the sanitary conditions of water;

(5) promote the transportation of agricultural, industrial, and commercial products;

(6) promote the health, safety, and general welfare of:

(A) property owners, residents, employers, and employees in the district; and

(B) the general public;

(7) promote the improvement of rivers, bays, creeks, streams, and canals to permit or to aid navigation and commerce; and

(8) promote the construction, maintenance, and operation of streets, roads, highways, turnpikes, and railroads in the greater Cedar Crossing area of Chambers County.

(e) The district will provide funding in the greater Cedar Crossing area needed to preserve, maintain, and enhance the economic health and vitality of the area as a community and a business and industrial center.

(f) The district will not act as the agent or instrumentality of a private interest even though many private interests will be benefited by the district, as will the general public.

(g) The legislature finds, determines, and intends that by creating the district it has established a program to accomplish the public purposes set out in Article III, Section 52-a, of the Texas Constitution.

(h) The legislature finds that all of the land and other property included within the boundaries of the district will be benefited by the improvements and services to be provided by the district under powers

conferred by Article III, Section 52, Article XVI, Section 59, and Article III, Section 52-a, of the Texas Constitution, and other powers granted under this Act, and that the district is created to serve a public use and benefit.

(i) This Act shall be liberally construed in conformance with the legislative findings and purposes stated in this Act.

SECTION 2. DEFINITIONS. In this Act:

(1) "Board" means the board of directors of the Chambers County Improvement District No. 1.

(2) "District" means the Chambers County Improvement District No. 1.

(3) "Extraterritorial jurisdiction" has the meaning assigned by Section 42.021, Local Government Code.

SECTION 3. BOUNDARIES. The district includes all of the territory contained within the following described area:

BEING approximately 13,900 acres of land situated in Chambers County, Texas, and being out of and a part of the Christian Smith League, Abstract No. 22, the Thomas Shepherd Survey, Abstract No. 229, the Chambers County School Land Survey, Abstract No. 321, the Solomon Barrow Survey, Abstract No. 3, the John Steele Survey, Abstract No. 227, the J. L. Hill Survey, Abstract No. 106, the J. K. Allen Survey, Abstract No. 31, the J. C. Fisher Survey, Abstract No. 31, the W. D. Smith League, Abstract No. 23 and the John Ijams Survey, Abstract No. 15. This tract of land is more particularly described by metes and bounds as follows, to-wit:

BEGINNING at the Northeast corner of Tract No. 199-B, in the East line of the Chambers County School Land Survey, Abstract No. 321 and in the West line of the Solomon Barrow Survey, Abstract No. 3 and in the South right of way line of the Houston Lighting and Power Company Discharge Canal right of way.

THENCE in a Southerly direction with the East line of this tract, the East line of the Chambers County School Land Survey and the West line of the Solomon Barrow Survey to the Northwest corner of Tract No. 100-A.

THENCE in an Easterly and Southerly direction with the North and East lines of Tract No. 100-A to a point at the intersection of the North line of Tract No. 100-A with the East right of way line of F. M. Highway No. 2354.

THENCE in a Southerly direction with the East right of way line of F. M. Highway No. 2354 to the intersection of the South right of way line of Fisher Road (Rice Farm Road) with the East right of way line of F. M. Highway No. 2354.

THENCE in a Westerly direction with the South right of way line of Fisher Road to the most Northern Northeast corner of Tract No. 89.

THENCE in a Southerly and Easterly direction with the East and North lines of Tract No. 89 to the Northwest corner of a 4.00 acre tract of land conveyed to Chambers County.

THENCE in a Southerly and Easterly direction with the West and South lines of the Chambers County 4.00 acre tract to the intersection of

the projection of the South line of the Chambers County 4.00 acre tract with the East right of way line of F. M. Highway No. 2354.

THENCE in a Southerly direction with the East right of way line of F. M. Highway No. 2354 to a point at the intersection of the East right of way line of F. M. Highway No. 2354 with the South line, as extended, of a 0.9796 acre tract of land conveyed to United States Steel Corporation by G. E. Troxell, Jr., by deed recorded in Volume 283 at Page 454 of the Deed Records of Chambers County, Texas.

THENCE in a Westerly direction with the South line of Tract No. 89M said Troxell tract to the Southwest corner of said Troxell tract in the East line of Tract No. 89M.

THENCE in a Southerly direction with the East line of Tract No. 89M to the Southeast corner of Tract No. 89M in the North line of Tract No. 125.

THENCE in a Easterly direction with the North line of Tract No. 125 to the East right of way line of F. M. Highway No. 2354.

THENCE in a Southerly direction with the East right of way line of Highway No. 2354 to the South line of Tract No. 125.

THENCE in a Westerly direction with the South line of Tract No. 125 to the Southwest corner of Tract No. 125 in the East line of Tract No. 119.

THENCE in a Southerly direction with the East line of Tracts No. 119, 118, 117, 117A, 116 to the Southeast corner of Tract No. 116 in the North line of Tract No. 114.

THENCE in a Easterly direction with the North line of Tract No. 114 to the East right of way line of F. M. Highway No. 2354.

THENCE in a Southerly direction with the East right of way line of F. M. Highway No. 2354 to South line of Tract No. 4-D as extended.

THENCE in a Westerly direction with the South line of Tract No. 4-D to the most Northern Northeast corner of Tract No. 10-B.

THENCE in a Southerly direction with the East and Northerly lines of Tract No. 10-B to a point at the intersection of the North line of Tract No. 10-B, as extended, with the East right of way line of F. M. Highway No. 2354.

THENCE in a Southwesterly direction with the East and South right of way line of F. M. Highway No. 2354 to the intersection with the East right of way line of Live Oak Drive.

THENCE in a Southwesterly direction with the East and South right of way line of Live Oak Drive to the intersection of the extended East line of the Nerco Oil and Gas Production Company 2.00 acre tract with the South right of way line of Live Oak Drive.

THENCE in a Northerly direction with the East line of the Nerco Oil and Gas 2.00 acre tract to the Northeast corner of said 2.00 acre tract.

THENCE in a Westerly direction with the North lines of the Nerco 2.00 acre tract, the Exxon 2.00 acre tract and the Exxon 5.00 acre tract of land to the Northwest corner of the Exxon 5.00 acre tract of land.

THENCE in a Southerly direction with the West line of the Exxon 5.00 acre tract to the Southwest corner of the Exxon 5.00 acre tract and a corner of the Jones and Laughlin Tract No. 3.

THENCE in a Westerly direction with the South and West lines of the Jones and Laughlin Tract No. 3 and the shore line of Galveston Bay and San Jacinto Bay and the West line of Tract No. 43 to the Southeast or East shore line of Cedar Bayou.

THENCE in a Northwesterly direction with the shore line of Cedar Bayou and the West line of Tracts No. 43, Atlantic Pipeline 14.3427 acre and 43A to the Southwest corner of the Maurice Hirsch so-called 40.28 acre tract and Northwest corner of Tract No. 43A.

THENCE in a Easterly direction with the South line of the Hirsch tract and the North line of Tract No. 43A to a point in the East right of way line of Tri-City Beach Road at the extension of the North line of Tract No. 43A.

THENCE in a Southerly direction with the East line of Tri-City Beach Road to the West right of way line of F. M. Highway No. 1405.

THENCE in a Northerly direction with the West right of way line of F. M. Highway No. 1405 to the Northeast corner of Tract No. 37.

THENCE in a Westerly direction with the North line of Tract No. 37 to the centerline of Cedar Bayou, being the County Line between Chambers and Harris Counties.

THENCE in a Northerly direction with the centerline of Cedar Bayou and said County Line to a point at the intersection of the centerline of Cedar Bayou with the South line of the Warrior and Gulf 15.00 acre tract.

THENCE in an Easterly, Northerly, Westerly and Southerly direction with the lines of the Warrior Gulf 15 acre tract and the Hoesch Tubular Products Company 25 acre tract lines to a point at the intersection of the West line of Hoesch 25 acre tract, extended, with the centerline of Cedar Bayou and said County Line.

THENCE in a Northerly direction with the centerline of Cedar Bayou to the intersection of the centerline of Cedar Bayou with the extension of the South line of Johnnie and Rosemary Jennings property.

THENCE in a Easterly, Northerly and Westerly direction around the Jennings property to the intersection of the North line of the Jennings property extended with the centerline of Cedar Bayou and said County Line.

THENCE in a Northerly direction with the centerline of Cedar Bayou to the intersection of the centerline of Cedar Bayou with the South line, extended, of a Tract conveyed to McDonugh Company.

THENCE in an Easterly direction with the South line of the McDonugh Company tract to a point for the Southeast corner of the McDonugh Company tract in the West right of way line of West Bay Road (Old F. M. Highway No. 1405).

THENCE in a Northerly direction with the West right of way line of West Bay Road to a point at the intersection of the North line, extended, of Tract No. 35-X.

THENCE in a Easterly direction with the North line of Tract No. 35-X to the Northeast corner of Tract No. 35-X and in the West right of way line of Houston Lighting and Power Company 330 foot right of way and in the West line of Tract No. 5-D.

THENCE in a Northerly direction with the West line of Tract No. 5-D and the West line of said 330 foot right of way to a point in the North right of way line of West Bay Road.

THENCE in an Easterly direction with the North right of way line of West Bay Road to a point for a corner of Tract No. 5-D being in the East right of way line of the old right of way for West Bay Road.

THENCE in an Easterly direction with the North line of Tract No. 5-D to the intersection with the South right of way line of the Houston Lighting and Power Company Discharge Canal.

THENCE in an Easterly direction with the South right of way line of the Houston Lighting and Power Company Discharge Canal to the Northwest corner of a 21.2152 acre tract of land conveyed to Houston Lighting and Power Company.

THENCE in a Southerly direction with the West line of said 21.2152 acre tract to the Southwest corner of said 21.2152 acre tract of land.

THENCE in an Easterly direction with the South line of said 21.2152 acre tract to the Southeast corner of said 21.2152 acre tract of land in the West line of the Coastal Water Authority 5.115 acre tract of land.

THENCE in a Southerly, Easterly and Northerly direction around said Coastal Water Authority 5.115 acre tract to a point for the Northeast corner of said 5.115 acre tract in the South right of way line of the Houston Lighting and Power Company Discharge Canal right of way.

THENCE in an Easterly direction with the South line of the Houston Lighting and Power Company Discharge Canal right of way to the PLACE OF BEGINNING, containing within said boundaries approximately 13,900 acres of land.

SECTION 4. FINDINGS RELATING TO BOUNDARIES. The legislature finds that the boundaries and field notes of the district form a closure. If a mistake is made in the field notes or in copying the field notes in the legislative process, it does not affect the organization, existence, or validity of the district, the right of the district to issue any type of bonds or to issue or enter into other types of obligations for the purposes for which the district is created, or the right of the district to levy and collect assessments or taxes, or affect in any other manner the legality or operation of the district or its governing body.

SECTION 5. BOARD OF DIRECTORS. (a) The district is governed by a board of seven directors.

(b) Except for the initial directors, the commissioners court of Chambers County shall appoint directors to represent a director district in the manner provided in Section 375.064, Local Government Code, from a list of candidates recommended by the board in the manner provided in Section 375.064, Local Government Code. Directors serve staggered four-year terms. A vacancy in the office of director shall be filled by the remaining directors for the remainder of the unexpired term.

(c) On the effective date of this Act, the following persons constitute the initial board of directors of the district and are appointed for the terms prescribed by Subsection (d) of this section to represent the following director district positions:

Director District Position	Name of Director
1	Deborah S. Hsi
2	Kandy K. Gregory
3	Langston H. Wood
4	Joseph S. Antoline
5	Donald E. Simpson
6	Robert B. Brown, Jr.
7	Robert Douglas Gates

(d) The initial directors appointed for director district positions 1-3 serve until May 1, 1995, and the initial directors appointed for director district positions 4-7 serve until May 1, 1997.

(e) Each director appointed by the commissioners court of Chambers County shall meet the qualifications for directors provided by Section 375.063, Local Government Code, for the area included within the boundaries of the director district which such director represents and no person may be appointed as a director or continue to serve as a director unless they satisfy the requirements set forth in Section 375.063 for the area in the director district such person is appointed to represent. Each director shall qualify for office as required by Subchapter D, Chapter 375, Local Government Code.

(f) The board is governed by Subchapter D, Chapter 375, Local Government Code, to the extent that subchapter does not conflict with this Act. Directors may vote on any matter authorized by Subchapter D, Chapter 375, Local Government Code; however, action may only be taken by the board if it is approved in the manner prescribed by Subchapter D, Chapter 375, Local Government Code.

(g) Each position on the board represents a separate area of the district to be known as a director district. As soon as possible after the effective date of this Act, the board shall establish the boundaries of the director districts over areas in the district that in the board's judgment provide a reasonable balance in the board representation between acreage, value, improvements, and interests of the property owners in the district. All land in the district shall be in a director district. Director districts may not overlap. The board from time to time may establish new boundaries for one or more director district if it is necessary to provide a reasonable balance in the board representation between acreage, value, improvements, and interests of the property owners in the district.

(h) Directors shall be compensated in the manner provided by Section 54.114, Water Code.

SECTION 6. GENERAL POWERS. (a) The district has all of the rights, powers, privileges, and authority conferred by the general law of this state applicable to districts created under Chapter 375, Local Government Code; Chapter 54, Water Code; Chapter 13, Acts of the 68th Legislature, 2nd Called Session, 1984 (Article 6674r-1, Vernon's Texas Civil Statutes); and Chapter 623, Acts of the 67th Legislature, Regular Session, 1981 (Article 6550c, Vernon's Texas Civil Statutes). The district also has the rights, powers, privileges, and authority granted to districts by Subchapters E and M, Chapter 60, Water Code, and Section 61.116, Water Code. Bonds or other obligations issued under any of those laws may be

secured by revenues, assessments, ad valorem taxes, impact fees, grants, or other funds of the district, or any combination of those funds. The district also has all of those powers granted to municipal management districts under Sections 375.092 and 375.111, Local Government Code, to provide any services or for any project the district is authorized to acquire, construct, or improve under this Act. The district may acquire any interest in land in accordance with Chapter 54, Water Code. If any provision of the referenced laws is in conflict with or is inconsistent with this Act, this Act prevails. All laws or provisions of laws referenced in the Act and subsequent amendments of those laws are adopted and incorporated into this Act for all purposes and may be used by the district independently of each other.

(b) The district may finance the cost of any authorized improvement project or services in the manner provided by any law made applicable to the district. A petition under Section 375.114, Local Government Code, is not required for the board to be authorized to levy taxes, assessments, or impact fees to finance services and improvement projects under this Act.

(c) If the district, in exercising a power conferred by this Act, requires a relocation, adjustment, raising, lowering, rerouting, or changing the grade of or altering the construction of any street, alley, highway, overpass, underpass, road, railroad track, bridge, facility or property, electric line, conduit, facility or property, telephone or telegraph line, conduit, facility or property, gas transmission or distribution pipe, pipeline, main, facility or property, water, sanitary sewer or storm sewer pipe, pipeline, main, facility or property, cable television line, cable, conduit, facility or property, or other pipeline or facility or property relating to the pipeline, that relocation, adjustment, raising, lowering, rerouting, changing of grade, or altering of construction must be accomplished at the sole cost and expense of the district, and damages that are suffered by owners of the property or facilities shall be borne by the district.

(d) The district may not own or operate an airport.

(e) The board shall establish by resolution the number of director signatures or the procedure required for all disbursements or transfers of the district's money.

SECTION 7. TORT CLAIMS. The district is a unit of government for purposes of Chapter 101, Civil Practice and Remedies Code. The operations of the district are essential governmental functions for all purposes and not proprietary functions.

SECTION 8. ANNEXATION AND EXCLUSION OF TERRITORY BY THE DISTRICT. The district may annex land to and exclude land from the district as provided by Chapter 54, Water Code. The district may not annex land in a municipality's extraterritorial jurisdiction unless the municipality consents to the annexation.

SECTION 9. MUNICIPAL ANNEXATION OF THE DISTRICT. A municipality in whose extraterritorial jurisdiction the district is located may annex all or part of the district, notwithstanding any provision of Chapter 43, Local Government Code. Annexation does not result in total or partial dissolution of the district or an assumption by the annexing municipality of any of the district's obligations or indebtedness. Creation of the district

does not affect the power of a municipality in whose extraterritorial jurisdiction the district or part of the district lies to designate all or part of the district as an industrial district or to limit a power of the municipality conferred by Chapter 42, Local Government Code. Creation of the district does not affect the power of a municipality to provide municipal services to any area in the municipality or its extraterritorial jurisdiction that is in the district and such municipality shall have the same power to extend or provide municipal services after the creation of the district as it had before its creation. A municipal annexation of all or part of the district has no effect on the validity of the district and the district shall continue to exist and exercise the powers granted by this Act.

SECTION 10. BONDS AND ASSESSMENTS. (a) The district may issue bonds or other obligations payable in whole or in part from ad valorem taxes, assessments, impact fees, revenues, grants, or other funds of the district, or any combination of those funds, to pay for any authorized purpose of the district. Bonds or other obligations of the district may be issued in the form of bonds, notes, certificates of participation, including other instruments evidencing a proportionate interest in payments to be made by the district, or other obligations that are issued in the exercise of the district's borrowing power and may be issued in bearer or registered form or not represented by an instrument but the transfer of which is registered on books maintained by or on behalf of the district. The board may levy and collect an assessment under Subchapter F, Chapter 375, Local Government Code, for any authorized purpose only if the assessment does not conflict with other provisions of this Act.

(b) No approval of bonds issued by the district is required other than the approval of the attorney general as provided by Section 375.205, Local Government Code, and the approval of the Texas Water Commission if the bonds are issued for a purpose that Section 375.208, Local Government Code, requires to be approved by the commission.

(c) Assessments or reassessments by the district, penalties and interest on the assessments or reassessment, expenses of collection, and reasonable attorney's fees incurred by the district are a first and prior lien against the property assessed, are superior to any other lien or claim other than a lien or claim for county, school district, or municipal ad valorem taxes, and are the personal liability of and charge against the owners of the property even if the owners are not named in the assessment proceedings. The lien is effective from the date of the resolution of the board levying the assessment until the assessment is paid. The board may enforce the lien in the same manner that the board may enforce an ad valorem tax lien against real property.

(d) Bonds payable from an ad valorem tax levied over the entire district may not be issued in an amount in excess of the greater of (1) $50,000,000, or (2) 10% of the assessed value of taxable property within the entire district as shown on the most recent certified tax rolls of the county central appraisal district, unless the Texas Water Commission approves the bonds as to feasibility, in which case, the limit on the amount of bonds to be issued shall be that amount set by the Texas Water

Commission. This provision will not limit the authority of the district to issue bonds which are not payable from ad valorem taxes levied over the entire district.

SECTION 11. ELECTIONS. The district shall hold elections as provided by Subchapter L, Chapter 375, Local Government Code. The district shall also hold elections in the manner provided by that subchapter for the purpose of obtaining voter approval for the district to levy a maintenance tax or to issue bonds payable from ad valorem taxes or assessments. The board may submit multiple purposes in a single proposition at an election.

SECTION 12. IMPACT FEES. The district may impose an impact fee for an authorized purpose as provided by Subchapter G, Chapter 375, Local Government Code. The district may not impose an impact fee or assessment on a single-family residential property or a residential duplex, triplex, quadruplex, or condominium.

SECTION 13. MAINTENANCE TAX. If authorized at an election held in accordance with Section 11 of this Act, the district may levy and collect an annual ad valorem tax on taxable property in the district for maintenance, operation, and upkeep of the district and the improvements constructed or acquired by the district and the provision of services to industrial and commercial businesses and residents and property owners. The board shall determine the tax rate.

SECTION 14. DISSOLUTION OF THE DISTRICT. The district may be dissolved as provided in Section 375.261 or Section 375.262, Local Government Code. If the district is dissolved, the district shall remain in existence solely for the limited purpose of discharging its bonds or other obligations according to their terms.

SECTION 15. CONTRACTS FOR SECURITY SERVICES. To protect the public interest, the district may contract with a private entity or a municipality, county, or other political subdivision for services for the security and protection of residents and property in the district.

SECTION 16. COMPETITIVE BIDDING. The district shall contract for services, improvements, or the purchase of materials, machinery, equipment, supplies, or other property in excess of $25,000 as provided by Section 375.221, Local Government Code, or Subchapter I, **H.B. 1266**, Acts of the 73rd Legislature, Regular Session, 1993.

SECTION 17. NOTICE AND CONSENT. The legislature finds that:

(1) proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and laws of this state, including the governor of Texas, who has submitted the notice and Act to the Texas Water Commission;

(2) the Texas Water Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time;

(3) the general law relating to consent by political subdivisions to the creation of districts with conservation, reclamation, and road powers and the inclusion of land in those districts has been complied with; and

(4) all requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction and passage of this Act have been fulfilled and accomplished.

SECTION 18. SEVERABILITY CLAUSE. The provisions of this Act are severable, and if any provision or part of this Act or the application thereof to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Act and the application of that provision or part of this Act to other persons or circumstances is not affected.

SECTION 19. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read.

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1326** by a viva voce vote.

SENATE BILL 1426 WITH HOUSE AMENDMENTS

Senator Parker called **S.B. 1426** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **S.B. 1426** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of social workers and to the creation of a new state board to replace the Council for Social Work Certification.

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

SECTION 1. Section 50.001, Human Resources Code, is amended to read as follows:

Sec. 50.001. TITLE; DEFINITIONS. (a) This chapter may be cited as the Texas Professional Social Work Act.

(b) In this chapter:

(1) "Board" means the Texas State Board of Social Worker Examiners [~~Human Services~~].

(2) "Licensed [~~Certified~~] social worker" means a person who is duly licensed [~~certified~~] as a licensed [~~certified~~] social worker by the board [~~department~~] in accordance with this chapter.

(3) [~~"Social work services" means the professional activity of helping individuals, groups, or communities enhance or restore their~~

~~capacity for social functioning and creating societal conditions favorable to this goal. Social work services consist of the professional application of social work values, principles, and techniques to one or more of the following ends: helping people obtain tangible services, counseling with individuals, families, or groups, helping communities or groups provide social and health services, and participating in formulating relevant public policies. The practice of social work requires knowledge of human development and behavior, of social, economic, and cultural institutions, and of the interaction of all these factors.~~

[~~(4)~~] "Social worker" means a person who has been licensed [~~duly certified as a social worker~~] by the board [~~department~~] in accordance with this chapter.

(4) "Licensed master social worker" means a person who is licensed as a licensed master social worker by the board in accordance with this chapter.

(5) "Advanced clinical practitioner" means a person who is licensed as a licensed master social worker and recognized as being qualified for the practice of clinical social work by the board in accordance with this chapter.

(6) "Professional social work practice" means service and action performed for compensation to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. For the purpose of this definition, the practice of professional social work is guided by special knowledge, acquired through formal professional social work education, of social welfare policies and services, social welfare systems and resources, human development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Professional social work practice involves the disciplined application of social work values, principles, and methods, including psychotherapy, marriage and family therapy, couples therapy, group therapy, counseling, assessment, and evaluation.

(7) "License" means a license required of a person to use any title or represent that the person is authorized to practice professional social work under this chapter.

(8) "Council on Social Work Education" means the national organization primarily responsible for accrediting schools of social work in the United States.

(9) "Department" means the Texas Department of Health.

(10) [~~(5)~~] "Social work associate" means a person who is licensed [~~has been duly certified~~] as a social work associate by the board [~~department~~] in accordance with this chapter.

[~~(6) "Council" means the Council for Social Work Certification.~~

[~~(7) "Department" means the Texas Department of Human Services.~~]

(c) [~~(b)~~] The board [~~department~~] may define by rule any word or term not defined in this section as necessary to administer or enforce this

chapter. The definition may not be inconsistent or in conflict with the purposes or objectives of this chapter.

SECTION 2. Section 50.002, Human Resources Code, is amended to read as follows:

Sec. 50.002. EXEMPTIONS. This chapter does not apply to:

(1) activities or services of other licensed, certified, or registered professions, including physicians and surgeons, attorneys, registered and licensed vocational nurses, psychologists, occupational therapists, licensed marriage and family therapists, licensed chemical dependency counselors, and licensed professional counselors, if the persons act strictly within the scope of their respective licenses and do not use the titles in Section 50.010;

(2) the delivery of human services by a volunteer or a staff member, if the person does not represent the person's services as social work services or represent the person as a social worker or use a title that would imply licensure or certification in professional social work services;

(3) the activity of a student, intern, or trainee in social work in connection with an institution of higher learning accredited by the Council on Social Work Education;

(4) an activity constituting a part of the course of study for the baccalaureate or master's degree in social work, if the person does not use a title that would imply licensure or certification in professional social work services;

(5) a service rendered by a nonresident of this state for less than 30 days during the calendar year, if the person is authorized to provide the service under the laws of the state or country of the person's residence;

(6) the activity or service of pastoral care counselors, including Christian Science practitioners recognized by the Church of Christ Scientist as registered and published in the Christian Science Journal and other recognized religious practitioners, if the person does not use a title that would imply licensure or certification in professional social work services; or

(7) all [~~All~~] persons who [~~are exempt from this chapter if they~~] do not represent or hold themselves out to the public, directly or indirectly, as licensed [~~certified~~] under this chapter and do not use any name, title, or designation indicating that they are licensed [~~certified~~] under this chapter.

SECTION 3. Section 50.003, Human Resources Code, is amended to read as follows:

Sec. 50.003. CIVIL RIGHTS. A consideration of an application for licensure [~~certification~~], examination, regulation, disciplinary proceeding, and any other action and decision performed by authority of this chapter shall be made or done without regard to sex, race, religion, national origin, color, or political affiliation.

SECTION 4. Section 50.004, Human Resources Code, is amended to read as follows:

Sec. 50.004. Texas State Board of Social Worker Examiners [~~Council for Social Work Certification~~]. (a) The Texas State Board of Social Worker Examiners [~~Council for Social Work Certification~~] is created [~~to~~

~~advise the department on problems relating to the practice of social work. The council shall review rules and minimum standards for social work certification and make recommendations to the department concerning rules, standards, and administration under this chapter~~].

(b) The board [~~council~~] is composed of nine members appointed by the governor with the advice and consent of the senate [~~board upon the recommendation of the commissioner~~]. The board [~~council~~] is composed as follows: three members shall be at all times licensed master [~~certified~~] social workers licensed [~~certified~~] under this chapter, at least two of whom shall be at all times recognized as advanced clinical practitioners; two [~~three~~] members shall be at all times licensed social workers licensed [~~or social work associates certified~~] under this chapter; one member shall be at all times a social work associate licensed under this chapter;[~~,~~] and the remaining three members shall be representatives of the public who are not licensed [~~certified~~] under this chapter and who do not have, other than as consumers, any interest in the practice of social work. [~~Until December 31, 1987, one member who is a certified social worker must have been certified under the work experience qualifications prescribed by Subdivision (3) or (4) of Subsection (a) of Section 50.015 of this chapter, and one member who is a social worker must have been certified under the work experience qualifications prescribed by Subdivisions (2), (3), or (4) of Subsection (a) of Section 50.016 of this chapter.~~]

(c) Members of the board [~~Except for the initial appointments, members~~] hold office for staggered terms of six [~~three~~] years with three members' terms expiring February 1 [~~January 31~~] of each odd-numbered year. A member appointed to fill a vacancy shall hold office for the remainder of that term. [~~In making the initial appointments, the board shall appoint members within 90 days after this chapter takes effect to serve the following terms: three members for terms that expire January 31, 1985, three members for terms that expire January 31, 1984, and three members for terms that expire January 31, 1983.~~]

(d) The governor [~~board~~] shall make appointments to the board [~~council~~] after considering how representative the board [~~council~~] is with regard to race, sex, age, and geographical representation.

(e) [~~It is a ground for removal from the council that a member:~~

[~~(1) does not have at the time of appointment the qualifications required by Subsection (b) of this section for appointment to the council;~~

[~~(2) does not maintain during the service on the council the qualifications required by Subsection (b) of this section for appointment to the council; or~~

[~~(3) violates a prohibition established by Subsection (g) or (h) of this section. The validity of an action of the council is not affected by the fact that it was taken when a ground for removal of a member of the council existed.~~

[~~(f) A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of his activities for compensation in or on behalf of a profession related to the operation of the council may not serve as a council member or act as the general counsel to the council.~~

[~~(g) A member or employee of the council may not be an officer, employee, or paid consultant of a trade association in the field of social work.~~

[~~(h) A member or employee of the council may not be related within the second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a trade association in the field of social work.~~

[~~(i) Members of the council must be citizens of the United States and residents of this state. Social workers appointed to the board must be certified as required by this section, except that the initial appointees must be persons who are eligible for the appropriate certificate and must have actively, actually, and continuously engaged in rendering social work services or in social work teaching or administration for a period of at least five years immediately preceding appointment.~~

[~~(j)~~] Each member of the board [~~council~~] is entitled to a per diem as set by legislative appropriation for state employees and travel expenses to and from the business of the board [~~council~~]. No member shall receive actual or necessary expenses except for travel to and from meetings.

(f) [~~(k)~~] The board [~~council~~] shall meet at least once a year. The governor shall designate one member of the board as presiding officer to serve in that capacity at the pleasure of the governor. At the first regular meeting each year the board [~~council~~] shall elect other officers [~~a chairman and a vice-chairman~~]. Other regular meetings may be held as the rules of the board [~~council~~] may provide. Special meetings may be held at times considered advisable by the board [~~council~~].

(g) [~~(l)~~] The board [~~council~~] 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).

(h) [~~(m) The department shall provide staff necessary to assist the council in performing its duties. The staff person directly responsible for the administration of this chapter shall at all times have the confidence of the majority of the council.~~

[~~(n)~~] The Texas State Board of Social Worker Examiners [~~Council for Social Work Certification~~] is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board [~~council~~] is abolished and this section expires September 1, 2005 [~~1993~~]. [~~If the council is continued in existence beyond that date, subsequent sunset provisions should be made to conform with those of the Texas Department of Human Services.~~]

SECTION 5. Chapter 50, Human Resources Code, is amended by adding Sections 50.0041-50.0045 to read as follows:

Sec. 50.0041. PUBLIC MEMBERSHIP RESTRICTION. 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 health care;

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

(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 the department or receiving funds from the board or the department; or

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

Sec. 50.0042. CONFLICT OF INTEREST RESTRICTIONS. (a) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a member of the board or 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 health care may not be a board member and may not be an employee of the department who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) 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.

Sec. 50.0043. EFFECT OF LOBBYING ACTIVITY. A person may not serve as a member of the board if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 50.0044. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 50.004;

(2) does not maintain during service on the board the qualifications required by Section 50.004;

(3) violates a prohibition established by Section 50.0042 or 50.0043;

(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.

(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 has knowledge that a potential ground for removal exists, the executive director shall notify the governor and the attorney general that a potential ground for removal exists.

Sec. 50.0045. STAFF. (a) The board is administratively attached to the Texas Department of Health and the basic personnel and necessary facilities that are required to administer this chapter shall be the personnel and facilities of the department. The department personnel shall act as the agents of the board. If necessary to the administration of this chapter, the department by agreement may secure and provide for compensation for services that it considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(b) The commissioner of health shall designate an employee of the department to serve as executive director of the board. The executive director shall be the administrator of the licensing and regulatory activities of the board. In addition to other duties provided by this chapter and by the department, the executive director shall:

(1) keep full and accurate minutes of the transactions and proceedings of the board;

(2) be the custodian of the files and records of the board;

(3) prepare and recommend to the board plans and procedures necessary to implement the purposes and objectives of this chapter, including rules and proposals or administrative procedures consistent with this chapter;

(4) exercise general supervision over persons employed by the department in the administration of this chapter;

(5) be responsible for the investigation of complaints and for the presentation of formal complaints;

(6) attend all meetings of the board as a nonvoting participant; and

(7) handle the correspondence of the board and obtain, assemble, or prepare the reports and information that the board may direct or authorize.

(c) The department shall provide staff necessary to assist the board in performing its duties. The executive director shall at all times have the confidence of the majority of the board.

SECTION 6. Section 50.005, Human Resources Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) All money paid to the department [~~derived from fees, assessments, or charges~~] under this chapter shall be deposited in the state treasury to the credit of a special social worker account in the general revenue fund and may be used only for the administration [~~paid by the department into the State Treasury for safekeeping and shall be placed by the State Treasurer in a separate fund to be known as the social workers fund. The money shall be available to the department exclusively for the administration, implementation,~~] and enforcement of this chapter. Surpluses are reserved for the use of the department in the administration and enforcement of this chapter.

(c) The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

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

SECTION 7. Section 50.006, Human Resources Code, is amended to read as follows:

Sec. 50.006. REGULATION AND ENFORCEMENT. (a) The board [~~department~~] may [~~adopt and~~] enforce [~~the~~] rules adopted by the board necessary for the performance of its duties, establish standards of conduct and ethics for all persons licensed [~~certified~~] under this chapter, and ensure strict compliance with and enforcement of this chapter. In adopting rules, the board shall consider the rules and procedures of the Texas Board of Health and the department and shall adopt procedural rules not inconsistent with similar existing rules and procedures of the Texas Board of Health or the department.

(b) The violation by a licensed master [~~certified~~] social worker, licensed social worker, or social work associate of this chapter or of any rule of the board [~~department~~] pertaining to the practice of social work is sufficient reason to reprimand a license holder or to suspend or revoke a license [~~certificate~~] issued under this chapter.

(c) In addition to any other action, proceeding, or remedy authorized by law, the board or department may institute an action to enjoin a violation of this chapter or a rule of the board [~~department~~]. The suit may be brought in Travis County, in the county of the defendant's residence, or in the county where any part of the alleged violation occurred. In order for the board or department to sustain the action, it is not necessary to allege or prove the lack of an adequate remedy at law or that substantial or irreparable damage would result from the continued violation. Either party to the action may appeal to the appellate court having jurisdiction of the cause. The board or department shall not be required to give any appeal bond in any cause arising under this chapter. The attorney general shall represent the board or department in all actions and proceedings to enforce this chapter.

(d) The board [~~department~~] shall prepare information of consumer interest describing the regulatory functions of the board [~~department~~] and describing the board's [~~department's~~] procedures by which consumer complaints are filed with and resolved by the board [~~department~~]. The board [~~department~~] shall make the information available to the general public and appropriate state agencies.

(e) 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 by the board; or

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

(f) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law [~~There shall be prominently displayed at all times in the place of business of each person certified under this chapter a sign containing the name, mailing address, and telephone number of the department and a statement informing consumers that complaints against persons certified under this chapter may be directed to the department~~].

SECTION 8. Section 50.0061, Human Resources Code, is amended to read as follows:

Sec. 50.0061. ADVERTISING. (a) The board [~~department~~] may not adopt rules restricting competitive bidding or advertising by a person regulated by the board [~~department~~] except to prohibit false, misleading, or deceptive practices by the person.

(b) The board [~~department~~] may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board [~~department~~] a rule that:

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

(2) restricts the person's personal appearance or use of the person's [~~his~~] 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 9. Chapter 50, Human Resources Code, is amended by adding Sections 50.0062-50.0065 to read as follows:

Sec. 50.0062. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 50.0063. PROGRAM ACCESSIBILITY. The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

Sec. 50.0064. STANDARDS OF CONDUCT INFORMATION. The board shall provide to its members and employees, as often as necessary, information regarding their qualifications for office or employment under this article and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 50.0065. TRAINING. (a) The board shall establish a training program for the members of the board.

(b) Before a member of the board may assume the member's duties, the member must complete at least one course of the training program established under this section, and before the member may be confirmed by the senate, the member must pass an examination given in conjunction

with the attorney general on subjects described by Subsections (c)(7), (8), and (9).

(c) A training program established under this section shall provide information to a participant regarding:

(1) the enabling legislation that created the board;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of the:

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes);

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes); and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes);

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(d) In developing the training requirements provided for by this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.

SECTION 10. Subsection (a), Section 50.008, Human Resources Code, is amended to read as follows:

(a) A roster showing the names and addresses, as reflected by the board's [~~department's~~] records, of all licensed master [~~certified~~] social workers, licensed social workers, and social work associates licensed [~~certified~~] by the board [~~department~~] shall be prepared and published by the board [~~department~~] at its discretion. Copies of the roster shall be mailed to each person certified by the department and placed on file with the secretary of state.

SECTION 11. Section 50.009, Human Resources Code, is amended to read as follows:

Sec. 50.009. FEES. (a) The board by rule [~~department~~] shall establish reasonable and necessary[~~, charge, and collect~~] fees so that the fees, in the aggregate, produce sufficient revenues to cover the cost of administering this chapter[~~, as follows:~~

[~~(1) a fee for the filing of an application to take an examination for a certificate under this chapter;~~

[~~(2) a fee for the taking of an examination;~~

[~~(3) a fee for the original issuance of certificate under this chapter;~~

[~~(4) a fee for the original issuance of an order of recognition to practice a specialty in the practice of social work;~~

[~~(5) a fee for an annual renewal of an order of recognition to practice a specialty in the practice of social work;~~

[~~(6) a fee for an annual renewal of a certificate issued in accordance with this chapter;~~

[~~(7) a fee for replacement of a certificate, specialty order of recognition, or renewal lost or destroyed; and~~

[~~(8) a fee for a copy of the official roster of certified persons published by the department for the one copy mailed to each person certified~~].

(b) The fees set by the board may be adjusted so that the total fees collected are sufficient to meet the expenses of administering this chapter. The board may not set a fee for an amount less than the amount of that fee on September 1, 1993 [~~If a certified social work associate is qualified on September 2, 1983, to be examined for a certificate as a social worker because of a legislative change in qualifications under Section 50.016 of this chapter, the department may not charge or collect a fee for issuing the social worker certificate to that person~~].

SECTION 12. Section 50.010, Human Resources Code, is amended to read as follows:

Sec. 50.010. LICENSE RESTRICTIONS AND LIMITATIONS [~~LIMITATION OF PRACTICE~~]. (a) Unless licensed [~~certified~~] under this chapter or unless specifically exempted from its provisions, a person may not:

(1) employ, use, cause to be used, or make use of any of the following terms or any combinations, variations, or abbreviations of the terms as a professional, business, or commercial identification, title, name, representation, claim, asset, or means of advantage or benefit: "[~~certified~~] social worker," "licensed master [~~certified~~] social worker," "licensed social worker," or [~~"registered certified social worker," "social worker," "licensed social worker," "registered social worker,"~~] "social work associate[~~,~~]" [~~or "registered social work associate"~~]; or

(2) use a title that implies licensure or certification in professional social work services [~~employ, use, cause to be used, or make use of any letter, abbreviation, word, symbol, slogan, sign, or any combination or variation of them that tends or is likely to create any impression with a member of the public that a person is qualified or authorized to practice social work or is a certified social worker, social worker, or social work associate, unless appropriately certified under and practicing in accordance with this chapter~~].

(b) A person, firm, partnership, association, corporation, business, or professional entity that does or offers or attempts to do an act prescribed by Subsection (a) of this section is engaged in the practice of professional social work.

SECTION 13. Section 50.011, Human Resources Code, is amended to read as follows:

Sec. 50.011. PROFESSIONAL IDENTIFICATION. A person licensed [~~certified~~] by the board [~~department~~] in accordance with this chapter shall,

in the professional use of the person's [his] name or any sign, directory, listing, contract, document, pamphlet, stationery, letterhead, advertisement, signature, or other means of professional identification, written or printed, use the following legally required identifications:

(1) if licensed [certified] as a licensed master [certified] social worker, the words "licensed master [certified] social worker" or the initials "L.M.S.W." ["C.S.W."];

(2) if licensed [certified] as a licensed social worker, the words "licensed social worker" or the initials "L.S.W."; or

(3) if licensed [certified] as a social work associate, the words "social work associate" or the initials "S.W.A."

SECTION 14. Section 50.012, Human Resources Code, is amended to read as follows:

Sec. 50.012. PUBLIC REPRESENTATIONS. A firm, partnership, association, corporation, or other business or professional entity may not hold itself or another out to the public as being engaged in the work or practice of social work or offering social work services under an assumed, trade, business, professional, partnership, or corporate name or title or employ, use, cause to be used, or make use of, directly or indirectly or in any manner, the words or terms "social work," "social work services," "social work, inc.," "professional social workers," "licensed [certified] social workers," "licensed master social workers," "social work associate," "L.M.S.W.," "L.S.W.," "S.W.A.," ["social work associates," "C.S.W.," "S.W.A.,"] or any combinations, abbreviations, or variations of any of these or in combination with any other words, letters, initials, signs, legends, or symbols on, in, or as a part of, directly or indirectly, any sign, directory, listing, contract, document, pamphlet, stationery, letterhead, advertisement, signature, trade name, assumed name, or corporate or other business or professional name, unless the firm, partnership, association, corporation, or other business or professional entity is actually and actively engaged in the practice of social work or is actually and actively performing social work services, and unless the services performed by it which constitute the practice of social work are either personally performed or done by a [certified] social worker[, social worker, or social work associate] practicing in accordance with this chapter or under the supervision [general direction] of a licensed [certified] social worker or licensed master social worker.

SECTION 15. Section 50.013, Human Resources Code, is amended to read as follows:

Sec. 50.013. APPLICATIONS. An application for licensure [certification] under this chapter shall be on a form prescribed and furnished by the board [department] and shall contain statements made under oath setting forth in detail the applicant's education, experience, and other information as required by the board [department] that qualify the applicant for a license [certificate] under this chapter. No person is eligible for a license [certificate] provided under this chapter unless the person [he] is at least 18 years of age and worthy of the public trust and confidence.

SECTION 16. Section 50.014, Human Resources Code, is amended to read as follows:

Sec. 50.014. EXAMINATIONS. (a) At least once each calendar year the board [~~department~~] shall prepare and administer an examination to determine the qualifications of applicants for certificates under this chapter. Examinations shall be conducted in the manner the board [~~department~~] determines and in a manner that is fair and impartial to all individuals and to every school or system of social work. Applicants shall be known to the examiners only by numbers until after the general averages of the applicants in a class have been determined and licenses [~~certificates~~] have been granted or refused. The scope and content of examinations shall be sufficient to ensure professional efficacy and competence in keeping with the highest standards of the social work profession. The board shall have the written portion of the examination, if any, validated by an independent testing entity.

(b) On satisfactory completion of all requirements of the examination conducted by the board [~~department~~], an applicant may be granted a license [~~certificate~~] as a licensed master [~~certified~~] social worker, licensed social worker, or social work associate as the board [~~department~~] determines.

(c) The board by rule shall establish:

(1) a limit on the number of times an applicant who fails an examination may retake the examination;

(2) requirements for retaking an examination; and

(3) alternative methods of examining competency [~~An applicant who fails an examination may be reexamined at a subsequent time on payment of the required fees. An applicant may be reexamined only three times for the same certificate~~].

(d) If requested by a person who fails the examination for a license [~~certificate~~], the board [~~department~~] shall furnish to the person an analysis of the person's performance on the examination.

(e) Not later than the 30th day after the day on which a licensing [~~certification~~] examination is administered under this chapter, the board [~~department~~] shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board [~~department~~] shall notify examinees of the results of the examination not later than the 14th day after the day on which the board [~~department~~] receives the results from the testing service. If the notice of the examination results will be delayed for longer than 90 days after the examination date, the board [~~department~~] shall notify the examinee of the reason for the delay before the 90th day.

SECTION 17. Section 50.015, Human Resources Code, is amended to read as follows:

Sec. 50.015. LICENSED MASTER [~~CERTIFIED~~] SOCIAL WORKER. The board [~~(a) Until December 31, 1985, the department~~] shall consider [~~the following as minimum evidence that an applicant is qualified to be examined for a certificate as a certified social worker:~~

[~~(1)~~] a doctoral degree in social work or master's degree in social work from a [~~an accredited~~] graduate program accredited [~~approved~~] by the Council on Social Work Education [~~department;~~

[~~(2) a doctoral degree or master's degree not in social work from an accredited program approved by the department and the successful completion of two years' actual and active social work experience approved by the department; or~~

[~~(3) a baccalaureate degree in social work or a related field from an educational program approved by the department and the successful completion of five years' actual and active social work experience approved by the department; or~~

[~~(4) a baccalaureate degree not in social work or a related field from an educational institution approved by the department and the successful completion of 10 years' actual and active social work experience approved by the department.~~

[~~(b) After December 31, 1985, the department shall consider only the qualifications prescribed by Subdivision (1) of Subsection (a) of this section~~] as minimum evidence that an applicant is qualified to be examined for a license [~~certificate~~] as a licensed master [~~certified~~] social worker.

SECTION 18. Section 50.016, Human Resources Code, is amended to read as follows:

Sec. 50.016. LICENSED SOCIAL WORKER. The board [~~(a) Until December 31, 1985, the department~~] shall consider [~~the following as minimum evidence that an applicant is qualified to be examined for a certificate as a social worker:~~

[~~(1)~~] a baccalaureate degree in social work from an educational program accredited [~~approved~~] by the Council on Social Work Education [~~department;~~

[~~(2) a baccalaureate degree not in social work from an educational institution approved by the department and the successful completion of five years' actual and active social work experience approved by the department;~~

[~~(3) an associate degree from an educational institution approved by the department and the successful completion of 10 years' actual and active social work experience approved by the department; or~~

[~~(4) a high school diploma or its substantial equivalent as determined by the department and the successful completion of 15 years' actual and active social work experience approved by the department.~~

[~~(b) After December 31, 1985, the department shall consider only the qualifications prescribed by Subdivision (1) of Subsection (a) of this section~~] as minimum evidence that an applicant is qualified to be examined for a license [~~certificate~~] as a licensed social worker.

SECTION 19. Section 50.017, Human Resources Code, is amended to read as follows:

Sec. 50.017. SOCIAL WORK ASSOCIATE. [~~(a)~~] The board [~~department~~] shall consider the following as minimum evidence that an applicant is qualified to be examined for a license [~~certificate~~] as a social work associate:

(1) a baccalaureate degree from an accredited educational institution and the additional satisfactory completion of a reasonable specified number of years of actual and active social work experience approved by the board [~~department~~]; or

(2) an associate of arts degree in the behavioral sciences as determined by the board from an accredited educational institution and the additional satisfactory completion of a reasonable specified number of years of actual and active social work experience approved by the board [~~department; or~~

[~~(3) a high school diploma or its substantial equivalent as determined by the department and the satisfactory completion of a specified number of years of actual and active social work experience approved by the department~~].

SECTION 20. Section 50.018, Human Resources Code, is amended to read as follows:

Sec. 50.018. EXPERIENCE EVALUATION. In determining the credibility and acceptability of an applicant's professional or technical experience or competence, the board [~~department~~] may require documentary evidence of the quality, scope, and nature of the experience and competence as necessary to ensure public safety, health, and welfare.

SECTION 21. Section 50.019, Human Resources Code, is amended to read as follows:

Sec. 50.019. TEMPORARY LICENSE [~~Provisional Certificate~~]. Prior to examination, an applicant for licensure may obtain a temporary license as long as the applicant meets all the requirements, except examination, as prescribed in this chapter for the level of license sought. The temporary license is valid until the results of the first qualifying written examination are available [~~(a) Until December 31, 1985, a person who, in the judgment of the department, meets the requirements of this chapter may be issued the appropriate certificate, as the department shall determine, without examination, on application to the department in the form and content that it may require and on payment of the fee for the original issue of a certificate as established by the department in accordance with this chapter.~~

[~~(b) After December 31, 1985, a person who has some of the work experience requirements for examination in Section 50.015 or 50.016 of this chapter may, after completion of the required work experience, be issued the appropriate certificate without examination if:~~

[~~(1) the person has at least one-half of the work experience prescribed by Section 50.015 or 50.016 of this chapter by December 31, 1985;~~

[~~(2) the person notifies the department not later than December 31, 1985, of the person's intention to apply for a certificate without examination; and~~

[~~(3) the department determines that the work experience is satisfactory~~].

SECTION 22. Section 50.020, Human Resources Code, is amended to read as follows:

Sec. 50.020. PRIVATE PRACTICE. (a) The board [~~department~~] shall establish procedures for the recognition of persons qualified for the private, independent practice of social work and publish or cause to be published a roster of qualified persons. Minimum qualifications for recognition shall include:

(1) licensure [~~certification~~] as a licensed master [~~certified~~] social worker under this chapter; and [~~or~~]

(2) a number of years of acceptable social work experience as determined by the board [~~department~~].

(b) A licensed social worker or social work associate will not be eligible for recognition as being qualified to practice social work as a private, independent practitioner.

(c) A person qualified for the private, independent practice of social work under this section shall, for the purposes of Article 21.52, Insurance Code, be authorized to use the title "advanced clinical practitioner" or any other title approved by the board and the other title shall mean the same as and be equivalent to the title "advanced clinical practitioner" as used in Article 21.52, Insurance Code.

SECTION 23. Section 50.021, Human Resources Code, is amended to read as follows:

Sec. 50.021. REVOCATION AND SUSPENSION. (a) The board shall revoke or suspend [~~department may refuse to issue or to renew~~] a license [~~certificate~~] or order of recognition, [~~may~~] place on probation a person whose license [~~certificate~~] or order of recognition has been suspended, or [~~may~~] reprimand a person with a license [~~certificate~~] or order of recognition[~~, or may revoke or suspend a certificate or order of recognition issued under this chapter~~] for any of the following reasons:

(1) violating a provision of this chapter or a rule of the board [~~department~~];

(2) circumventing or attempting to circumvent this chapter or a rule of the board [~~department~~];

(3) participating, directly or indirectly, in a plan, scheme, or arrangement attempting or having as its purpose the evasion of this chapter or a rule of the board [~~department~~];

(4) engaging in unethical conduct;

(5) engaging in conduct which discredits or tends to discredit the profession of social work;

(6) performing an act, allowing an omission, or making an assertion or representation that is fraudulent, deceitful, or misleading or that in any manner tends to create a misleading impression;

(7) knowingly associating with or permitting or allowing the use of any licensed [~~certified~~] person's professional services or professional identification in a project or enterprise that the person knows or with the exercise of reasonable diligence should know is a practice that violates this chapter or a rule of the board [~~department~~] pertaining to the practice of social work;

(8) knowingly associating with or permitting the use of a licensed [~~certified~~] person's name, professional services, professional identification, or endorsement in connection with a venture or enterprise that the person knows or with the exercise of reasonable diligence should know is a trade, business, or professional practice of a fraudulent, deceitful, misleading, or dishonest nature;

(9) revealing, directly or indirectly, or causing to be revealed a confidential communication transmitted to the licensed [~~certified~~] person by a client or recipient of his services except as may be required by law;

(10) having a certificate or a license to practice social work in another jurisdiction denied, suspended, or revoked for reasons or causes the board [~~department~~] finds would constitute a violation of this chapter or a rule pertaining to the practice of social work adopted by the board [~~department~~];

(11) having been convicted of a felony in an American jurisdiction; or

(12) refusing to do or perform any act or service for which the person is licensed [~~certified~~] under this chapter solely on the basis of the recipient's age, sex, race, religion, national origin, color, or political affiliation.

(b) If a license or order of recognition suspension is probated, the board may require the probationer to:

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

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

(3) continue or review continuing professional education until the probationer attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

SECTION 24. Section 50.022, Human Resources Code, is amended to read as follows:

Sec. 50.022. DISCIPLINARY PROCEEDINGS. (a) A proceeding under Section 50.021 [~~of this chapter~~] begins when a charge is filed with the department and referred to the board in writing and under oath. The charge may be made by any person.

(b) A person is entitled to notice and a hearing before the State Office of Administrative Hearings before a sanction is imposed under Section 50.021.

[~~(c) The department may rule that the order revoking or suspending a certificate or order of recognition be probated so long as the probationer conforms to the orders and rules that the department sets out as the terms of probation. The department, at the time of probation, shall set out the period of time that constitutes the probationary period. The department may at any time while the probationer remains on probation hold a hearing and on majority vote rescind the probation and enforce the department's original action in revoking or suspending the certificate or order of recognition.~~

[~~(d) The department shall provide for notice and an opportunity to appeal from disciplinary proceedings.~~] Disciplinary proceedings and the appeals from the proceedings are governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The board by rule shall adopt a broad schedule of sanctions for violations under this chapter. The State Office of Administrative Hearings shall use the schedule for any sanction imposed as the result of a hearing conducted by that office.

[~~(e) The department shall keep an information file on each complaint or charge filed. During the consideration of a charge filed under this section and until the charge is finally resolved, all parties shall be informed monthly in writing as to the status of the complaint.~~]

SECTION 25. Chapter 50, Human Resources Code, is amended by adding Sections 50.0221 through 50.0224 to read as follows:

Sec. 50.0221. COMPLAINT PROCEDURE IN GENERAL. (a) The board shall keep an information file about each complaint filed with the department and referred to the board. The board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is referred to the board, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Sec. 50.0222. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the department and referred to the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The program director for the board shall notify the board of a complaint that extends beyond the time prescribed by the board for

resolving the complaint so that the board may take necessary action on the complaint.

Sec. 50.0223. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(b) Rules adopted under this section must provide the complainant and the license or order of recognition holder an opportunity to be heard and must require the presence of a representative of the department's legal staff to advise the board or board's employees.

Sec. 50.0224. MONITORING OF LICENSE OR ORDER OF RECOGNITION HOLDER. The board by rule shall develop a system for monitoring license or order of recognition holders' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a license or order of recognition holder who is ordered by the board to perform certain acts to ascertain that the license or order of recognition holder performs the required acts and to identify and monitor license or order of recognition holders who represent a risk to the public.

SECTION 26. Section 50.023, Human Resources Code, is amended to read as follows:

Sec. 50.023. EXPIRATION AND RENEWAL. (a) The board [~~department~~] by rule shall adopt a system under which licenses [~~certificates~~] or orders of recognition issued under this chapter expire on various dates during the year, and the dates for renewal shall be adjusted accordingly. A person may renew an expired license [~~On renewal of the certificate~~] or order of recognition by paying to the department before [~~or on~~] the expiration date of the license or order the required[~~, the total~~] renewal fee [~~is payable~~].

(b) Not later than 30 days before the expiration date, the board [~~department~~] shall notify in writing each person licensed [~~certified~~] of the date of the expiration of a license [~~certificate~~] or order of recognition issued to the person at the person's last known address according to the records of the board [~~him, the amount of the fee for renewal, and the continuing education provisions that are required for its renewal for one year. The department shall attempt to obtain from the person a signed receipt confirming receipt of the notice~~].

(c) If a person's license [~~certificate~~] or order of recognition has been expired for [~~not longer than~~] 90 days or less, the person may renew the license [~~certificate~~] or order of recognition by paying to the department the required renewal fee and a fee that is one-half of the examination fee for the license [~~certificate~~].

(d) If a person's license [~~certificate~~] or order of recognition has been expired for longer than 90 days but less than one year [~~two years~~], the person may renew the license [~~certificate~~] or order of recognition by

paying to the department all unpaid renewal fees and a fee that is equal to the examination fee for the license [~~certificate~~].

(e) If a person's license [~~certificate~~] or order of recognition has been expired for one year [~~two years~~] or longer, the person may not renew the license [~~certificate~~] or order of recognition. The person may obtain a new license [~~certificate~~] or order of recognition by submitting to reexamination, if an examination was originally required, and complying with the requirements and procedures for obtaining an original license [~~certificate~~] or order of recognition. However, the board may renew without reexamination an expired license or order of recognition of a person who was licensed in this state, moved to another state, and is currently licensed or certified and has been in practice in the other state for the two years preceding application. The person must pay to the department a fee that is equal to the examination fee for the license or order of recognition.

SECTION 27. Section 50.024, Human Resources Code, is amended to read as follows:

Sec. 50.024. SPECIALTY [~~DEPARTMENT~~] REGULATION. (a) The board [~~department~~] may establish, within the scope of social work and this chapter, specifically designed areas of specialty work service or practice for those persons licensed [~~certified~~] and in good standing as licensed master [~~certified social workers or~~] social workers. The basis for board [~~department~~] action in establishing a social work specialty shall be founded in the public interest and necessity and for the purpose of practicing, aiding, and assisting the public in identifying those persons in the professions qualified to practice or perform specialty services.

(b) In establishing a specialty service or practice, the board [~~department~~] shall define the scope of the specialty, establish standards of special qualifications for the specialty workers or practitioners that will accurately and truly describe the parameters of the specialty and the use of which will be prohibited to those who have not satisfied the board's [~~department's~~] requirements for qualification in the specialty, adopt rules of conduct for specialty practitioners that will ensure strict compliance with and enforcement of this chapter, and adopt rules for suspending or revoking the order of recognition in the specialty.

(c) A specialty may not be authorized for the private practice of social work except for those persons licensed [~~certified~~] as licensed master [~~certified~~] social workers under this chapter meeting the minimum number of years of actual and active social work practice with appropriate supervision and examination as determined by the board [~~department~~]. However, the board [~~department~~] may not establish any specialty or specialty identification in conflict with any licensing law of this state.

(d) The board shall establish a social work specialty for those persons qualified for the practice of clinical social work. Use of the title "Advanced Clinical Practitioner" or the initials "A.C.P." shall be restricted to those persons who have qualified for the practice of clinical social work under this chapter. A specialty may not be authorized for the practice of clinical social work except for those persons licensed as licensed master social workers under this chapter meeting the minimum number of years

of actual and active social work practice with appropriate supervision and clinical examination as determined by the board.

(e) Persons recognized as being qualified for the practice of clinical social work pursuant to the provisions of this section shall, for the purposes of Article 21.52, Insurance Code, as amended, be authorized to use the title "advanced clinical practitioner" or any other title approved by the board and said other title shall mean the same as and be equivalent to, for any and all purposes whatsoever, the title "advanced clinical practitioner" as used in Article 21.52, Insurance Code, as amended.

SECTION 28. Section 50.025, Human Resources Code, is amended to read as follows:

Sec. 50.025. LIMITATIONS. After the effective date of an order of the board [~~department~~] establishing areas of specialty service or practice, a licensed master [~~certified~~] social worker or licensed social worker may not make use of a specialty professional identification or title designated by the board [~~department~~] until the person has qualified and been recognized by the board [~~department~~] as worthy of the public trust in performing services within the scope of the specialty.

SECTION 29. Section 50.026, Human Resources Code, is amended to read as follows:

Sec. 50.026. RECOGNITION ORDER. After a licensed master [~~certified~~] social worker [~~or social worker~~] has met all requirements of the board [~~department~~] for recognition in a specialty established by the board [~~department~~], the board [~~department~~] shall recognize the person as so qualified. The recognition shall be evidenced by an order of recognition of specialty of a name, design, and content as the board [~~department~~] shall determine, setting forth the full name of the person, official specialty serial number, the signature of the presiding officer [~~commissioner and the chairman~~] of the board [~~council~~], and the board's [~~department's~~] official seal. Issue of the order of recognition of specialty shall be evidence that the person to whom it is issued has been recognized by this state as a specialty social work practitioner under the name or title designated by the board [~~department~~].

SECTION 30. Section 50.027, Human Resources Code, is amended to read as follows:

Sec. 50.027. EXPIRATION. The board [~~department~~] by rule shall adopt a system under which orders of recognition of specialty practice expire on various dates during the year, and the dates for renewal shall be adjusted accordingly. On renewal of the specialty order of recognition on the expiration date, the total specialty order of recognition renewal fee is payable.

SECTION 31. Section 50.028, Human Resources Code, is amended to read as follows:

Sec. 50.028. VIOLATIONS. A person who violates this chapter or a rule of the board [~~department~~] pertaining to the practice of social work is subject to a civil penalty of not less than $50 nor more than $500 for each day of violation.

SECTION 32. Section 50.029, Human Resources Code, is amended to read as follows:

Sec. 50.029. INJUNCTIVE RELIEF [~~ENFORCEMENT~~]. (a) When it appears that a person has violated or is violating or is threatening to violate this chapter or a rule or order of the board [~~department~~] pertaining to social work, the board or department may cause a civil suit to be instituted in a district court for injunctive relief to restrain the continued violation or threat of violation or for the assessment and recovery of the civil penalty, as the court may consider proper, or for both injunctive relief and civil penalty. On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter or a rule, variance, or order of the board or department, the district court may grant the injunctive relief that the facts warrant.

(b) At the request of the board or department, the attorney general shall institute and conduct a suit in the name of this state for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty, as authorized in Subsection (a) [~~of this section~~].

SECTION 33. Section 50.030, Human Resources Code, is amended to read as follows:

Sec. 50.030. FUNDS [~~APPROPRIATION~~]. [~~For the biennium ending August 31, 1983, the funds received in the social workers fund are appropriated to the department to be expended by it in the administration of this chapter.~~] To the extent applicable, the general rules of the General Appropriations Act apply to the expenditure of funds under an [~~this~~] appropriation.

SECTION 34. Section 50.031, Human Resources Code, is amended to read as follows:

Sec. 50.031. GRANTS. The board or department may [~~department is hereby empowered and authorized to~~] take all action necessary to qualify for, accept, and receive funds or grants made available by the United States or an agency of the United States, by this state or any agency of this state, or by a private foundation or other source for the establishment and maintenance of programs of continuing education.

SECTION 35. Section 50.032, Human Resources Code, is amended to read as follows:

Sec. 50.032. ENDORSEMENT [~~Reciprocity~~]. (a) The board [~~department~~] may, on application and payment of the appropriate fee, grant a provisional license to a [~~certify as a certified social worker,~~] social worker[~~;~~] or social work associate [~~a person~~] who is appropriately certified or licensed by another state, territory, or possession of the United States if the requirements of that state, territory, or possession for the certificate or license are the substantial equivalent of the requirements of this chapter as determined by the board [~~department~~]. An applicant for a provisional license under this section must:

(1) be licensed in good standing as a social worker or social work associate in another state, the District of Columbia, or a territory of the United States that has license requirements that are substantially equivalent to the requirements of this chapter;

(2) have passed a national or other examination recognized by the board relating to social work; and

(3) be sponsored by a person licensed by the board under this chapter with whom the provisional license holder may practice under this section.

(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 50.014;

(2) the board verifies that the provisional license holder has the academic and experience requirements for a license under this chapter; and

(3) the provisional license holder satisfies any other license requirements under this chapter.

(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later.

(e) [~~(b)~~] The board [~~department~~] may waive any licensure [~~certification~~] requirement for an applicant with a valid certificate or license from another state with which the State of Texas has a reciprocity agreement.

SECTION 36. Section 50.033, Human Resources Code, is amended to read as follows:

Sec. 50.033. EMPLOYMENT OF SOCIAL WORKER. Nothing in this chapter shall be construed as requiring the employment of a licensed [~~certified~~] social worker, [~~a social worker, or~~] a social work associate, or a licensed master social worker by any public agency or private employer. As used in this section, private employer includes but is not limited to a nonprofit corporation.

SECTION 37. Section 50.034, Human Resources Code, is amended to read as follows:

Sec. 50.034. CONTINUING EDUCATION. (a) The board by rule shall establish mandatory [~~department may recognize, prepare, or administer~~] continuing education requirements [~~programs~~] for licensed master [~~certified~~] social workers, licensed social workers, and social work associates licensed [~~certified~~] under this chapter[~~. Participation in the programs is voluntary~~].

(b) The board by rule shall establish a minimum number of hours of continuing education required to renew a license or order of recognition under this chapter. The board may assess the continuing education needs of license or order of recognition holders and may require license or order of recognition holders to attend continuing education courses specified by the board. The board by rule shall develop a process to evaluate and approve continuing education courses.

(c) The board shall identify the key factors for the competent performance by a license or order of recognition holder of the license or

order of recognition holder's professional duties. The board shall adopt a procedure to assess a license or order of recognition holder's participation in continuing education programs.

SECTION 38. Subsection (B), Section 2, Chapter 397, Acts of the 54th Legislature, 1955 (Article 3.70-2, Vernon's Texas Insurance Code), is amended to read as follows:

(B) No policy of accident and sickness insurance shall make benefits contingent upon treatment or examination by a particular practitioner or by particular practitioners of the healing arts hereinafter designated unless such policy contains a provision designating the practitioner or practitioners who will be recognized by the insurer and those who will not be recognized by the insurer. Such provision may be located in the "Exceptions" or "Exceptions and Reductions" provisions, or elsewhere in the policy, or by endorsement attached to the policy, at the insurer's option. In designating the practitioners who will and will not be recognized, such provision shall use the following terms: Doctor of Medicine, Doctor of Osteopathy, Doctor of Dentistry, Doctor of Chiropractic, Doctor of Optometry, Doctor of Podiatry, Audiologist, Speech-language Pathologist, Doctor in Psychology, Licensed Master [~~Certified~~] Social Worker—Advanced Clinical Practitioner, Licensed Dietitian, Licensed Professional Counselor, and Licensed Marriage and Family Therapist.

For purposes of this Act, such designations shall have the following meanings:

Doctor of Medicine: One licensed by the Texas State Board of Medical Examiners on the basis of the degree "Doctor of Medicine";

Doctor of Osteopathy: One licensed by the Texas State Board of Medical Examiners on the basis of the degree of "Doctor of Osteopathy";

Doctor of Dentistry: One licensed by the State Board of Dental Examiners;

Doctor of Chiropractic: One licensed by the Texas Board of Chiropractic Examiners;

Doctor of Optometry: One licensed by the Texas Optometry Board;

Doctor of Podiatry: One licensed by the State Board of Podiatry Examiners;

Audiologist: One with a master's or doctorate degree in audiology from an accredited college or university and who is certified by the American Speech-language and Hearing Association;

Speech-language Pathologist: One with a master's or doctorate degree in speech pathology or speech-language pathology from an accredited college or university and who is certified by the American Speech-language and Hearing Association;

Doctor in Psychology: One licensed by the Texas State Board of Examiners of Psychologists and certified as a Health Service Provider;

Licensed Master [~~Certified~~] Social Worker—Advanced Clinical Practitioner: One licensed [~~certified~~] by the Texas State Board of Social Worker Examiners [~~Department of Human Services~~] as a Licensed Master [~~Certified~~] Social Worker with the order of recognition of Advanced Clinical Practitioner;

Licensed Dietitian: One licensed by the Texas State Board of Examiners of Dietitians;

Licensed Professional Counselor: One licensed by the Texas State Board of Examiners of Professional Counselors; and

Licensed Marriage and Family Therapist: One licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

SECTION 39. Sections 1 and 3, Article 21.52, Insurance Code, as amended by Chapters 242 and 824, Acts of the 72nd Legislature, Regular Session, 1991, are reenacted and amended to read as follows:

Sec. 1. DEFINITIONS. As used in this article:

(a) "health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract, providing benefits for medical or surgical expenses incurred as a result of an accident or sickness;

(b) "doctor of podiatric medicine" includes D.P.M., podiatrist, doctor of surgical chiropody, D.S.C. and chiropodist;

(c) "doctor of optometry" includes optometrist, doctor of optometry, and O.D.;

(d) "doctor of chiropractic" means a person who is licensed by the Texas Board of Chiropractic Examiners to practice chiropractic;

(e) "licensed dentist" means a person who is licensed to practice dentistry by the State Board of Dental Examiners;

(f) "audiologist" means a person who has received a master's or doctorate degree in audiology from an accredited college or university and is certified by the American Speech-language and Hearing Association;

(g) "speech-language pathologist" means a person who has received a master's or doctorate degree in speech-language pathology from an accredited college or university and is certified by the American Speech-language and Hearing Association to restore speech loss or correct a speech impairment;

(h) "licensed master [~~certified~~] social worker—advanced clinical practitioner" means a person who is licensed [~~certified~~] by the Texas State Board of Social Worker Examiners [~~Department of Human Services~~] as a licensed master [~~certified~~] social worker with the order of recognition of advanced clinical practitioner;

(i) "licensed dietitian" means a person who is licensed by the Texas State Board of Examiners of Dietitians;

(j) "licensed professional counselor" means a person who is licensed by the Texas State Board of Examiners of Professional Counselors; [~~and~~]

(k) "psychologist" means a person licensed to practice psychology by the Texas State Board of Examiners of Psychologists; and[~~.~~]

(l) [~~(k)~~] "licensed marriage and family therapist" means a person who is licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

Sec. 3. SELECTION OF PRACTITIONERS. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state by any insurance company, association, or organization to which this article

applies may select a licensed doctor of podiatric medicine, a licensed dentist, or a doctor of chiropractic to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that practitioner, a licensed doctor of optometry to perform the services or procedures scheduled in the policy which fall within the scope of the license of that doctor of optometry, an audiologist to measure hearing for the purpose of determining the presence or extent of a hearing loss and to provide aural rehabilitation services to a person with a hearing loss if those services or procedures are scheduled in the policy, a speech-language pathologist to evaluate speech and language and to provide habilitative and rehabilitative services to restore speech or language loss or to correct a speech or language impairment if those services or procedures are scheduled in the policy, a licensed master [~~certified~~] social worker—advanced clinical practitioner to provide the services that fall within the scope of the license of such licensed [~~certified~~] practitioner and which are specified as services within the terms of the policy of insurance, including the provision of direct, diagnostic, preventive, or clinical services to individuals, families, and groups whose functioning is threatened or affected by social or psychological stress or health impairment, if those services or procedures are scheduled in the policy, a licensed dietitian including a provisional licensed dietitian under a licensed dietitian's supervision to provide the services that fall within the scope of the license of that dietitian if those services are scheduled in the policy, a licensed professional counselor to provide the services that fall within the scope of the license of that professional if those services are scheduled in the policy, or a licensed marriage and family therapist to provide the services that fall within the scope of the license of that professional if those services are scheduled in the policy, or a psychologist to perform the services or procedures scheduled in the policy that fall within the scope of the license of that psychologist. The services of a licensed master [~~certified~~] social worker—advanced clinical practitioner, licensed professional counselor, or licensed marriage and family therapist that are included in this Act may require a professional recommendation by a doctor of medicine or doctor of osteopathy unless the health insurance policy terms do not require such a recommendation. The payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine, a licensed doctor of optometry, a licensed doctor of chiropractic, a licensed dentist, an audiologist, a speech-language pathologist, a licensed master [~~certified~~] social worker—advanced clinical practitioner, a licensed dietitian, a licensed professional counselor, or a licensed marriage and family therapist, or a psychologist. There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine, a doctor of optometry, a doctor of chiropractic, a licensed dentist, an

audiologist, a speech-language pathologist, a licensed master [~~certified~~] social worker—advanced clinical practitioner, a licensed dietitian, a licensed professional counselor, or a licensed marriage and family therapist, or a psychologist which fall within the scope of his license or certification and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provisions of this policy. Any presently approved policy form containing any provision in conflict with the requirements of this Act shall be brought into compliance with this Act by the use of riders and endorsements which have been approved by the State Board of Insurance or by the filing of new or revised policy forms for approval by the State Board of Insurance.

SECTION 40. (a) As soon as possible after the effective date of this Act, the governor shall appoint the initial members of the Texas State Board of Social Worker Examiners in accordance with this Act. In making the initial appointments, the governor shall designate members to serve terms as follows:

(1) one member certified as a certified social worker and eligible for licensure as a "licensed master social worker" who holds an order of recognition as an "advanced clinical practitioner" under this Act, one member certified as a social work associate and eligible for licensure as a social work associate under this Act, and one public member to serve for the terms expiring January 31, 1995;

(2) one member certified as a certified social worker and eligible for licensure as a "licensed master social worker" who holds an order of recognition as an "advanced clinical practitioner" under this Act, one member certified as a social worker and eligible for licensure as a licensed social worker under this Act, and one public member to serve for the terms expiring January 31, 1997; and

(3) one member certified as a certified social worker and eligible for licensure as a "licensed master social worker" who may or may not hold an order of recognition as an "advanced clinical practitioner" under this Act, one member certified as a social worker and eligible for licensure as a licensed social worker under this Act, and one public member to serve for the terms expiring January 31, 1999.

(b) The Texas State Board of Social Worker Examiners may not take any action and is not created until the day after the date that the last appointee to the initial board takes office. On the date of its creation, the board assumes its functions and:

(1) the Council for Social Work Certification is abolished;

(2) the obligations, rights, contracts, equipment, other property, personnel, and records of and the unspent money appropriated to or for the Council for Social Work Certification in the social worker fund are transferred to and for the Texas Department of Health;

(3) the rules of the Council for Social Work Certification and Department of Human Services regarding the certification or licensure,

recognition, and regulation of social workers are continued in effect as rules of the Texas State Board of Social Worker Examiners until superseded by rule of the new board;

(4) the certificates and orders of recognition in effect that were issued by the Council for Social Work Certification and the Department of Human Services are continued in effect as licenses and orders of recognition of the Texas State Board of Social Worker Examiners as provided in this section;

(5) a complaint or investigation pending before the Council for Social Work Certification or the Department of Human Services is transferred without change in status to the Texas State Board of Social Worker Examiners;

(6) a contested case pending before the Council for Social Work Certification or the Department of Human Services is transferred to the Texas State Board of Social Worker Examiners, and actions taken in the proceeding are treated as if taken by the Texas State Board of Social Worker Examiners; and

(7) any reference in a law to the Council for Social Work Certification means the Texas State Board of Social Worker Examiners.

(c) In order to effect a transition from the certification of social workers to licensure:

(1) any qualified person certified in good standing as of August 31, 1993, under the Social Work Certification Act as a "certified social worker" shall, on the date of renewal of the certificate and subsequent renewals, receive a license as a "licensed master social worker" without examination under the requirements in effect on or before August 31, 1993;

(2) any qualified person certified in good standing as of August 31, 1993, under the Social Work Certification Act as a "social worker" shall, on the date of renewal of the certificate and subsequent renewals, receive a license as a "licensed social worker" without examination under the requirements in effect on or before August 31, 1993;

(3) any qualified person certified in good standing as of August 31, 1993, under the Social Work Certification Act as a "social work associate" shall, on the date of renewal of the certificate and subsequent renewals, receive a license as a "social work associate" without examination under the requirements in effect on or before August 31, 1993;

(4) any qualified person certified in good standing as of August 31, 1993, under the Social Work Certification Act as a "certified social worker — advanced clinical practitioner" shall, on the date of renewal of the order of recognition and subsequent renewals, be recognized as being qualified for the private, independent practice of social work under this Act, without examination under the requirements in effect on or before August 31, 1993;

(5) any qualified person certified in good standing as of August 31, 1993, under the Social Work Certification Act as a "certified social worker — advanced clinical practitioner" shall, on the date of renewal of the order of recognition and subsequent renewals, be recognized as being qualified for the practice of clinical social work and the use of

the authorized specialty designation evidencing same under this Act without examination, and on application pursuant to the provisions of this Act shall be so recognized;

(6) any person with an application on file for certification as a social work associate with the Department of Human Services as of August 31, 1993, and who completes the requirements in effect on the day the application was submitted shall be licensed as a social work associate;

(7) any person with an application on file for certification as a social worker with the Department of Human Services as of August 31, 1993, and who completes the requirements of this Act before August 31, 1994, shall be licensed as a licensed social worker; and

(8) any person with an application on file for certification as a certified social worker with the Department of Human Services as of August 31, 1993, and who completes the requirements in effect on the day the application was submitted shall be licensed as a licensed master social worker.

(d) The Texas State Board of Social Worker Examiners shall adopt rules under this Act not later than March 1, 1994.

SECTION 41. This Act takes effect September 1, 1993.

SECTION 42. 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 No. 1

Amend Subsection (c) of Section 40 of **C.S.S.B. 1426** by striking "and" at the end of Subdivision (7), striking the period at the end of Subdivision (8) and substituting "; and", and adding a new Subdivision (9) to read as follows:

"(9) any qualified person who satisfies the requirements of Section 17 of this act and who has been continuously engaged in the teaching of social work in an institution of higher education in this or another state for not less than five years immediately prior to the effective date of this act shall, upon application filed with the board not later than September 1, 1994, be licensed as a licensed master social worker without examination."

Amendment No. 2

Amend **C.S.S.B. 1426** as follows:

1. In SECTION 2, Sec. 50.002(1), page 4, line 3, strike "strictly."

Floor Amendment No. 3

Amend **C.S.S.B. 1426** as follows:

(1) Amend SECTION 5 on page 10, line 27, by inserting the words "<u>or serve as general counsel to the board</u>" between the word "<u>board</u>" and the word "<u>if</u>".

(2) Amend SECTION 8 on page 17, lines 21 through 24, by deleting the words starting with the comma on line 21 through and up to the period on line 24.

(3) Amend SECTION 10 on page 19, line 9, by deleting the words "certified by the department" and replacing them with the words "licensed by the board".

(4) Amend SECTION 17 on page 24, line 1, by striking the word "certificates" and inserting in its place the word "licenses".

(5) Amend SECTION 25 on page 34, line 8, between the word "board" and the comma by inserting the words "that the board has the authority to resolve".

(6) Amend SECTION 25 on page 36, line 8, between the word "staff" and the word "to" by inserting the words "or the attorney general's office".

(7) Amend SECTION 26 by replacing the word "license" with the words "license or certificate" on page 37, lines 12, 18, 24, and on page 38, line 6.

(8) Amend SECTION 40 on page 56, lines 12 and 13, by deleting the words after the second comma on line 12 through the second comma on line 13 and inserting in that place to words "and who completes the requirements in effect on the day the application was submitted".

(9) Amend the bill by adding a new appropriately numbered section to read as follows:

SECTION ____. On or after January 1, 1994, the State Office of Administrative Hearings shall assume responsibility for hearings held with respect to contested cases arising under Chapter 50, Human Resources Code and its subsequent amendments. The Texas State Board of Social Work Examiners and the chief administrative law judge of the State Office of Administrative Hearings may agree to transfer contested cases pending before the board to the State Office of Administrative Hearings before January 1, 1994.

(10) Amend Section 25 on page 35, line 20, by deleting the word "program" and replacing it with the word "executive".

(11) Renumber the sections of the bill accordingly.

Amendment No. 1 on Third Reading

Amend Section 22 of **C.S.S.B. 1426** on third reading as follows: beginning on page 29, line 27, strike Subsection (c) of the quoted Section 50.020.

The amendments were read.

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendments to **S.B. 1426** by a viva voce vote.

SENATE BILL 702 WITH HOUSE AMENDMENT

Senator Leedom called **S.B. 702** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 702** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the application of the Texas Health Maintenance Organization Act to certain hospital districts.

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

SECTION 1. Section 2(l), Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), is amended to read as follows:

(l) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, organizations, trusts, or corporations. The term includes a hospital district located in a county with a population of more than 1,800,000 but less than 2,000,000.

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

The amendment was read.

Senator Leedom 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. 702** 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 Leedom, Chair; Ellis, Shapiro, Madla, and Shelley.

SENATE BILL 737 WITH HOUSE AMENDMENTS

Senator Bivins called **S.B. 737** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **S.B. 737** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to fuels and the creation of an alternative fuels council and an alternative fuels loan program; granting the authority to issue bonds.

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

SECTION 1. Section 113.241, Natural Resources Code, is amended to read as follows:

Sec. 113.241. RULES REGARDING RESEARCH AND EDUCATION. The commission may adopt all necessary rules relating to the purposes of this subchapter and activities [~~conducting research and educating the public~~] regarding the use of LPG and other environmentally beneficial alternative fuels that are or have the potential to be effective in improving the quality of air in this state.

SECTION 2. Section 113.242, Natural Resources Code, is amended to read as follows:

Sec. 113.242. ADVISORY COMMITTEES. The commission may appoint one or more advisory committees composed of members representing the industries that produce LPG and other environmentally beneficial alternative fuels [~~industry~~], consumers, and other interests to consult with and advise the commission on opportunities and methods to expand the use of LPG and other environmentally beneficial alternative fuels.

SECTION 3. Section 113.243, Natural Resources Code, is amended by amending Subsections (b), (c), and (d), and adding Subsection (e) to read as follows:

(b) The fund consists of money from:

(1) fees charged under this subchapter;

(2) the penalties for the late payment of the fee charged under this subchapter; [~~and~~]

(3) gifts, grants, or other assistance received by the commission from any source for the purposes of this subchapter; and

(4) interest earned on amounts in the fund.

(c) The fund may be used only by the commission to pay for activities relating to the specific fuel from which the fee was derived, or the specific fuel, if any, for which the gift, grant, or other assistance is given, including direct and indirect costs relating to:

(1) researching all possible uses of LPG and other environmentally beneficial alternative fuels to enhance air quality;

(2) researching, developing, and implementing marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers;

(3) developing and implementing conservation and distribution plans to minimize the frequency and severity of disruptions in the supply of alternative fuels;

(4) developing a public information plan that will provide advisory services relating to alternative fuels to consumers;

(5) developing voluntary participation plans to promote the use of alternative fuels by federal, state, and local agencies;

(6) other functions the commission determines are necessary to add to a program established by the commission for the purpose of promoting the use of LPG or other environmentally beneficial alternative fuels; and

(7) the administrative costs incurred by the commission under this subchapter.

(d) If a specific fee, gift, grant, or other assistance is designated for or collected from discrete components of the alternative fuels industry, [~~other than LPG,~~] the fee, gift, grant, or other assistance shall be deposited in a separate account in [~~within~~] the fund.

(e) The commission may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this subchapter. Money received under this subsection shall be deposited in a separate account in the fund as provided in Subsection (d) of this section.

SECTION 4. Chapter 113, Natural Resources Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. ALTERNATIVE FUELS COUNCIL

Sec. 113.281. DEFINITION. In this subchapter, "council" means the Alternative Fuels Council.

Sec. 113.282. ALTERNATIVE FUELS COUNCIL. The Alternative Fuels Council is an agency of the state.

Sec. 113.283. COMPOSITION. (a) The council is composed of the following individuals:

(1) the commissioner of the General Land Office;

(2) the members of the Railroad Commission of Texas;

(3) the chairman of the General Services Commission; and

(4) the executive director of the Texas Department of Commerce.

(b) A member may designate an individual from the state agency the member represents to serve in place of the member.

(c) The initial chairman of the council shall be the commissioner of the General Land Office or a person designated by the commissioner. Chairmanship of the council shall rotate annually between the commissioner of the General Land Office and the chairman of the Railroad Commission of Texas or individuals designated by those members under Subsection (b) of this section.

Sec. 113.284. ALTERNATIVE FUELS PROGRAM. (a) The council shall coordinate a comprehensive program to be carried out by state agencies in support of the use of environmentally beneficial alternative fuels.

(b) In developing a program under this section, the council may adopt rules necessary to achieve the purposes of this subchapter.

Sec. 113.285. ALTERNATIVE FUELS CONVERSION FUND. (a) The alternative fuels conversion fund is in the state treasury.

(b) To the extent permitted by federal law or regulations, the council may use the money in the fund only to:

(1) make loans under this subchapter;

(2) finance activities supporting or encouraging the use of alternative fuels; or

(3) pay the costs of administering this subchapter.

(c) The council may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this subchapter.

(d) The council shall maintain a separate account in the fund for money received that is designated for the promotion of a specific fuel or

that is collected from a discrete component of the alternative fuels industry. The council may use money in a separate account in the fund only to finance an activity that relates to the fuel for which the money is received.

(e) The fund consists of:

(1) oil overcharge funds appropriated by the legislature;

(2) gifts, grants, and other assistance to the council or fund for the purpose of financing alternative fuels activities;

(3) other money designated by the legislature or the executive branch;

(4) payments of principal and interest on loans made under this subchapter; and

(5) interest earned on amounts in the fund.

Sec. 113.286. FUELS CONVERSION LOAN PROGRAM. (a) The council may make loans, grants, or other distributions to eligible borrowers to fund conversion or infrastructure projects to promote the use of environmentally beneficial alternative fuels or for other purposes, subject to applicable regulations or approval of the United States Department of Energy.

(b) The council shall adopt rules necessary to administer the fuels conversion loan program.

(c) The council shall adopt rules under this section in accordance with rules and regulations of the United States Department of Energy.

(d) The council by rule shall determine which individuals and businesses are eligible for a loan, grant, or other disbursement under this section. The rules shall provide for historically underutilized businesses, individuals with low incomes, institutions of higher education, and health care facilities to be eligible for loans, grants, or other disbursements to undertake conversion and infrastructure projects for alternative fuels.

(e) A state agency, county, municipality, school district, or mass transit authority or department is eligible to receive a loan, grant, or other disbursement under this subchapter to carry out an eligible conversion or infrastructure project regarding LPG or another environmentally beneficial alternative fuel to comply with alternative fuel requirements provided by or by rules adopted under:

(1) Subchapter E, Chapter 382, Health and Safety Code;

(2) Subchapter E, Chapter 21, Education Code;

(3) Sections 3.03, 3.29, and 14.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes);

(4) Sections 14(c)-(g), Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes);

(5) Sections 20(e)-(i), Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes); and

(6) Sections 6(k)-(o), Article 1118z, Revised Statutes.

(f) The council may make a loan to finance the construction of an infrastructure refueling facility only if the facility is to serve and be accessible to the general public.

Sec. 113.287. INTEREST AMOUNTS. (a) The council may loan money under this subchapter at no interest to a state agency, county, municipality, school district, or mass transit authority or department.

(b) A loan to any other entity must bear interest at a rate that is not greater than the auction average rate quoted on a bank discount basis for 26-week treasury bills issued by the United States as published by the federal reserve board for the week preceding the week in which the interest rate is determined, plus two percent.

Sec. 113.288. TERM OF LOAN. A loan under this subchapter must be repaid not later than the fifth anniversary of the date the loan was issued.

Sec. 113.289. TRANSFER OF VEHICLE OR OTHER PROPERTY CONVERTED WITH LOAN PROCEEDS. A borrower may not transfer to another person a vehicle or other property converted to alternative fuel use with the proceeds of a loan under this subchapter unless before the transfer:

(1) the loan is fully repaid; or

(2) the alternative fuels equipment purchased, installed, or constructed with the loan proceeds is removed and installed on another vehicle or other property owned by the person.

SECTION 5. The Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes) is amended by adding Section 9C to read as follows:

Sec. 9C. ISSUANCE OF OBLIGATIONS FOR ALTERNATIVE FUELS PROJECTS. (a) The authority may, if it determines that a project is financially viable and sufficient revenue is or will be available, issue and sell obligations for the financing of:

(1) the conversion of state agency vehicles and other sources of substantial energy output to alternative fuels under Section 3.29, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), and its subsequent amendments;

(2) the construction, acquisition, or maintenance by the General Services Commission of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology to support state agency vehicles and other energy applications that use alternative fuels;

(3) the conversion of school district motor vehicles and other sources of substantial energy output to alternative fuels under Section 21.174, Education Code, and its subsequent amendments;

(4) the construction, acquisition, or maintenance by a school district of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology to support school district motor vehicles and other energy applications that use alternative fuels;

(5) the conversion of local mass transit authority or department motor vehicles and other sources of substantial energy output to alternative fuels under Section 14, Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes), Section 20, Chapter 683, Acts of the 66th Legislature, 1979 (Article 1118y, Vernon's Texas Civil Statutes), and Section 6, Article 1118z, Revised Statutes, and their subsequent amendments;

(6) the construction, acquisition, or maintenance of fueling stations supplying alternative fuels or equipment enhancing the use of engine-driven technology by a local mass transit authority or department to support

transit authority or department vehicles and other energy applications that use alternative fuels; and

(7) a joint venture between the private sector and a state agency or political subdivision that is required under law to use alternative fuels in the agency's or subdivision's vehicles or other energy applications to:

(A) convert vehicles or other sources of substantial energy output to alternative fuels;

(B) develop fueling stations and resources for the supply of alternative fuels and engine-driven applications;

(C) aid in the distribution of alternative fuels; and

(D) engage in other projects to facilitate the use of alternative fuels.

(b) The authority may not issue and sell more than $50 million in obligations for projects under this section.

(c) The board may provide for the payment of the principal of or interest on the bonds and obligations issued under this section:

(1) by pledging all or a part of the revenue the state derives from the sale of alternative fuels, alternative fuels equipment or technology, or vehicles powered by alternative fuels;

(2) by contracting with a political subdivision or a private entity to pledge revenue the political subdivision or private entity derives from the sale of alternative fuels, alternative fuels equipment or technology, or vehicles powered by alternative fuels in an amount sufficient to ensure that the bonds or obligations are paid;

(3) by pledging appropriated general revenues of the state or other appropriated money in the state treasury; or

(4) from any other source of funds available to the board.

(d) The authority shall attempt to include minority-owned businesses in the issuance and underwriting of at least 20 percent of the bonds and obligations issued under this section and women-owned businesses in the issuance and underwriting of at least 10 percent of the bonds and obligations issued under this section.

(e) The Alternative Fuels Council shall evaluate an application under this section by an eligible entity for the financing of the acquisition, construction, or improvement of alternative fuels infrastructure and shall determine whether the proposed project will increase energy or cost savings to the applicant. A bond or other obligation may not be issued under Subsection (a) of this section unless the Alternative Fuels Council certifies that the proposed project will increase energy or cost savings to the applicant. The Alternative Fuels Council may by rule adopt procedures and standards for the evaluation of an application for financing of a proposed project under this section.

(f) Costs of administration of the alternative fuels finance program shall be considered a part of project costs and shall be funded with bond proceeds.

SECTION 6. (a) If the 73rd Legislature appropriates oil overcharge funds for the promotion of natural gas use, $5 million of that appropriation is made available for the purposes of the alternative fuels conversion fund under Section 113.285, Natural Resources Code, as added by this Act.

(b) If the 73rd Legislature appropriates money to school districts with below average property wealth per pupil for energy management assistance, $17 million of that appropriation is made available for the purposes of the alternative fuels conversion fund under Section 113.285, Natural Resources Code, as added by this Act.

(c) Notwithstanding Section 113.285, Natural Resources Code, as added by this Act, if the 73rd Legislature appropriates money to the alternative fuels conversion fund, $5 million of that appropriation is made available for the purposes of **H.B. 923**, 73rd Legislature, Regular Session, 1993, if that bill is enacted and becomes law.

SECTION 7. If any provision in Section 4 of this Act conflicts with another statute enacted by the 73rd Legislature, Regular Session, 1993, this Act controls.

SECTION 8. This Act takes effect September 1, 1993.

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.

Amendment No. 1

Amend **C.S.S.B. 737** as follows:

(1) Strike Section 2 and substitute the following:

SECTION 2. Section 113.242, Natural Resources Code, is amended to read as follows:

Sec. 113.242. ADVISORY COMMITTEES. The commission may appoint one or more advisory committees composed of members representing the LPG industry and other environmentally beneficial alternative fuels industries [~~industry~~], consumers, and other interests to consult with and advise the commission on opportunities and methods to expand the use of LPG and other environmentally beneficial alternative fuels.

(2) In Section 4, added Section 113.283(a)(4), Natural Resources Code, strike "executive director" and substitute "presiding officer of the policy board".

(3) In Section 4, between added Sections 113.284 and 113.285, Natural Resources Code, insert the following section and renumber the added Sections 113.285-113.289 as Sections 113.286-113.290:

Sec. 113.285. LEGISLATIVE FINDINGS. (a) The legislature finds that this subchapter serves the public purposes of:

(1) development and diversification of the economy of the state;

(2) elimination of unemployment or underemployment in the state; and

(3) development or expansion of transportation or commerce in the state.

(b) The enumeration of public purposes in Subsection (a) of this section is not intended to be a complete list of the public purposes served by this subchapter and does not preclude a finding that this subchapter serves a public purpose not enumerated in that subsection.

(4) In Section 4, added Section 113.285(b)(1), Natural Resources Code, between "loans" and "under", insert "or grants".

(5) In Section 4, added Section 113.286(c), Natural Resources Code, between "with" and "rules", insert "applicable".

(6) In Section 4, added Section 113.286(f), Natural Resources Code, between "public" and the period, insert "to the extent practicable".

(7) In Section 6, strike "Section 113.285" wherever occurring and substitute "Section 113.286".

(8) On page 11 at line 14, strike Section 6 in its entirety and substitute the following:

SECTION 6. If the 73rd Legislature appropriates money to the alternative fuels conversion fund for the purposes of Sec. 113.286 Natural Resources Code, as added by this Act, an amount equal to 10% of such appropriation, up to a maximum of $500,000, is made available in accordance with applicable rules and regulations of the United States Department of Energy for the purposes of **H.B. 923**, 73rd Legislature, Regular Session, 1993, if that bill is enacted and becomes law.

Floor Amendment No. 2

Amend **C.S.S.B. 737**, SECTION 4., Sec. 113.283 as follows:

On page 4, lines 6 and 7, delete "the executive director of the Texas Department of Commerce" and replace with "the chairman of the Texas Air Control Board or its successor agency"

The amendments were read.

On motion of Senator Bivins and by unanimous consent, the Senate concurred in the House amendments to **S.B. 737** by a viva voce vote.

RECORD OF VOTES

Senators Moncrief and Montford asked to be recorded as "Present-not voting" on concurring in the amendments.

SENATE BILL 839 WITH HOUSE AMENDMENTS

Senator Moncrief called **S.B. 839** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **S.B. 839** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of the practice of vocational nursing and to the continuation of the Board of Vocational Nurse Examiners; providing penalties.

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

SECTION 1. Sections 1(a) and (b), Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) "Board" means the Board of Vocational Nurse Examiners.

(b) "Licensed Vocational Nurse" means a person who is licensed under this Act by the Board of Vocational Nurse Examiners.

SECTION 2. Section 5, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. TERM OF OFFICE, ORGANIZATION, MEETINGS OF BOARD[~~; CONTINUING EDUCATION~~]. (a) There is hereby created a board to be known as the Board of Vocational Nurse Examiners, consisting of 15 [~~twelve (12)~~] members to be appointed by the Governor and confirmed by the State Senate. Appointments to the Board shall be made without regard to the race, color, handicap [~~creed~~], sex, religion, or national origin of the appointees.

Seven (7) members of the Board must be Licensed Vocational Nurses who are graduates of approved schools of vocational nursing, who have been actively engaged in the practice of vocational nursing for five (5) years immediately preceding their appointments, and who are not licensed physicians, registered professional nurses, or hospital administrators.

One (1) member of the Board must be a Registered Nurse licensed by the Board of Nurse Examiners who is actively engaged in a teaching, administrative, or supervisory capacity in a vocational nursing educational program and who is not a licensed physician, hospital administrator, or licensed vocational nurse.

One (1) member of the Board must be a physician licensed by the Texas State Board of Medical Examiners who has been actively engaged in the practice of medicine for five (5) years immediately preceding appointment and who is not a hospital administrator, registered professional nurse, or licensed vocational nurse.

One (1) member of the Board must be a hospital administrator who has been actively engaged in hospital administration for a period of five (5) years and who is not a licensed physician, registered professional nurse, or licensed vocational nurse.

Five (5) [~~Two (2)~~] members of the Board must be representatives of the general public. 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 health care;

(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 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. [~~A person is not eligible for appointment as a public member if the person or the person's spouse is licensed by an occupational regulatory agency in the field of health care or is employed by, participates~~

~~in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.~~]

(b) The term of office of each member of the Board shall be six (6) years. A member may not immediately succeed the member's term [~~himself (or herself)~~] in office. In case of death, resignation or vacancy from any cause on the Board, the vacancy of the unexpired term shall be filled by the Governor within sixty (60) days after the occurrence of such vacancy.

Each appointee to the Board [~~of Vocational Nurse Examiners~~] shall, within fifteen (15) days of the date of his appointment, qualify by taking the constitutional oath of office.

(c)(1) An officer, employee, or paid consultant of a Texas trade association in the field of health care may not be a Board member.

(2) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of health care may not be a Board member.

(3) 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. [~~A member or employee of the Board may not be an officer, employee, or paid consultant of a national or state trade association in the vocational nursing field.~~]

(d) A person may not serve as a Board member if the person is required to register as a lobbyist under Chapter 305, Government Code, and its subsequent amendments, because of the person's activities for compensation on behalf of a profession related to the operation of the Board. [~~A member or employee of the Board may not be related within the second degree by affinity or consanguinity, as determined under Article 5996h, Revised Statutes, to a person who is an officer, employee, or paid consultant of a national or state trade association in the vocational nursing field.~~]

(e)(1) It is a ground for removal from the Board if a member:

(A) does not have at the time of appointment the qualifications required by Subsection (a) of this section;

(B) does not maintain during service on the Board the qualifications required by Subsection (a) of this section;

(C) violates a prohibition established by Subsections (c) and (d) of this section;

(D) cannot discharge the member's term for a substantial part of the term for which the member is appointed because of illness or disability; or

(E) 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.

(2) 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.

(3) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the Board of the ground. The presiding officer shall then notify the governor that a potential ground for removal exists.

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

[~~(2) does not maintain during his service on the Board the qualifications required by Subsection (a) of this section for appointment to the Board;~~

[~~(3) violates a prohibition prescribed by Subsection (c) or (d) of this section; or~~

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

(f) The governor shall designate from the members of the Board the President of the Board. The person designated as President serves in that capacity at the will of the governor. [~~The validity of an action of the Board is not affected by the fact that it was taken when a ground for removal of a member of the Board existed.~~

[~~(g)~~] The Board shall elect a [~~President,~~] Vice-president[~~,~~] and Secretary-treasurer yearly at an annual meeting. The Board may make such rules and regulations as may be necessary to govern its proceedings and to carry in effect the purposes of this law. The Secretary-treasurer shall be required to keep minutes of each meeting of said Board, a register of the names of all nurses licensed under this law, and books of account of fees received and disbursements; and all minutes, the register of Licensed Vocational Nurses and books of account shall be at all times open to public inspection. The financial transactions of this Board are subject to audit by the state auditor in accordance with Chapter 321, Government Code. The Board shall employ a person other than a member of the Board as the executive director of the Board. The executive director shall perform the administrative functions of the Board. The Board shall employ other persons that it considers necessary in carrying out the provisions of this law. The Secretary-treasurer shall be bonded by the Board in such amount as may be recommended by the State Auditor.

[~~(h) The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay authorized by the executive director must be based on the system established under this subsection.~~]

(g) [~~(i)~~] The Board shall employ a full-time Director of Education, who shall have had at least five (5) years experience in teaching nursing in an accredited school of nursing or an approved program in vocational nursing. The Board may select either a Licensed Vocational Nurse or a Registered Nurse as the Director of Education. The duties of the Director of Education shall be to visit and inspect all schools of vocational nursing to determine whether the Board's minimum requirements for vocational nursing programs are being met. The Board, by rule, may establish a separate fee for the survey of approved programs. The Board shall prescribe such methods and rules of visiting, and such methods of

reporting [~~by the Director of Education~~] as may in its judgment be deemed proper.

(h) [~~(j)~~] Regular meetings of the Board shall be held at least twice a year, one of which shall be designated as an Annual Meeting for election of officers and the reading of auditors' reports. At least twice each year the Board shall hold examinations in various cities in the state for qualified applicants for licensure. Examinations may be held under the supervision of a Board member or such other person as the Board may specify. Special [~~Not less than sixty (60) days notice of the holding of the examination shall be given by publication in at least three (3) daily newspapers of general circulation, to be selected by the Board; special~~] meetings shall be held upon request of five (5) [~~four (4)~~] members of the Board or upon the call of the president; eight (8) [~~six (6)~~] members of the Board shall constitute a quorum for the transaction of business, and should a quorum not be present on the day appointed for any meeting, those persons present may adjourn from day to day until a quorum shall be present, providing that such period shall not be longer than three (3) successive days; each member of said Board is entitled to a per diem set by legislative appropriation for each day that the member engages in the business of the Board. A member may not receive any compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

(i) [~~(k)~~] The Board may not adopt rules restricting competitive bidding or advertising by a licensee of the Board except to prohibit false, misleading, or deceptive practices by the licensee. The Board may not include in its rules to prohibit false, misleading, or deceptive practices by a licensee a rule that:

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

(2) restricts the licensee's personal appearance or use of the person's [~~his~~] voice in an advertisement;

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

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

[~~(l)(1) The Board may recognize, prepare, or implement continuing education programs for licensees and may require participation in continuing education programs as a condition of renewal of a license.~~

[~~(2) The Board may not require more than a total of 20 hours of continuing education in a two-year license period and may not require that more than 10 of those hours consist of classroom instruction in approved programs. The remaining 10 hours may consist of any combination of classroom instruction, institutional-based instruction, or individualized study.~~

[~~(3) If the Board requires participation in continuing education programs as a condition of renewal of a license, the Board shall by rule establish a system for the approval of programs and providers of continuing education. In adopting the rules, the board shall consider but is not obligated to approve programs or providers approved or accredited through continuing education accreditation systems established by national~~

~~or state associations of licensed vocational nurses and nurse in-service programs offered by hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations, certified by Medicare, or maintained or operated by the federal government or the State of Texas. The Board may assess programs and providers a fee in an amount reasonable and necessary to defray the costs incurred in approving providers and programs. The fee collected under this subsection shall be deposited in the Vocational Nurse Examiners Fund.~~

[~~(4) The Board may adopt other rules as necessary to implement this section.~~]

(j) [~~(m) The Board shall prepare information of consumer interest describing the regulatory functions of the Board and the Board's procedures by which consumer complaints are filed with and resolved by the Board. The Board shall make the information available to the general public and appropriate state agencies.~~

[~~(n)~~] The Board shall enforce this Act. The Board may retain outside legal counsel to represent the Board. However, before the Board may retain outside counsel, the Board shall request the attorney general to perform the necessary services and may retain the outside counsel only if the attorney general certifies to the Board that the services cannot be performed.

(k) [~~(o) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not serve as a member of the Board or act as the general counsel to the Board.~~

[~~(p)~~] The Board of Vocational Nurse Examiners is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this Act expires September 1, 2005 [~~1993~~].

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

[~~(r) If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the Board 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 Board receives the committee's statements.~~]

(m)(1) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program shall require intra-agency posting of all nonentry level positions concurrently with any public posting.

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

(n)(1) 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, disability, sex, religion, age, or national origin. The policy statement must include:

(A) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) a comprehensive analysis of the Board workforce that meets federal and state guidelines;

(C) procedures by which a determination can be made of significant underuse in the Board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and

(D) reasonable methods to appropriately address those areas of underuse.

(2) A policy statement prepared under Subdivision (1) of this subsection must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subdivision (1)(A) of this subsection, and be filed with the governor's office.

(3) The governor's office shall deliver a biennial report to the legislature based on the information received under Subdivision (2) of this subsection. The report may be made separately or as part of other biennial reports to the legislature.

(o)(1) The Board shall prepare information of public interest describing the functions of the Board and the Board's procedures by which complaints are filed with and resolved by the Board. The Board shall make the information available to the public and appropriate state agencies.

(2) 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:

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

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

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

(3) The Board shall enter into memoranda of understanding with each state agency that licenses health care facilities or agencies for the purpose of coordinating any notification requirements under Subdivision (2) of this subsection with notification requirements that may be imposed on the health care facility or agency by any other state agency.

(4) The Board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

(p) 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.

(q) The Board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the Board's programs. The Board shall also comply with federal and state laws for program and facility accessibility.

(r)(1) The Board shall establish a training program for the members of the Board.

(2) Before a member of a Board may assume the member's duties, the member must complete at least one course of the training program established under this subsection, and before the member may be confirmed by the senate.

(3) A training program established under this subsection shall provide information to a participant regarding:

(A) the enabling legislation that created the Board;

(B) the programs operated by the Board;

(C) the role and functions of the Board;

(D) the rules of the Board with an emphasis on the rules that relate to disciplinary and investigatory authority;

(E) the current budget for the Board;

(F) the results of the most recent formal audit of the Board;

(G) the requirements of the:

(i) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(ii) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(iii) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(H) the requirements of the conflict of interest laws and other laws relating to public officials; and

(I) any applicable ethics policies adopted by the Board or the Texas Ethics Commission.

(4) In developing the training requirements provided for in this subsection, the Board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(5) In the event that another state agency or entity is given the authority to establish the training requirements, the Board shall allow that training in lieu of developing its own program.

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

(t) The Board may enter interagency contracts for any purpose authorized by law.

SECTION 3. Section 6, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. EXAMINATION AND LICENSES. (a) Except as provided in Section 7 of this Act, every person desiring to be licensed as a Licensed Vocational Nurse or use the abbreviation L.V.N. in the State of Texas, shall be required to pass the examination approved [~~given~~] by the Board of Vocational Nurse Examiners [~~or its delegate~~]. The applicant shall make application by presenting to [~~the secretary of~~] the Board, on forms furnished by the Board, satisfactory sworn evidence that the applicant has had at least two (2) years of high school education or its equivalent and has completed an approved course [~~of not less than twelve (12) months~~] in an approved school for educating vocational nurses. An approved school as used herein shall mean one approved by the Board or by another state. Application for examination by the Board or its delegate shall be made at least thirty (30) days prior to the date set for the examination.

(b) The Board in its discretion may waive the requirement in Subsection (a) of this section for completion of a course in an approved school for educating vocational or practical nurses upon presentation of satisfactory sworn evidence that the applicant has completed an acceptable level [~~at least two (2) years~~] of education in a nursing school approved by the State Board of Nurse Examiners of Texas or in some other school of professional nurse education located in another state, the District of Columbia, a possession of the United States, or a foreign country. The Board by rule shall determine acceptable levels of education. The Board shall have the written portion of the examination, if any, validated by an independent testing professional. If the applicant received training in another state, the District of Columbia, a possession of the United States, or a foreign country, the applicant must present evidence satisfactory to the Board that the nursing education received is equivalent to that required for licensure as a vocational nurse in this state.

(c) Not later than the 30th day [~~Within 30 days~~] after the date a licensing examination is administered under this Act, the Board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the Board shall notify each examinee of the results of the examination within two weeks after the date the Board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the Board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the Board shall furnish the person with an analysis of the person's performance on the examination or other information which the Board has available to it after the tests are scored.

(d) If an applicant has graduated from an approved educational program in vocational nursing in this state, another state, or the District of Columbia, or successfully completed an acceptable level of education in a professional nursing program [~~two years of an associate degree program or diploma program in professional nursing education~~] in this

state, another state, or the District of Columbia, the Board may issue to the applicant, pending the results of the licensing examination, a temporary permit to practice vocational nursing under the direct supervision of a licensed vocational nurse, registered professional nurse, or licensed physician. A permit issued to an applicant who fails the examination expires on the date indicated on the permit. A permit issued to an applicant who passes the examination expires on the applicant's receipt of a license from the Board. A permit may not be issued to an applicant who has previously failed an examination administered by the Board or by another state. [~~The Board may issue a temporary permit to practice vocational nursing to an applicant who is a vocational or practical nurse who has graduated from an approved program for educating vocational or practical nurses, holds a license as a vocational or practical nurse from another state, the District of Columbia, or a possession of the United States, and has actually been engaged in the practice of vocational or practical nursing within the past five years. Such an applicant must practice under the direct supervision of a licensed vocational nurse, registered professional nurse, or licensed physician. A temporary permit issued to an applicant from another state, the District of Columbia, or a possession of the United States expires on receipt of a license from the Board or on the expiration of 90 days, whichever occurs first. The Board may, by mutual agreement, assign the function of physical distribution of the temporary permits to an agent designated by the Board to act on behalf of the Board.~~]

(e) Any nurse who is licensed under the provisions of this Act, when on duty in a public or private hospital, nursing home, or licensed health-care facility, shall wear [~~identifying~~] insignia identifying the nurse as a licensed vocational nurse [~~on white caps or uniforms~~].

SECTION 4. Section 7, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. QUALIFICATION FOR LICENSING BY ENDORSEMENT. (a) To qualify for a temporary license to practice as a licensed vocational nurse by endorsement, an applicant for licensing must:

(1) submit to the Board an application fee as determined by the Board and a completed application given under oath, in the form prescribed by the Board;

(2) have possessed at the time of initial licensing as a licensed vocational nurse the qualifications necessary to have been eligible for licensing at that time in this state;

(3) have presented to the Board proof of initial licensing by examination and proof that the current active license and other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason; and

(4) submit to the Board a notice of sponsorship of the applicant by the holder of a Texas health care professional license under whom the applicant will practice.

(b) A holder of a temporary license under this section shall receive a permanent license if the applicant:

(1) has submitted official verification of the academic and professional credentials of the applicant; and

(2) satisfies any other requirement set by statute.

(c) The Board shall either grant or deny an application for a permanent license within 180 days after the date of the Board's receipt of all required forms or information. The Board may extend the 180-day deadline to allow for the receipt and tabulation of pending examination results.

(d) The Board shall adopt rules relating to the conditions of sponsorship under Subsection (a)(4) of this section, including waiver of the requirement in the event of a hardship. [~~Any applicant who holds a license as a Vocational Nurse or Practical Nurse issued by the District of Columbia or another state whose requirements are equal to those of Texas, and whose individual qualifications shall be equivalent to those required by this law, may be granted a license to practice nursing as a Licensed Vocational Nurse in this State without examination provided the required fee is paid to the Board by such applicant.~~]

SECTION 5. Sections 8(a), (b), and (c), Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The Board [~~board~~] by rule shall adopt a system under which licenses expire on various dates during the year [~~every two years~~]. [~~For the year in which the expiration date is changed, license fees payable on September 1 shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.~~]

(b) At [~~The Board shall notify each licensee about the expiration date of the person's license at~~] least 30 days before the expiration of a person's license, the Board [~~date. The Board by United States mail~~] shall send written notice of the impending license expiration to the person, at the person's last known address according to the Board's records [~~with the notice an application for license renewal to the licensee's address contained in the Board's records. A licensee whose completed application for renewal is received by the Board after the expiration date of the license shall be charged a late fee~~].

(c) If a person's license has been expired for [~~not more than~~] 90 days or less, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half the examination fee for the license. If a person's license has been expired for more than 90 days but less than one year [~~two years~~], the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license. The Board by rule shall set a length of time beyond which an expired license may not be renewed. The Board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the period set by the Board beyond which a license may not be renewed [~~If a~~

~~person's license has been expired for two years or more, the person may renew the license by complying with the requirements set forth in substantive rules adopted by the Board~~]. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the Board may renew without examination 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 two years preceding application. The person must pay to the Board a fee that is equal to the examination fee for the license.

SECTION 6. Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Section 8A to read as follows:

Sec. 8A. MANDATORY CONTINUING EDUCATION REQUIREMENTS. (a) To renew a license, a licensee must demonstrate to the satisfaction of the Board completion of the requirement for continuing professional education.

(b) The Board shall adopt rules relating to the operation of the mandatory continuing education programs. In establishing the requirement for continuing education, the Board shall consider:

(1) factors that lead to the competent performance of professional duties; and

(2) the continuing education needs of licensees.

(c) The Board shall adopt rules relating to the adoption or approval of mandatory continuing education programs and providers and shall adopt rules to evaluate the effectiveness of the programs and a licensee's participation and performance in the programs.

SECTION 7. Section 9, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. FEES. (a) The Board by rule shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering this Act. The fees set by the Board may be adjusted so that the total fees collected shall be sufficient to meet the expenses of administering this Act. The Board may not set a fee for an amount less than the amount of that fee on September 1, 1993 [~~for the administration of this Act in amounts not to exceed:~~

[~~(1) examination and application fee: $40;~~

[~~(2) reexamination fee: $40;~~

[~~(3) renewal fee: $20;~~

[~~(4) endorsement fee: $40;~~

[~~(5) accreditation of new programs fee: $75;~~

[~~(6) duplicate temporary permit or license fee: $10;~~

[~~(7) filing of affidavits in reehange of name fee: $10;~~

[~~(8) endorsement to another state fee: $40; and~~

[~~(9) reactivating from inactive status fee: $30~~].

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

(b) All expenses under this Act shall be paid from fees collected by the Board under this Act, and no expense incurred under this Act shall ever be charged against the funds of the State of Texas.

(c) On or before January 1 of each year, the Board shall make in writing to the Governor and the presiding officer of each house of the legislature a complete and detailed report accounting for all funds received and disbursed by the Board during the preceding year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

SECTION 8. Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Sections 10A-10F to read as follows:

Sec. 10A. RECORDS OF COMPLAINTS. (a) The Board shall keep an information file about each complaint filed with the Board. The Board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the Board that the Board has authority to resolve, the Board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The Board by rule shall adopt a form to standardize information concerning complaints made to the Board. The Board by rule shall prescribe information to be provided to a person when the person files a complaint with the Board.

(d) The Board shall provide reasonable assistance to a person who wishes to file a complaint with the Board.

Sec. 10B. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The Board shall adopt rules concerning the investigation of a complaint filed with the Board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the Board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the Board to obtain the services of a private investigator.

(b) The Board shall dispose of all complaints in a timely manner. The Board shall establish a timeline for conducting each phase of a complaint

that is under the control of the Board not later than the 30th day after the date the complaint is received by the Board. The timeline shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the timeline must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The executive director shall notify the Board of a complaint that extends beyond the time prescribed by the Board for resolving the complaint so that the Board may take necessary action on the complaint.

Sec. 10C. INFORMAL PROCEEDINGS. (a) The Board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the Board's legal staff or of the office of the attorney general to advise the Board or the Board's employees.

Sec. 10D. MONITORING OF LICENSEE. The Board by rule shall develop a system for monitoring licensees' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a licensee who is ordered by the Board to perform certain acts to ascertain that the licensee performs the required acts and to identify and monitor licensees who represent a risk to the public.

Sec. 10E. ADMINISTRATIVE PENALTIES. (a) The Board may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.

(b) The penalty for each violation may be in an amount not to exceed $1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the executive director determines that a violation has occurred, the executive director may issue to the Board a report that states the facts

on which the determination is based and the executive director's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive director shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director, the Board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law. The administrative law judge shall promptly issue to the Board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the Board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the Board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the Board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the Board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) An executive director who receives a copy of an affidavit under Subsection (k)(2) of this section may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the Board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 10F. SCHEDULE OF SANCTIONS. The schedule of sanctions adopted by the Board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.

SECTION 9. Section 11, Chapter 118, Acts of the 52nd Legislature, Regular Session, 1951 (Article 4528c, Vernon's Texas Civil Statutes), is amended by adding Subsection (c) to read as follows:

(c) A person who violates this Act is liable to the state for a civil penalty that does not exceed $1,000 a day. The civil penalty may be collected in a suit initiated by the Board.

SECTION 10. (a) The changes in law made by this Act in the qualifications of members of the Board of Vocational Nurse Examiners do not affect the entitlement of a member appointed before September 1, 1993, to continue to hold office for the term for which the member was appointed. The changes in the qualifications apply only to a member appointed on or after September 1, 1993.

(b) As soon as possible on or after September 1, 1993, the governor shall appoint three additional public members to the Board of Vocational Nurse Examiners. In making the initial appointments of the new members, the governor shall designate one for a term expiring on the regular expiration date of board members in 1995, one for a term expiring on the regular expiration date of board members in 1997, and one for a term expiring on the regular expiration date of board members in 1999.

SECTION 11. This Act takes effect September 1, 1993.

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

Floor Amendment No. 1

Amend **C.S.S.B. 839** as follows:

(1) Amend SECTION 2 on page 4 at line 12 by inserting the words "or serve as general counsel to the board" between the word "member" and the word "if".

(2) Amend SECTION 2 by deleting the comma on page 13, line 27, and the words after the comma through to the end of the sentence on page 14, line 1.

(3) Amend SECTION 4 on page 19, line 27, by inserting the following after the period:

(e) The board shall specify training, education or examination requirements that an applicant may complete in lieu of the requirements of Subsection (a)(2) of this section.

The amendments were read.

On motion of Senator Moncrief and by unanimous consent, the Senate concurred in the House amendments to **S.B. 839** by a viva voce vote.

SENATE RESOLUTION 1068

Senator Turner offered the following resolution:

S.R. 1068, Directing the Parks and Wildlife Department to negotiate with the Weches Cemetery Association in Houston County for the sale of one acre of real property at an agreed price.

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

SENATE BILL 1015 WITH HOUSE AMENDMENT

Senator Wentworth called **S.B. 1015** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 1015** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to filing a final account of an estate of a decedent or ward or guardianship of a person, removing the estate from a court's active docket, and closing the estate.

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

SECTION 1. Section 406, Texas Probate Code, is amended to read as follows:

Sec. 406. PROCEDURE IN CASE OF NEGLECT OR FAILURE TO FILE FINAL ACCOUNT; PAYMENTS DUE MEANTIME. (a) If a personal representative charged with the duty of filing a final account fails or neglects so to do at the proper time, the court may [~~shall~~], upon its own motion, or shall, upon the written complaint of any one interested in the decedent's or ward's estate which has been administered, cause such representative to be cited to appear and present such account within the time specified in the citation.

(b) If a written complaint has not been filed by anyone interested in the guardianship of a person or estate of a minor or deceased ward, the court may, on or after the third anniversary after the date of the death of the ward or after the date the minor reaches the age of majority, remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative.

(c) If a complaint has not been filed by anyone interested in the estate of a ward whose whereabouts are unknown to the court, the court may, on or after the fourth anniversary after the ward's whereabouts became unknown to the court, remove the estate from the court's active docket without a final accounting and without appointing a successor personal representative.

(d) If the whereabouts of the personal representative and heirs of a decedent are unknown and a complaint has not been filed by anyone interested in the decedent's estate, the court may, on or after the fourth anniversary after the last date on which letters testamentary or of administration are issued by the court clerk, close the estate without a final accounting and without appointing a successor personal representative.

(e) Rentals [~~So far as applicable, this Section shall also govern with respect to guardians of the person. Meantime, rentals~~] or other payments becoming due to the ward, his estate, or his guardian, between the date the ward's disability terminates or the date of the ward's death and the effective date of the guardian's discharge may be paid or tendered to the emancipated ward, his guardian, or the personal representative of the ward's estate, at obligor's option, and such payment or tender shall constitute and be an absolute discharge of such matured obligation for all purposes to the extent of the amount thus paid or tendered.

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

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **S.B. 1015.**

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

SENATE BILL 952 WITH HOUSE AMENDMENT

Senator Wentworth called **S.B. 952** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 952** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the transfer of extraterritorial jurisdiction between certain municipalities.

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

SECTION 1. Subchapter B, Chapter 42, Local Government Code, is amended by adding Sections 42.024 and 42.025 to read as follows:

Sec. 42.024. TRANSFER OF EXTRATERRITORIAL JURISDICTION BETWEEN CERTAIN MUNICIPALITIES. (a) In this section:

(1) "Adopting municipality" means a home-rule municipality with a population of less than 7,500 that purchases and appropriates raw water for its water utility by authority of a trans-basin diversion permit from one of two river authorities in which the municipality has territory.

(2) "Releasing municipality" means a home-rule municipality with a population of more than 450,000 that owns an electric utility.

(b) The governing body of an adopting municipality by resolution may adopt as part of its extraterritorial jurisdiction an area within the extraterritorial jurisdiction of a releasing municipality if:

(1) the area is not being served by the releasing municipality's water, sewer, and electric utilities;

(2) the releasing municipality has had a capital improvement plan in place for at least five consecutive years that includes proposed installation of water and sewer lines necessary to serve the area, but the releasing municipality has not funded the plan;

(3) the adopting municipality has adopted a service plan to provide water and sewer service to the area;

(4) the area is:

(A) adjacent to the territory of the adopting municipality;

(B) wholly within a county in which both municipalities have territory; and

(C) within one or more school districts, each of which has the majority of its territory outside the territory of the releasing municipality; and

(5) the adopting municipality adopts ordinances or regulations applicable to the land proposed to be released relating to the control or abatement of water pollution that are at least as effective as those of the releasing municipality applicable to the land proposed to be released as of January 1, 1993.

(c) The transfer of the area takes effect on the date that the adopting municipality delivers a copy of the resolution adopted under Subsection (b) to the municipal clerk of the releasing municipality. On and after that date the area is in the extraterritorial jurisdiction of the adopting municipality and not in the extraterritorial jurisdiction of the releasing municipality.

Sec. 42.025. REIMBURSEMENT OF RELEASING MUNICIPALITY. The adopting municipality within one year shall reimburse the releasing municipality for the proportional share of the reasonable and actual construction costs attributable to the land proposed to be released that have been expended by the releasing municipality in the construction of permanent water or wastewater facilities in place as of January 1, 1993.

SECTION 2. This Act takes effect September 1, 1993.

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 Wentworth and by unanimous consent, the Senate concurred in the House amendment to **S.B. 952** by a viva voce vote.

SENATE BILL 73 WITH HOUSE AMENDMENT

Senator Bivins called **S.B. 73** 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 No. 1

Amend **S.B. 73**, SECTION 2, page 4, lines 9-19, to read as follows:

SECTION 2. Subdivision (14), Section 1, Article 18.21, Code of Criminal Procedure, is amended to read as follows:

(14) "Trap and trace device" means a mechanical or electronic device that attaches to a telephone line and is capable of recording an incoming electronic or other impulse that identifies the originating number of an instrument or device from which a wire or electronic communication was transmitted. The term does not include a device or telecommunications network used in providing either: (1) a caller identification service authorized by the Public Utility Commission of Texas under Section 87C, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes); or (2) the services referenced in Subsection (g) of Section 87C, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes.)

The amendment was read.

On motion of Senator Bivins and by unanimous consent, the Senate concurred in the House amendment to **S.B. 73** by a viva voce vote.

SENATE BILL 1042 WITH HOUSE AMENDMENT

Senator Parker called **S.B. 1042** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **S.B. 1042** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of on-site sewage disposal systems; providing penalties.

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

SECTION 1. Section 366.002(2), Health and Safety Code, is amended to read as follows:

(2) "Board" or "commission" means the Texas Natural Resource Conservation Commission.

SECTION 2. Section 366.002(4), Health and Safety Code, is amended to read as follows:

(4) "Designated representative" means a person who is designated by the department or authorized agent to make percolation tests, system designs, and inspections subject to the department's [~~or authorized agent's~~] approval.

SECTION 3. Section 366.002(8), Health and Safety Code, is amended to read as follows:

(8) "On-site sewage disposal system" means one or more systems of treatment devices and disposal facilities [~~that are not regulated by the Texas Water Commission and~~] that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on the site where the system is located.

SECTION 4. Section 366.014, Health and Safety Code, is amended to read as follows:

Sec. 366.014. DESIGNATED REPRESENTATIVE. (a) The department or an authorized agent may designate a person to make percolation tests, systems designs, and inspections subject to the approval of the department [~~or agent~~].

(b) To qualify as a designated representative, a person must:

(1) demonstrate to the department's [~~or authorized agent's~~] satisfaction the person's competency to make percolation tests, designs, and inspections for on-site sewage disposal systems in accordance with this chapter and rules adopted under this chapter; [~~and~~]

(2) successfully complete the training program provided by the department;

(3) successfully pass an examination provided by the department;

(4) receive written certification from the department; and

(5) pay a reasonable fee to the department for administration of this training and certification.

SECTION 5. Section 366.071, Health and Safety Code, is amended to read as follows:

Sec. 366.071. REGISTRATION. A person may not operate as an installer in this state unless the person is registered by the department [~~or an authorized agent~~].

SECTION 6. Section 366.077(a), Health and Safety Code, is amended to read as follows:

(a) An installer's statewide registration may be revoked by the department [~~or an authorized agent~~] after notice and hearing if the installer violates this chapter or a rule adopted under this chapter.

SECTION 7. Section 366.092, Health and Safety Code, is amended to read as follows:

Sec. 366.092. INJUNCTION OR CIVIL SUIT. (a) If it appears that a person has violated, is violating, or is threatening to violate any provision of this chapter, or any rule, permit, or other order of the commission issued pursuant to this chapter, the commission may request the attorney general to bring a civil suit for:

(1) mandatory or prohibitory injunctive relief, as warranted by the facts;

(2) a civil penalty as provided by this chapter; or

(3) both injunctive relief and civil penalty.

(b) Venue for an action under this chapter is in Travis County District Court, the county in which the defendant resides, or in the county in which the violation or threat of violation occurs. [~~The department or an authorized agent may bring suit for injunction to prevent or restrain a violation of this chapter.~~]

SECTION 8. Subchapter F, Chapter 366, Health and Safety Code, is amended by adding Sections 366.0921, 366.0922, 366.0923, and 366.0924 to read as follows:

Sec. 366.0921. CIVIL PENALTY. (a) An owner who violates any provision of this subchapter or any rule, permit, or order issued pursuant to this chapter is subject to a civil penalty of not less than $100 nor more than $500 for each act of violation and for each day of violation.

(b) Any other person who violates any provision of this subchapter or any rule, permit, or order issued pursuant to this chapter is subject to a civil penalty of not less than $500 nor more than $5,000 for each act of violation and for each day of violation.

Sec. 366.0922. COMMISSION DESIGNATED SOLE AUTHORITY TO ENFORCE. The commission shall be the sole authority designated to initiate an enforcement action under Sections 366.092, 366.0921, and 366.0924. However, a local government may request that the commission initiate an enforcement action pursuant to these sections through a petition filed with the commission. If the commission chooses to initiate an enforcement action on behalf of a local government, civil penalties recovered shall be divided between the local government and the state based on the proportion of resources expended by each entity in the course of enforcement action.

Sec. 366.0923. FEES AND COSTS RECOVERABLE. If the state prevails in a suit under this subchapter, it may recover reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

Sec. 366.0924. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter or a rule or order adopted or a permit issued under this chapter, the commission may assess an administrative penalty against that person as provided by this section.

(b) A person who violates this chapter or a rule, order, or permit issued pursuant to this chapter is subject to a civil penalty as follows:

(1) an owner shall be subject to a civil penalty in an amount not to exceed $500 per day or act of violation. Each day a violation continues may be considered a separate offense for purposes of assessing a penalty; and

(2) any other person shall be subject to a civil penalty in an amount not to exceed $5,000 per day or act of violation. Each day a violation continues may be considered a separate offense for purposes of assessing a penalty.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the circumstances surrounding the prohibited act, with special consideration of the threat to public health and the environment;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matters that justice may require.

(d) If the executive director of the commission concludes that a violation has occurred, the executive director may issue a preliminary report:

(1) stating the facts that support the conclusion; and

(2) recommending that a civil penalty be assessed as described in this section.

(e) The executive director shall send a copy of the report to the person charged no later than the 10th day after the report was issued. That notice shall include a statement that the person has the right to a hearing before the agency.

(f) The person charged may, no later than 20 days after the date on which the notice was received, give written consent to the executive director's report or request a hearing.

(g) If the person charged with the violation consents to the penalty recommended by the executive director or does not timely respond to the notice, the commission shall assess the penalty by order, or shall order a hearing to be held on the findings and recommendations in the executive director's report. If the commission assesses the penalty, the commission shall give written notice to the person charged of its decision.

(h) The person assessed an administrative penalty shall pay the penalty not later than the 30th day after the date on which the commission order is final or file a petition for judicial review.

(i) The commission may request enforcement by the attorney general if any person fails to comply with an agency order.

(j) Judicial review of any agency administrative order issued under this section shall be under Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(k) An administrative penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

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 amendment was read.

On motion of Senator Parker and by unanimous consent, the Senate concurred in the House amendment to **S.B. 1042** by a viva voce vote.

(Senator Parker in Chair)

SENATE BILL 1029 WITH HOUSE AMENDMENTS

Senator Armbrister called **S.B. 1029** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **S.B. 1029** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the review and approval of certain permits by the state, a municipality, and other local governmental entities.

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

SECTION 1. Subdivision (3), Section 481.142, Government Code, is amended to read as follows:

(3) "Project" means an endeavor over which a regulatory agency exerts its jurisdiction and for which a permit is required before initiation of the endeavor. Preliminary plans and related subdivision plats, site plans and site development permits connected to such preliminary plan or subdivision plats are considered collectively to be one project, provided that each site plan is submitted to the regulatory agency within three years after the final plat of the subdivision for such site plan is approved or the effective date of this Act, whichever is later. All contiguous property that is under common or affiliated ownership and that is subject to one or more applications for subdivision shall be considered to be one project.

SECTION 2. Subdivision (4), Section 481.142, Government Code, is amended to read as follows:

(4) "Regulatory agency" means an agency, bureau, department, division, or commission of the state or any department or other agency or governing body of a political subdivision in its capacity of processing, approving, or issuing permits [~~that processes and issues permits~~].

SECTION 3. Section 481.142, Government Code, is amended by adding Subdivision (5) to read as follows:

(5) "Contiguous" means physically adjacent, but disregarding easements, rights-of-way, roads, stream beds, and public or quasi-public land.

SECTION 4. Section 481.143, Government Code, is amended to read as follows:

Sec. 481.143. UNIFORMITY OF REQUIREMENTS. (a) The approval, disapproval, or conditional approval of an application for a permit shall be considered by each regulatory agency solely on the basis of any orders, regulations, ordinances, rules, or other duly adopted requirements in effect at the time the original application for the permit is filed. If a series of permits is required for a project and if the project is initiated within two years after the last required permit is approved, the orders, regulations, ordinances, rules, or other requirements in effect at the time the original application for the first permit in that series is filed shall be the sole basis for consideration, approval, disapproval, or conditional approval of all subsequent permits required for the completion of the project and all permits required for the project shall be considered to be a single series of permits. The project will be considered to have been initiated if plans are prepared and the ground is broken for the first phase of the project. The project and subsequent phases must be in a continuous process of completion and be completed as soon as reasonably possible consistent with generally accepted local standards and practices, provided that the project shall be considered to be in a continuous process of completion during any period in which completion or initiation is interrupted for any reason or circumstance beyond the control of the persons to whom the permit has been issued as a result of an action taken by a regulatory agency or other governmental entity or agency thereof.

(b) This subchapter applies to all projects in progress on or commenced after the effective date of this section as originally enacted, and the duly adopted requirements in effect at the time the original application for the first permit for the project was filed control.

(c) This section does not apply to:

(1) permits or licenses issued in connection with any form of gaming or gambling;

(2) permits or licenses issued under Title 2, Tax Code; [~~or~~]

(3) permits, orders, or regulations issued by local regulatory agencies to comply with federally mandated programs, statutes, regulations, or permits;

(4) permits or orders issued under programs for which a state regulatory agency has received authorization, delegation, or approval from the federal government to implement an equivalent state program in lieu of or as part of the federal program; or

(5) permits for the construction of buildings or structures intended for human occupancy or habitation that are issued pursuant to laws, ordinances, procedures, rules, and regulations adopting solely the provisions of uniform building, fire, electrical, plumbing, or mechanical codes promulgated by the Southern Building Code Congress, International Conference of Building Officials, the International Fire Code Institute, or the International Association of Plumbing and Mechanical Officials or local amendments to building, fire, electrical, plumbing, or mechanical codes enacted to address imminent threats to health and safety.

SECTION 5. Chapter 481, Subchapter I, Government Code, is amended by adding Section 481.144 to read as follows:

Sec. 481.144. APPLICABILITY TO CERTAIN HOME-RULE MUNICIPALITIES. (a) In addition to all other provisions of this subchapter, this section shall apply to home-rule municipalities which had limited purpose annexation authority on January 1, 1993, which issued permits in a limited purpose annexed area, and which had previously disannexed limited purpose annexed territory.

(b) A home-rule municipality described in Subsection (a) may enact by ordinance time limits in which all or part of a preliminary subdivision plan must apply for final plat approval in order to remain subject to the orders, regulations, ordinances, rules, or other duly adopted requirements in effect at the time the preliminary plan was filed. For projects of 100 acres or less, the time limit for filing for final plat approval may not be less than two years from the date of approval of the preliminary plan or the date of the implementing ordinance, whichever is later. For projects over 100 acres, the time limit to apply for final plat approval may not be less than five years from the date of the approval of the preliminary plan or the date of the implementing ordinance, whichever is later, unless the project qualifies as a master planned development, in which case the time limit may not be less than 10 years from the applicable date.

(c) For purposes of this section, a master planned development is a project that includes 1,500 or more contiguous acres under common or affiliated ownership for which one or more preliminary subdivision plans subject to a common development plan are filed or for which a long-range,

mixed use land use plan is submitted and approved. To remain subject to the orders, regulations, ordinances, rules, or other duly adopted requirements in effect at the time the preliminary plan was filed, a master planned development must agree, by plat note or plat amendment, that the remainder of the project for which final plat applications have not been filed will meet the water quality standard in place under a municipal water quality ordinance applicable to that geographic area 10 years after the preliminary plan was approved or the date of the implementing ordinance, whichever is later, and thereafter in five-year increments until final plat applications for the entire project have been filed.

(d) The owner of land within a master planned development may appeal the application of the water quality standard under a municipal water quality ordinance to a court of competent jurisdiction or the Texas Water Commission or its successor pursuant to the Water Code or applicable law if such owner contends that application of the water quality standard is invalid, arbitrary, unreasonable, inefficient, or ineffective in its attempt to control water quality.

(e) Subject to the provisions of this subchapter, all existing and previously enacted ordinances and regulations of a home-rule municipality described in Subsection (a) establishing expiration dates for preliminary subdivision plans and site plans are hereby validated and ratified, to the extent such expiration dates are not inconsistent with time periods set out in this subchapter.

(f) For a master planned development which was in continuous process before the effective date of this Act to qualify as a project, the applicant must file a designation of the project as a master planned development with the municipality within 90 days after the passage of this Act. The designation shall be sufficient if it includes a written notice delivered to the mayor or the city manager of the municipality containing the following information: (1) an intent to designate the project as a master planned development; (2) a legal description of the project and a general description of the master planned development; and (3) the date on which the original application for the first permit for the project was filed. In order for a master planned development for which the original application for the first permit is filed after the effective date of this Act to qualify as a project, the applicant must file a designation of the project as a master planned development with the municipality at the time of the initial filing.

(g) If a proposed change in municipal ordinances affecting approval, disapproval, or conditional approval of a land development permit is posted as an agenda item for a meeting of the governing body or is the subject of an initiative duly certified as a ballot item, a project which is not otherwise covered by this subchapter shall become subject to the changes as of the date of posting or the date of certification of the ballot item, provided that (1) the proposed ordinance is adopted and becomes effective within 30 days of the posting date in the case of a posting on the governing body agenda or within 90 days of the date of certification for a ballot item or the next uniform election date and canvass of the election, whichever is earlier; and (2) the permit application has not otherwise been granted within the 30-day or 90-day period.

(h) To the extent not inconsistent with this subchapter, all municipal ordinances regulating permits for preliminary plans, final plats, and site plans are hereby validated whether adopted by initiative, referendum, or legislative action. All such ordinances and the procedures under which they were adopted are validated in all respects and are deemed to be in compliance with any and all applicable state laws including specifically the Election Code, the Water Code, and the common law governing municipal elections and ballot initiatives.

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.

Amendment No. 1

Amend **C.S.S.B. 1029** by adding the following SECTION 6 and renumbering the existing sections accordingly:

SECTION 6. Nothing in this Government Code, Subchapter I, shall be construed to: (a) limit or otherwise affect the authority of a state agency with respect to the enforcement of rules or implementation of programs or plans which are funded or mandated by the federal government under the Federal Coastal Zone Management Act; (b) limit or otherwise affect the authority of a state or local regulatory agency to implement or enforce statutory standards or state agency rules applicable to the coastal zone; or (c) apply to permits, orders, rules, regulations or other actions issued or undertaken by a state regulatory agency in connection with federal funding or federal programs relating to the coastal zone.

The amendments were read.

Senator Armbrister moved to concur in the House amendments to **S.B. 1029.**

The motion prevailed by the following vote: Yeas 14, Nays 10.

Yeas: Armbrister, Bivins, Brown, Harris of Dallas, Henderson, Montford, Nelson, Patterson, Rosson, Shapiro, Shelley, Sims, Wentworth, Whitmire.

Nays: Barrientos, Carriker, Ellis, Madla, Moncrief, Parker, Truan, Turner, West, Zaffirini.

Absent: Haley, Harris of Tarrant, Leedom, Lucio, Luna, Ratliff, Sibley. (Senators Haley, Lucio, Luna, Ratliff, and sibley were attending the conference committee meeting on **S.B. 7.**)

SENATE BILL 381 WITH HOUSE AMENDMENTS

Senator Armbrister, on behalf of Senator Haley, called **S.B. 381** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **S.B. 381** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the acquisition or provision of goods, services, and records by the state.

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

PART 1. GENERAL STATE ACQUISITION PROCESS

SECTION 1.01. Section 2, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. PURPOSE. The purpose of this Act is to provide a method of financing:

(1) for the acquisition or construction of buildings in Travis County, Texas; and

(2) for the purchase or lease of equipment by state agencies in the executive or judicial branch of state government.

SECTION 1.02. Section 9A(a), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The authority may issue and sell obligations for the financing of a lease or other agreement so long as the agreement concerns equipment that a state agency in the executive or judicial branch of state government has purchased or leased or intends to purchase or lease. The authority's power to issue obligations includes the power to issue and sell obligations for the financing of a package of agreements involving one or more state agencies.

SECTION 1.03. Section 1(3), Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) "State agency" has the meaning assigned by Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes) [~~means a 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 a university system and an institution of higher education as defined in Section 61.003, Education Code. The term does not include a public junior college~~].

SECTION 1.04. Subchapter C, Chapter 403, Government Code, is amended by adding Section 403.039 to read as follows:

Sec. 403.039. TEXAS IDENTIFICATION NUMBER SYSTEM. (a) The comptroller shall assign a Texas Identification Number, based on the comptroller's taxpayer identification number system, to each person, other than a state employee, who supplies property or services to the state for compensation or reimbursement.

(b) The Texas Identification Number system shall be used by each state agency as the primary identification system for persons, other than state employees, who supply property or services to the agency for

compensation or reimbursement. The agency may assign secondary numbers if the secondary numbering system does not unnecessarily create duplication of data bases, efforts, or costs.

(c) All state agencies shall cooperate with the comptroller to convert existing relevant identification systems to the Texas Identification Number system. The comptroller may adopt rules governing the conversion to and the administration of the Texas Identification Number system, including rules on the procedure for applying for a number under the system.

(d) In this section, "state agency" means any department, commission, board, office, or other agency in the executive, legislative, or judicial branch of state government, including an institution of higher education.

SECTION 1.05. The comptroller shall begin implementation of the Texas Identification Number system, as added by Section 1.04 of this part, as soon as practicable. A state agency may phase in its use of the system but shall fully implement the system not later than September 1, 1998.

SECTION 1.06. Section 1.02(3), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(3) "Historically underutilized [~~Disadvantaged~~] business" means:

(A) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities are owned by one or more persons who are socially disadvantaged because of their identification as members of certain groups, including black Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, who have suffered the effects of discriminatory practices or similar insidious circumstances over which they have no control;

(B) a sole proprietorship created for the purpose of making a profit that is 100 percent owned, operated, and controlled by a person described by Paragraph (A) of this subdivision;

(C) a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership is owned by one or more persons described by Paragraph (A) of this subdivision. Those persons must have a proportionate interest in the control, operation, and management of the partnership affairs;

(D) a joint venture in which each entity in the joint venture is a historically underutilized [~~disadvantaged~~] business under this subdivision; or

(E) a supplier contract between a historically underutilized [~~disadvantaged~~] business under this subdivision and a prime contractor under which the historically underutilized [~~disadvantaged~~] business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies.

SECTION 1.07. Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1.03. Historically underutilized [~~Disadvantaged~~] BUSINESSES. (a) The commission [~~Office of Small Business Assistance of the Texas Department of Commerce~~] shall certify businesses that are historically

underutilized [~~disadvantaged~~] businesses. As part of its certification procedures, the commission [~~office~~] may approve a municipal program that certifies historically underutilized [~~disadvantaged~~] businesses under substantially the same definition prescribed by Section 1.02(3) of this Act and may certify businesses certified by the municipality as historically underutilized [~~disadvantaged~~] businesses under this Act.

(b) The commission [~~office~~] shall compile a directory of businesses certified as historically underutilized [~~disadvantaged~~] businesses under Subsection (a) of this section. The commission [~~office~~] shall update the directory at least semiannually and provide a copy of the directory to [~~the commission and~~] each state agency semiannually. The commission shall provide access to the directory either electronically or in another format, depending on the needs of each state agency. On request, the commission shall make the directory available to local governments and the public. The commission and state agencies shall use the directory in determining awards of state purchasing and public works contracts.

(c) The commission shall annually prepare a report based on a compilation and analysis of [~~commission and each state agency shall report to the office~~] the total number and dollar amount of contracts awarded to historically underutilized [~~disadvantaged~~] businesses. The commission shall submit the report [~~These reports shall be made each January and July and shall report on the previous six-month period. The office shall compile and analyze the reports and submit a report based on the analysis~~] to the presiding officer of each house of the legislature each February. The commission may require information from a state agency and may adopt rules to administer this subsection. The comptroller shall provide information to the commission that will assist the commission in the performance of its duties under this subsection.

(d) The commission shall offer assistance and training to historically underutilized [~~disadvantaged~~] businesses regarding state procurement procedures. The commission shall advise historically underutilized [~~disadvantaged~~] businesses of the availability of state contracts and advise historically underutilized [~~disadvantaged~~] businesses to enter the businesses' names on the state's bid list.

(e) The commission and each state agency shall prepare as part of its strategic plan under Article 6252-31, Revised Statutes, as added by Chapter 384, Acts of the 72nd Legislature, Regular Session, 1991, a written plan for increasing the commission's or the agency's use of historically underutilized businesses in purchasing and in public works contracting. On request, the commission shall provide technical assistance to an agency that is preparing its plan under this subsection. The plan must include:

(1) a policy or mission statement relating to increasing use of historically underutilized businesses by the commission or agency;

(2) goals to be met by the commission or agency in carrying out the policy or mission; and

(3) specific programs to be conducted by the commission or agency to meet the goals stated in the plan, including a specific program to encourage contractors to use historically underutilized businesses as partners and subcontractors.

(f) The commission and each state agency shall prepare an annual report for each fiscal year documenting progress under its plan for increasing use of historically underutilized businesses. The commission or agency shall file the report with the governor, lieutenant governor, and speaker of the house of representatives not later than December 31 of each year.

(g) In cooperation with the state auditor, the commission shall develop a standard form for reports prepared under Subsection (f) of this section.

(h) The commission shall assist the Texas Department of Commerce in the performance of the department's duties under Section 481.103, Government Code, and its subsequent amendments.

(i) The commission shall encourage the use of historically underutilized businesses by state agencies by:

(1) working with state agencies to establish a statewide policy for increasing use of historically underutilized businesses;

(2) assisting state agencies in seeking historically underutilized businesses capable of supplying materials and services that the agencies require;

(3) assisting state agencies in identifying and advising historically underutilized businesses on the types of goods and services needed by the agencies; and

(4) assisting state agencies in increasing the volume of business placed with historically underutilized businesses.

SECTION 1.08. Section 1.04(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person commits an offense if the person intentionally applies as a historically underutilized [~~disadvantaged~~] business for an award of a purchasing contract or public works contract under this Act and the person knowingly does not meet the definition of a historically underutilized [~~disadvantaged~~] business under Section 1.02(3) of this Act.

SECTION 1.09. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.0221 to read as follows:

Sec. 3.0221. COMPETITIVE SEALED PROPOSALS; ACQUISITION OF CERTAIN SUPPLIES, MATERIALS, EQUIPMENT, AND ROUTINE SERVICES. (a) The commission may follow a procedure using competitive sealed proposals to acquire:

(1) supplies, materials, or equipment if the cost of acquisition is $1 million or more;

(2) routine services if the cost of acquisition is $100,000 or more;

(3) prototype medical equipment not yet commonly available on the market, without regard to its cost;

(4) medical equipment so new to the market that its benefits are not fully known, without regard to its cost; or

(5) major medical equipment, without regard to its cost, that is so technically complex or that has variable operations to such a degree that acquisition under competitive bidding is not feasible.

(b) Except as provided by Subsections (l) and (o) of this section:

(1) only the commission may acquire goods or services using competitive sealed proposals under this section; and

(2) the commission may not delegate authority under this section to a state agency.

(c) To acquire goods or services using competitive sealed proposals under this section, the commission must first determine in an open meeting that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state.

(d) The commission shall solicit proposals by a request for proposals. The commission shall give public notice of a request for proposals in the manner provided for requests for bids under Section 3.12 of this article.

(e) The commission shall consult with appropriate personnel of a requisitioning agency to develop specifications for a request for competitive sealed proposals under this section.

(f) The commission shall open each proposal in a manner that does not disclose the contents of the proposal during the process of negotiating with competing offerors. The commission shall file each proposal in a register of proposals, which shall be open for public inspection after a contract is awarded unless the register contains information that is excepted from disclosure as an open record under Section 3, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(g) As provided in a request for proposals and under rules adopted by the commission, the commission may discuss acceptable or potentially acceptable proposals with offerors to assess an offeror's ability to meet the solicitation requirements. After the submission of a proposal but before making an award, the commission may permit the offeror to revise the proposal in order to obtain the best final offer. The commission may not disclose any information derived from proposals submitted from competing offerors in conducting discussions under this subsection. The commission shall provide each offeror with an equal opportunity for discussion and revision of proposals.

(h) The commission shall invite a requisitioning agency to participate in discussions conducted under Subsection (g) of this section.

(i) The commission shall make a written award of a contract 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. The contract file must state in writing the basis on which the award is made.

(j) The commission may adopt rules and request assistance from other state agencies to perform its responsibilities under this section.

(k) This section does not affect Section 3.022 of this article regarding the use of competitive sealed proposals for acquiring goods or services related to telecommunications or automated information technology.

(l) The commission may delegate to an institution or other agency of higher education the authority to acquire under this section through the use

of a competitive sealed proposal procedure the items described by Subsection (a) of this section.

(m) An institution or other agency of higher education to which the commission delegates authority under Subsection (l) of this section shall:

(1) follow commission rules and the procedures provided by this section regarding the use of competitive sealed proposals;

(2) before soliciting a request for proposals under this section, submit to the commission a written finding that competitive sealed bidding or informal competitive bidding is not practical or is disadvantageous to the state for the proposed acquisition;

(3) before awarding a contract under this section, submit to the commission written notice and a copy of the proposed award; and

(4) consult with a commission representative in developing specifications for a request for competitive sealed proposals under this section and in evaluating received proposals.

(n) The commission may:

(1) revoke a delegation under Subsection (l) of this section; or

(2) prohibit a particular acquisition or award by an institution or other agency of higher education under this section.

(o) Subsection (b)(1) of this section does not apply to an acquisition of supplies, materials, equipment, or services that is not subject to the requirement that it be made by the commission under Section 3.01 of this article.

(p) In this section, "institution or other agency of higher education" means an institution of higher education or other agency of higher education as those terms are defined by Section 61.003, Education Code, and its subsequent amendments.

SECTION 1.10. Section 3.101, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.101. Centralized Master BIDDERS List [~~lists~~]. (a) This section:

(1) applies to all purchases or other acquisitions under this article, including the acquisition of services, for which competitive bidding or competitive sealed proposals are required;

(2) applies to each [~~all~~] state agency [~~agencies~~] that makes [~~make~~] purchases or other acquisitions under this article, including the commission and agencies that make purchases or other acquisitions under Section 3.06 of this article; and

(3) does not apply to purchases or other acquisitions 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 commission and each state agency shall make the form available to applicants. The form shall include an application for:

(1) certification as a historically underutilized business;

(2) a payee identification number for use by the comptroller; and

(3) placement on the commission's master bidders list.

(c) A state agency shall submit to the commission each uniform registration form that it receives. The commission shall send to the comptroller a copy of each uniform registration form.

(d) The commission [~~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 master 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. The commission [~~An agency~~] may include other relevant vendor information on the list. Each state agency shall solicit bids or proposals from all eligible vendors on the list that serve the agency's geographic region, as provided by this section, when the agency proposes to make a purchase or other acquisition that will cost more than $15,000 [~~$5,000~~]. The commission shall maintain the master bidders list in a manner that facilitates a state agency's solicitation of vendors that serve the agency's geographic area.

(e) The commission shall make the master bidders list available to each state agency that makes purchases or other acquisitions to which this section applies. The commission shall provide access to the list either electronically or in another format, depending on the needs of each state agency.

(f) The commission [~~(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 commission's [~~agency's~~] costs in developing and maintaining the master [~~its~~] bidders list and in soliciting bids or proposals under this section. The commission [~~An agency~~] shall set the amount of the fees by rule.

(g) The commission [~~(e) Each state agency~~] shall adopt procedures for developing and maintaining the master [~~its~~] bidders list and procedures for removing inactive vendors from the list.

(h) The commission [~~(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 or other acquisition are solicited under this section.

(i) A state agency may maintain and use its own bidders list only if the commission determines by rule that the agency has specialized needs that can best be met through maintaining and using its own specialized bidders list. The commission by rule may prescribe the categories of purchases or other acquisitions for which an agency's specialized bidders list may be used.

(j) [~~(g)~~] The commission may establish by rule a process under which the requirement for soliciting bids or proposals from eligible vendors on a [~~the~~] bidders list may be waived for appropriate state agencies or appropriate purchases or other acquisitions in circumstances in which the requirement is not warranted. The commission also may assist state agencies regarding issues that arise under this section.

SECTION 1.11. Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 3.081 to read as follows:

Sec. 3.081. CATALOGUE PURCHASE PROCEDURE. (a) A vendor who wants to sell or lease automated information systems under this section to state agencies covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes) shall apply to the commission for designation as a "qualified information systems vendor" according to an application process promulgated by the commission. At a minimum, the application process shall include submission of the following elements:

(1) a catalogue containing all products and services eligible for purchase by state agencies, including descriptions of each product or service, the list price of each product or service, and the price to Texas state agencies of each product or service;

(2) a maintenance, repair, and support plan for all eligible products and services;

(3) proof of the applicant's financial resources and ability to perform; and

(4) a guarantee that the vendor will make available equivalent replacement parts for products sold to Texas for at least three years from the date of a product's discontinuation.

(b) Within 90 days after the effective date of the law enacting this section the commission shall establish standards and criteria for designating qualified information systems vendors on a regional and statewide basis. A vendor remains qualified until the commission determines the vendor fails to meet the criteria set forth in this section. Vendors granted regional status may sell catalogue-listed products and services directly to state agencies covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes) within a region defined by the commission. Vendors granted statewide status may sell catalogue-listed products and services directly to any state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes). The commission's standards and criteria shall be developed in accordance with the following parameters:

(1) the ability of the vendor to provide adequate and reliable support and maintenance;

(2) the vendor's ability to provide adequate and reliable support and maintenance in the future;

(3) the technical adequacy and reliability of the vendor's products; and

(4) consistency with standards adopted by the Department of Information Resources or a subsequent entity.

(c) If a vendor is designated by the commission as a qualified information systems vendor, the vendor shall publish and maintain a catalogue containing all products and services eligible for purchase by state agencies, including descriptions of each product or service, the list price of each product or service, and the price to Texas state agencies of each product or service. The vendor shall update the catalogue on an as needed basis to reflect changes in price or the availability of products or services and shall forward a copy of each updated catalogue to the commission and all eligible purchasers.

(d) A state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes) may purchase or lease automated information systems directly from a qualified information systems vendor and may negotiate additional terms and conditions to be included in contracts relating to the purchase or lease, provided the purchase or lease is based on the best value available and is in the state's best interest. In determining which products or services are in the state's best interest, the agency shall consider the following factors:

(1) installation costs and hardware costs;

(2) the overall life cycle cost of the system or equipment;

(3) estimated cost of employee training and estimated increase in employee productivity;

(4) estimated software and maintenance costs; and

(5) compliance with applicable statewide standards adopted by the Department of Information Resources or a subsequent entity as validated by criteria established by the department or a subsequent entity in administrative rule.

(e) The commission shall establish rules and regulations and implement the catalogue purchase procedure set forth in this section no later than January 1, 1994.

(f) Purchases of automated information systems shall be made through the catalogue procedure enumerated in this section unless the commission determines that the best value available accrues from an alternative purchase method authorized by this Act.

SECTION 1.12. Section 1.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (4), (5), and (6) to read as follows:

(4) "Automated information systems" means any automated information systems, the computers on which they are automated, or a service related to the automation of information systems or the computers on which they are automated, including computer software, awarded to a vendor by a state agency covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes), or any telecommunications apparatus or device that serves as a component of a voice, data, or video communications network for the purpose of transmitting, switching, routing, multiplexing, modulating, amplifying, or receiving signals on that network.

(5) "Best value" means lowest overall cost of information systems based on the following factors including, but not limited to:

(A) purchase price;

(B) compatibility to facilitate exchange of existing data;

(C) capacity for expansion and upgrading to more advanced levels of technology;

(D) quantitative reliability factors;

(E) the level of training required to bring end-users to a stated level of proficiency;

(F) the technical support requirements for maintenance of data across a network platform and management of the network's hardware and software; and

(G) compliance with applicable statewide standards adopted by the Department of Information Resources or a subsequent entity as validated by criteria established by the department or a subsequent entity in administrative rule.

(6) "Qualified information systems vendor" means manufacturers or wholesale sellers of automated information systems who are authorized by the commission to publish catalogues of products and services which may be directly purchased by state agencies covered by the Information Resources Management Act (Article 4413(32j), Revised Statutes).

SECTION 1.13. Section 3.15(h), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(h) This section does not apply to interagency purchases or transactions. Interagency purchases and transactions must be accomplished on special vouchers or electronically as prescribed by the comptroller [~~of public accounts. The commission shall audit all interagency purchases and transactions after they have been completed~~].

SECTION 1.14. Section 5.16(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), 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, (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) an evaluation of energy alternatives as required by Section 5.161 of this article, and (9) 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 1.15. Article 5, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 5.161 to read as follows:

Sec. 5.161. EVALUATION OF ENERGY ALTERNATIVES. (a) For each project for which a project analysis is prepared under Section 5.16 of this article, and for which the construction, alteration, or repair involves installing or replacing all or part of an energy system, energy source, or energy-consuming equipment, the commission, or the private architect/engineer employed by the commission, shall prepare a written evaluation of energy alternatives for the project.

(b) An evaluation prepared under this section shall include information about the economic and environmental impact of various energy alternatives, including an evaluation of economic and environmental costs both initially and over the life of the system, source, or equipment.

(c) An evaluation under this section shall identify the best energy alternative for the project considering both economic and environmental costs and benefits.

SECTION 1.16. 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 (d) 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. Except in an emergency, the [~~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.

(d) In this section, an emergency is a situation that:

(1) presents an imminent peril to the public health, safety, or welfare;

(2) presents an imminent peril to property;

(3) requires expeditious action to prevent a hazard to life, health, safety, welfare, or property; or

(4) requires expeditious action to avoid undue additional cost to a state agency or the state.

SECTION 1.17. Section 5.26(b), 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; one person [~~two persons~~] appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Architects; one person [~~two persons~~] appointed by the commission from a list of nominees submitted to it by the President of the Texas Society of Professional Engineers; one person [~~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; one person [~~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; one person appointed by the commission from a list of nominees submitted to it by the Executive Secretary of the Texas Building and Construction Trades Council; one person appointed by the commission from a list of nominees submitted to it by the President of the Associated Builders and Contractors of Texas; one person residing in Texas appointed by the commission from a list of nominees submitted by the Executive Director of the National Association of Minority Contractors; one person appointed by the commission representing an institution of higher education, as defined by Section 61.003, Education Code; one person appointed by the commission representing a state agency that has a substantial on-going construction program; and one person appointed by the commission representing the attorney general's office. 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 1.18. Section 5.36, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.36. PUBLIC WORKS CONTRACTS WITH CERTAIN BUSINESSES. A state agency that enters into a contract for a project, including a project constructed by or for an agency otherwise excepted under Section 5.13 of this article, shall make a good faith effort to assist historically underutilized [~~disadvantaged~~] businesses to receive at least 10 percent of the total value of each construction contract award that the agency expects to make in its fiscal year. Each agency shall estimate the expected total value of contract awards under this article not later than the 60th day of its fiscal year and may revise the estimate as new information requires.

SECTION 1.19. 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. 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, residential space for a Texas Youth Commission program, or space to be utilized for less than one month for meetings, conferences, seminars, conventions, displays, examinations, auctions, or other similar purposes.

SECTION 1.20. Article 6, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 6.021 to read as follows:

Sec. 6.021. SPACE USE STUDY; LIMITATION ON ALLOCATION OF SPACE. (a) The commission periodically shall conduct a study to determine the space requirements of various state agencies that occupy space under the commission's charge and control, including state-owned space and space leased from other sources.

(b) The commission shall use the results of the study to:

(1) determine the optimal amount of space required for various state agency uses; and

(2) allocate space to state agencies in the best and most efficient manner possible.

(c) The commission may not allocate space to a state agency as defined in Articles I and II of the General Appropriations Act that exceeds an average of 153 square feet for each agency employee for each agency site for usable office space as defined by the General Services Commission, with the exception of an agency site at which 15 or fewer employees are located, insofar as possible without sacrifice of critical public or client services by the end of the 1994-1995 biennium. This subsection does not apply to:

(1) warehouse space;

(2) laboratory space;

(3) storage space exceeding 1,000 gross square feet; or

(4) another type of space specified by commission rule, if the commission determines that it is not practical to apply this subsection to the specified space.

(d) The commission shall conduct a study under this section at least once during each state fiscal biennium.

(e) This section does not apply to space that is not occupied by a state agency as defined by Section 1.02 of this Act.

SECTION 1.21. Section 10.05, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10.05. SHARING OF SERVICES OR FACILITIES. (a) Telecommunications facilities and services, to the extent feasible and desirable, shall be provided on an integrated or shared basis, or both, to avoid waste of state funds and manpower.

(b) The commission, the Department of Information Resources, and the comptroller shall develop, in coordination with The Texas A&M University System, The University of Texas System, other institutions of higher education, and other state agencies, a plan for a state telecommunications

network that will effectively and efficiently meet the long-term voice, video, and computer communications requirements of state government. The plan should recognize that all state agencies and institutions of higher education are a single entity for purposes of purchasing and determining tariffs. The plan shall incorporate efficiencies obtained through the use of shared transmission services and open systems architecture as they become available, building on existing systems as appropriate, and the developers of the plan shall make use of the technical expertise of the institutions of higher education and state agencies. The commission, department, and comptroller shall present to the governor and the legislature a comprehensive summary of the plan and its implementation schedule before September 1, 1994.

SECTION 1.22. Section 10.09(d), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) The commission shall prepare and issue a revised centralized telephone service directory not later than March 31 [~~in February~~] of each year.

SECTION 1.23. Chapter 417, Government Code, is amended by adding Section 417.0081 to read as follows:

Sec. 417.0081. INSPECTION OF CERTAIN STATE-OWNED BUILDINGS. The state fire marshal, at the commission's direction, shall periodically inspect public buildings under the charge and control of the General Services Commission and shall take any action authorized by the commission to protect the buildings and their occupants from an existing or threatened fire hazard.

SECTION 1.24. Subchapter A, Chapter 419, Government Code, is amended by adding Section 419.0081 to read as follows:

Sec. 419.0081. PROTECTION OF CERTAIN STATE-OWNED BUILDINGS AGAINST FIRE HAZARDS. (a) The commission shall take any action necessary to protect a public building under the charge and control of the General Services Commission, and the building's occupants, against an existing or threatened fire hazard.

(b) The commission and the General Services Commission shall make and each adopt by rule a memorandum of understanding that coordinates the agencies' duties under this section.

SECTION 1.25. Section 771.002, Government Code, is amended to read as follows:

Sec. 771.002. DEFINITIONS. In this chapter:

(1) "Agency" includes:

(A) a department, board, bureau, commission, court, office, authority, council, or institution;

(B) a university, college, or any service or part of a state institution of higher education; and

(C) any statewide job or employment training program for disadvantaged youth that is substantially financed by federal funds and that was created by executive order not later than December 30, 1986.

(2) [~~"Commission" means the State Purchasing and General Services Commission.~~

[~~(3)~~] "Resources" means materials and[~~,~~] equipment[~~, and supplies~~].

(3) [~~(4)~~] "Services" means special or technical services, including the services of employees.

SECTION 1.26. Section 771.004(a), Government Code, is amended to read as follows:

(a) Before a state agency may provide [~~furnish~~] or receive a service or resource under this chapter, the agency must have entered into a written agreement or contract that has been approved by the administrator of each agency that is a party to the agreement or contract [~~and by the commission~~].

SECTION 1.27. Section 771.004, Government Code, is amended by amending Subsection (c) and by adding Subsection (d) to read as follows:

(c) A written agreement or contract is [~~and advance approval by the commission are~~] not required:

(1) in an emergency for the defense or safety of the civil population or in the planning and preparation for those emergencies;

(2) in cooperative efforts, proposed by the governor, for the economic development of the state; or

(3) in a situation in which the amount involved is less than $50,000 [~~$2,500~~].

(d) In an interagency exchange that is exempt from the requirements of a written agreement or contract, the agencies involved shall document the exchange through informal letters of agreement or memoranda.

SECTION 1.28. Section 771.006, Government Code, is amended to read as follows:

Sec. 771.006. [~~Equipment~~] PURCHASES AND SUBCONTRACTS of Services and Resources. A contract under this chapter may authorize an [~~permit a furnishing~~] agency providing services and resources to subcontract and purchase the services and resources [~~equipment to the extent considered appropriate by the commission~~].

SECTION 1.29. On the effective date of this part, all powers, duties, and obligations relating to the protection of public buildings under the charge and control of the General Services Commission, and the buildings' occupants, against existing or threatened fire hazards are transferred from the General Services Commission to the Texas Commission on Fire Protection as provided by this Act. All property in the custody of the General Services Commission and the original or a copy of any record that relates to fire protection activity in the buildings are transferred to the Texas Commission on Fire Protection. All appropriations to the General Services Commission for fire protection activity in the buildings and all employees of the General Services Commission employed primarily to engage in fire protection activity in the buildings are transferred to the Texas Commission on Fire Protection. All investigations and all filed reports or complaints relating to fire protection in the buildings are transferred without change in status from the General Services Commission to the Texas Commission on Fire Protection. All rules, standards, and specifications of the General Services Commission relating to fire protection in the buildings remain in effect as rules, standards, and

specifications of the Texas Commission on Fire Protection unless superseded by proper authority of that commission.

SECTION 1.30. The General Services Commission shall complete implementation of the changes in law made by this Act relating to the use of a centralized master bidders list by state agencies not later than September 1, 1995. During the transition period provided by this section, affected state agencies shall provide the General Services Commission with all records and information in the custody of the agencies that relate to the commission's preparation of the centralized master bidders list.

SECTION 1.31. (a) The General Services Commission shall appoint the new members added to the commission's construction contract review committee by this Act as soon as practicable after the effective date of this part. The representatives of each society or association that has had its representation on the committee reduced from two members to one member shall determine by agreement or by lot which representative will remain on the committee.

(b) Until all removals and new appointments of members of the commission's construction contract review committee have taken place, a quorum of the committee is a majority of the number of members serving at the time of a meeting.

SECTION 1.32. On the effective date of this part, all powers, duties, and obligations of the Office of Small Business Assistance of the Texas Department of Commerce under Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are transferred to the General Services Commission as prescribed by the changes to Section 1.03 made by this Act. All records and property in the custody of the office that relate to a function transferred by this Act are transferred to the commission. All appropriations to the office for functions transferred by this Act and all employees of the office employed primarily to engage in those functions are transferred to the commission. An application for certification as a historically underutilized business is transferred without change in status from the office to the commission. All rules, standards, and specifications of the office relating to the functions transferred by this Act remain in effect as rules, standards, and specifications of the commission unless superseded by proper authority of the commission. All references in a transferred application, rule, standard, or specification to disadvantaged businesses is considered to be a reference to historically underutilized businesses. A prior certification made by the office that a business is a disadvantaged business is considered to be a certification that a business is a historically underutilized business.

SECTION 1.33. Not later than January 1, 1995, the General Services Commission shall submit to the governor, lieutenant governor, and speaker of the house of representatives a report on the competitive sealed proposal process established by this Act that includes:

(1) a list of all purchases made under the process during the state fiscal year ending August 31, 1994, including purchases by institutions and other agencies of higher education under authority delegated by the commission;

(2) an analysis of benefits and disadvantages of the process; and

(3) recommendations for improving the process.

SECTION 1.34. (a) The following laws are repealed:

(1) Section 771.005, Government Code; and

(2) Section 771.009, Government Code.

(b) The following law is repealed:

(1) Section 771.008(d), Government Code; or

(2) Section 6(d), The Interagency Cooperation Act (Article 4413(32), Vernon's Texas Civil Statutes), as added by Section 30, Chapter 641, Acts of the 72nd Legislature, Regular Session, 1991.

(c) Subsection (b)(1) of this section takes effect only if a bill relating to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes, and to conforming codifications enacted by the 72nd Legislature to other acts of that legislature, is enacted by the 73rd Legislature and becomes law. Subsection (b)(2) of this section takes effect only if the bill described by this subsection does not become law.

SECTION 1.35. Article 5, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 5.265 to read as follows:

Sec. 5.265. COMMON SURETY OR INSURER. If it is advantageous to the state, the commission, or an agency whose project is exempted from all or part of this article under Section 5.13 of this article, may negotiate an arrangement with a surety or an insurer, as appropriate, authorized to do business in this state to furnish some or all of the bonds, insurance, or both that a contractor or subcontractor is required to execute or carry to receive a contract or subcontract on a project administered by the commission or other agency. Notwithstanding Section 1, Chapter 87, Acts of the 56th Legislature, Regular Session, 1959 (Article 7.19-1, Vernon's Texas Insurance Code), and its subsequent amendments, the commission or other agency may require a contractor or subcontractor to meet part or all of the bonding or insurance requirements for the project under the arrangement negotiated by the commission or other agency.

SECTION 1.36. Article 5, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 5.342 to read as follows:

Sec. 5.342. ACQUISITION OF EXISTING BUILDING AS ALTERNATIVE TO LEASING SPACE. (a) This section applies only to meeting office space needs of one or more state agencies in a county in which the state is leasing at least 50,000 square feet of usable office space.

(b) The commission may meet office space needs of one or more state agencies that are being met through leased space by purchasing one or more existing buildings in accordance with this section. The purchase of a building may include the purchase of the building's grounds and related improvements. The purchase of a building under this section must be:

(1) financed through bonds issued by the Texas Public Finance Authority; and

(2) approved by the legislature if it is in session or by the Legislative Budget Board if the legislature is not in session.

(c) The commission may purchase a building under this section only if the commission determines that the projected annual total space occupancy costs of the purchased space will not exceed, over the term of the bonded indebtedness, the projected annual total space occupancy costs of meeting the same space needs through leased space. In this section, "total space occupancy costs" include:

(1) for leased space, the direct cost of the lease payments for the space;

(2) for purchased space, the direct cost of rental or installment payments for the space under Section 12(b), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes);

(3) the cost of any necessary renovations;

(4) operating costs, including janitorial and utility costs; and

(5) for purchased space, the cost of maintaining a cash replacement reserve sufficient to service structural maintenance requirements reflecting the expected performance life of the major capital expense items of the building for the term of the bonded indebtedness.

(d) If the commission has made the necessary determination under Subsection (c) of this section and the purchase has been approved by the legislature or the Legislative Budget Board under Subsection (b) of this section, the Texas Public Finance Authority shall issue and sell bonds to finance the purchase in accordance with the Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), and the commission may purchase the building in accordance with that Act and other applicable law. The limitation prescribed by Section 9, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), relating to the location of a building for which bonds may be issued and sold does not apply to financing the purchase of a building under this section.

(e) Any person from whom real property or any existing buildings or other improvements are purchased under this section shall provide to the commission the name and the last known address of each person who:

(1) owns record legal title to the property, buildings, or other improvements; or

(2) owns a beneficial interest in the property, buildings, or other improvements through a trust, nominee, agent, or any other legal entity.

(f) When a state agency vacates leased space to move into space in a building purchased under this section or when the leased space itself is purchased under this section, the money specifically appropriated by the legislature or the money available to and budgeted by the agency for lease payments for the leased space for the remainder of the biennium may be used only for rental or installment payments for the purchased space under Section 12(b), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), and for the payment of operating expenses for the purchased space that are incurred by the commission. The comptroller may adopt rules for the administration of this subsection.

SECTION 1.37. Sections 4.15(c) and (m), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended to read as follows:

(c) Except as provided by this section and Article 6252-3c, Revised Statutes, the commission shall determine the amount of space in a building to be allocated to private tenants and the types of activities in which the tenants may engage based on the market for certain activities among employees and visitors in the building and in the vicinity of the building. Except as provided by Subsection (m) [~~(l)~~] of this section, the amount of space allocated to private tenants may not exceed 15 percent of the total space in the building. Any space leased to provide child care services for state employees shall not be counted in the 15 percent maximum.

(m) If the commission determines under Section 5.34 or 5.342 of this Act that the purchase of an existing building is more advantageous to the state than constructing [~~the construction of~~] a new building or continuing to lease space for a state agency, but a purchase of the building would be subject to existing leases to private tenants 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 to a private tenant expires, the commission may renew the lease subject to this section, including Subsection (c).

SECTION 1.38. Section 9(b), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) When the acquisition or construction of a building has been authorized in accordance with this Act or under Section 5.34 or 5.342, 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.

SECTION 1.39. Section 10(a), Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), as amended by Chapter 1244, Acts of the 71st Legislature, Regular Session, 1989, is amended to read as follows:

(a) Except as permitted by Sections 24A(b)(5) and 24A(d) of this Act or Section 5.34 or 5.342, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), before the board may issue and sell bonds, the legislature by law must have authorized in this Act, the General Appropriations Act, or another Act the specific project for which the bonds are to be issued and sold and must have authorized the estimated cost of the project or the maximum amount of bonded indebtedness that may be incurred by the issuance and sale of bonds for the project. In recognition that the cost estimates for acquisition, construction, repair, or renovation of a project will not be final at the time the project is authorized for financing and that the bonds may be issued to fund associated costs, including but not limited to reasonably required reserve funds, capitalized interest, administrative costs of the authority, and issuing expenses, the principal amount of any bond issue for that purpose may be

up to 1-1/2 the amount of the estimated cost for the project being financed. For additional costs to be included in that principal amount, the board must affirmatively find that those costs are necessary and reasonable at the time the bonds are issued.

SECTION 1.40. (a) The initial reports required by Section 1.03(f), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this part, shall be filed not later than December 31, 1994.

(b) The written plan required by Section 1.03(e), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as added by this part, shall be completed not later than June 1, 1994.

SECTION 1.41. Section 481.105, Government Code, is transferred to Article 3, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), redesignated as Section 3.281, and amended to read as follows:

Sec. 3.281 [~~481.105~~]. PARTICIPATION by Small Businesses IN STATE PURCHASING. The commission [~~office~~] shall foster participation of small businesses in the purchasing activities of the state by:

(1) assisting state agencies in developing procedures to ensure the inclusion of small businesses on state agency master bid lists;

(2) informing small businesses of state purchasing opportunities;

(3) assisting small businesses in complying with the procedures for bidding on state contracts;

(4) working with state and federal agencies and with private organizations in disseminating information on state purchasing procedures and the opportunities for small businesses to participate in state contracts;

(5) assisting state agencies with the development of a comprehensive list of small businesses capable of providing materials, supplies, equipment, or services to the state; [~~and~~]

(6) making recommendations to state agencies for simplification of specifications and terms to increase the opportunities for small business participation;

(7) working with state agencies to establish a statewide policy for increasing use of small businesses;

(8) assisting state agencies in seeking small businesses capable of supplying materials and services that the agencies require;

(9) assisting state agencies in identifying and advising small businesses on the types of goods and services needed by the agencies; and

(10) assisting state agencies in increasing the volume of business placed with small businesses.

SECTION 1.42. On the effective date of this part, all powers, duties, and obligations of the Office of Small Business Assistance of the Texas Department of Commerce under Section 1.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), and under former Section 481.105, Government Code, are transferred to the General Services Commission as prescribed by this part. All records and property in the custody of the office that relate to a function transferred by this part are transferred to the commission. All appropriations to the office for functions transferred by this part and all employees of the office employed

primarily to engage in those functions are transferred to the commission. An application for certification as a disadvantaged business is transferred without change in status from the office to the commission. All rules, standards, and specifications of the office relating to the functions transferred by this part remain in effect as rules, standards, and specifications of the commission unless superseded by the commission.

SECTION 1.43. This part takes effect immediately.

PART 2. ABOLITION OF TEXAS SURPLUS PROPERTY AGENCY

SECTION 2.01. Section 2.06(c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The executive director shall employ two associate deputy directors, who shall administer the operation of the divisions of the commission, except the surplus and salvage property division, as provided by this Act. The commission shall:

(1) employ a third associate deputy director to administer the operation of the surplus and salvage property division as provided by this Act, and that associate deputy director serves at the pleasure of the commission; or

(2) assign the duty to administer the surplus and salvage property division directly to the executive director, who shall directly administer that division subject to and under the direction of the commission.

SECTION 2.02. Section 2.09, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.09. DIVISIONS. (a) The commission is divided into divisions as provided by this section. The associate deputy director employed to administer the surplus and salvage property division shall direct that division as provided by Subsection (c) of this section. Another [~~One~~] associate deputy director shall direct the travel division and other divisions as directed by the executive director. The other associate deputy director shall direct the remaining divisions as directed by the executive director.

(b) Each division shall be managed by a division director who shall report to the appropriate associate deputy director, except as provided by Subsection (c) of this section.

(c) The surplus and salvage property division is established to administer Article 9 of this Act. Notwithstanding Section 2.06(b) of this Act, and unless the commission assigns the duty to administer the division directly to the executive director, the affairs of the division are managed by the associate deputy director of that division, whose management is subject to and under the direction of the commission and who reports directly to the commission. All direction of the commission to the associate deputy director shall be made at an open meeting of the commission and made a part of the minutes of the commission. The division may share support functions with other divisions of the commission, but the division shall operate autonomously from the rest of the commission, and the administration of the division must be housed in a different building than other commission functions. If the commission assigns the duty to administer the division directly to the executive

director, the division must still operate autonomously from the rest of the commission, and, except for the executive director's office, the administrative functions of the division must still be housed in a different building from other commission functions.

SECTION 2.03. Section 8.01(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) This article applies to:

(1) personal property belonging to the state; and

(2) real or personal property acquired by or otherwise under the commission's jurisdiction under Section 9.16 of this Act and 40 U.S.C. Section 483c, 484(j), or 484(k).

SECTION 2.04. Section 9.01(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (3) and (4) and adding Subdivision (8) to read as follows:

(3) "Property" means personal property. The term does not include real property, or any interest in real property, except federal real property acquired under Section 9.16 of this article and Section 484(k), Federal Property and Administrative Services Act. Personal[~~; however, personal~~] property affixed to real property may be sold under this law if its removal and disposition is to carry out a lawful objective under this law or any other law. The term includes property lawfully confiscated and subject to disposal by a state agency.

(4) "Surplus property":

(A) means:

(i) any personal property which is in excess of the needs of any state agency and which is not required for its foreseeable needs; or

(ii) federal surplus property acquired by the commission or otherwise under the commission's jurisdiction under Section 9.16 of this article and Section 483c, 484(j), or 484(k), Federal Property and Administrative Services Act; and

(B) includes property that[~~. Surplus property~~] may be used or new but possesses some usefulness for the purpose for which it was intended or for some other purpose.

(8) "Federal Property and Administrative Services Act" means the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Section 484).

SECTION 2.05. Section 9.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.02. ESTABLISHMENT OF PROCEDURES. The commission shall establish and maintain procedures for the transfer, sale, or disposal, as prescribed by law, of:

(1) surplus and salvage property no longer needed by state agencies; and

(2) federal surplus property that the state acquires under the Federal Property and Administrative Services Act.

SECTION 2.06. Section 9.03, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.03. MAILING LISTS OF ASSISTANCE ORGANIZATIONS AND POLITICAL SUBDIVISIONS. The commission shall maintain a mailing list, renewable annually, of assistance organizations and political subdivision purchasing agents or other officers performing similar functions who have asked for information on surplus or salvage equipment or material the state may have available. [~~The commission shall provide the list to the Texas Surplus Property Agency.~~]

SECTION 2.07. Section 9.05(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If surplus or salvage property of a state agency is not disposed of under the provisions of Section 9.04 of this article, the commission shall sell the property by competitive bid or auction or delegate to the state agency having possession of the property the authority to sell the property on a competitive bid basis. The commission or agency shall collect a fee from the purchaser. The commission shall set the fee in an amount to recover the costs associated with the sale of the property, but the amount may not be less than two percent nor more than 12 percent of the proceeds from the sale of the property.

SECTION 2.08. Section 9.13, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.13. EXEMPTION. For purposes of this article the terms "surplus" and "salvage" shall not apply to products and by-products of research, forestry, agricultural, livestock, and industrial enterprises [~~in excess of that quantity required for consumption by the producing agency when such agencies have a continuing and adequate system of marketing research and sales, the efficiency of which shall be certified to the commission by the state auditor. A qualifying agency shall furnish the commission with a copy of the rules and regulations and latest revisions thereof promulgated by the policy making body of each agency or institution for the guidance and administration of the programs enumerated herein. When requested by such agency or institution to do so, the commission shall dispose of the property as provided for in this article~~].

SECTION 2.09. Section 9.14, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9.14. AUTHORIZATION OF AGENCIES TO DISPOSE OF PROPERTY. The commission may authorize an agency to dispose of surplus or salvage property where the agency demonstrates to the commission its ability to make such disposition under the rules and regulations set up by the commission, as provided for herein. State eleemosynary institutions and institutions and agencies of higher learning shall be excepted from the terms of this article that relate to the disposition of their surplus or salvage property.

SECTION 2.10. Article 9, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Sections 9.16 and 9.17 to read as follows:

Sec. 9.16. FEDERAL SURPLUS PROPERTY. (a) The commission is the designated state agency under Section 484(j) of the Federal Property and Administrative Services Act.

(b) The commission may:

(1) acquire and warehouse federal property allocated to the commission under the Federal Property and Administrative Services Act; and

(2) distribute the property:

(A) to an entity or institution that meets the qualifications for eligibility for the property under the Federal Property and Administrative Services Act; and

(B) without complying with the provisions of this article that relate to the disposition of surplus state agency property.

(c) The commission may:

(1) disseminate information and assist a potential applicant regarding the availability of federal surplus real property;

(2) assist in the processing of an application for acquisition of federal real property and related personal property under Section 484(k) of the Federal Property and Administrative Services Act;

(3) assist in assuring use of the property; and

(4) engage in an activity relating to the use of federal surplus property by another state agency, institution, or organization engaging in or receiving assistance under a federal program.

(d) The commission shall:

(1) file a state plan of operation that complies with federal law and operate in accordance with the plan;

(2) take necessary action to meet the minimum standards for a state agency in accordance with the Federal Property and Administrative Services Act; and

(3) cooperate to the fullest extent consistent with this section.

(e) The commission may:

(1) make the necessary certifications and undertake necessary action, including an investigation;

(2) make expenditures or reports that may be required by federal law or regulation or that are otherwise necessary to provide for the proper and efficient management of the commission's functions under this section;

(3) provide information and reports relating to the commission's activities under this section that may be required by a federal agency or department; and

(4) adopt rules necessary for the efficient operation of its activities under this section or as may be required by federal law or regulation.

(f) The commission may enter into an agreement, including:

(1) a cooperative agreement with a federal agency under Section 484(n) of the Federal Property and Administrative Services Act;

(2) an agreement with a state agency for surplus property of a state agency that will promote the administration of the commission's functions under this section; or

(3) an agreement with a group or association of state agencies for surplus property that will promote the administration of the commission's functions under this section.

(g) The commission may act as an information clearinghouse for an entity or institution that may be eligible to acquire federal surplus property and may assist, as necessary, the entity or institution to obtain federal surplus property.

(h) The commission may:

(1) acquire and hold title or make capital improvements to real property in accordance with Subsection (i) of this section; or

(2) make an advance payment of rent for a distribution center, office space, or another facility that is required to carry out the commission's functions under this section.

(i) The commission may collect a service charge for the commission's acquisition, warehousing, distribution, or transfer of property. The commission may not collect a charge for real property in an amount that is greater than the reasonable administrative cost the commission incurs in transferring the property.

(j) A charge collected under Subsection (i) of this section shall be deposited in the state treasury to the credit of the surplus property service charge fund, and income earned on money in the surplus property service charge fund shall be credited to that fund. Money in the fund may be used only to carry out the functions of the commission under this section.

(k) The commission may appoint advisory boards and committees necessary and suitable to administer this section.

(l) The commission may employ, compensate, and prescribe the duties of personnel, other than members of advisory boards and committees, necessary and suitable to administer this section. A personnel position may only be filled by an individual selected and appointed on a nonpartisan merit basis.

Sec. 9.17. ADMINISTRATIVE COST RECOVERY STUDY. The commission shall conduct a study to determine if its functions under this article can be made self-supporting by charging fees for commission services. If the commission determines that a function can be made self-supporting through charging fees, the commission shall prepare a fee implementation plan. Before January 1, 1995, the commission shall report to each member of the legislature the results of the study and the implementation plan for fee recovery, if any. This section expires January 1, 1995.

SECTION 2.11. Section 403.271(a), Government Code, is amended to read as follows:

(a) This subchapter applies to:

(1) all personal property belonging to the state; and

(2) real and personal property acquired by or otherwise under the jurisdiction of the state under 40 U.S.C. Section 483c, 484(j), or 484(k), and Section 9.16, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 2.12. (a) The General Services Commission and the Texas Surplus Property Agency shall coordinate the transfer of all Texas Surplus

Property Agency functions to the General Services Commission as required by this part. The administrative functions of the Texas Surplus Property Agency are transferred to the General Services Commission to be carried out by staff located in Austin, in accordance with the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), as amended by this Act.

(b) The transfer of all functions from the Texas Surplus Property Agency to the General Services Commission shall be accomplished as soon as practicable, but not later than the 45th day after the effective date of this part, at which time the Texas Surplus Property Agency is abolished.

(c) The transfer required by this part includes the transfer of all assets, duties, powers, obligations, and liabilities, including contracts, leases, real or personal property, funds, employees, furniture, computers and other equipment, and files and related materials used by the Texas Surplus Property Agency.

(d) A form, rule, or procedure adopted by the Texas Surplus Property Agency that is in effect on the effective date of this part remains in effect on and after that date as if adopted by the General Services Commission until amended, repealed, withdrawn, or otherwise superseded by the commission.

(e) All unexpended appropriations made to the Texas Surplus Property Agency are transferred to the General Services Commission.

(f) Notwithstanding Subsections (b) and (e) of this section and Section 2.13 of this Act:

(1) to the extent that changes in law made by this Act are changes that must be approved by the federal government under federal law relating to surplus property as a condition of this state's full participation in the federal surplus property program, the appropriate prior law is continued in effect until the necessary approval is received; and

(2) if the abolition of the Texas Surplus Property Agency and the transfer of its functions under this Act must be approved by the federal government under federal law relating to surplus property as a condition of this state's full participation in the federal surplus property program, the Texas Surplus Property Agency and the law under which it performs its functions are continued in effect until the necessary approval is received.

SECTION 2.13. The following laws are repealed:

(1) Chapter 32, Acts of the 62nd Legislature, Regular Session, 1971 (Article 6252-6b, Vernon's Texas Civil Statutes); and

(2) Subsections (d), (e), and (g), Section 9.04, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 2.14. This part takes effect September 1, 1993, except that:

(1) the amendment to Section 403.271(a), Government Code, takes effect when Subchapter L, Chapter 403, Government Code, as added by Section 2.30, Chapter 8, Acts of the 72nd Legislature, 2nd Called Session, 1991, takes effect; and

(2) the amendment to Section 8.01(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), does not take effect if on or before September 1, 1993, 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, in accordance with Section 6.01(d), Chapter 8, Acts of the 72nd Legislature, 2nd Called Session, 1991.

PART 3. TRAVEL

SECTION 3.01. 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; and

(4) exemptions from the prohibition prescribed by Section 14.02(d) of this article.

SECTION 3.02. Sections 14.02(b) and (c), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), are amended 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 travel vouchers in accordance with Chapter 403, Government Code, and its subsequent amendments, for compliance with [~~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 3.03. Section 14.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Subsections (d) and (e) to read as follows:

(d) This subsection applies only to a state agency in the executive branch of state government that is required to participate in the commission's contracts for travel services. Except as provided by commission rule, a state agency may not:

(1) purchase commercial airline or rental car transportation if the amount of the purchase exceeds the amount of the central travel office's contracted fares or rates; or

(2) reimburse a person for the purchase of commercial airline or rental car transportation for the amount that exceeds the amount of the central travel office's contracted fares or rates.

(e) The commission shall educate state agencies about Subsection (d) of this section. The comptroller shall audit travel vouchers in accordance with Chapter 403, Government Code, and its subsequent amendments, for compliance with Subsection (d) of this section. To facilitate the audit of the travel vouchers, the commission shall consult with the comptroller before the commission adopts rules or procedures under Subsection (d) of this section.

SECTION 3.04. This part takes effect September 1, 1993, except that Sections 3.01 and 3.03 of this part take effect January 1, 1994.

PART 4. MAIL

SECTION 4.01. Article 11, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended by adding Section 11.021 to read as follows:

Sec. 11.021. OUTGOING FIRST-CLASS MAIL. (a) This section applies only to outgoing first-class mail practices of state agencies located in Travis County.

(b) The commission shall evaluate and coordinate the outgoing first-class mail practices of state agencies located in Travis County, including the lists, systems, and formats used to create mail. The commission shall adopt rules for the state agencies to implement this section.

(c) The commission shall achieve the maximum available discount on postal rates in all cases in which acceptable levels of timeliness, security, and quality of service can be maintained notwithstanding the discounted rate.

(d) A state agency to which this section applies shall consult with the commission before the agency may:

(1) purchase, upgrade, or sell mail processing equipment;

(2) contract with a private entity for mail processing; or

(3) take actions that significantly affect the agency's first-class mail practices.

(e) The commission by interagency contract shall establish a fee-for-service structure to charge and collect fees from each state agency to which this section applies for the commission's services under this section. The total amount charged a state agency under this section shall be the same as the amount of the agency's appropriated funds for outgoing first-class mail, as determined by the Legislative Budget Board, minus the agency's fixed costs for these services. The commission shall transfer to

the general revenue fund the amount of a fee charged a state agency under this subsection that is greater than the amount of the commission's actual expenses for performing services for the agency.

(f) The commission shall adopt and distribute to each state agency to which this section applies guidelines by which state outgoing first-class mail practices may be measured and analyzed, using, to the extent possible, the services of the United States Postal Service. The commission shall review and update these guidelines not less often than once every two years after the date of the adoption of the guidelines. Not later than the 90th day after the date of the distribution of the initial guidelines and not less often than annually after the date of that distribution, the commission shall provide training to state agency personnel who handle first-class mail. The commission, to the extent possible, may use the free training provided by the United States Postal Service.

(g) If the commission determines that the upgrade of existing mail production or processing equipment or the purchase of new mail production or processing equipment is required to improve the outgoing first-class mail practices of the commission or other state agencies located in Travis County, the commission shall prepare a cost-benefit analysis demonstrating that the upgrade or purchase is more cost-effective than contracting with a private entity to provide that equipment or mail service. The commission shall approve the most cost-effective method.

(h) A cost-benefit analysis prepared under this section and a request for bids or a request for proposals prepared to implement a course of action under this section shall be sent to the state auditor for review and comment as soon as practicable after preparation. The state auditor's office shall perform its review and offer its comments not later than the 14th working day after the day it receives the analysis or the request for bids or proposals.

(i) Not later than February 1, 1995, the commission shall report to the legislature all significant changes in first-class mail practices under this section. The report shall include a discussion of funds transferred to the general revenue fund under Subsection (e) of this section. This subsection expires June 1, 1995.

SECTION 4.02. This part takes effect immediately.

PART 5. RECORDS COST RECOVERY

SECTION 5.01. In Sections 5.02 through 5.04 of this part:

(1) "State agency" has the meaning assigned by Sections 1.02(2)(A) and (C), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

(2) "Commission" means the General Services Commission.

(3) "Public records" has the meaning assigned by Section 2(2), Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments.

SECTION 5.02. (a) The commission shall conduct a study of the charges made by state agencies for copies of public records.

(b) The attorney general, comptroller, Department of Public Safety, Texas Department of Human Services, and Texas State Board of Public Accountancy shall help conduct the study.

(c) The commission shall prepare a report of its findings under the study and shall provide a copy of the report to each state agency before December 1, 1993.

SECTION 5.03. (a) Each state agency shall review its processes for providing access to and copies of public records and shall analyze the charges the state agency makes for the copies.

(b) A state agency shall prepare a report of its review and analysis and shall provide a copy of the report to the commission, the Legislative Budget Board, and the comptroller before May 1, 1994.

(c) The commission shall assist a state agency without accounting expertise in making the review and analysis required by this section.

SECTION 5.04. (a) On September 1, 1993, each state agency shall:

(1) increase by 15 percent the amount of any charge the state agency has in place for providing a copy of a public record; and

(2) increase by 25 percent the amount of any charge the state agency has in place for providing a copy of a mailing list.

(b) This section does not apply to the Department of Public Safety.

SECTION 5.05. Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), is amended by adding Section 9A to read as follows:

Sec. 9A. CHARGES FOR PUBLIC RECORDS BY STATE AGENCY. (a) The General Services Commission by rule shall specify the methods and procedures that a state agency may use in determining the amounts that the agency should charge to recover:

(1) the full cost to the agency of providing copies of public records under this Act; and

(2) the market value of a copy of a mailing list provided under this Act. The commission shall prepare and distribute to state agencies a handbook that compiles and explains the methods and procedures for determining the cost and market value.

(b) Each state agency by rule shall specify the charges the agency will make for copies of public records. A state agency may establish a charge for a copy of a public record that is equal to the full cost to the agency of providing the copy.

(c) In providing a copy of a mailing list, a state agency may charge a commercial user for the market value of the list. In this subsection, "commercial user" means a purchaser of a public record who intends to use the record for the purpose of selling, advertising, or distributing a product or service.

(d) The charges that a state agency establishes for a copy of a public record and a copy of a mailing list must be at least equal to the charge the agency has in place on August 31, 1993, plus 15 percent for a copy of a public record or 25 percent for a copy of a mailing list.

(e)(1) A state agency shall pay to the comptroller for deposit in an unobligated account designated by the comptroller in the general revenue fund all money collected by the agency for providing copies of public records.

(2) Of the total amount of money deposited in the general revenue fund under Subdivision (1) of this subsection, the comptroller may transfer

25 percent of the money collected for providing copies of mailing lists and 15 percent of the money collected for providing copies of other public records to the general revenue fund.

(3) The comptroller shall adopt rules to administer this subsection.

(f) This section is cumulative of Section 9 of this Act.

(g) In this section, "state agency" has the meaning assigned by Sections 1.02(2)(A) and (C), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes).

SECTION 5.06. Sections 403.301 and 403.302, Government Code, are repealed.

SECTION 5.07. This part takes effect immediately.

PART 6. APPROPRIATIONS FOR CLAIMS AGAINST STATE

SECTION 6.01. Title 5, Civil Practice and Remedies Code, is amended by adding Chapter 109 to read as follows:

CHAPTER 109. APPROPRIATIONS FOR PAYMENT OF CLAIMS AGAINST STATE AGENCIES

Sec. 109.001. DEFINITION. In this chapter, "state agency" means any entity that constitutes the state government for purposes of Section 101.001.

Sec. 109.002. APPROPRIATIONS AS PROVIDED BY CHAPTER. (a) The legislature may not make an appropriation to pay a claim for which the state government is liable under Chapter 101 and that results from the conduct of a state agency except as provided by this chapter.

(b) The legislature may not make an appropriation to indemnify an employee, member of a governing board, or other officer of a state agency under Chapter 104 except as provided by this chapter.

Sec. 109.003. SOURCE OF APPROPRIATION. An appropriation subject to this chapter shall be made from available and previously unappropriated amounts in a special fund or account that may be appropriated for that purpose to the affected state agency. To the extent those amounts are not available, the appropriation may be made from the general revenue fund.

Sec. 109.004. DEDUCTION FROM AGENCY APPROPRIATION. (a) Subject to Subsections (b) and (c), for each appropriation made to pay a claim subject to this chapter the comptroller shall reduce an agency's appropriation in the General Appropriations Act by the same amount.

(b) The reduction in the appropriation for a state agency for a particular claim may not exceed $5,000.

(c) The total of all reductions in the appropriation for a state agency for any fiscal year under this section may not exceed five percent of the total appropriation made to that agency for that fiscal year.

Sec. 109.005. REPORTS. (a) The comptroller shall notify an affected state agency of:

(1) each claim subject to this chapter paid by the comptroller under this chapter for that state agency;

(2) the amount of the claim;

(3) the amount of the claim paid from a special fund or account;

(4) the amount of any reduction made under Section 109.004; and

(5) the subject matter of the claim.

(b) Each agency shall summarize the information reported to it by the comptroller under Subsection (a) and report that information as part of the agency's annual report to the budget division of the governor's office and to the Legislative Budget Board as required by the General Appropriations Act.

Sec. 109.006. APPROPRIATION FOR CLAIM NOT LIMITED. This chapter does not limit the amount the legislature may appropriate to pay claims subject to this chapter.

Sec. 109.007. EXCEPTIONS. This chapter does not apply to an appropriation:

(1) to pay or indemnify a person for a negligent act or omission in the diagnosis, care, or treatment of a health care or mental health care patient, without regard to whether the claim is based on tort or contract principles;

(2) to pay a claim based on the conduct of a state medical school or of a hospital affiliated with an institution of higher education;

(3) to pay a claim based on the conduct of an institution of higher education; or

(4) to pay a claim based on the conduct of a state law enforcement or corrections agency, including the Department of Public Safety, the Texas Department of Criminal Justice, and the Board of Pardons and Paroles.

SECTION 6.02. (a) This part takes effect September 1, 1993.

(b) Chapter 109, Civil Practice and Remedies Code, as added by this part, applies only to an appropriation made on or after September 1, 1994. An appropriation made before September 1, 1994, is governed by the law in effect immediately before the effective date of this part, and that law is continued in effect for that purpose.

(c) Chapter 109, Civil Practice and Remedies Code, as added by this part, applies only to a claim that accrues after the effective date of this part and for which an appropriation is made on or after September 1, 1994. A claim that accrues before the effective date of this part or for which an appropriation is made before September 1, 1994, is governed by the law in effect immediately before the effective date of this part, and that law is continued in effect for that purpose.

PART 7. EMERGENCY

SECTION 7.01. 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 No. 1

Amend **C.S.S.B. 381** by adding the following appropriately numbered section to Part 1 of the bill and renumbering existing sections of Part 1 of the bill appropriately:

SECTION 1.____. Subchapter B, Chapter 435, Government Code, is amended by adding Section 435.027 to read as follows:

Sec. 435.027. GRONER A. PITTS NATIONAL GUARD ARMORY. The Texas National Guard armory located in Brownwood, Texas, is named the Groner A. Pitts National Guard Armory in honor of Groner A. Pitts.

Amendment No. 2

Amend **C.S.S.B. 381** as follows:

1. On page 18, line 1, delete Section (f) and substitute the following:

(f) Purchases of automated information systems shall be made through the catalogue procedure enumerated in this section unless the commission or state agency determines that the best value available accrues from an alternative purchase method authorized by this Act.

(g) The commission shall make the catalogue purchasing procedure enumerated in this section available to local governments who qualify for cooperative purchasing under Sections 271.082 and 271.083, Local Government Code. In this subsection, "local government" has the meaning assigned to it by Section 271.081, Local Government Code.

2. On page 19, line 12, delete "wholesale sellers" and substitute "resellers".

Amendment No. 3

Amend **C.S.S.B. 381** in Part 1, Section 1.20 of the bill, in Subsection (c) of added Section 6.021, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), by striking Subdivisions (1)-(4) of Subsection (c) (page 26, lines 6-12, House Committee Printing), and substituting the following:

(1) warehouse space;

(2) laboratory space;

(3) storage space exceeding 1,000 gross square feet;

(4) library space;

(5) hearing room space to be used for hearings conducted under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); or

(6) another type of space specified by commission rule if the commission determines that it is not practical to apply this subsection to the specified space.

Amendment No. 4

Amend **C.S.S.B. 381**, pages 54 and 55, SECTION 3.02, by striking Subsection (c) and substituting the following:

(c) State agencies in the executive branch of government shall participate in accordance with commission rules in the commission's contracts for travel services. Institutions[~~, provided that~~] 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 or other travel services purchased from funds other than general revenue funds or educational and general funds as defined in Section 51.009, Education Code. 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 in Subsection (a) of this section.

Amendment No. 5

Amend **C.S.S.B. 381** in Part 1 of the bill by adding the following appropriately numbered section and renumbering existing sections of Part 1 of the bill appropriately:

SECTION 1.__. In all contracts to which the state is a party, the state shall be allowed the greatest competitive advantage to the state allowable under Article 5159a, Vernon's Texas Civil Statutes.

The amendments were read.

Senator Armbrister, on behalf of Senator Haley, 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. 381** 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 Haley, Chair; Harris of Dallas, Armbrister, Shelley, and Madla.

CONFERENCE COMMITTEE ON HOUSE BILL 1200

Senator Whitmire 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. 1200** 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. 1200** 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 Whitmire, Chair; Armbrister, Henderson, Brown, and Carriker.

SENATE RULE 11.19 SUSPENDED
(Posting Rule)

On motion of Senator Henderson and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Jurisprudence might consider the following bills today:

H.B. 2259
H.B. 171

SENATE RULE 11.11 SUSPENDED
(Posting Rule)

On motion of Senator Henderson and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Jurisprudence might meet today.

SENATE RULE 11.19 SUSPENDED
(Posting Rule)

On motion of Senator Barrientos and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Economic Development might consider **H.B. 2712** today.

RECESS

On motion of Senator Harris of Dallas, the Senate at 12:01 p.m. took recess until 1:30 p.m. today.

AFTER RECESS

The Senate met at 1:30 p.m. and was called to order by the President.

LEAVE OF ABSENCE

On motion of Senator Harris of Dallas, Senator Leedom was granted leave of absence for the remainder of today on account of important business.

CONFERENCE COMMITTEE ON HOUSE BILL 1166

Senator Zaffirini, on behalf of Senator Luna, 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. 1166** 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. 1166** 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 Luna, Chair; West, Barrientos, Harris of Tarrant, and Henderson.

(Senator Truan in Chair)

SENATE CONCURRENT RESOLUTION 42 WITH HOUSE AMENDMENT

Senator Zaffirini called **S.C.R. 42** 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

Amend **S.C.R. 42** by substituting in lieu thereof the following:

CONCURRENT RESOLUTION

WHEREAS, For the last five years, the State of Texas has led the nation in vaccine preventable disease morbidity and mortality; and

WHEREAS, Texas also ranks last among all 50 states in the percentage of children who have been fully immunized, with immunization levels in some parts of the state below those of third world countries; and

WHEREAS, It has been estimated that three out of every 10 two-year-olds fail to get proper immunizations, and in our inner cities and colonias less than 50 percent of two-year-olds are fully immunized; and

WHEREAS, Measles cases have risen sharply, and the majority of these cases has been in the preschool age population; and

WHEREAS, In addition to death and suffering, preventable diseases are economic burdens to the health care delivery system; and

WHEREAS, There is limited immunization education and motivation among parents and guardians of young children in Texas; in addition, the general public is unaware of the existence and severity of vaccine preventable disease; and

WHEREAS, Indifference and apathy to the low vaccine rate in Texas can be overcome through concerted efforts of health care leaders, public officials, and public citizens; now, therefore, be it

RESOLVED, That the 73rd Legislature of the State of Texas hereby declare July 1993 as Immunization Month in Texas; and, be it further

RESOLVED, That the Texas Department of Health direct a bilingual statewide immunization effort for the month of July 1993, coordinating efforts of the United States government, the United States Armed Forces, other state agencies, public medical schools, health science centers, and volunteer health care providers with public and private entities to provide public service announcements, newspaper and other notices, transportation services, state and local public facilities, and other necessary components to focus public attention on immunization efforts, bring about public awareness, and effectuate the immunization of persons under 18 years of age; and, be it further

RESOLVED, That the Texas Department of Health explore new and innovative ways to reach the goal of 100 percent immunization of children under the age of 18 at the earliest possible date and in the most cost-effective manner, including seeking discretionary funding from the United States Department of Health and Human Services or from foundations for an emergency immunization demonstration program that would target five counties in Texas with the lowest immunization rates and create model programs for those counties, seeking discretionary funding from the United States Department of Health and Human Services or from foundations to develop models for building public awareness concerning the importance of preschool immunization among high-risk populations, contracting with the United States Armed Forces, the public medical schools, health science centers, and other state agencies, and instituting programs on a statewide or local level or through mobile outreach clinics utilizing volunteer health care providers; and, be it further

RESOLVED, That the Texas Department of Health review the development and implementation of a statewide immunization registry; and, be it further

RESOLVED, That the findings and recommendations made by the Texas Department of Health pursuant to this resolution be reported by the department to the governor and presiding officer of each house of the legislature not later than June 1, 1994; and, be it further

RESOLVED, That the Texas Department of Health report to the Legislative Health and Human Services Board by September 1, 1994, as to the efforts being made to effectuate 100 percent immunization of children under the age of 18 years, the results of those efforts, what new efforts could and/or should be made to better reach this goal, and what recommendations the Texas Department of Health would have.

The amendment was read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendment to **S.C.R. 42** by a viva voce vote.

SENATE BILL 212 WITH HOUSE AMENDMENTS

Senator Zaffirini called **S.B. 212** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **S.B. 212** on page 2, line 24, by deleting the word "rehabilitation" and inserting "therapy".

Floor Amendment No. 2

Amend **S.B. 212** on page 3 by inserting between lines 6 and 7 two new lines as follows:

(10) certified orthotics
(11) certified prosthetics

The amendments were read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendments to **S.B. 212** by a viva voce vote.

(President in Chair)

SENATE BILL 1321 WITH HOUSE AMENDMENTS

Senator Barrientos called **S.B. 1321** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **S.B. 1321** on page 1, line 20, by inserting the words "10 or more years" between the word "undertaken" and the word "prior".

Amendment No. 2

Amend **S.B. 1321** on page 2, after line 8, by adding a new Subsection (e) to read as follows:

(e) Nothing in this section prohibits a public institution of higher education from applying standard admissions criteria generally applicable to persons seeking admission to the institution.

The amendments were read.

Senator Barrientos moved to concur in the House amendments to **S.B. 1321.**

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

SENATE BILL 277 WITH HOUSE AMENDMENTS

Senator Zaffirini called **S.B. 277** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **S.B. 277** as follows:

Add a new section to read as follows:

SECTION ____. Section 192.003, Health and Safety Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) Upon the birth of a child, the hospital, the physician, midwife, or person acting as a midwife in attendance or their designee at a birth may:

(1) Provide an opportunity for the child's mother and biological father to sign a form prescribed by the department in which the biological father consents to be named as the child's father on the child's birth certificate; and

(2) Provide written information, including an application for child support services, furnished by the attorney general, to the mother regarding the benefits of having her child's paternity established and of the availability of paternity establishment services.

(e) The local registrar shall transmit signed consent forms to the state registrar.

(f) The state registrar shall transmit signed consent forms to the attorney general who may use such forms for any purpose directly connected with the provision of child support services pursuant to Chapter 76, Human Resources Code.

Amendment No. 1 on Third Reading

Amend **S.B. 277** between the enacting clause and Section 1 by inserting the following sections and renumbering the subsequent sections appropriately:

SECTION 1. Section 192.005, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) If the items relating to the child's father are not completed on a birth certificate filed with the state registrar, the state registrar shall notify the attorney general.

SECTION 2. Chapter 13, Family Code, is amended by adding Section 13.015 to read as follows:

Sec. 13.015. ASSISTANCE OF ATTORNEY GENERAL. On notification by the state registrar under Section 192.005(d), Health and Safety Code, that the items relating to the child's father are not completed on a birth certificate filed with the state registrar, the attorney general may provide to:

(1) the child's mother and, if possible, the man claiming to be the child's biological father written information necessary for the man to complete a statement of paternity as provided by Section 13.22, Family Code; and

(2) the child's mother written information:

(A) explaining the benefits of having the child's paternity established; and

(B) regarding the availability of paternity establishment and child support enforcement services.

SECTION 3. Section 13.22, Family Code, ia amended by adding Subsection (f) to read as follows:

(f) The statement must include the social security number of the father.

The amendments were read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendments to **S.B. 277** by a viva voce vote.

SENATE BILL 487 WITH HOUSE AMENDMENTS

Senator Zaffirini called **S.B. 487** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **S.B. 487** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the establishment of the Texas Academy of Foreign Languages and Culture.

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

SECTION 1. Chapter 61, Education Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. TEXAS ACADEMY OF FOREIGN LANGUAGES AND CULTURE

Sec. 61.781. DEFINITIONS. In this subchapter:

(1) "Academy" means the Texas Academy of Foreign Languages and Culture.

(2) "Director" means the director of the academy.

Sec. 61.782. ACADEMY. (a) The academy is established under the board.

(b) The board may employ a director and other personnel necessary to administer this subchapter. The salaries of personnel employed by the board to administer this subchapter must be paid out of gifts and grants, including federal grants, except that the board may assign duties related to the academy to employees who are compensated out of other sources of revenue if those employees are employed by the board primarily for the purpose of performing duties that are not related to the academy.

(c) The board may adopt rules to administer this subchapter.

(d) The board may receive gifts and grants to implement this subchapter, except for gifts and grants offered by an office, a department, or another agency of state government.

(e) The purpose of the academy is to:

(1) advance the study of foreign languages and/or cultures in Texas; and

(2) advance educational and cultural exchange between Texas and current and prospective trade partners.

Sec. 61.783. CONTRACTS. (a) The academy shall accomplish its purposes through contracts with a National Endowment for the Humanities grant recipient for this state under 20 U.S.C. Section 956. The academy shall contract with a grant recipient to provide on behalf of the academy:

(1) scholarships to selected college and university juniors and seniors who are majoring in a foreign language and who intend to pursue teaching careers;

(2) financial support to selected institutions and organizations for cultural exchange programs between Texas and its current and prospective trade partners that include photographic exhibitions, film and video documentary programs, print resources, conferences, and literary projects;

(3) financial support to selected teachers and scholars to conduct lectures and research projects in key foreign countries and to cover reasonable and necessary domestic expenses of teachers and scholars of other nations qualified to lecture and conduct research in Texas;

(4) financial support to selected colleges and universities to host summer programs of three to four weeks in duration in foreign language and culture studies, including the study of key international issues, designed to improve the knowledge and skills of foreign language teachers;

(5) financial support to selected colleges and universities to sponsor programs of one or two weeks in duration for interested high school students who have had at least two successful years of foreign language study; and

(6) financial support to selected institutions that will provide, for a fee, intensive foreign language instruction to owners and representatives of businesses and to professionals in this state who are doing or planning to do business with current and prospective trade partners and who will pay for the instruction.

(b) A contract with a grant recipient under Subsection (a) of this section must provide that:

(1) the grant recipient shall award scholarships and financial support that use academy money to persons and entities based on a competitive program established by the grant recipient;

(2) the grant recipient shall establish controls designed to ensure that persons and entities who receive scholarships or financial support use the money for the intended purpose;

(3) the grant recipient shall make regular reports to the director on its expenditures under the contract, including the identity of persons and entities chosen by the grant recipient to receive scholarships or financial support under the contract, and on other information related to the contract that may be required by the director; and

(4) the transactions of the grant recipient under the contract are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(c) The grant recipient may also accomplish the purposes of the subject matter of a contract under this section with money that is not received under the contract, to the extent allowed under this subchapter and federal law.

Sec. 61.784. COORDINATION. The board may establish an interagency task force on international studies and cultural exchange, coordinated by the academy, to develop long-range goals designed to enhance foreign language and international studies and to expand educational and cultural exchange. If the board establishes the task force, then in addition to other persons chosen for the task force by the academy, the academy shall invite the governor, the commissioner of education, the commissioner of higher education, the executive director of the Texas Department of Commerce, and the executive director of the Texas Committee for the Humanities to serve on the task force or to designate a representative to serve on the task force. The academy also shall invite the lieutenant governor to designate a member of the senate to serve on the task force and shall invite the speaker of the house of representatives to designate a member of the house to serve on the task force.

SECTION 2. For the fiscal biennium beginning September 1, 1993, general revenue may not be appropriated for costs related to the implementation of this Act, except to the extent that employees who are employed by the Texas Higher Education Coordinating Board primarily for the purpose of performing duties that are not related to the Texas Academy of Foreign Languages and Culture perform limited duties related to the academy to the extent allowed by Section 61.782(b), Education Code, as added by 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 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 No. 1

Amend **C.S.S.B. 487** as follows:

On page 4, lines 24-25, strike the following language:"For the fiscal biennium beginning September 1, 1993, general" and substitute: "General".

The amendments were read.

Senator Zaffirini moved to concur in the House amendments to **S.B. 487.**

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

SENATE BILL 555 WITH HOUSE AMENDMENTS

Senator Patterson called **S.B. 555** from the President's table for consideration of the House amendments to the bill.

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

Committee Amendment No. 1

Amend **S.B. 555** by striking Section 2, Texas Health Maintenance Organization Act (Article 20A.02, Vernon's Texas Insurance Code), Subsection (u).

Committee Amendment No. 2

Amend **S.B. 555** by adding a new section to Section 2 of the bill to read as follows:

Section 2. Section 6, Texas Health Maintenance Organization Act (Section 20A.06, Vernon's Texas Insurance Code) is amended by adding a new Section (d) to read as follows:

(d) unless this section and the powers specified in Section (a) are specifically amended, no other law or rule shall be construed to prohibit or restrict a group model health maintenance organization from (1) selectively contracting with or declining to contract with any or all providers as the health maintenance organization deems necessary, (2) contracting for or declining to contract for an individual health care service or full range of health care services as the health maintenance organization deems necessary provided that such service or services may be legally provided by the contracting provider, or (3) requiring enrolled members of the health maintenance organization who wish to obtain the services covered by the health maintenance organization use the providers specified by the health maintenance organization. As used herein, a group model health maintenance organization is a health maintenance organization which provides the majority of its professional services through a single group medical practice and such group medical practice is formally affiliated with the medical school component of a Texas, state-supported, public college or university.

The amendments were read.

On motion of Senator Patterson and by unanimous consent, the Senate concurred in the House amendments to **S.B. 555** by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 75 ON SECOND READING

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

C.S.H.B. 75, Relating to certain election processes and procedures; providing criminal penalties.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

Amend **C.S.H.B. 75** by striking SECTION 47.

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

On motion of Senator Carriker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

FLOOR PRIVILEGES GRANTED

On motion of Senator Parker and by unanimous consent, floor privileges were granted to his staff during the deliberation of **C.S.H.B. 2055.**

COMMITTEE SUBSTITUTE HOUSE BILL 2055 ON SECOND READING

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

C.S.H.B. 2055, Relating to health insurance and health costs and the availability of health insurance coverage for certain individuals and small employers.

The bill was read second time.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 1

C.S.H.B. 2055 is amended as follows:

(1) On page 7, after line 23, insert the following new Subsection (e) to Article 26.21, Subchapter C, Chapter 26, that the substitute would add to the Insurance Code, and renumber all subsequent subsections of new Article 26.21 accordingly:

"(e) A small employer may establish a waiting period during which a new employee is not eligible for coverage. A waiting period established as provided by this Subsection may not exceed 90 days from the first day of employment.

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

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 2055** as follows:

1. Amend Section 26.43 on page 12 by striking lines 3-23 and substituting the following:

(b) A health carrier may not issue and the commissioner may not approve a health benefit plan certificate or policy or a rider to a health benefit plan certificate or policy unless it is written in plain language.

(c) Each provision of a health benefit plan certificate or policy or a rider to a health benefit plan certificate or policy relating to renewal of coverage, conditions of coverage, or per occurrence or aggregate dollar limitations on coverage must be clearly explained in plain language.

(d) A health carrier may not use and the commissioner may not approve a health benefit plan application form unless it is in plain language.

(e) Subsections (b) through (d) of this article do not apply if the specific language to be used is mandated by federal law or state statute or by rules implementing federal law.

(f) For purposes of Subsections (b) through (e) of this article, a health benefit plan certificate or policy, a rider to or a provision of a health benefit plan certificate or policy, or a health benefit plan application form is written in plain language if it achieves the minimum score established by the commissioner on the Flesch reading ease test or an equivalent test selected by the commissioner.

(g) The provisions of Subsections (b) through (f) of this article requiring the use of plain language do not apply to a health benefit plan group master policy or to a policy application or enrollment form for a health benefit plan group master policy.

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

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 2055** by adding Article 26.47A as follows:

Article 26.47A. The employees of a small employer group may accept and small employer carriers may offer the Primary and Preventive Benefit Plan or the Standard Health Benefit Plan without providing coverage for alcohol and substance abuse benefits if:

(1) at least 50% of the employees waive, in writing, the benefits, and indicate in writing that they have undergone alcoholism or substance abuse treatment or counseling within the last 3 years; and

(2) the exclusion from coverage of alcohol and substance abuse applies only to those employees.

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

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.H.B. 2055** as follows:

Strike SECTION 12 in its entirety and insert the following:

SECTION 12. To the extent that any provision of this law conflicts with Articles 20.11, 20A.14, 21.52, 21.52B, 21.53, Insurance Code, the provisions of Articles 20.11, 20A.14, 21.52, 21.52B, and 21.53 shall prevail.

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

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 5

Amend **C.S.H.B. 2055** in SECTION 1. as follows:

Add Art. 26.02(9)(Q) to read:

(Q) individually underwritten health insurance policies provided through an employer without employer contributions to, or reimbursement of, any portions of the premium.

The amendment was read.

On motion of Senator Patterson and by unanimous consent, Floor Amendment No. 5 was withdrawn.

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 6

Amend **C.S.H.B. 2055** in SECTION 1. as follows:

Art. 26.02(12)(A)(ii) delete states and add declines in writing

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

Senator Harris of Tarrant offered the following amendment to the bill:

Floor Amendment No. 7

Amend **C.S.H.B. 2055** as follows:

(1) On page 5 between lines 63 and 64 add a new Subsection (j) to read as follows:

"(j) The Texas Health Benefits Purchasing Cooperative is intended solely for instances where there is a lack of employer interest in developing competitive private cooperatives as defined by Art. 26.14."

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

Senator Harris of Tarrant offered the following amendment to the bill:

Floor Amendment No. 8

Amend **C.S.H.B. 2055** as follows:

Beginning on page 5, line 45, after the word "trustees", strike "~~as provided by the General Appropriations Act~~".

Beginning on page 5, line 62, after the word "subsidize", add "any expense of the cooperative or"

The amendment was read.

On motion of Senator Harris of Tarrant and by unanimous consent, Floor Amendment No. 8 was withdrawn.

Senator Patterson, on behalf of Senator Leedom, offered the following amendment to the bill:

Floor Amendment No. 9

Amend **C.S.H.B. 2055** in SECTION 1 by striking the proposed Art. 26.21(b) in its entirety and substituting in lieu thereof the following:

(b) Coverage under a small employer health benefit plan is not available to a small employer unless the small employer pays at least 75 percent of the insurance premium for its eligible employees who elect to be covered by at least one of the small employer health benefit plans selected by the small employer. Coverage is available under a small employer health benefit plan if at least 75 percent of a small employer's eligible employees elect to be covered. A small employer is not required to pay any amount with respect to an employee who elects not to be covered. The small employer may elect to pay the premium cost for additional coverage. This chapter does not require a small employer to purchase health insurance coverage for the employer's employees.

The amendment was read and failed of adoption by the following vote: Yeas 4, Nays 20.

Yeas: Bivins, Nelson, Patterson, Wentworth.

Nays: Armbrister, Barrientos, Carriker, Ellis, Harris of Tarrant, Harris of Dallas, Henderson, Madla, Moncrief, Montford, Parker, Rosson, Shapiro, Shelley, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Absent: Brown, Haley, Lucio, Luna, Ratliff, Sibley. (Senators Haley, Lucio, Luna, Ratliff, and Sibley were attending the conference committee meeting on **S.B. 7.**)

Absent-excused: Leedom.

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 10

Amend **C.S.H.B. 2055** in SUBCHAPTER E. COVERAGE as follows:

Art. 26.45(b) between provided and without insert the words on appropriate medical schedule

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

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 11

Amend **C.S.H.B. 2055** in SUBCHAPTER E. COVERAGE as follows:

Art. 26.47. (a)(8)(A) delete 90 and insert 28

The amendment was read and failed of adoption by the following vote: Yeas 11, Nays 12.

Yeas: Bivins, Brown, Montford, Nelson, Patterson, Shapiro, Shelley, Sims, Turner, Wentworth, West.

Nays: Armbrister, Barrientos, Carriker, Ellis, Harris of Tarrant, Harris of Dallas, Madla, Moncrief, Parker, Rosson, Whitmire, Zaffirini.

Absent: Haley, Henderson, Lucio, Luna, Ratliff, Sibley, Truan. (Senators Haley, Lucio, Luna, Ratliff, and Sibley were attending the conference committee meeting on **S.B. 7.**)

Absent-excused: Leedom.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 12

Amend **C.S.H.B. 2055** as follows:

1. On page 5, following line 8, add the following:

(c) Utilization review performed for any cost containment, case management, or managed care arrangement shall comply with Insurance Code, Article 21.58A.

2. On page 6, line 59, following the word "under" and on page 6, line 62, following the phrase "required by" insert the following:

Article 20A.15, Article 20A.15A, or

3. On page 12, line 35, following the word "chapter", insert the following:

and other applicable statutes

4. On page 19, line 30, delete the word "standard"

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

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 13

Amend **C.S.H.B. 2055** as follows:

Amend Sec. 1 (d) (3), Article 3.51-6, Insurance Code, as follows:

On page 22, line 14, add the word "first" between the words shall and offer.

And on page 22, line 22, add the words "insurer shall offer and an" between the words An and employee.

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

On motion of Senator Parker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

On motion of Senator Parker and by unanimous consent, further consideration of **C.S.H.B. 2055** was temporarily postponed.

Question—Shall the bill be passed to third reading?

COMMITTEE SUBSTITUTE HOUSE BILL 466 ON SECOND READING

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

C.S.H.B. 466, Relating to the operation of the Texas Funeral Service Commission.

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

COMMITTEE SUBSTITUTE HOUSE BILL 466 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 466** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

COMMITTEE SUBSTITUTE HOUSE BILL 1892 ON SECOND READING

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

C.S.H.B. 1892, Relating to the application and administration of the franchise tax.

The bill was read second time.

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1892** by adding a new Section 2, to read as follows, and renumber the remaining sections accordingly:

SECTION 2. Section 171.052, Tax Code, is amended to read as follows:

Sec. 171.052. CERTAIN CORPORATIONS. A corporation that is an insurance company,[;] surety, guaranty, or fidelity company now required to pay or who pays an annual tax measured by their gross receipts is exempted from the franchise tax.

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

Senator Montford offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 1892** as follows:

(1) In SECTION 4 of the committee substitute, on page 2, line 31, of the committee report printing, strike "are" and insert "is" in its place.

(2) In SECTION 4 of the committee substitute, on page 2, lines 33-34, of the committee report printing, strike "The income allocated to this state under this section is net of any related expenses." and insert in its place the following:

"Income that can only be allocated to the state of commercial domicile because the income has insufficient unitary connection with any other state or country shall be allocated to this state or another state or country net of expenses related to that income."

(3) In SECTION 5 of the committee substitute, on page 2, line 43, of the committee report printing, strike "computed" and insert "based" in its place.

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

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1892 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1892** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

GUEST PRESENTED

Senator Parker was recognized and introduced to the Senate Senator Charlie Williams of Mississippi, President of the Southern Legislative Conference.

The Senate welcomed Senator Williams.

COMMITTEE SUBSTITUTE HOUSE BILL 2055 ON SECOND READING

The Senate resumed consideration of **C.S.H.B. 2055** on its second reading and passage to third reading, further consideration having been temporarily postponed earlier today.

C.S.H.B. 2055, Relating to health insurance and health costs and the availability of health insurance coverage for certain individuals and small employers.

Question—Shall the bill be passed to third reading?

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

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

MOTION TO PLACE COMMITTEE SUBSTITUTE HOUSE BILL 2055 ON THIRD READING

Senator Parker moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2055** be placed on its third reading and final passage.

The motion was lost by the following vote: Yeas 21, Nays 6. (Not receiving four-fifths vote of Members present)

Yeas: Armbrister, Barrientos, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Madla, Moncrief, Montford, Parker, Rosson, Shelley, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Nelson, Patterson, Shapiro, Wentworth, Lucio.

Absent: Luna, Ratliff, Sibley. (These Senators were attending the conference committee meeting on **S.B. 7.**)

Absent-excused: Leedom.

(Senator Truan in Chair)

(President in Chair)

HOUSE BILL 1873 ON SECOND READING

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

H.B. 1873, Relating to state employee contributions to the federal old age and survivors insurance program.

The motion prevailed by the following vote: Yeas 20, Nays 5.

Yeas: Armbrister, Bivins, Brown, Ellis, Harris of Tarrant, Harris of Dallas, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Rosson, Shapiro, Shelley, Sims, Turner, Wentworth, Whitmire, Zaffirrini.

Nays: Barrientos, Carriker, Luna, Truan, West.

Absent: Haley, Henderson, Lucio, Ratliff, Sibley. (Senators Haley, Lucio, Ratliff, and Sibley were attending the conference committee meeting on **S.B. 7.**)

Absent-excused: Leedom.

The bill was read second time.

Senator Bivins offered the following committee amendment to the bill:

Amend **H.B. 1873** as follows:

Strike Sections 4 and 5 of the bill and substitute the following:

SECTION 4. The appropriations in the General Appropriations Act for the state's contribution to the tax that state employees and state-paid judges pay under the Federal Insurance Contributions Act for the period beginning January 1, 1994, and ending August 31, 1995, are canceled and may not take effect. The appropriations for the state's matching contribution are not affected by this section.

SECTION 5. (a) Notwithstanding Chapter 467, Acts of the 54th Legislature, 1955 (Article 695h, Vernon's Texas Civil Statutes), as it exists before Sections 1, 2, and 3 of this Act take effect, the state is not obligated to pay any portion of the tax that state employees and state-paid judges are required to pay under the Federal Insurance Contributions Act

for persons who were not employed by state agencies or institutions or holding office as state-paid judges on August 31, 1993.

(b) The state is obligated to pay in lieu of a portion of the employee tax required by the Federal Insurance Contributions Act supplemental pay and amounts equal to increased employee retirement contributions as described by Subsection (d) of this section to persons who were employed by state agencies or institutions or holding office as state-paid judges on August 31, 1993.

(c) A person who was employed by a state agency or institution or holding office as a state-paid judge on August 31, 1993, who remains employed or in office on September 1, 1993, and who leaves state service after that date for less than two years is entitled on return to state service to the supplemental pay and amounts equal to increased employee retirement contributions being paid to state employees earning the same salary who have not left state service after August 31, 1993.

(d) This Act is contingent on the becoming law of an appropriation for the fiscal biennium ending August 31, 1995, made by the 73rd Legislature at its regular session that provides supplemental pay, beginning January 1, 1994, to all persons who were employed by state agencies or institutions or holding office as state-paid judges on August 31, 1993, who were eligible on that date for state payment of employee contributions under Chapter 467, Acts of the 54th Legislature, 1955 (Article 695h, Vernon's Texas Civil Statutes), and who remain employed or in office on September 1, 1993, in an amount that equals 5.85 percent of the first $16,500 earned in a calendar year, plus an additional amount equal to the increased employee contributions resulting from this Act to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the optional retirement program governed by Chapter 830, Government Code, the Judicial Retirement System Plan One, and the Judicial Retirement System Plan Two. A general increase in salaries for state employees and state-paid judges that does not include amounts appropriated specifically to compensate for the reductions in net pay resulting from Section 4 of this Act does not satisfy the contingency of this subsection. If legislation described by this subsection does not become law, this Act has no effect.

(e) Except as provided by Subsections (d) and (f) of this section, this Act takes effect January 1, 1994.

(f) This subsection and Subsection (a) of this section take effect September 1, 1993.

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

On motion of Senator Bivins and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1873 ON THIRD READING

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1873** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 3.

Yeas: Armbrister, Bivins, Brown, Carriker, Ellis, Harris of Tarrant, Harris of Dallas, Henderson, Lucio, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Rosson, Shapiro, Shelley, Sims, Truan, Turner, Wentworth, Whitmire, Zaffirini.

Nays: Barrientos, Luna, West.

Absent: Haley, Ratliff, Sibley. (These Senators were attending the conference committee meeting on **S.B. 7.**)

Absent-excused: Leedom.

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

RECORD OF VOTES

Senators Barrientos, Luna, Truan, West, and Haley asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE
HOUSE BILL 2055 ON THIRD READING

The President stated that the previous vote taken on the motion to suspend Senate Rule 7.18 and the Constitutional Three-Day Rule for **C.S.H.B. 2055** was incorrectly announced as Yeas 21, Nays 6, resulting in the failure to suspend the rules which required a four-fifths vote of Members present. The rules were therefore suspended, and the official vote was recorded as follows: Yeas 20, Nays 5.

Yeas: Armbrister, Barrientos, Brown, Carriker, Ellis, Harris of Tarrant, Harris of Dallas, Henderson, Madla, Moncrief, Montford, Parker, Rosson, Shelley, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Nelson, Patterson, Shapiro, Wentworth.

Absent: Haley, Lucio, Luna, Ratliff, Sibley. (These Senators were attending the conference committee meeting on **S.B. 7.**)

Absent-excused: Leedom.

The President laid before the Senate **C.S.H.B. 2055** on its third reading and final passage.

C.S.H.B. 2055, Releating to health insurance and health costs and the availability of health insurance coverage for certain individuals and small employers.

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

RECORD OF VOTES

Senators Bivins, Haley, Nelson, Patterson, Shapiro, and Wentworth asked to be recorded as voting "Nay" on the final passage of the bill.

HOUSE BILL 2115 ON SECOND READING

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

H.B. 2115, Relating to emergency appropriations.

The bill was read second time.

Senator Montford offered the following committee amendment to the bill:

Committee Amendment

Amend **H.B. 2115** by deleting Section 2 on page 1 and by adding three new, appropriately numbered sections as follows:

SECTION ____. The Office of the Governor is hereby authorized to transfer such amounts as may be necessary from one program to another within the total appropriations for the current fiscal biennium.

SECTION ____. From amounts previously appropriated from general revenue for the current fiscal biennium, the sum of $3,000,000 is transferred from the Office of the Governor and hereby appropriated to the Central Education Agency for the two-year period beginning on the effective date of this Act. The Commissioner of Education is authorized to expend these funds and to enter into agreements with other state agencies for the purpose of implementing the provisions of **S.B. 7**, Acts of the 73rd Legislature, Regular Session, or similar legislation. Any unexpended balance from this appropriation shall be transferred to the Office of the Governor prior to the expiration of this appropriation. It is the intent of the Legislature that the General Services Commission, the Comptroller of Public Accounts, and the State Auditor's Office shall assist the Commissioner in expediting necessary purchasing and contracting agreements associated with implementation of **S.B. 7**. This section is contingent upon passage of **S.B. 7** or similar legislation.

SECTION ____. In addition to amounts previously appropriated for the current fiscal biennium, the sum of $345,000 is hereby appropriated from the Advance Interest Trust Fund 935 to the Texas Employment Commission for implementation of the Smart Jobs Program for the two-year period beginning with the effective date of this act.

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

Senator Montford offered the following amendment to the bill:

Floor Amendment

Amend **H.B. 2115** by adding a new section to read as follows:

Section ____. Of a sum not to exceed $18 million previously appropriated for the current fiscal biennium, the following sums for the following programs are appropriated for the remainder of the fiscal year ending August 31, 1993, from the general revenue fund to the Department of Housing and Community Affairs:

HOME Investment Partnerships Program	$5,655,049
Homeownership of Single Family Homes Program, "HOPE 3"	$ 321,000
Housing Trust Fund related expenses	$6,395,000

A sum not to exceed four percent of the total sum previously appropriated for the current fiscal biennium is appropriated for the remainder of the fiscal year ending August 31, 1993, from the general revenue fund to the Department of Housing and Community Affairs for the purposes of implementation and administration of such programs. The term "Housing Trust Fund related expenses" includes the payment of expenses incurred after the effective date of this Act for housing contracts awarded in 1993.

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

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2115 ON THIRD READING

Senator Montford moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2115** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

COMMITTEE SUBSTITUTE HOUSE BILL 1540 ON SECOND READING

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

C.S.H.B. 1540, Relating to the regulation of multiple employer welfare arrangements; creating offenses and providing civil and criminal penalties; providing for fees.

The bill was read second time.

(Senator Harris of Tarrant in Chair)

Senator Patterson offered the following amendment to the bill:

Amend **C.S.H.B. 1540** at page 1 beginning at line 16 to read as follows:

"(4) "Fully insured Multiple Employer Welfare Arrangement" means an Multiple Employer Welfare Arrangement that provides benefits to its participants the amount of all of which are guaranteed under a contract or policy of insurance issued by an insurance company authorized to do business in this state. Such contract or policy of insurance may be evidenced through a Group Master Policy of insurance issued to the

Multiple Employer Welfare Arrangement and certificates of insurance evidencing coverage under the Group Master Policy of insurance issued by the insurer to the individual participants in the Multiple Employer Welfare Arrangement or through a reinsurance treaty, contract, or agreement with an insurance company authorized to do business in this state.

The amendment was read.

On motion of Senator Parker, the amendment was tabled by the following vote: Yeas 20, Nays 6.

Yeas: Armbrister, Barrientos, Carriker, Ellis, Harris of Tarrant, Harris of Dallas, Lucio, Madla, Moncrief, Montford, Nelson, Parker, Rosson, Shelley, Sims, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Patterson, Shapiro, Sibley, Wentworth.

Absent: Haley, Henderson, Luna, Ratliff. (Senators Haley, Luna, and Ratliff were attending the conference committee meeting on **S.B. 7.**)

Absent-excused: Leedom.

The bill was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1540 ON THIRD READING

Senator Parker moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1540** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

HOUSE BILL 653 ON SECOND READING

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

H.B. 653, Relating to the establishment of an education tariff for certain telecommunications services.

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

HOUSE BILL 653 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 653** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

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Adjourned May 31, 1993

VOLUME III

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COMMITTEE SUBSTITUTE
HOUSE BILL 712 ON SECOND READING

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

C.S.H.B. 712, Relating to solicitation by public safety organizations, public safety publications, and certain independent promoters; providing criminal and civil penalties.

There was objection.

Senator Lucio then moved to suspend the regular order of business and take up **C.S.H.B. 712** for consideration at this time.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: West.

Absent-excused: Leedom.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Amend **C.S.H.B. 712** as follows:

Page 2, line 56, strike "attorney general" and substitute secretary of state

Page 4, line 2, strike "attorney general" and substitute secretary of state

Page 5, line 64, strike Section 15 and substitute with the following:

SECTION 15. SERVICE ON SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS. Any service of process or pleading served on the secretary of state as the agent for a nonresident solicitor, public safety organization, independent promotor, or public safety organization must be served on the secretary of state in triplicate. The secretary of state shall file one copy in the secretary of state's office and immediately forward the other copies by certified mail, return receipt requested, to the address of the nonresident, as shown on the nonresident's registration statement. Service on the secretary of state shall be returned in not less than 30 days.

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

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE
HOUSE BILL 712 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 712** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

(President in Chair)

GUESTS PRESENTED

The President introduced to the Senate Representative Libby Linebarger and Judge Giles Dalby, father-in-law of Senator Whitmire.

The Senate welcomed Representative Linebarger and Judge Dalby.

COMMITTEE SUBSTITUTE HOUSE BILL 456 ON SECOND READING

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

C.S.H.B. 456, Relating to the regulation of certain staff leasing services; providing penalties.

The bill was read second time.

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 456**, page 2, line 19, by adding a Subsection (D) to read as follows:

(D) A temporary common worker agency or employer as defined in Volume 15, Article 5221A-10 Vernon's Texas Civil Statutes.

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

Senator Harris of Dallas offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 456**, SECTION 3(e)(1), page 3, line 10, by changing the word "and" to the word "or"

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

On motion of Senator Harris of Dallas and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 456 ON THIRD READING

Senator Harris of Dallas moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 456** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

COMMITTEE SUBSTITUTE
HOUSE BILL 958 ON SECOND READING

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

C.S.H.B. 958, Relating to the issuance of insurance through eligible surplus lines insurers.

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

COMMITTEE SUBSTITUTE
HOUSE BILL 958 ON THIRD READING

Senator Parker moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 958** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

COMMITTEE SUBSTITUTE
HOUSE BILL 74 ON SECOND READING

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

C.S.H.B. 74, Relating to certain processes and procedures connected with the registration of voters; providing a criminal penalty.

The bill was read second time.

Senator Carriker offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 74** by striking Section 20 of the bill, amending Section 18.063, Election Code (page 5, lines 22-44, Committee Printing), and substituting the following:

SECTION 20. Section 18.063, Election Code, is amended to read as follows:

Sec. 18.063. INFORMATION FURNISHED BY REGISTRAR. (a) On or after January 1 but before January 16 and on or after September 1 but before September 16 of each even-numbered year, each registrar <u>of a county that has not contracted with the secretary of state for electronic data services to facilitate the implementation of the registration service program</u> shall deliver to the secretary of state a list containing each new registration, canceled registration, and change in registration information that has occurred in the county since the delivery of the previous [~~corresponding~~] list <u>under this subsection or Subsection (b), as applicable</u>.

(b) Not more than once each calendar year, the secretary may require the registrar of a county covered by Subsection (a) to deliver to the secretary a complete list of the county's voter registration information. The registrar shall deliver the list within the period prescribed by the secretary.

(c) The information on the lists required by this section [~~list~~] must be current as of the date of delivery. The secretary shall use the information to update the state master file.

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

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 74** as follows:

(1) Strike Section 8 of the bill (committee printing page 2, lines 58 through 71).

(2) Strike Section 14 of the bill (committee printing page 3, lines 67 through 71, and page 4, lines 1 though 43).

(3) Renumber subsequent sections accordingly.

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

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 74** by inserting the following appropriately numbered section and renumbering subsequent sections accordingly:

SECTION ____. Chapter 63, Election Code, is amended by adding Section 63.0091 to read as follows:

Sec. 63.0091. REGISTRATION AT POLLING PLACE: VOTING PROCEDURES. (a) This section applies to a county only if the commissioners court issues an order approving implementation of this section. The order must be recorded in the commissioners court's minutes not later than the 30th day before election day. The order is effective until rescinded. The commissioners court may not rescind the order between an election and a resulting runoff election.

(b) This section applies to the conduct of voting and to the registration of voters notwithstanding and in addition to other applicable provisions of this code.

(c) A person who would be eligible to vote in an election under Section 11.001, but for the requirement to be a registered voter, shall be accepted for voting in the precinct of the person's residence if, on the day the person offers to vote, the person:

(1) submits a voter registration application that complies with Section 13.002; and

(2) presents the person's Texas driver's license or an identification card that is issued by a state governmental entity and that includes the person's photograph and residence.

(d) Persons voting under this section shall be processed separately at the polling place from persons who are voting under regular procedures.

(e) The secretary of state shall prescribe the procedures necessary to implement this section and to ensure the proper and orderly conduct of elections.

The amendment was read and adopted by the following vote: Yeas 16, Nays 14.

Yeas: Armbrister, Barrientos, Carriker, Ellis, Haley, Luna, Madla, Moncrief, Montford, Parker, Rosson, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Harris of Tarrant, Harris of Dallas, Henderson, Lucio, Nelson, Patterson, Ratliff, Shapiro, Shelley, Sibley, Sims, Wentworth.

Absent-excused: Leedom.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.H.B. 74** by inserting the following appropriately numbered sections and renumbering subsequent sections accordingly:

SECTION ____. Subchapter B-1, Chapter 13, Election Code, as added by Section 3A.01, **H.B. 947**, 73rd Legislature, Regular Session, 1993, is amended by adding Section 13.052 to read as follows:

Sec. 13.052. EMPLOYMENT COMMISSION. (a) In this section:

(1) "State agency" means the Texas Employment Commission.

(2) "Existing frontline employee" means any state agency employee already in a position to accept forms from the public.

(b) A state agency shall provide an opportunity to complete a voter registration application form to each person who appears in person at an agency office to inquire about, request, apply for, or receive services.

(c) If a state agency regularly uses a form for persons to inquire about, request, apply for, or receive services, the agency shall include the following language on the form: "If you are not registered to vote at your current address, would you like to register to vote here today? ——— YES ———NO". The agency may include, after the preceding question, the following language on the form: "You may receive government services without being registered to vote."

(d) An existing frontline employee of the state agency shall provide a voter registration application form and on request shall provide nonpartisan voter registration assistance to any interested person who indicates a desire to register to vote on the agency's form.

(e) On receipt of a completed voter registration application, the employee shall note the date of submission on the application and issue a receipt to the applicant containing the date of submission and the notation "voter registration application received."

(f) Not later than the first regular business day after the date a completed voter registration application is received, the state agency shall deliver the application by mail to the voter registrar of the county in which the office is located.

(g) The date of submission of a completed voter registration application to a state agency employee is considered to be the date of submission to the voter registrar for the purpose of determining the effective date of registration only.

SECTION ____. A state agency subject to Section 13.052, Election Code, as added by this Act, shall add the language required or authorized by Subsection (c) of that section to existing forms with an inked rubber stamp. When existing forms have been depleted, the agency shall add the language to the form when reprinting.

The amendment was read and was adopted by the following vote: Yeas 17, Nays 13.

Yeas: Armbrister, Barrientos, Carriker, Ellis, Haley, Lucio, Luna, Madla, Moncrief, Montford, Parker, Rosson, Truan, Turner, West, Whitmire, Zaffirini.

Nays: Bivins, Brown, Harris of Tarrant, Harris of Dallas, Henderson, Nelson, Patterson, Ratliff, Shapiro, Shelley, Sibley, Sims, Wentworth.

Absent-excused: Leedom.

VOTE RECONSIDERED

Senator Carriker moved to reconsider the vote by which Floor Amendment No. 3 by Senator Ellis to **C.S.H.B. 74** was adopted.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Ratliff, Rosson, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Nays: Patterson, Shapiro.

Absent-excused: Leedom.

Question—Shall Floor Amendment No. 3 be adopted?

On motion of Senator Ellis and by unanimous consent, Floor Amendment No. 3 was withdrawn.

On motion of Senator Carriker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

ORDERED NOT PRINTED

On motion of Senator Parker and by unanimous consent, the House amendments to **S.B. 498** were ordered not printed in the Senate Journal.

SENATE BILL 498 WITH HOUSE AMENDMENTS

Senator Parker called **S.B. 498** 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.

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 498** 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 Parker, Chair; Haley, Sibley, Rosson, and Turner.

HOUSE BILL 1432 ON SECOND READING

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

H.B. 1432, Relating to the powers of a river authority that engages in the distribution and sale of electric energy; granting the authority to issue bonds.

The bill was read second time.

Senator Armbrister offered the following committee amendment to the bill:

Committee Amendment

Amend **H.B. 1432** by adding a new Subsection (f) to Section 4B, to read as follows:

(f) This section does not in any way limit the authority of the Public Utility Commission to determine the recoverability of cost from rate payers.

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

Senator Montford offered the following amendment to the bill:

Floor Amendment

Amend **H.B. 1432** by adding the following new SECTION 2 on page 2 between lines 69 and 70:

SECTION 2. Section 51, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Subsection (a)(4) as follows:

Sec. 51(a) A public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; [~~or~~]

(3) operation, extension, or service in progress on the effective date of this Act[~~.~~]; or

(4) the provision of service, upon request, to a political subdivision of the state created under Article XVI, Section 59, of the Texas Constitution, which political subdivision is located within the drainage area of the Colorado River basin above the east line of Coleman County.

Renumber the remaining sections accordingly.

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

RECORD OF VOTE

Senator Rosson asked to be recorded as voting "Nay" on the adoption of the amendment.

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTE

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

HOUSE BILL 1432 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1432** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Rosson.

Absent-excused: Leedom.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1. (Same as previous roll call)

HOUSE BILL 1815 ON SECOND READING

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

H.B. 1815, Relating to payment of vendors by the state or by certain political subdivisions.

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

HOUSE BILL 1815 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1815** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

HOUSE BILL 1835 ON SECOND READING

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

H.B. 1835, Relating to the regulation of the practice of perfusion; providing a penalty.

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

HOUSE BILL 1835 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1835** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

COMMITTEE SUBSTITUTE HOUSE BILL 2043 ON SECOND READING

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

C.S.H.B. 2043, Relating to the rulemaking process of the Texas Water Commission; permitting of certain disposal wells; and permitting of certain waste management facilities.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Amend **C.S.H.B. 2043** by the following:

(1) Insert a new SECTION 6 to read as follows:

"SECTION 6. Amend Section 361.069, Health and Safety Code, to read as follows:

Sec. 361.069. The department or the commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088. In making a determination on the question of land use compatibility, the department or commission may not consider the position of a state or federal agency which is not supported by credible expert testimony from that agency during the public hearing."

(2) On page 5, line 20, after "(b)", insert "and 361.069".
(3) Renumber the remaining sections appropriately.

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

On motion of Senator Armbrister and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2043 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2043** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE BILL 2199 ON SECOND READING

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

H.B. 2199, Relating to the appellate jurisdiction of the Texas Water Commission.

The bill was read second time.

On motion of Senator Moncrief and by unanimous consent, further consideration of **H.B. 2199** was temporarily postponed.

Question—Shall the bill be passed to third reading?

COMMITTEE SUBSTITUTE HOUSE BILL 2394 ON SECOND READING

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

C.S.H.B. 2394, Relating to the denial, revocation, or suspension of a license to operate a child-care facility and to licensing the facility after revocation.

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

COMMITTEE SUBSTITUTE HOUSE BILL 2394 ON THIRD READING

Senator Shelley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2394** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

COMMITTEE SUBSTITUTE HOUSE BILL 2333 ON SECOND READING

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

C.S.H.B. 2333, Relating to evaluating the performance of public schools and the rules and policies of the University Interscholastic League.

The bill was read second time.

Senator Sibley offered the following amendment to the bill:

Amend **C.S.H.B. 2333** as follows:

1) On page 2, line 13 through line 17, strike existing Subsection (h) and insert a new Subsection (h) to read as follows:

(h) Except for new schools, new programs or districts affected by consolidation, the University Interscholastic League may not take any action relating to implementing a decision to reclassify a school district before the advisory council has submitted a final report under Subsection (e) of this section.

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

On motion of Senator Sibley and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 2333 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 2333** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE BILL 2199 ON SECOND READING

The Senate resumed consideration of **H.B. 2199** on its second reading and passage to third reading, further consideration having been temporarily postponed earlier today.

Question—Shall the bill be passed to third reading?

Senator Moncrief, on behalf of Senator Barrientos, offered the following amendment to the bill:

Amend **H.B. 2199** by striking the word "The" on line 15 and substituting the following: "For agreements between municipalities the"

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

On motion of Senator Moncrief and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2199 ON THIRD READING

Senator Moncrief moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2199** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

STATEMENT OF LEGISLATIVE INTENT

Senator Moncrief submitted the following statement of legislative intent:

June 28, 1993

Honorable Kay Granger
Mayor of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

Dear Mayor Granger,

This letter is in response to your question regarding the legislative intent of **H.B. 2199**, which amends Section 13.043(j) of the Texas Water Code. I am familiar with the legislative intent of the bill because I was the sponsor of the bill in the Senate, and I was the Senator responsible for its passage through the Natural Resources Committee, and its presentation on the Senate floor.

At the time the bill was passed, there was no intent on the part of the legislature to alter or broaden the jurisdiction of the Texas Water Commission over wholesale rates. The jurisdiction given to the Commission over wholesale rates is appellate jurisdiction only, derived from Section 13.043(f) of the Water Code, which was not changed by **H.B. 2199**. As you know, the Travis County Water District recently ruled that the jurisdiction of the Texas Water Commission over wholesale rates set by contracts is limited by the "public interest" standard set by the Austin Court of Appeals in the High Plains case. Although that recent Travis County District Court decision is currently on appeal, the legislature did not choose to take any action to broaden the Commission's jurisdiction in the face of that decision or its possible outcome on appeal. This is consistent with Representative Brimer's statement of intent that **H.B. 2199**

was not intended to change the jurisdiction of the Texas Water Commission to set rates.

Thus, without affecting jurisdiction, **H.B. 2199** simply dictates one element the Commission must consider once it reaches a proper appellate review of wholesale rates. The amendment to Section 13.043(j) makes it clear that the Texas Water Commission must take into consideration terms of existing wholesale water or sewer service contracts between the parties, and, thus, the original bargain of the parties, in conducting a review of wholesale rates, when they have jurisdiction to do so. As you know, the Texas Water Commission's practice has been to pay no attention at all to wholesale contracts. The requirement to give due regard to contracts is now expressed, rather than implied.

I hope this has answered your question. If you have further questions or comments, please don't hesitate to call me.

Sincerely,

/s/Mike Moncrief

HOUSE BILL 391 ON SECOND READING

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

H.B. 391, Relating to public retirement benefits payable to certain persons who have obtained qualified domestic relations orders.

The bill was read second time.

Senator Turner offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 391** as follows:

1) In Section 1, page 1, line 24, insert the phrase "greater of the" between the words "the" and "age".

2) In Section 1, page 2, line 1, strike the phrase "at full or actuarially reduced benefits."

3) In Section 1, page 1, line 24, insert the phrase "or normal retirement age" between the words "62" and "and".

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

Senator Turner offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **H.B. 391** as follows:

1) In Section 1, page 1, line 16, strike the words "present" and "value" and replace "value" with "equivalent".

2) In Section 1, page 1, line 19, strike the word "value" and replace it with "equivalent".

3) In Section 1, page 2, line 7, strike the words "present" and "value" and replace "value" with "equivalent".

4) In Section 1, page 2, line 9, strike the word "present".

5) In Section 1, page 2, line 10, strike the word "value" and replace it with "equivalent".

6) In Section 1, page 2, line 11, insert the words "normal age" between the words "a" and "standard".

7) In Section 1, page 2, line 12, strike the phrase "reduced as appropriate for early retirement,".

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

Senator Turner offered the following committee amendment to the bill:

Committee Amendment No. 3

Amend **H.B. 391** as follows:

1) In SECTION 1, page 1, line 13, insert the word "alternate" between the words "the" and "payee".

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

Senator Turner offered the following committee amendment to the bill:

Committee Amendment No. 4

Amend **H.B. 391** as follows:

In Section 1, page 1, line 15, insert the phrase "on or after January 1, 1985" after the word "order" and before the comma.

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

On motion of Senator Turner and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 391 ON THIRD READING

Senator Turner moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 391** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

HOUSE BILL 2622 ON SECOND READING

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

H.B. 2622, Relating to regulation of natural gas underground storage facilities; providing penalties.

The bill was read second time.

Senator Truan offered the following amendment to the bill:

Amend the committee report for **H.B. 2622** by striking Subsection (2) of Section 4(a) in its entirety and substituting in lieu thereof a new Subsection (2) to read as follows:

(2) the establishment of emergency notification procedures for the operator of a facility in the event of a release of a hazardous substance that poses a substantial risk to the public.

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

On motion of Senator Turner and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2622 ON THIRD READING

Senator Turner moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2622** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

HOUSE BILL 1433 ON SECOND READING

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

H.B. 1433, Relating to the enforcement, collection, and withholding of income for child support.

The bill was read second time.

Senator Harris of Tarrant offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1433** as follows:

Insert the following three new sections, appropriately numbered:

1. Section ____. Amend Section 11.191, Family Code, to read as follows:

Section 11.191. Payment for Statement of Facts. If the party requesting the statement of facts in an appeal of a suit affecting the parent-child relationship has filed an affidavit stating the party's inability to pay costs as provided by Rule 40, Texas Rules of Appellate Procedure, and the affidavit is approved by the trial court, the trial court shall order the county in which the trial was held to pay the costs of preparing the statement of facts. [~~This section shall apply to any county with a population in excess of two million according to the most recent federal census.~~]

2. Section ____. Amend Section 14.32(b), Family Code, to read as follows:

(b) Record [~~Court Reporter~~]. An enforcement order under this subchapter may not be entered if a record of the proceedings is not made by a court reporter or as provided by Subchapter A, Chapter 54, Government Code, unless:

(1) the parties agree on entry of the order; or

(2) when the motion does not seek [~~if the order seeks~~] incarceration, the parties waive the requirement of a record at the time of hearing, either in writing or in open court and with the approval of the court.

3. Section ____. Section 54.06, Family Code, is amended by adding Subsection (c) to read as follows:

(c) A court may enforce an order for support under this section by ordering garnishment of the wages of the person ordered to pay support.

4. Amend Section 11 of the engrossed copy of the bill as follows:

Section 11.

1) On page 10, line 19, strike "and" and after "(h)," insert "and (q)".

2) On page 14, between lines 16 and 17, insert the following:

(q) Reduction or Termination of Withholding.

In any proceeding brought under Part D of Title IV of the federal Social Security Act, as amended (42 U.S.C. Section 651 et seq.), the attorney general shall establish procedures for the reduction in or termination of withholding from income on the liquidation of an arrearage or the termination of the obligation of support. The procedures must provide that the payment of overdue support may not be used as the sole basis for terminating withholding. If a court has rendered an order which reduces the amount of child support to be withheld under this section or terminates withholding for child support, any person or governmental entity may deliver to the employer a certified copy of the order without the requirement that the clerk of the court deliver the order. The provisions of Subsection (l) of this section apply to an order which reduces or terminates withholding.

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

Senator Harris of Tarrant offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1433** as follows:

On page 1, Committee Amendment No. 1, strike lines 20 through 31.

On page 1, line 18, after the word "following", strike the word "three", and replace it with the word "two".

On page 8, strike Section 14 in its entirety and renumber subsequent sections appropriately.

On page 9, between lines 68 and 69, by adding a new Section 21 to read as follows and renumber subsequent sections appropriately.

SECTION 21. Section 76.009, Human Resources Code, as amended by **S.B. 857,** Acts of the Seventy-third Legislature, is amended by amending Subsection (a) to read as follows:

(a) In, or in connection with, a Title IV-D case brought by the attorney general or a private attorney or political subdivision that has entered into a contract under Section 76.007(b), the attorney general shall pay the following fees in a suit affecting the parent-child relationship under Title 2, Family Code, including a suit to establish paternity, a motion to enforce or modify a decree, or a notice of child support delinquency, or in a suit under Chapter 21, Family Code:

(1) filing fees and fees for issuance and [~~of~~] service of process as provided by Sections 51.317[~~(b) and~~], 51.318(b)(2), and 51.319(4), Government Code, and Section 14.13, Family Code;

(2) fees for transfer as provided by Section 11.06(l) or Section 14.13, Family Code;

(3) fees for the issuance and delivery of orders and writs of income withholding in the amounts [~~amount as~~] provided by Sections [~~Section~~] 14.43[~~(i)~~] and 14.45, Family Code; [~~and~~]

(4) a fee of $45 [~~$35~~] for each item of process to each individual on whom service is required, including service by certified or registered mail [~~without regard to the amount of items of process to be served on that individual~~], to be paid to a sheriff, constable, or clerk whenever service of process is required; and

(5) mileage costs incurred by a sheriff or constable when traveling out of the county to execute an outstanding warrant or capias, to be reimbursed at a rate not to exceed the rate provided for mileage incurred by state employees in the General Appropriation Act.

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

(Senator Montford in Chair)

Senator Harris of Tarrant offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1433** by adding the following sections appropriately numbered:

SECTION _____. Section 14.055, Family Code, is amended by amending Subsection (b) and adding Subsections (f)-(j) to read as follows:

(b) Schedule[~~: $4,000 or Less Monthly Net Resources~~]. In rendering an order of child support under circumstances in which the obligor's monthly net resources are [~~$4,000 or~~] less than the amount specified in Subsection (a) of this section, the court shall presumptively apply the following schedule:

CHILD SUPPORT GUIDELINES
BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR

1 child	20% of Obligor's Net Resources
2 children	25% of Obligor's Net Resources
3 children	30% of Obligor's Net Resources
4 children	35% of Obligor's Net Resources
5[~~+~~] children	40% of Obligor's Net Resources [~~Not less than the amount for 4 children~~]
6+ children	Not less than the amount for 5 children

(f) Children in More Than One Household. In applying the child support guidelines for an obligor who has children in more than one household, the court shall apply the percentage guidelines in this section by making the following computation:

(1) determine the amount of child support that would be ordered if all children, both before the court and not before the court, whom the obligor has the legal duty to support lived in one household by applying the schedule in Subsection (b) of this action;

(2) compute a child support credit for the obligor's children who are not before the court by dividing the amount determined under Subdivision (1) of this subsection by the total number of children whom the obligor is obligated to support and multiplying that number by the number of the obligator's children who are not before the court;

(3) determine the adjusted net resources of the obligor by subtracting the child support credit computed under Subdivision (2) of this subsection from the net resources of the obligor; and

(4) determine the child support amount for the children before the court by applying the percentage guidelines from Subsection (b) of this section for the number of children of the obligor before the court to the obligor's adjusted net resources.

(g) Child Support Credit. For the purpose of determining a child support credit under Subsection (f)(2) of this section, the total number of an obligor's children includes the children before the court for the establishment or modification of a support order and any other children, including children residing with the obligor, whom the obligor has the legal duty of support.

(h) Child Support Paid by Obligor. The child support credit under Subsection (f)(2) of this section with respect to children for whom the obligor is obligated by a court order to pay support is computed, regardless of whether the obligor is delinquent in child support payments, without regard to the amount of the order.

(i) Child Support Received by Obligor. Child support received by an obligor who is obligated to support children in more than one household shall be added to the net resources of the obligor to compute the net resources of an obligor before determining the child support credit under Subsection (f)(2) of this section or applying the percentages in the table in Subsection (j) of this section.

(j) Alternative Method of Computing Support for Children in More Than One Household. In lieu of performing the computation under Subsection (f) of this section, the court may determine the child support amount for the children before the court by applying the percentages in the table below to the obligor's net resources.

Multiple Family adjusted guidelines (% of net resources)		Number of children before the court						
		1	2	3	4	5	6	7
Number	0	20.00	25.00	30.00	35.00	40.00	40.00	40.00
of other	1	17.50	22.50	27.38	32.20	37.33	37.71	38.00

children	2	16.00	20.63	25.20	30.33	35.43	36.00	36.44
for whom	3	14.75	19.00	24.00	29.00	34.00	34.67	35.20
the	4	13.60	18.33	23.14	28.00	32.89	33.60	34.18
obligor	5	13.33	17.86	22.50	27.22	32.00	32.73	33.33
has a	6	13.14	17.50	22.00	26.60	31.27	32.00	32.62
duty of	7	13.00	17.22	21.60	26.09	30.67	31.38	32.00
support:								

SECTION ___. Section 14.056, Family Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Additional Factors. In addition to the factors listed in these guidelines, a court may consider other relevant factors [~~The support obligations owed to a subsequently born or adopted child does not constitute cause to decrease the amount of an existing child support order.~~] The history of support voluntarily provided in excess of the court order does not constitute cause to increase the amount of an existing child support order.

(d) Use of Guidelines for Children in More Than One Household. In applying the child support guidelines under this section, if the obligor has the duty to support children in more than one household, the court shall apply the percentage guidelines in Section 14.055 of this code by making the computation provided by Section 14.055(f) of this code.

SECTION ___. Section 14.057, Family Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in any suit affecting the parent-child relationship or reciprocal child support action in which child support is contested and the amount of the support [~~order~~] is set or modified by the court, on written request made or filed with the court not later than 10 days after the date of the hearing or an oral request made in open court during the hearing, the court shall state the following in the child support order:

"(1) the amount of net resources available to the obligor per month is $____;

"(2) the amount of net resources available to the obligee per month is $____;

"(3) the amount of child support payments per month that is computed if Section 14.055, Family Code, is applied is $____;

"(4) the percentage applied to the obligor's net resources for child support by the actual order rendered by the court is _____%; and, if applicable,

"(5) the specific reasons that the amount of support per month ordered by the court varies from the amount computed by applying the percentage guidelines pursuant to Section 14.055, Family Code, are: _____."

(c) In an order that child support be paid by an obligor who is obligated to support children as provided by Section 14.055(f) of this code, the court shall make the findings required by Subsection (b) of this section and shall specify under finding five of that subsection:

(1) the number of children before the court;

(2) the number of children not before the court:

(A) who reside in the same household with the obligor; and

(B) for whom the obligor is obligated by a court order to pay support, without regard to whether the obligor is delinquent in child support payments, and who are not counted in Paragraph (A) of this subdivision.

Amend Section 22 by adding new subsections (c) and (d) to read as follows:

(c) The change in law made by amending Sections 14.055(b), 14.056(b), and 14.057(a), Family Code, as amended by this Act, and by adding new Sections 14.055(f)-(j), and 14.056(d), Family Code, as added by this Act, apply only to a child support order rendered or modified on or after the effective date of this Act.

(d) The enactment of this Act is sufficient by itself to constitute a material and substantial change in the circumstances of a child for whose benefit a child support order has been entered to warrant modification of the order under Section 14.08, Family Code.

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

On motion of Senator Harris of Tarrant and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

RECORD OF VOTES

Senators Nelson and Shapiro asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1433 ON THIRD READING

Senator Harris of Tarrant moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1433** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

RECORD OF VOTES

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

COMMITTEE SUBSTITUTE HOUSE BILL 301 ON SECOND READING

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

C.S.H.B. 301, Relating to judicial review of certain ad valorem tax determinations.

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

COMMITTEE SUBSTITUTE HOUSE BILL 301 ON THIRD READING

Senator Henderson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 301** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

COMMITTEE SUBSTITUTE HOUSE JOINT RESOLUTION 14 ON SECOND READING

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

C.S.H.J.R. 14, Proposing a constitutional amendment increasing the maximum size of an urban homestead to 10 acres and prescribing permissible uses of urban and rural homesteads.

The resolution was read second time.

Senator Wentworth offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **C.S.H.J.R. 14** by striking Section 1 of the resolution and substituting the following:

SECTION 1. Article XVI, Section 51, of the Texas Constitution is amended to read as follows:

Sec. 51. (a) The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or lots amounting to not more than one acre of land, together with any improvements on the land; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

(b) In addition to the land for the homestead in a city, town, or village under Subsection (a) of this section, an individual may claim as the homestead up to nine additional acres of land, together with any improvements on the land, consisting of a lot or contiguous lots located in a city, town, or village that is used only for purposes of a home. To

qualify under this subsection, the land must be contiguous to land claimed as an urban homestead under Subsection (a) of this section.

The amendment was read.

On motion of Senator Wentworth and by unanimous consent, further consideration of **C.S.H.J.R. 14** was temporarily postponed.

Question—Shall Floor Amendment No. 1 be adopted?

COMMITTEE SUBSTITUTE HOUSE BILL 1626 ON SECOND READING

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

C.S.H.B. 1626, Relating to treatment of chemically dependent persons and to a requirement that the Texas Commission on Alcohol and Drug Abuse provide alternatives for children at risk of selling controlled substances.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 1626** by adding a new SECTION 5, and renumbering the subsequent sections accordingly.

SECTION 5. Article 4512o, Vernon's Texas Civil Statutes, is amended by amending Sections 2, 3, 10, 11, and 20 to read as follows:

Sec. 2. LICENSE REQUIRED. A person may not engage in the practice of chemical dependency counseling or perform chemical dependency assessments or interventions unless the person is licensed as a chemical dependency counselor under this Act. This section does not apply to those persons listed in Subdivision (4), Subsection (b), Section 3 of this Act.

Sec. 3. EXEMPTIONS. (a) A person is exempt from this Act if the person does not represent to the public, directly or indirectly, that the person is licensed under this Act and does not use any name, title, or designation indicating that the person is licensed under this Act.

(b) This Act does not apply to the activities and services of:

(1) a person employed as a counselor by a federal institution, if the person is performing chemical dependency counseling within the scope of the person's employment;

(2) a student, intern, or trainee pursuing a course of study in counseling at a regionally accredited institution of higher education or training institution, if those activities and services constitute a part of the supervised course of study and the person is designated as a "counselor intern";

(3) a person who is not a resident of this state if:

(A) performed for not more than 30 days during any year; and

(B) the person is authorized to perform the activities and services under the laws of the state of the person's residence; or

(4) a licensed physician or psychologist, licensed professional counselor, certified social worker, religious leader of a congregation providing pastoral chemical dependency counseling within the scope of his or her duties; or school counselor certified by the Central Education Agency.

(5) a person approved by the commission to work as a counselor exclusively within institutions of the Criminal Justice system of this state, provided however, such persons must meet minimum professional training criteria established by the commission.

(c) A person otherwise exempt under this section who elects to obtain a license under this Act is subject to this Act to the same extent as any other license holder.

Sec. 10. APPLICATION; LICENSE REQUIREMENTS. (a) An application for a license under this Act must:

(1) be on a form prescribed and furnished by the commission; and

(2) contain a statement made under oath that accurately describes [~~states~~] the applicant's education, experience, and other qualifications established by the commission as required for a license under this Act.

(b) To be eligible for a license under this Act, a person must:

[~~(1) be a citizen of the State of Texas;~~]

(1)[~~(2)~~] be at least 18 years of age;

(2)[~~(3)~~] have a high school diploma or its equivalent;

(3)[~~(4)~~] have completed 270 classroom hours of approved curricula;

(4)[~~(5)~~] have 4,000 hours of approved supervised experience performing the twelve designated core functions in relation to chemical dependency [~~working with chemically dependent persons~~];

(5)[~~(6)~~] have completed 300 hours of approved supervised field work practicum;

(6)[~~(7)~~] have two letters of reference from licensed chemical dependency counselors;

(7)[~~(8)~~] pass a written examination by the commission;

(8)[~~(9)~~] submit a case presentation to the commission;

(9)[~~(10)~~] pass an oral examination approved by the commission;

(10)[~~(11)~~] be determined by the commission to be worthy of the public trust and confidence;

(11)[~~(12)~~] successfully complete the chemical dependency counselor examination under Section 11 of this Act; and

(12)[~~(13)~~] sign a written agreement to abide by the standards of ethics approved by the commission.

(c) The commission may require additional information regarding the quality, scope, and nature of the experience, [~~and~~] competence, and character of the applicant if the commission determines that a person's application lacks sufficient information for consideration by the commission.

(d) Applicants holding a baccalaureate degree in chemical dependency counseling, psychology, sociology, or any other related program approved

by the commission shall be exempted from the requirements of Subdivisions (4) and (6) of Subsection (b) of this section. On presentation of documentation by the applicant, the commission may waive any portion of Subdivision (5) of Subsection (b) of this section it deems has been met as evidenced by such documentation.

[~~(c) An applicant holding a baccalaureate degree in psychology, sociology, or any other related program approved by the commission is exempt from the requirements of Subdivisions (4) and (6) of Subsection (b) of this section. On presentation of documentation by the applicant, the commission may waive any portion of Subdivision (5) of Subsection (b) of this section it deems has been met as evidenced by such documentation.~~]

Sec. 11. EXAMINATION. (a) At least twice each year, the commission may prepare and administer or contract with an organization approved by the National Certification Reciprocity Consortium/Alcoholism and Other Drug Abuse (NCRC/AODA) for the preparation and administration of an examination to determine the qualifications of an applicant for a license under this Act. The examination shall be conducted as determined by the commission and in a manner that is fair and impartial to and considers each school or system of chemical dependency counseling. An applicant shall be known to the examiners only by number until after the examination has been graded and the licenses have been granted or denied. The scope and content of the examination shall [~~must~~] be sufficient to ensure professional competence in keeping with the highest standards of the chemical dependency counseling profession.

(b) An applicant who fails the examination may take a subsequent examination on payment of the required examination fees. However, an applicant may not be reexamined on more than three occasions without specific approval from the Commission.

(c) If requested by a person who fails the examination, the commission shall furnish an analysis of the person's performance on the examination.

(d) The commission shall notify each examinee of the results of the examination not later than the 30th day after the date on which the examination results are received by the Commission [~~is administered~~].

[~~Sec. 20. TRANSITION. (a) A person is not required to obtain a license under this Act until January 1, 1992.~~

[~~(b) An applicant to be a licensed chemical dependency counselor may receive a license from the commission without taking the chemical dependency counselor examination required by Section 10 of this Act if the applicant:~~

[~~(1) is certified on or before October 1, 1991, as an alcohol and drug abuse counselor by the Texas Association of Alcohol and Drug Abuse Counselors; or~~

[~~(2) holds a baccalaureate degree in chemical dependency counseling or in sociology, psychology, criminology, or other related field conferred by an educational program approved by the commission and has successfully completed two years of actual and active chemical dependency counseling experience approved by the commission on or before October 1, 1991.~~

[~~(c) The commission shall adopt rules under this Act not later than January 1, 1992.~~]

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

Senator Shelley offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 1626** by adding the following SECTIONS 5 through 15, and renumbering the existing sections accordingly:

SECTION 5. LEGISLATIVE FINDINGS. The legislature finds that it is in the best interests of the health, safety and welfare of the state's youth that access to tobacco products by children be restricted, and that the use of tobacco products by children, and the risk that they might become dependent upon such products, should be minimized by state action. Accordingly, Sections 6 through 14 of this act are enacted.

SECTION 6. Section 161.081(a), Subchapter H, Chapter 161, Health and Safety Code, is amended to read as follows:

Sec. 161.081. SALE OR DISTRIBUTION OF CIGARETTES OR TOBACCO PRODUCTS TO MINORS PROHIBITED. (a) A person commits an offense if the person, as a commercial enterprise:

(1) with criminal negligence, sells, gives, or causes to be sold or given a cigarette or other tobacco product to someone who [~~the person knows~~] is younger than 18 years of age; or

(2) sells, gives, or causes to be sold or given a cigarette or other tobacco product to another person, knowing that the person receiving the cigarette or other tobacco product intends to deliver it to someone who is younger than 18 years of age.

SECTION 7. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.083 to read as follows:

Sec. 161.083. PURCHASE OF CIGARETTES OR TOBACCO PRODUCTS BY PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED. (a) A person younger than 18 years of age commits an offense if the person purchases a cigarette or other tobacco product.

(b) An offense under this section is subject to a fine not to exceed $100 and the community service provisions of Article 45.521, Code of Criminal Procedure.

SECTION 8. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.084 to read as follows:

Sec. 161.084. ADMINISTRATION AND ENFORCEMENT. (a) The state treasurer is responsible for the administration and enforcement of this subchapter and for compliance with section 1926 and the related provisions of the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. 102-321, except as otherwise provided by state law.

(b) In administering and enforcing this subchapter, the state treasurer has all rights and powers prescribed by Chapters 154 and 155, Tax Code.

(c) The state treasurer shall adopt rules relating to the administration and enforcement of this subchapter and compliance with the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization

Act, Pub. L. 102-321, and perform all duties and responsibilities necessary for the state to comply with the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. 102-321, and the rules adopted under that law.

(d) The state treasurer shall adopt rules reasonably necessary to comply with section 1926 and related provisions of the federal Alcohol, Drug Abuse, and Mental Health Administration Reorganization Act, Pub. L. 102-321, and rules promulgated thereunder, to assess administrative penalties and suspend and revoke permits issued under Chapter 154 and 155, Tax Code, for permit holder's violation of Sections 161.081 or 161.082, or a rule promulgated thereunder.

(e) The state treasurer shall annually conduct random, unannounced inspections at locations where tobacco products are sold to ensure compliance with this subchapter. Persons under 18 years of age may be enlisted to ensure compliance with this subchapter. Local law enforcement agencies shall cooperate with the state treasurer and file a report with the state treasurer which summarizes findings regarding compliance with this subchapter and the number of violations occurring within their jurisdiction. The Texas Commission on Alcohol and Drug Abuse, with the assistance of the state treasurer, shall prepare the report required by section one thousand nine hundred and twenty-six of subpart I part B of title XIX of the federal Public Health Service Act (42 U.S.C. 300X-26) on an annual basis for submission to the Secretary of the United States Department of Health and Human Services.

(f) In promulgation of rules under this subchapter, the state treasurer shall provide for the following:

(1) any administrative penalties for violations of Sections 161.081 or 161.082 shall not exceed the following schedule:

(A) the penalty for the first violation may be in an amount not to exceed $500;

(B) the penalty for a second or subsequent violation may be in an amount not to exceed $1000.

(2) The penalty for a third or subsequent violation of Section 161.081 may include the suspension or revocation of a retailer's permit issued under Chapter 154 or 155, Tax Code; provided however, that no suspension may exceed a period of 10 days. Further, a permit may not be revoked until such permit has been suspended at least once in the prior 12 month period.

(3) The amount of a penalty shall be based on:

(A) the seriousness of the violation;

(B) the history of previous violations;

(C) the person's demonstrated good faith; and

(D) any other matter that justice may require.

(4) A determination that a violation has occurred shall be made following written notice and hearing pursuant to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(5) It shall be a defense to the imposition of administrative penalties or suspension or revocation of a permit for a violation of

Sections 161.081 that the person to whom the cigarette or tobacco product was sold or given presented to the person apparently valid proof of identification that contained a physical description and photograph consistent with the person's appearance, purported to establish that the person is 18 years of age or older, and was purportedly issued by a governmental agency. The proof of identification may include a driver's license issued by this state or another state, a passport or an identification card issued by a state or the federal government.

(6) With respect to the revocation or suspension of a permit, based on a violation of Section 161.081 by an employee, it is a defense that the employer acted in good faith and did the following:

(A) conspicuously posted and reasonably maintained appropriate signs in areas frequented by employees, such as near time cards or in lunchrooms, reminding the employees of the provisions of this subchapter and the penalties provided hereunder;

(B) conspicuously posted and reasonably maintained signs on or near any cash register or comparable area reminding employees to ask for proof of identification before selling cigarettes or tobacco products if there is any doubt as to the customer being younger than 18 years of age;

(C) provided the employee a copy of this subchapter or a reasonable summary of this subchapter and required the employee to sign a statement that the copy or the summary was received and understood and that the employee will uphold the law;

(D) provided the employee with a written list of the types of proof of identification that are deemed valid by the state to establish legal age under this subchapter; and

(E) if the employee has violated this subchapter more than once:

(i) promptly terminated the employee's employment; or

(ii) promptly reassigned the employee to a position in which the employee is prohibited from selling and does not sell cigarettes or tobacco products for a period of one year from the date of the employee's last violation.

SECTION 9. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.085 to read as follows:

Sec. 161.085. RECORDS AND REPORTS OF INSPECTIONS AND VIOLATIONS. (a) Each municipality, county, state agency, or other governmental unit that issues a citation or makes an inspection in connection with the sale or distribution of cigarettes or tobacco products to a person under 18 years of age shall maintain statistics and information and shall provide the state treasurer with records and reports as required by the rules of the state treasurer.

SECTION 10. Subchapter H, Chapter 161, Health and Safety Code, is amended by adding Section 161.086 to read as follows:

Sec. 161.086. ENFORCEMENT. The provisions of Subchapter H, Chapter 161, Health and Safety Code, and Chapters 154 and 155, Tax Code, shall govern exclusively the sale and distribution of cigarettes and

other tobacco products in this state; provided, however, that this section shall not affect an ordinance, regulation, order, resolution or policy adopted by the governing board of a political subdivision regulating the sale or distribution of cigarettes or other tobacco products to persons under 18 years of age in effect on October 1, 1993.

SECTION 11. Section 154.304, Tax Code, is amended to read as follows:

Sec. 154.304. INSPECTIONS. (a) To determine the tax liability of a person dealing in cigarettes or the person's compliance with any of the provisions of this chapter or Subchapter H, Chapter 161, Health and Safety Code, the treasurer may during business hours:

(1) inspect any place of business [~~premises~~], including a vehicle or vending machine and its contents, where cigarettes are manufactured, produced, stored, transported, sold, or offered for sale or exchange;

(2) remain on the premises as long as necessary during business hours to determine tax liability;

(3) examine the records required by this chapter or other records, books, documents, papers, accounts, and objects that the treasurer determines are necessary for conducting a complete examination; and

(4) examine stocks of cigarettes and cigarette stamps.

(b) A person dealing in cigarettes may not during business hours:

(1) fail to produce, on the treasurer's demand, records required by this chapter; or

(2) hinder or prevent the inspection of records or the examination of the premises.

SECTION 12. Section 154.512, Tax Code, is amended to read as follows:

Sec. 154.512. REFUSAL OF INSPECTION [~~OF PREMISES~~]. A person commits an offense if the person refuses to permit a complete inspection during business hours by an authorized representative of the treasurer of any place of business [~~premises~~] where cigarettes are manufactured, produced, stored, transported, sold, or offered for sale or exchange, or fails to produce, on the treasurer's demand, records required by this chapter.

SECTION 13. Section 155.183, Tax Code, is amended to read as follows:

Sec. 155.183. INSPECTIONS. (a) To determine the tax liability of a person dealing in tobacco products or the person's compliance with any of the provisions of this chapter or Subchapter H, Chapter 161, Health and Safety Code, the treasurer may during business hours:

(1) inspect any place of business [~~premises~~], including a vehicle or vending machine and its contents, where tobacco products are manufactured, produced, stored, transported, sold, or offered for sale or exchange;

(2) remain on the premises as long as necessary during business hours to determine tax liability;

(3) examine the records required by this chapter or other records, books, documents, papers, accounts, and objects that the treasurer determines are necessary for conducting a complete examination; and

(4) examine stocks of tobacco products.

(b) A person dealing in tobacco products may not during business hours:

(1) fail to produce, on the treasurer's demand, records required by this chapter; or

(2) hinder or prevent the inspection of records or the examination of the premises.

SECTION 14. Section 155.210, Tax Code, is amended to read as follows:

Sec. 155.210. REFUSAL OF INSPECTION [~~OF PREMISES~~]. A person commits an offense if the person refuses to permit a complete inspection during business hours by an authorized representative of the treasurer of any place of business [~~premises~~] where tobacco products are manufactured, produced, stored, transported, sold, or offered for sale or exchange, or fails to produce, on the treasurer's demand, records required by this chapter.

SECTION 15. Chapter 21, Education Code, is amended by adding Section 21.927-1 to read as follows:

Sec. 21.927-1. Smoking and the use of other tobacco products are prohibited in public school facilities and at any school related or sanctioned activity. Local school boards are authorized to make exceptions for adults at extracurricular activities such as football games.

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

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1626 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1626** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

COMMITTE SUBSTITUTE HOUSE JOINT RESOLUTION 14 ON SECOND READING

The Senate resumed consideration of **C.S.H.J.R. 14** on its second reading and passage to third reading, further consideration having been temporarily postponed earlier today.

C.S.H.J.R. 14, Proposing a constitutional amendment increasing the maximum size of an urban homestead to 10 acres and prescribing permissible uses of urban and rural homesteads.

Question—Shall Floor Amendment No. 1 be adopted?

On motion of Senator Wentworth, Floor Amendment No. 1 was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

On motion of Senator Wentworth and by unanimous consent, further consideration of **C.S.H.J.R. 14** was postponed to a time certain of 11:00 a.m. Wednesday, May 26, 1993.

Question—Shall the resolution be passed to third reading?

COMMITTEE SUBSTITUTE HOUSE BILL 1705 ON SECOND READING

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

C.S.H.B. 1705, Relating to proprietary schools; providing civil penalties.

The bill was read second time.

Senator Harris of Dallas offered the following amendment to the bill:

Amend **C.S.H.B. 1705**, SECTION 9, page 16, by adding the following new exemption:

"(11) a course or courses of instruction by bona fide electrical trade associations for the purpose of preparing students for electrical tests required for licensing and for the purpose of providing continuing education to students for the renewal of electrical licenses."

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

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 1705 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 1705** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

HOUSE BILL 1718 ON SECOND READING

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

H.B. 1718, Relating to work programs for inmates and former inmates of a county jail or state prison.

The bill was read second time.

Senator Shelley offered the following committee amendment to the bill:

Amend **H.B. 1718** by inserting new SECTION 5 as follows and renumbering remaining sections accordingly:

SECTION 5. Section 497.035 (a), Government Code, is amended to read as follows:

Sec. 497.035. OFFENSE: SALE OR OFFER OF SALE OF PRISON-PRODUCED ARTICLES OR PRODUCTS. (a) A person commits an offense if the person intentionally sells or offers to sell on the open market in this state an article or product the person knows was manufactured in whole or part by an inmate of the institutional division or an inmate in a correctional facility in any other state, other than an inmate who was on probation or parole or employed by an enterprise who has employed the inmate to advantage themselves of the Franchise Tax Credit offered under Subchapter L, Chapter 171, Tax Code at the time of manufacture.

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

On motion of Senator Shelley and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1718 ON THIRD READING

Senator Shelley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1718** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

HOUSE BILL 2241 ON SECOND READING

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

H.B. 2241, Relating to health careers promotion for high school students interested in providing health care services in qualified areas.

The bill was read second time.

Senator Carriker offered the following committee amendment to the bill:

Amend **H.B. 2241** as follows:

(1) In Section 106.075(a), Health and Safety Code (page 2, lines 26 and 27, house engrossment), strike Subdivision (2) and substitute the following:

"(2) at the time of the application for the loan, be enrolled in high school or enrolled or accepted for enrollment in a postsecondary educational institution in this state;".

(2) In Section 106.081(a), Health and Safety Code (page 6, line 14, house engrossment), insert the following after the period:
The center shall distribute reports relating to the progress of a student to the community sponsoring the student.

(3) In Section 106.081, Health and Safety Code (page 6, lines 19-23, house engrossment), strike Subsection (c) and substitute the following:

(c) A postsecondary educational institution shall provide to the executive committee a copy of the academic transcript of each student for whom the institution has received a release that complies with state and federal open records laws and that authorizes the provision of the transcript.

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

On motion of Senator Carriker and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 2241 ON THIRD READING

Senator Carriker moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 2241** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

COMMITTEE SUBSTITUTE HOUSE BILL 431 ON SECOND READING

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

C.S.H.B. 431, Relating to the regulation of viatical settlements by the State Board of Insurance.

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

COMMITTEE SUBSTITUTE HOUSE BILL 431 ON THIRD READING

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 431** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

SENATE BILL 954 WITH HOUSE AMENDMENTS

Senator Brown called **S.B. 954** from the President's table for consideration of the House amendments to the bill.

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

Floor Amendment No. 1

Amend **S.B. 954** as follows:

On page 1, line 17, delete the words, "Court Reporters Certification Board", and in lieu thereof, insert the following:
"National Court Reporters Association's Board of Approved Student Education and approval from the Texas Court Reporters Certification Board of the school's entrance requirements and qualifying testing procedures for eligibility to take the Texas certified shorthand reporter examination."

On page 4, line 7, between the words "approval" and "from", insert the following:
"of the school's entrance requirements and qualifying testing procedures for eligibility to take the Texas certified shorthand reporter examination"

On page 4, line 15, delete the wording "(4) approve curriculum for court reporter proprietary schools as provided by Section 32.33, Education Code", and in lieu thereof, insert the following:

"(4) approve the entrance requirements and qualifying testing procedures for eligibility to take the Texas certified shorthand reporter examination utilized by all court reporter training programs as provided by Sections 32.33 and 61.051, Education Code."

On page 4, lines 17, 18, and 19, Section 3(b)(5), delete all wording.

Amendment No. 2

Amend **S.B. 954** by deleting the period on line 12 of page 4 and adding the following:
"<u>, the National Court Reporters Association, and any other nationally recognized accreditation organization for court reporter training.</u>"

The amendments were read.

Senator Brown 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. 954** 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 Brown, Chair; Shapiro, Shelley, Sibley, and Zaffirini.

CONFERENCE COMMITTEE ON HOUSE BILL 977

Senator Turner 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. 977** 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. 977** 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 Turner, Chair; Sims, Sibley, Montford, and Carriker.

SENATE RULE 7.21 SUSPENDED
(Printing Rule)

On motion of Senator Armbrister and by unanimous consent, Senate Rule 7.21 was suspended as it relates to the printing of the House amendments to **S.B. 1477.**

SENATE BILL 1477 WITH HOUSE AMENDMENTS

Senator Armbrister called **S.B. 1477** 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 No. 1

Amend **S.B. 1477** by striking all below the enacting clause and substituting the following:

ARTICLE 1

SECTION 1.01. FINDINGS AND DECLARATION OF POLICY. The legislature finds that the Edwards Aquifer is a unique and complex hydrological system, with diverse economic and social interests dependent on the aquifer for water supply. In keeping with that finding, the Edwards Aquifer is declared to be a distinctive natural resource in this state, a unique aquifer, and not an underground stream. To sustain these diverse interests and that natural resource, a special regional management district is required for the effective management of the resource to protect terrestrial and aquatic life; domestic, livestock, and municipal water supplies; the operation of industries; agriculture; and the economic development of the state. All reasonable measures shall be taken to conserve water and protect water quality.

SECTION 1.02. CREATION. (a) A conservation and reclamation district, to be known as the Edwards Aquifer Authority, is created in all or part of Atascosa, Bexar, Caldwell, Comal, Guadalupe, Hays, Medina, and Uvalde counties. A confirmation election is not necessary. The authority is a governmental agency and a body politic and corporate.

(b) The authority is created under and is essential to accomplish the purposes of Article XVI, Section 59, of the Texas Constitution.

SECTION 1.03. DEFINITIONS. In this article:

(1) "Aquifer" means the Edwards Aquifer, which is that portion of an arcuate belt of porous, water-bearing, predominately carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos Springs from underground flow to the Rio Grande Basin, through Uvalde, Medina, Atascosa, Bexar, Guadalupe, and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

(2) "Augmentation" means an act or process to increase the amount of water available for use or springflow.

(3) "Authority" means the Edwards Aquifer Authority.

(4) "Authority board" means the board of directors of the authority.

(5) "Beneficial use" means the use of water for a lawful purpose.

(6) "Commission" means the Texas Natural Resource Conservation Commission.

(7) "Conservation" means any measure that would increase water use efficiency.

(8) "Diversion" means the removal of state water from a watercourse or impoundment.

(9) "Domestic or livestock use" means use of water for:

(A) drinking, washing, or culinary purposes;

(B) irrigation of a family garden or orchard the produce of which is for household consumption only; or

(C) watering of animals.

(10) "Existing user" means a person who has withdrawn and beneficially used underground water from the aquifer on or before June 1, 1993, or who purchases water for the provision of potable water to public utility customers from a person who has withdrawn and beneficially used underground water from the aquifer on or before June 1, 1993.

(11) "Industrial use" means the use of water for or in connection with commercial or industrial activities, including manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt, and cement, commercial uses of water for tourism, entertainment, and hotel or motel lodging, generation of power other than hydroelectric, and other business activities.

(12) "Irrigation use" means the use of water for the irrigation of pastures and commercial crops, including orchards and landscapes and establishing cover crops.

(13) "Livestock" means animals collected or raised for pleasure, recreational use, or commercial use.

(14) "Municipal use" means the use of water in, or outside of, a municipality and its environs whether supplied by a person, privately owned utility, political subdivision, or other entity, including the use of treated effluent for certain purposes specified as follows. The term includes:

(A) the use of water for domestic use, the watering of lawns and family gardens, fighting fires, sprinkling streets, flushing sewers and drains, water parks and parkways, and recreation, including public and private swimming pools;

(B) the use of water in industrial and commercial enterprises supplied by a municipal distribution system without special construction to meet its demands; and

(C) the application of treated effluent on land under a permit issued under Chapter 26, Water Code, if:

(i) the primary purpose of the application is the treatment or necessary disposal of the effluent;

(ii) the application site is a park, parkway, golf course, or other landscaped area within the authority's boundaries; or

(iii) the effluent applied to the site is generated within an area for which the commission has adopted a rule that prohibits the discharge of the effluent.

(15) "Order" means any written directive carrying out the powers and duties of the authority under this article.

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

(17) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of any water in the boundaries of the authority, or the contamination of any water in the boundaries of the authority, that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, property, or public health, safety, or welfare or that impairs the usefulness of the public enjoyment of the water for any lawful purpose.

(18) "Recharge" means increasing the supply of water to the aquifer by naturally occurring channels or artificial means.

(19) "Reuse" means use of water after the water is used for the original purpose of use.

(20) "Underground water" has the meaning assigned by Section 52.001, Water Code.

(21) "Well" means a bored, drilled, or driven shaft or an artificial opening in the ground able or intended to produce water that is made by digging, jetting, or some other method where the depth of the shaft or opening is greater than its largest surface dimension, but does not include a surface pit, surface excavation, or natural depression.

(22) "Well J-17" means state well number AY-68-37-203 located in Bexar County.

(23) "Well J-27" means state well number YP-69-50-302 located in Uvalde County.

(24) "Withdrawal" means taking water from the aquifer by or through man-made facilities.

SECTION 1.04. BOUNDARIES. The authority includes the territory contained within the following area:

(1) all of the areas of Bexar, Medina, and Uvalde counties;

(2) all of the area of Comal County, except that portion of the county that lies North of the North line through the county of Subdivision No. 1 of the Underground Water Reservoir in the Edwards Limestone, Balcones escarpment area, as defined by the order of the Board of Water Engineers dated January 10, 1957;

(3) the part of Caldwell County beginning with the intersection of Hays County Road 266 and the San Marcos River;

THENCE southeast along the San Marcos River to the point of intersection of Caldwell, Guadalupe, and Gonzales counties;

THENCE southeast along the Caldwell-Gonzales County line to its intersection with U.S. Highway 183;

THENCE north along U.S. Highway 183 to its intersection with State Highway 21;

THENCE southwest along State Highway 21 to its intersection with Hays County Road 266;

THENCE southwest along Hays County Road 266 to the place of beginning;

(4) the part of Hays County beginning on the northwest line of the R. B. Moore Survey, Abstract 412, in Comal County where it crosses the Comal County-Hays County line northeast along the northwest line of said Survey to the northeast corner of said Survey in Hays County, Texas;

THENCE southeast in Hays County, Texas across the Jas. Deloach Survey, Abstract 878, to the most westerly northwest corner of the Presidio Irrigation Co. Survey, Abstract 583;

THENCE northeast along the northwest line of said Survey to its most northerly northwest corner;

THENCE continuing in the same line across the R.S. Clayton Survey 2, Block 742, to the west line of the H. & G. N. RR. Co. Survey 1, Abstract 668;

THENCE north along the west line of said Survey to its northwest corner;

THENCE east along the north line of said Survey to its northeast corner;

THENCE northeast across the David Wilson Survey 83, Abstract 476, to the southeast corner of the F. W. Robertson Survey 71, Abstract 385;

THENCE north along the east line of said Survey to the southwest corner of the Benjamin Weed Survey 72, Abstract 483;

THENCE east along the south line of said Survey to its southeast corner;

THENCE northeast across the William Gray Survey 73, Abstract 92, and the Murray Bailey Survey 75, Abstract 42, to the southwest corner of the D.Holderman Survey 33, Abstract 225;

THENCE north along the west line of said Survey to its northwest corner;

THENCE continuing in the same line to the north line of the Day Land & Cattle Co. Survey 672;

THENCE west along said north line of said Survey to its northwest corner, which is in the east line of the Jesse Williams Survey 4 to the northeast corner of said Survey;

THENCE west along the north line of said Survey to the Southwest corner of the Amos Singleton Survey 106, Abstract 410;

THENCE north along the west lines of said Amos Singleton Survey 106 and the Watkins Nobles Survey 107, Abstract 346, to the northwest corner of said Watkins Nobles Survey 107;

THENCE east along the north line of said Survey to the southwest corner of the Jesusa Perez Survey 14, Abstract 363;

THENCE north along the west line of said Jesusa Perez Survey 14 to its northwest corner;

THENCE east along the north line of said Survey to its northeast corner;

THENCE, south along the east line of said Survey for a distance of approximately 10,000 feet to its intersection with Ranch Road 150;

THENCE, east by southeast along Ranch Road 150 approximately 24,500 feet to its intersection with the southern boundary line of the Andrew Dunn Survey 9, Abstract 4;

THENCE, east along the south line of said survey as it extends and becomes the southern boundary line of the Morton M. McCarver Survey 4, Abstract 10, for a distance of approximately 7,000 feet to its intersection with Ranch Road 2770;

THENCE, south on Ranch Road 2770 for a distance of approximately 400 feet to its intersection with Farm-to-Market Road 171;

THENCE, east along Farm-to-Market Road 171 for a distance of approximately 10,500 feet to its intersection with Farm-to-Market Road 25;

THENCE, north by northeast along Farm-to-Market Road 25 for a distance of approximately 3,100 feet to its intersection with Farm-to-Market Road 131;

THENCE, east by southeast along Farm-to-Market Road 131 for a distance of approximately 3,000 feet to its intersection with the east line of the Thomas G. Allen Survey, Abstract 26;

THENCE south along the east line of said Thomas G. Allen Survey to the most northerly northwest corner of the Elisha Pruett Survey 23, Abstract 376;

THENCE southwest along a west line of said Elisha Pruett Survey 23 to the west corner of said Survey;

THENCE southeast along the southwest line of said Survey to the north corner of the John Stewart Survey, Abstract 14;

THENCE southwest along the northwest line of said John Stewart Survey to its west corner;

THENCE continuing in the same line to the most northerly southwest line of the John Jones Survey, Abstract 263;

THENCE southeast along said southwest line to an interior corner of said John Jones Survey;

THENCE southwest along the most southerly northwest line of said Survey to the southwest corner of said Survey;

THENCE southeast along the south line of said Survey to the north corner of the James W. Williams Survey 11, Abstract 473;

THENCE southwest along the northwest line of said James W. Williams Survey 11 to its west corner;

THENCE southeast along the southwest line of said Survey to the north right-of-way line of the I. & G. N. RR.;

THENCE southwest along said right-of-way of said I. & G. N. RR. to the Hays County-Comal County line;

THENCE south along said county line to the northwest line of the R. B. Moore Survey, Abstract 412, in Hays County where it crosses the Hays County-Comal County line;

(5) all of the territory of Hays County contained within the following described area:

Beginning on the most southern point of Hays County at the intersection of Hays, Comal, and Guadalupe Counties; then continuing in a northeasterly direction along the Hays-Guadalupe county line to its intersection with the Hays-Caldwell county line; then continuing along the Hays-Caldwell county line to an intersection with Farm-to-Market Road 150; then continuing in a northwesterly direction along Farm-to-Market Road 150 to the intersection with the existing southern boundary of the part of Hays County described in Subdivision (4) of this section; then continuing in a southwesterly direction along the existing southern boundary of the part of Hays County described in Subdivision (4) of this section to the intersection with the Hays-Comal county line; then continuing in a southerly direction along the Hays-Comal county line to the point of beginning;

(6) the part of Guadalupe County beginning at the Guadalupe County-Caldwell County-Hays County line at the San Marcos River in the northeast corner of Guadalupe County, Texas.

THENCE southwest along the Guadalupe County-Hays County line to the intersect of the Guadalupe County-Hays County-Comal County line.

THENCE southwest along the Guadalupe County-Comal County line to the intersect of the Guadalupe County-Comal County-Bexar County intersect at the Cibolo creek.

THENCE south along the Guadalupe County-Bexar County line along the Cibolo creek to the intersect of the Guadalupe County-Bexar County-Wilson County line.

THENCE south along the Guadalupe County-Wilson County line along the Cibolo creek to the intersect and crossing of Guadalupe County Road 417.

THENCE east along Guadalupe County Road 417 to the intersect of Guadalupe County Road 417 and Guadalupe County Road 412.

THENCE northeast along Guadalupe County Road 412 to the intersect of Guadalupe County Road 412 and Guadalupe County Road 411 A.

THENCE east along Guadalupe County Road 411 A to the intersect of Guadalupe County Road 411 A and Farm-to-Market road number 725.

THENCE north along Farm-to-Market Road 725 to the intersect of Farm-to-Market Road 725 and Interstate Highway 10.

THENCE east along Interstate Highway 10 to the intersect of Interstate Highway 10 and State Highway 90.

THENCE east along State Highway 90 to the Guadalupe County-Caldwell County line at the San Marcos river.

THENCE northwest along the Guadalupe County-Caldwell County line along the San Marcos river to the place of beginning; and

(7) the part of Atascosa County beginning on the north line of the Robt. C. Rogers Survey, at the Bexar County-Atascosa County line, to its northwest corner, which is the northeast corner of the F. Brockinzen Survey, Abstract 86;

THENCE south along the east line of said Survey passing through its southeast corner and continuing south along the east line of the F. Brockinzen Survey, Abstract 90, to its southeast corner;

THENCE west along the south line of said survey to its southwest corner;

THENCE north along the west line of said F. Brockinzen Survey to the southeast corner of the B. Bonngartner Survey, Abstract 87;

THENCE west along the south line of said B. Bonngartner Survey passing through its southwest corner and continuing along the south line of the J. B. Goettlemann Survey, Abstract 309, to the Atascosa County-Medina County line;

THENCE north along the Atascosa County-Medina County line to the Bexar County line;

THENCE east along the Atascosa County-Bexar County Line to the place of beginning.

SECTION 1.05. FINDINGS RELATING TO BOUNDARIES. The legislature finds that the boundaries and field notes of the authority form a closure. A mistake in the field notes or in copying the field notes in the legislative process does not affect the organization, existence, or validity of the district or the legality or operation of the district or its governing body.

SECTION 1.06. FINDING OF BENEFIT. (a) The legislature finds that the water in the unique underground system of water-bearing formations known as the Edwards-Balcones Fault Zone Aquifer has a hydrologic interrelationship to the Guadalupe, San Antonio, San Marcos, Comal, Frio, and Nueces river basins, is the primary source of water for the residents of the region, and is vital to the general economy and welfare of this state. The legislature finds that it is necessary, appropriate, and a benefit to the welfare of this state to provide for the management of the aquifer through the application of management mechanisms consistent with our legal system and appropriate to the aquifer system.

(b) The legislature further finds that the state will be benefitted by exercise of the powers of the authority and by the works and projects that are to be accomplished by the authority under powers conferred by Article XVI, Section 59, of the Texas Constitution. The authority is created to serve a public use and benefit.

SECTION 1.07. OWNERSHIP OF UNDERGROUND WATER. The ownership and rights of the owner of the land and the owner's lessees and assigns, including holders of recorded liens or other security interests in the land, in underground water and the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use are recognized, and this Act may not be construed as depriving or divesting the owner or the

owner's lessees and assigns, including holders of recorded liens or other security interests in the land, of these ownership rights or as impairing the contract rights of any person who purchases water for the provision of potable water to the public or for the resale of potable water to the public for any use, subject to the rules adopted by the authority or a district exercising the powers provided by Chapter 52, Water Code. The legislature intends that just compensation be paid if implementation of this article causes a taking of private property or the impairment of a contract in contravention of the Texas or federal constitution.

SECTION 1.08. GENERAL POWERS. (a) The authority has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of this state, including Chapters 50, 51, and 52, Water Code, applicable to an authority created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article regarding the area of the authority's jurisdiction.

(b) The authority's powers apply only to underground water within the aquifer.

(c) The authority, local governments with pollution control powers provided under Subchapters D and E, Chapter 26, Water Code, and state agencies, in order to prevent pollution and enforce water quality standards in the counties included within the authority's boundaries and within a buffer zone that includes all of the area less than five miles outside of those counties, shall apply pollution control regulations equally and uniformly throughout the area within the counties and the buffer zone.

SECTION 1.09. BOARD OF DIRECTORS. (a) The authority is governed by a board of nine directors.

(b) The authority board consists of:

(1) a member appointed by the South Central Texas Water Council created by this Act;

(2) three residents of Bexar County, with two residents appointed by the governing body of the city of San Antonio and one resident appointed by the Commissioners Court of Bexar County to represent cities, communities, and agricultural interests in the county other than the city of San Antonio;

(3) one resident of Comal County or the city of New Braunfels appointed by the Commissioners Court of Comal County;

(4) one resident of Hays County appointed by the governing body of the city of San Marcos;

(5) one resident of Medina County appointed by the governing body of the Medina Underground Water Conservation District;

(6) one resident of Uvalde County appointed by the governing body of the Uvalde Underground Water Conservation District; and

(7) one person appointed in rotation to represent Atascosa, Caldwell, or Guadalupe County, with a resident of Atascosa County appointed by the governing body of the Evergreen Underground Water District, with the person appointed by the Evergreen Underground Water District serving the first term, followed by a person appointed by the Commissioners Court of Caldwell County to serve the second term,

followed by a person appointed by the Commissioners Court of Guadalupe County to serve the third term, and rotating in that order of appointment for subsequent terms.

(c) The Commissioners Court of Bexar County and the governing body of the city of San Antonio shall make appointments under Subsection (b) of this section that accurately reflect the ethnic composition of the population of Bexar County.

(d) The initial directors of the authority board shall draw lots to determine their terms. Four initial directors serve terms that expire June 1, 1995. Five initial directors serve terms that expire June 1, 1997. Subsequent directors shall be appointed to serve staggered four-year terms, the appropriate number of which expire June 1 of each odd-numbered year.

(e) At the initial meeting of the authority board, the members shall select one member to serve as presiding officer. The presiding officer serves a term set by rule of the authority board not to exceed four years. An act of the authority board is not valid unless adopted by the affirmative vote of a majority of the members of the authority board.

(f) An authority board member receives no compensation for service on the authority board but is entitled to reimbursement for actual and necessary expenses incurred in the performance of the member's duties.

(g) An authority board member shall hold office until a successor has been selected and approved and has qualified by taking the oath of office.

(h) If a vacancy on the authority board occurs, the governing body that appointed the vacating member shall appoint another person having the same qualifications required of the vacating member to serve the unexpired portion of the vacating member's term.

SECTION 1.10. REGIONAL SOUTH CENTRAL TEXAS WATER COUNCIL. (a) The South Central Texas Water Council shall advise all municipalities and water districts in its member counties on water rights and issues. The council consists of members appointed in accordance with Subsection (b) of this section and one member appointed by the commissioners court of each of the following counties:

(1) Atascosa;
(2) Bandera;
(3) Bexar;
(4) Caldwell;
(5) Calhoun;
(6) Comal;
(7) DeWitt;
(8) Edwards;
(9) Frio;
(10) Goliad;
(11) Gonzales;
(12) Guadalupe;
(13) Hays;
(14) Jackson;
(15) Karnes;
(16) Kinney;
(17) Medina;

(18) Nueces;
(19) Real;
(20) Refugio;
(21) San Patricio;
(22) Uvalde;
(23) Victoria; and
(24) Wilson.

(b) The governing body of each municipality that is in a county listed in Subsection (a) of this section and has a population of more than 50,000 may also appoint a member to the council.

(c) A council member must be a resident or qualified voter of a county all or part of which is included in the member's area of representation.

(d) The reimbursement of a council member for expenses is on the same terms as the reimbursement of authority board members. A council member is not entitled to compensation.

(e) A council member holds office until a successor is appointed.

(f) The authority shall send to each council member all the communications of the authority that are extended to authority board members. Council members may participate in authority board meetings to represent water concerns and assist in solutions to those concerns.

(g) The council by resolution may request the authority board to reconsider any action that is considered prejudicial to regional water interests. If the authority board review does not result in a resolution satisfactory to the council, the council by resolution adopted by a two-thirds vote may request the commission to review the action. The commission shall review the action when requested to do so and if the commission does not consent to the action of the authority the action is annulled.

(h) The council shall meet to organize and elect a presiding officer.

(i) The presiding officer of the council shall submit a report assessing the effectiveness of the authority to the Legislative Natural Resources Board, the commission, and the authority on or before March 31 of each even-numbered year. The report must assess the effect on downstream water rights as a result of the management of the aquifer, and any other matters considered pertinent by the council. The authority shall be guided by the report in managing the authority's affairs.

(j) The council's duties include:

(1) assisting the authority in developing the authority's demand management plan; and

(2) assisting the authority in implementing the demand management plan.

SECTION 1.11. GENERAL POWERS AND DUTIES OF AUTHORITY. (a) The authority shall adopt rules to implement this article and the powers granted under general law, including Chapters 51 and 52, Water Code. The authority may issue orders to enforce those rules.

(b) The authority may hold permits under state law or under the federal Endangered Species Act of 1973 (16 U.S.C. Section 1531 et seq.).

(c) The authority may contract with a person to construct, operate, own, finance, and maintain water supply facilities. Management fees or special fees may not be used for purchasing or operating these facilities. For the purpose of this subsection, "water supply facility" includes a dam, reservoir, treatment facility, transmission facility, or recharge project.

(d) The authority has the power of eminent domain. The authority may not acquire rights to underground water by the power of eminent domain.

(e) The authority 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).

SECTION 1.12. LEGISLATIVE OVERSIGHT. (a) The authority and the water districts within it are subject to a full legislative review of the effectiveness of their protection of endangered species and management of water resources in the region. The review shall be conducted by the Legislative Natural Resources Board and its initial report shall be made to the 74th Legislature during its regular session. The board shall recommend the conditions for continuation of the stewardship of the authority or the transfer of the authority's duties to the commission.

(b) The authority is subject to review under Chapter 325, Government Code (Texas Sunset Act).

(c) Unless the authority is continued by an act of the legislature, the authority is abolished on September 1, 2005, and the authority's powers, functions, and duties are transferred to the commission.

SECTION 1.13. REUSE AUTHORIZED. (a) Any regulation of the withdrawal of water from the aquifer must allow for credit to be given for certified reuse of the water. For regulatory credit, the authority or a local underground water conservation district must certify:

(1) the lawful use and reuse of aquifer water;

(2) the amount of aquifer water to be used; and

(3) the amount of aquifer withdrawals replaced by reuse.

(b) Water withdrawn from the aquifer and returned to a water course by a user under a wastewater discharge permit is appropriated to the discharging user for reuse to the extent that:

(1) reuse is certified by the authority or a local underground water conservation district;

(2) reuse replaces water that would otherwise have been withdrawn from the aquifer; and

(3) reuse is for municipal, industrial, or domestic or livestock purposes.

SECTION 1.14. WITHDRAWALS. (a) Management of water use from the aquifer shall be made in accordance with this Act to:

(1) protect species that are designated as threatened or endangered under applicable federal law along with their critical habitat;

(2) protect the quality of water entering the aquifer;

(3) protect the water quality of discharges to the surface streams to which the aquifer provides springflow;

(4) maximize the water available for withdrawal from the aquifer; and

(5) achieve water conservation.

(b) The authority may not allow withdrawals from the aquifer through wells drilled after June 1, 1993, except additional water as provided by Subsection (e) and then on an interruptible basis.

(c) Except as provided by Subsections (e), (f), and (i) of this section and Section 1.17 of this article, for the period ending December 31, 2007, the amount of withdrawals from the aquifer should not exceed 450,000 acre-feet of water for each calendar year.

(d) Except as provided by Subsections (e), (f), and (i) of this section and Section 1.17 of this article, beginning January 1, 2008, the amount of withdrawals from the aquifer should not exceed 400,000 acre-feet of water for each calendar year.

(e) If, through studies and implementation of water management strategies, including conservation, springflow augmentation, diversions downstream of the springs, reuse, supplemental recharge, conjunctive management of surface and subsurface water, and drought management plans, the authority determines that additional supplies are available from the aquifer or that the available supply is reduced, the authority, in consultation with appropriate state and federal agencies, may review and may increase or decrease the maximum amount of withdrawals provided by this section and set a different maximum amount of withdrawals.

(f) If the level of the aquifer is equal to or greater than 665 feet above mean sea level as measured at well J-17, the authority may authorize withdrawal from the San Antonio pool, on an interruptible basis, of additional amounts above the withdrawal limitations imposed in accordance with this section. If the level of the aquifer is equal to or greater than 865 feet at well J-27, the authority may authorize withdrawal from the Uvalde pool, on an interruptible basis, of additional amounts above the withdrawal limits imposed in accordance with this section. If the level of the aquifer is less than 665 feet but greater than 644 feet at well J-17, the authority may impose a reduction on withdrawals from the San Antonio pool of not more than 15 percent. If the level of the aquifer is less than 865 feet but greater than 840 feet at well J-27, the authority may impose a reduction on withdrawals from the Uvalde pool of not more than 15 percent. If the level of the aquifer is less than 644 feet at well J-17 or less than 840 feet at well J-27, the authority shall impose a reduction on withdrawals from the appropriate pool, proportionately among underground water users, as necessary to ensure that springflows are not affected during critical drought conditions.

(g) The authority by rule may define other pools within the aquifer, in accordance with hydrogeologic research, and may establish index wells for any pool to monitor the level of the aquifer to aid the regulation of withdrawals from the pools.

(h) The authority may, if it considers it necessary to reach the overall withdrawal goals provided by Subsections (c) and (d) of this section,

require water users to obtain a permit to construct a well or withdraw water from the aquifer. Each permit must specify the maximum rate and total volume of water that the water user may withdraw in a calendar year. If the authority issues a permit under this subsection, the permit must be for the withdrawal of an amount of water equal to the water user's maximum historical usage of water in a calendar year before September 1, 1993, or, if a water user does not have historical usage for an entire calendar year, an amount of water equal to the water user's estimated usage of water for a year as determined by the authority from the user's historical usage of water for that part of the calendar year. If a person who is, before September 1, 1993, an irrigation water user cannot establish by records the maximum historical usage of water before September 1, 1993, the permit must be for the withdrawal of an amount of water that is not less than two acre-feet of water a year for each acre of land the irrigation user has irrigated in any one calendar year before September 1, 1993. Any reductions in permitted water use ordered by the authority under this section shall be on a uniform and equal pro rata basis.

(i) To accomplish the purposes of this article, by June 1, 1994, the authority, through a management plan, shall implement and enforce water management practices, procedures, and methods to ensure that, not later than December 31, 2012, the continuous minimum springflows of the Comal Springs and the San Marcos Springs are maintained to protect endangered and threatened species to the extent required by federal law. The authority from time to time as appropriate may revise the practices, procedures, and methods. To meet this requirement, the authority may require:

(1) phased reductions in the amount of water that may be used or withdrawn by existing users or categories of other users; or

(2) implementation of alternative management practices, procedures, and methods.

(j) The authority shall prepare and implement a plan for reducing, by January 1, 2008, the targeted annual volume of water authorized to be withdrawn from the aquifer to 400,000 acre-feet a year or the adjusted amount determined under Subsection (e) of this section. The plan must be enforceable and must include water conservation and reuse measures and other water management measures designed to achieve the reduction levels or appropriate management of the resource.

SECTION 1.15. LOANS AND GRANTS. (a) Notwithstanding any other provision of law, the authority is eligible as a lender district to receive loans from the Texas Water Development Board under the agricultural water conservation bond program under Subchapter J, Chapter 17, Water Code.

(b) The authority may apply for, request, solicit, contract for, receive, and accept gifts, grants, and other assistance from any source for the purposes of this article.

(c) The authority may issue grants or make loans to finance the purchase or installation of equipment or facilities. If the authority issues a grant for a water conservation, reuse, or water management project, the

authority shall demonstrate a cost benefit equal to replacement cost of the water conserved or made available by the project.

SECTION 1.16. COMPREHENSIVE MANAGEMENT PLAN. (a) Consistent with Section 1.14 of this article, the authority shall develop, by September 1, 1995, and implement a comprehensive water management plan that includes conservation, future supply, and demand management plans. The authority may delegate the development of the plan under Section 1.33 of this article.

(b) The authority, in conjunction with the South Central Texas Water Council, the Texas Water Development Board, and underground water conservation districts within the authority's boundaries, shall develop a 20-year plan for providing alternative supplies of water to the region, with five-year goals and objectives, to be implemented by the authority and reviewed annually by the appropriate state agencies and the Legislative Natural Resources Board. The authority, council, Texas Water Development Board, and districts, in developing the plan, shall:

(1) thoroughly investigate all alternative technologies;

(2) investigate mechanisms for providing financial assistance for alternative supplies through the Texas Water Development Board; and

(3) perform a cost-benefit analysis and an environmental analysis.

SECTION 1.17. CRITICAL PERIOD MANAGEMENT PLAN. The authority shall prepare and coordinate implementation of a plan for critical period management on or before September 1, 1995. The mechanisms must:

(1) distinguish between discretionary use and nondiscretionary use;

(2) require reductions of all discretionary use to the maximum extent feasible;

(3) require utility pricing, to the maximum extent feasible, to limit discretionary use by the customers of water utilities; and

(4) require reduction of nondiscretionary use, to the extent further reductions are necessary, in the reverse order of the following water use preferences:

(A) municipal, domestic, and livestock;

(B) industrial and crop irrigation;

(C) residential landscape irrigation;

(D) recreational and pleasure; and

(E) other uses that are authorized by law.

SECTION 1.18. RESEARCH. (a) The authority shall assist the research on the technological feasibility of springflow enhancement and yield enhancement that is being conducted by the Edwards Underground Water District on September 1, 1993.

(b) The authority shall conduct research to:

(1) augment the springflow, enhance the recharge, and enhance the yield of the aquifer;

(2) monitor and protect water quality;

(3) manage water resources, including water conservation, water use and reuse, and drought management measures; and

(4) develop alternative supplies of water for users.

(c) Not later than September 1, 1995, the authority shall schedule demonstration projects for purposes of Subsection (b)(1) of this section.

(d) The authority may contract with other persons to conduct research.

SECTION 1.19. TAX; BONDS. (a) The authority may not levy a property tax.

(b) The authority may issue revenue bonds to finance the purchase of land or the purchase, construction, or installation of facilities or equipment. The authority may not allow for any person to construct, acquire, or own facilities for transporting groundwater out of Uvalde County or Medina County.

(c) Bonds issued by the authority are subject to review and approval of the attorney general and the commission. If the attorney general finds that the bonds have been authorized in accordance with the law, the attorney general shall approve them, and the comptroller of public accounts shall register the bonds. Following approval and registration, the bonds are incontestable and are binding obligations according to their terms.

(d) The authority board may organize proceeds of the bonds into funds and accounts and may invest the proceeds as the authority board determines is appropriate.

SECTION 1.20. FUNDING OF AUTHORITY. (a) The cost of reducing withdrawals must be borne:

(1) solely by users of the aquifer for reducing withdrawals from the level on the effective date of this article to 450,000 acre-feet a year, or the adjusted amount for the period ending December 31, 2007, determined under Section 1.14(e) of this article; and

(2) equally by aquifer users and downstream water rights holders from 450,000 acre-feet a year, or the adjusted amount for the period ending December 31, 2007, determined under Section 1.14(e) of this article, to 400,000 acre-feet a year, or the adjusted amount for the period beginning January 1, 2008, determined under Section 1.14(e) of this article.

(b) The authority shall assess equitable aquifer management fees based on aquifer use under the water management plan to finance its administrative expenses and programs authorized under this article. Each water district governed by Chapter 52, Water Code, that is within the authority's boundaries may contract with the authority to pay expenses of the authority through taxes in lieu of user fees to be paid by water users in the district. The contract must provide that the district will pay an amount equal to the amount that the water users in the district would have paid through user fees. The authority may not collect a total amount of fees and taxes that is more than is reasonably necessary for the administration of the authority.

(c) The authority shall assess special fees on all downstream water rights holders in a river basin affected by the management of the aquifer. Money derived from the fees may be used only to finance the retirement of water rights necessary to meet the targeted limits provided by Section 1.14 of this article.

(d) The amount of special fees assessed under Subsection (c) shall be determined in accordance with an agreement adopted by the South Central Texas Water Council and approved by the authority in accordance with

fees under the South Texas watermaster program. A downstream water rights holder shall pay fees assessed under Subsection (c) to the authority. A fee may not be assessed by the authority under Subsection (c) on contractual deliveries of water stored in Canyon Lake that may be diverted downstream of the San Marcos Springs or Canyon Dam. A person or entity making a contractual sale of water stored upstream of Canyon Dam may not establish a systemwide rate that requires purchasers of upstream-stored water to pay the special fee assessed under Subsection (c).

(e) In developing an equitable fee structure under this section, the authority may establish different fee rates on a per acre-foot basis for different types of use. The fees must be equitable between types of uses. The fee rate for agricultural use may not be more than the lesser of $2 or 20 percent of the fee rate for municipal use.

(f) The authority may impose a registration application fee not to exceed $10.

(g) Special fees collected under Subsection (c) of this section may not be used to finance a surface water supply reservoir project.

(h) The authority shall provide money as necessary, but not to exceed five percent of the money collected under Subsection (d) of this section, to finance the South Central Texas Water Council's administrative expenses and programs authorized under this article.

SECTION 1.21. RIVER DIVERSIONS. (a) The authority may without further permission divert water from the Guadalupe River from a diversion point on the river downstream of the point where the river emerges as a spring to provide water for the creation or maintenance of artificial habitat for endangered or threatened species, augmentation, supplemental aquifer recharge, or other uses the authority determines to be necessary if:

(1) the diversion is made to increase the yield of the aquifer; and

(2) the diversion does not impair senior water rights or vested riparian rights.

(b) The commission shall recognize the volume of water diverted under this section and may not grant a right to appropriate water that is senior to the right granted by this section.

SECTION 1.22. MEASURING DEVICES. (a) The owner of a nonexempt well that withdraws water from the aquifer shall install and maintain a measuring device approved by the authority designed to indicate the flow rate and cumulative amount of water withdrawn by that well. This requirement may be waived by the authority on written request by a well owner to use an alternative method of determining the amount of water withdrawn.

(b) The authority is responsible for the costs of purchasing, installing, and maintaining measuring devices, if required, for an irrigation well in existence on September 1, 1993.

SECTION 1.23. REPORTS. Not later than March 1 of each year, and on a form prescribed by the authority, each owner of a metered well shall file with the authority a written report of water use for the preceding calendar year.

SECTION 1.24. WELL METER EXEMPTION; EXEMPT WELL REGISTRATION. (a) A well that produces 25,000 gallons of water a day or less for domestic or livestock use is exempt from metering requirements.

(b) Exempt wells must register with the authority or with an underground water conservation district in which the well is located.

(c) A well within or serving a subdivision requiring platting does not qualify for the exemption under Subsection (a) of this section.

SECTION 1.25. TRANSFER OF WATER. (a) Water withdrawn from the aquifer must be used within the boundaries of the authority.

(b) The authority by rule may develop procedures to quantify for a well the annual quantity of water historically used from the well. The owner of a well may lease not more than 50 percent of the annual quantity of water used from the well as determined by the authority. The owner of a well must apply to the authority for a determination of historical use in accordance with rules of the authority and on forms prescribed by the authority before the owner leases water from the well.

(c) An underground water conservation district may lease irrigable land above the aquifer for the production of water.

SECTION 1.26. PROHIBITION. A person may not withdraw water from the aquifer except as authorized by this article.

SECTION 1.27. ENFORCEMENT. The authority may issue orders to enforce the terms and conditions of enforceable plans adopted under this article.

SECTION 1.28. ADMINISTRATIVE PENALTY. (a) The authority may assess an administrative penalty against a person who violates this article or order issued under this article in an amount of not less than $100 or more than $1,000 for each violation and for each day of a continuing violation.

(b) In determining the amount of the penalty, the authority shall consider:

(1) the history of previous violations;

(2) the amount necessary to deter future violations;

(3) efforts to correct the violation;

(4) enforcement costs relating to the violation; and

(5) any other matters that justice may require.

(c) If after an examination of the facts the authority concludes that the person did commit a violation, the authority may issue a preliminary report stating the facts on which it based its conclusion, recommending that an administrative penalty under this section be imposed, and recommending the amount of the proposed penalty.

(d) The authority shall give written notice of the report to the person charged with committing the violation. The notice must include a brief summary of the facts, a statement of the amount of the recommended penalty, and a statement of the person's right to an informal review of the occurrence of the violation, the amount of the penalty, or both.

(e) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice, the person may either give the authority written consent to the report, including the recommended penalty, or make a written request for an informal review by the authority.

(f) If the person charged with committing the violation consents to the penalty recommended by the authority or fails timely to request an

informal review, the authority shall assess the penalty. The authority shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(g) If the person charged with committing a violation requests an informal review as provided by Subsection (e) of this section, the authority shall conduct the review. The authority shall give the person written notice of the results of the review.

(h) Not later than the 10th day after the date on which the person charged with committing the violation receives the notice prescribed by Subsection (g) of this section, the person may make to the authority a written request for a hearing.

(i) If, after informal review, a person who has been ordered to pay a penalty fails to request a formal hearing in a timely manner, the authority shall assess the penalty. The authority shall give the person written notice of its action. The person shall pay the penalty not later than the 30th day after the date on which the person receives the notice.

(j) Within 30 days after the date the authority's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the authority's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the authority by certified mail.

(l) If the authority receives a copy of an affidavit under Subsection (k)(2) of this section, it may file, with the court within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that

the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the authority may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the authority:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes); and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the authority.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

SECTION 1.29. CIVIL PENALTY. (a) The authority may file a civil action in state district court for a civil penalty for a violation of this article or a rule adopted or order issued under this article.

(b) The authority may recover a civil penalty of not less than $100 or more than $10,000 for each violation and for each day of violation and attorney fees.

(c) A civil penalty or attorney fees collected by the authority under this section shall be paid to the authority.

SECTION 1.30. INJUNCTION BY AUTHORITY. The authority may file a civil suit in a state district court for an injunction to enforce this article. The authority may recover reasonable attorney's fees in a suit under this section.

SECTION 1.31. EDWARDS UNDERGROUND WATER DISTRICT. Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes), is amended by adding Section 1A to read as follows:

Sec. 1A. The Edwards Underground Water District has the powers provided by Chapter 52, Water Code, for an underground water conservation district.

SECTION 1.32. Section 6(a), Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) All elections within the District shall be conducted in accordance with procedures provided by resolutions adopted by the Board of Directors or as set forth in the bylaws and the Election Code, and the results of all elections shall be canvassed by the Board of Directors of the District at the regular or special meeting following each election. All elections shall be held on the first Saturday in May [~~third Saturday in January~~] of each odd-numbered year and at the polling places designated by the Board of Directors of the District. The terms of office of Directors elected at each election [~~shall~~] begin on the date of the first meeting of the Board [~~March 1~~] following their election.

SECTION 1.33. EFFECT ON OTHER DISTRICTS. (a) An underground water conservation district other than the authority may manage and control water that is a part of the aquifer after the effective date of this article as provided by this section. This article does not affect a water reclamation or conservation district's management of any aquifer other than the Edwards Aquifer as described in this Act.

(b) An underground water conservation district other than the authority may manage and control water that is a part of the aquifer to the extent that those management activities do not conflict with this article.

(c) The authority shall delegate all or part of its powers or duties to an underground water conservation district on the district's request if:

(1) the district has statutory powers necessary for full enforcement of the rules and orders to be delegated; and

(2) the district has implemented all rules and policies necessary to fully implement the programs to be delegated.

(d) If the authority determines that a district has failed to enforce or implement any of the rules or orders delegated under this section, the authority immediately shall provide to the district notice that sets forth the reasons for its determination and the actions that the district must take to retain the delegated authority. Failure by the district to take actions within the time specified by the authority shall result in the immediate revocation of the delegation to the district.

ARTICLE 2

SECTION 2.01. DEFINITION. In this article, "district" means the Uvalde County Underground Water Conservation District.

SECTION 2.02. VALIDATION. The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are validated in all respects. The creation of the district and all resolutions, orders, and other acts or attempted acts of the board of directors of the district are valid as though they originally had been legally authorized or accomplished.

SECTION 2.03. BOUNDARIES. Pursuant to the petition to the Commissioners Court of Uvalde County, Texas, requesting the creation of

the district, the district includes the territory contained within the boundaries of Uvalde County.

SECTION 2.04. FINDING OF BENEFIT. All the land and other property included within the boundaries of the district will be benefitted by the validation of the district.

SECTION 2.05. POWERS. (a) The district has all of the rights, powers, privileges, authority, functions, and duties provided by the general law of the state, including Chapters 50 and 52, Water Code, applicable to underground water conservation districts created under Article XVI, Section 59, of the Texas Constitution. This article prevails over any provision of general law that is in conflict or inconsistent with this article.

(b) The district may develop and implement a drought response plan, with reasonable rules, using water levels as observed in the Uvalde Index Well YP-69-50-302.

(c) The rights, powers, privileges, authority, functions, and duties of the district are subject to the continuing right of supervision of the state to be exercised by and through the Texas Water Commission.

SECTION 2.06. LEVY OF TAXES. The levy and collection of taxes by the district is governed by Subchapter H, Chapter 52, Water Code, except that the district may not levy a maintenance and operating tax at a rate that exceeds two cents per $100 assessed valuation unless an election held in the district authorizes a higher rate.

SECTION 2.07. PENDING LITIGATION. This article does not apply to or affect litigation pending on the effective date of this article in any court of competent jurisdiction in this state to which the district is a party.

ARTICLE 3

SECTION 3.01. LEGISLATIVE OVERSIGHT. Chapter 3, Acts of the 72nd Legislature, 1st Called Session, 1991, is amended by adding Section 10.06 to read as follows:

Sec. 10.06. Notwithstanding Section 10.04 of this article the board shall continually oversee and review:

(1) the activities of the Edwards Aquifer Authority and the implementation of that authority's enabling legislation;

(2) the activities of the South Central Texas Water Council;

(3) compliance with federal law relating to threatened or endangered species related to management of underground or surface water in the Edwards Aquifer region;

(4) water pollution control activities in the Edwards Aquifer region; and

(5) the activities of soil and water conservation districts and river authorities in the Edwards Aquifer district that affect the management of the aquifer.

SECTION 3.02. CANCELLATION PROCEEDINGS. The Texas Natural Resource Conservation Commission shall initiate proceedings under Subchapter E, Chapter 11, Water Code, in regard to permits, certified filings, and certificates of adjudication in the Guadalupe-Blanco River Basin, shall determine the gains and losses of water and the consumptive and nonconsumptive use of water in that basin for the 20 years preceding the effective date of this Act, and shall report to the authority the amount

of water unappropriated. The authority may enter into a contract for the unappropriated water or apply for a permit with the commission for the unappropriated water.

SECTION 3.03. RIVER AUTHORITIES. The Guadalupe-Blanco River Authority and the San Antonio River Authority are abolished on September 1, 1995, unless continued by law.

ARTICLE 4

SECTION 4.01. FINDINGS RELATED TO PROCEDURAL REQUIREMENTS. (a) The proper and legal notice of the intention to introduce this Act, setting forth the general substance of this Act, has been published as provided by law, and the notice and a copy of this Act have been furnished to all persons, agencies, officials, or entities to which they are required to be furnished by the constitution and other laws of this state, including the governor, who has submitted the notice and Act to the Texas Water Commission.

(b) The Texas Water Commission has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(c) All requirements of the constitution and laws of this state and the rules and procedures of the legislature with respect to the notice, introduction, and passage of this Act are fulfilled and accomplished.

SECTION 4.02. EFFECTIVE DATES. This Act takes effect September 1, 1993, except that Section 1.26 of Article 1 takes effect March 1, 1994.

SECTION 4.03. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Amendment No. 2

Amend the Lewis Amendment to **S.B. 1477** in Section 108(c) (page 14, line 20, of the amendment) after the period, by inserting the following sentence: "The buffer zone does not include the territory within a water management district created under Chapter 654, Acts of the 71st Legislature, Regular Session, 1989."

Amendment No. 3

Amend the proposed floor substitute to **S.B. 1477** as follows:

(I) On page 15, strike lines 14 through 23 and substitute the following:

"(7) one person appointed in rotation to represent Atascosa, Guadalupe, or Caldwell County, with a resident of Atascosa County appointed by the governing body of the Evergreen Underground Water District, with the person appointed by the Evergreen Underground Water District serving the first term, followed by a person appointed by the Commissioners Court of Guadalupe County to serve the second term, followed by a person appointed by the Commissioners Court of Caldwell County to serve the third term, and rotating in that order of appointment for subsequent terms."

Floor Amendment No. 4

Amend Section 1.11 of the Lewis amendment to **S.B. 1477** as follows:

(1) Add a new Subsection (d) to read:

(d) The authority shall make a good faith effort to award to minority-owned and women-owned businesses contracts issued under the powers and duties granted under this section in the amount of 20 percent of the total amount of those contracts.

(A) Not later than October 31 of every even-numbered year, the authority shall file with the governor and each house of the legislature a written report containing the following information for the previous two years for all businesses, for minority-owned and women-owned businesses classified by minority group and within each minority group classification, by gender:

(1) the total number of contracts issued by the authority;

(2) the total dollar amount of those contracts;

(3) the total number of businesses submitting bids or proposals relating to such contracts and to the purpose of such contracts.

(B) In this section:

(1) "Minority-owned business" means a business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations.

(2) "Minority group" includes:

(i) African Americans

(ii) American Indians

(iii) Asian Americans; and

(iv) Mexican Americans and other Americans of Hispanic origin.

(3) "Women-owned business" means a business entity at least 51 percent of which is owned by women, or in the case of a corporation, at least 51 percent of the shares of which are owned by women, and that is managed and controlled by women in its daily operations.

(2) Renumber the following subsections accordingly.

Amendment No. 5

Amend **S.B. 1477** on page 27 after line 27 by adding the following appropriately numbered section and renumber the sections accordingly:

SECTION ____. AUGMENTATION. (a) The authority shall research, develop, and implement augmentation plans and facilities to maintain springflow or to replace springflow downstream from spring openings.

(b) It is the intent of the legislature to mandate the construction and demonstration of various methods of augmenting streamflows and springflows in the areas of and near San Marcos Springs and Comal Spring to maintain endangered species under all conditions, including a repeat of the drought of record. The authority shall prepare and present by actual demonstration projects the strongest possible evidence to federal and state

legislative, judicial, and administrative bodies and to the public of how endangered species can be maintained and protected with augmentation and recharge waters.

(c) The authority or a member district acting under Subsection (d) of this section may apply for a federal or state permit required for the construction or demonstration of augmentation methods.

(d) If the authority does not contract to construct an augmentation project by September 1, 1995, a member district may contract to construct augmentation projects inside the district's boundaries. A member district may pay for augmentation projects from available funds or from the proceeds of revenue bonds secured by user fees and issued for that purpose.

Floor Amendment No. 6

Amend floor substitute for **S.B. 1477**, Section 1.20, Subsection (c), page 29, on line 18 by adding the following after the word "aquifer": ", except for the Nueces River Basin."

Amendment No. 7

Amend the Lewis amendment to **S.B. 1477** in Article 1 as follows:

(1) In SECTION 1.32 (on page 38, line 3), between "1.32." and "Section 6(a)" insert "EDWARDS UNDERGROUND WATER DISTRICT ELECTION DATE.".

(2) Insert SECTION 1.321 (on page 38, between lines 16 and 17) to read as follows:

SECTION 1.321. EDWARDS UNDERGROUND WATER DISTRICT TRANSITION BOARD ELECTION. (a) The board of directors of the Edwards Underground Water District shall call an election of a new board of directors to be held on the first uniform election date after the effective date of this article. The election must be held as provided by Sections 5 and 6, Chapter 99, Acts of the 56th Legislature, Regular Session, 1959 (Article 8280-219, Vernon's Texas Civil Statutes), and the Election Code.

(b) The terms of the board of directors of the Edwards Underground Water District who are serving on September 1, 1993 expire on the date 10 of the newly elected directors are elected and have qualified.

(c) When all of the directors elected as provided by this Section have qualified, the directors shall draw lots to determine their terms so that 6 directors' terms expire the first Saturday in May, 1995, 6 directors' terms expire the first Saturday in May, 1997, and 6 directors' terms expire the first Saturday in May, 1999.

Amendment No. 8

Amend the Lewis amendment to **S.B. 1477** in Article 1, by adding a new Section 1.34 to the bill (page 39, between lines 15 and 16 of the amendment) to read as follows:

SECTION 1.34. COOPERATIVE CONTRACTS FOR ARTIFICIAL RECHARGE. (a) The authority may contract with any political subdivision of the state under Chapter 791, Government Code to provide for artificial recharge of the aquifer, through injection wells or with surface

water subject to the control of the political subdivision, for the subsequent retrieval of the water by the political subdivision or its authorized assignees for beneficial use within the authority.

(b) The authority may not unreasonably deny a request to enter into a cooperative contract under this section if the political subdivision agrees to:

(1) file with the authority records of the injection or artificial recharge of the aquifer; and

(2) provide for protection of the quality of the aquifer water and of the rights of aquifer users in designating the location of injection wells or recharge dams, the methods of injection or recharge, and the location and type of retrieval wells.

(c) The political subdivision causing artificial recharge of the aquifer is entitled to withdraw during any 12-month period the measured amount of water actually injected or artificially recharged during the preceding 12-month period, as demonstrated and established by expert testimony, less an amount determined by the authority to:

(1) account for that part of the artificially recharged water discharged through springs; and

(2) compensate the authority in lieu of users' fees.

(d) The amounts of water withdrawn under this section are not subject to the maximum total permitted withdrawals provided by Section 1.14 of this article.

Amendment No. 9

Amend the Lewis amendment to **S.B. 1477** in Article 1 of the amendment on page 39, between lines 15 and 16, by adding a new SECTION 1.35 to read as follows and renumbering subsequent sections of the article appropriately:

SECTION 1.35. RECHARGE DAMS. (a) The authority may build or operate recharge dams in the recharge area of the aquifer if the recharge is made to increase the yield of the aquifer and the recharge project does not impair senior water rights or vested riparian rights.

(b) The commission shall determine the historic yield of the floodwater to the Nueces River basin. The historic yield is equal to the lesser of:

(1) the average annual yield for the period from 1950 to 1987; or

(2) the annual yield for 1987.

(c) Only the amount of floodwater in excess of the historic yield as determined by the commission may be impounded by a recharge dam built or operated under this section.

Amendment No. 10

Amend the Lewis amendment to **S.B. 1477** in Section 3.02 of the amendment (page 42, line 4, Lewis amendment) by adding a sentence, after the period, to read as follows:

"This section does not affect an application for surface water rights that is pending before the commission on September 1, 1993."

Amendment No. 11

Substitute the Holzheauser amendment to **S.B. 1477** to read as follows:

Amend the Lewis amendment to **S.B. 1477** in Section 3.02 of the amendment (page 42, line 4, Lewis amendment) by adding a sentence, after the period, to read as follows:

"This section does not affect an application for surface water rights that is pending before the commission on May 31, 1993."

The amendments were read.

Senator Armbrister 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. 1477** 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 Armbrister, Chair; Sims, Truan, Luna, and Madla.

SENATE BILL 947 WITH HOUSE AMENDMENTS

Senator Armbrister, on behalf of Senator Montford, called **S.B. 947** 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 No. 1

Amend **S.B. 947** by striking all below the enacting clause and substituting the following:

SECTION 1. Section 56.001(a), Government Code, is amended to read as follows:

(a) The judicial and court personnel training fund is created in the state treasury and shall be administered by the [~~supreme~~] court of criminal appeals.

SECTION 2. Section 56.001(i), Government Code, is amended to read as follows:

(i) On requisition of the [~~supreme~~] court of criminal appeals, the comptroller shall draw a warrant on the fund for the amount specified in the requisition for a use authorized in Section 56.003. A warrant may not exceed the amount appropriated for any one fiscal year. At the end of each state fiscal year, any unexpended balance in the fund in excess of $500,000 shall be transferred to the general revenue fund.

SECTION 3. Section 56.003, Government Code, is amended to read as follows:

Sec. 56.003. USE OF FUNDS. (a) The [~~supreme~~] court of criminal appeals may not use more than three percent of the money appropriated in

any one fiscal year to hire staff and provide for the proper administration of this chapter.

(b) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of appellate courts, district courts, county courts at law, and county courts performing judicial functions as required by the [~~supreme~~] court of criminal appeals under Section 74.025 and of their court personnel.

(c) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of justice courts as required by the [~~supreme~~] court of criminal appeals under Section 74.025 and of their court personnel.

(d) No more than one-third of the funds appropriated for any fiscal year shall be used for the continuing legal education of judges of municipal courts as required by the [~~supreme~~] court of criminal appeals under Section 74.025 and of their court personnel.

(e) The [~~supreme~~] court of criminal appeals shall grant legal funds to statewide professional associations of judges and other entities whose purposes include providing continuing legal education courses, programs, and projects for judges and court personnel. The grantees of those funds must ensure that sufficient funds are available for each judge to meet the minimum educational requirements set by the [~~supreme~~] court of criminal appeals under Section 74.025 before any funds are awarded to a judge for education that exceeds those requirements.

(f) The court of criminal appeals shall grant legal funds to statewide professional associations of prosecuting attorneys, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and justices of the peace whose purposes include providing continuing legal education, technical assistance, and other support programs.

SECTION 4. Section 56.004, Government Code, is amended to read as follows:

Sec. 56.004. ALLOCATION OF FUNDS. (a) The legislature shall appropriate funds from the judicial and court personnel training fund to the [~~supreme~~] court of criminal appeals to provide for the continuing legal education of judges and court personnel in this state.

(b) The legislature shall appropriate funds from the judicial and court personnel training fund to the court of criminal appeals to provide for continuing legal education, technical assistance, and other support programs for prosecuting attorneys and their personnel, criminal defense attorneys who regularly represent indigent defendants in criminal matters, and justices of the peace and their court personnel.

SECTION 5. Section 56.005, Government Code, is amended to read as follows:

Sec. 56.005. JUDICIAL EDUCATION COMMITTEES. (a) The [~~supreme~~] court of criminal appeals shall appoint the [~~supreme~~] court of criminal appeals education committee to recommend educational requirements and course content, credit, and standards for judges and court personnel of appellate courts, district courts, statutory county courts, and county courts performing judicial functions. The [~~supreme~~] court of criminal appeals shall appoint at least two appellate judges, four district

court judges, two statutory county court judges, and one judge of a county court performing judicial functions. The [~~supreme~~] court of criminal appeals may appoint not more than six additional members. Members serve at the will of the [~~supreme~~] court of criminal appeals.

(b) An entity receiving a grant of funds from the [~~supreme~~] court of criminal appeals for the education of justices of the peace and their court personnel shall designate a committee to recommend educational requirements and course content, credit, and standards for the purposes of the grant awarded.

(c) An entity receiving a grant of funds from the [~~supreme~~] court of criminal appeals under this chapter for the education of municipal court judges and their personnel shall designate a committee to recommend educational requirements and course content, credit, and standards for the purposes of the grant awarded.

(d) The [~~supreme~~] court of criminal appeals education committee and any committee established as provided by Subsection (b) or (c) shall meet at least twice a year to:

(1) review and recommend course content, credit, and standards for initial and continuing judicial education for judges and court personnel; and

(2) make recommendations and take other action necessary to carry out the purposes of this chapter.

(e) The [~~supreme~~] court of criminal appeals education committee and any committee established as provided by Subsection (b) or (c) shall:

(1) recommend to the [~~supreme~~] court of criminal appeals the minimum educational requirements for judges and court personnel; and

(2) issue an annual report to the [~~supreme~~] court of criminal appeals that lists the courses, credits, and standards for the judges and court personnel.

SECTION 6. Chapter 56, Government Code, is amended by adding Section 56.006 to read as follows:

Sec. 56.006. RULES. The court of criminal appeals may adopt rules for programs relating to education and training for attorneys, judges, court personnel, and justices of the peace as provided by Section 56.003.

SECTION 7. Section 74.025, Government Code, is amended to read as follows:

Sec. 74.025. EDUCATION PROGRAMS. The [~~supreme~~] court of criminal appeals shall, if adequate funding is available for education programs for judges and court personnel, ensure that adequate education programs are available on an equitable basis for judges and court personnel of [~~all~~] courts created under the constitution and laws of this state.

SECTION 8. This Act takes effect September 1, 1993.

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.

Amendment No. 1 on Third Reading

Amend **S.B. 947** by adding an appropriately numbered section to the bill to read as follows:

SECTION ____. Chapter 56, Government Code, is amended by adding Section 56.006 to read as follows:

Sec. 56.006. ADMINISTRATIVE EXPENSES. An entity receiving a grant of funds from the court of criminal appeals under this chapter for continuing legal education, technical assistance, and other support programs may not use the grant funds to pay the entity's administrative expenses.

The amendments were read.

Senator Armbrister, on behalf of 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. 947** 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; Armbrister, Turner, West, and Brown.

MOTION TO PLACE HOUSE BILL 1077 ON SECOND READING

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

H.B. 1077, Relating to the use of corporate revenue of certain industrial development corporations for promotional purposes.

There was objection.

Senator Sims then moved to suspend the regular order of business and take up **H.B. 1077** for consideration at this time.

The motion was lost by the following vote: Yeas 17, Nays 11, Present-not voting 1. (Not receiving two-thirds vote of Members present)

Yeas: Brown, Carriker, Harris of Dallas, Lucio, Luna, Madla, Moncrief, Nelson, Parker, Patterson, Rosson, Shapiro, Sibley, Sims, Turner, Wentworth, Whitmire.

Nays: Armbrister, Barrientos, Bivins, Ellis, Haley, Harris of Tarrant, Ratliff, Shelley, Truan, West, Zaffirini.

Present-not voting: Montford.

Absent: Henderson.

Absent-excused: Leedom.

(President in Chair)

HOUSE BILL 1978 ON SECOND READING

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

H.B. 1978, Relating to bicycle safety training courses.

The bill was read second time.

Senator Barrientos offered the following committee amendment to the bill:

Amend **H.B. 1978** as follows:
Page 2, line 22, strike "should" and insert in lieu thereof "may."
Page 2, line 25, strike "should" and insert in lieu thereof "may."

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

On motion of Senator Barrientos and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1978 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1978** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

HOUSE BILL 1158 ON SECOND READING

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

H.B. 1158, Relating to penalties and interest on property taxes included in certain tax bills returned undelivered to the tax collector by the postal service.

The bill was read second time.

Senator Henderson offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **H.B. 1158** by adding a new SECTION 3. to the bill to read as follows:

"SECTION 3. Section 31.08, Tax Code, is amended by adding a new subsection to read as follows:

(d) If the oil and gas in place owned by the owner of the surface estate in the property are separately appraised or taxed from the surface estate, the certificate must show the delinquent taxes, penalties and interest due on the oil and gas of that owner or state that the certificate does not include oil and gas. If the certificate does not contain such limitations, a purchaser of the property that includes oil and gas in place shall be entitled to rely upon the tax certificate as provided in Subsection (b)."

Renumber subsequent sections of the bill accordingly.

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

Senator Henderson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **H.B. 1158** by inserting new sections 1 - 10 to read as follows and renumbering existing sections accordingly:

SECTION 1. Subsection (e), Section 1.111, Tax Code, is amended to read as follows:

(e) An agreement between [~~an agent for~~] a property owner or the owner's agent and the chief appraiser [~~relating to a matter that may be protested to the appraisal review board~~] is [~~not~~] final if the agreement relates to a matter:

(1) which may be protested to the appraisal review board or on which a protest has been filed but not determined [~~unless approved~~] by the [~~appraisal review~~] board; or

(2) which may be corrected under Section 25.25 or on which a motion for correction under that section has been filed but not determined by the board.

SECTION 2. Section 6.06, Tax Code, is amended by adding Subsection (k) to read as follows:

(k) An appraisal district may pledge revenues from payments delinquent under Subsection (e) of this section as security for a loan. Funds secured through such loans may be used for any legal expenditure or purpose of an appraisal district under this title.

SECTION 3. Section 25.25, Tax Code, is amended by adding Subsections (h) through (j) to read as follows:

(h) The appraisal review board, on the joint motion of the property owner and the chief appraiser filed at any time prior to the date the taxes become delinquent, shall by written order correct an error that resulted in an incorrect appraised value for the owner's property.

(i) A person who acquires property after January 1 of the tax year at issue is entitled to file any motion that this section authorizes the person who owned the property on January 1 of that year to file, if the deadline for filing the motion has not passed.

(j) If during the pendency of a motion under this section the ownership of property subject to the motion changes, the new owner of the property is entitled to proceed with the motion in the same manner as the property owner who filed the motion.

SECTION 4. Section 32.01, Tax Code, is amended to read as follows:

Sec. 32.01. TAX LIEN. (a) On January 1 of each year, a tax lien attaches to property to secure the payment of all taxes, penalties, and interest ultimately imposed for the year on the [~~that~~] property, whether or not the taxes are imposed in the year the lien attaches. The lien exists in favor of each taxing unit having power to tax the property.

(b) A tax lien on inventory, furniture, equipment, or other personal property is a lien in solido and attaches to all inventory, furniture, equipment, and other personal property that the property owner owns on January 1 of the year the lien attaches or that the property owner subsequently acquires.

(c) The lien under this section is perfected on attachment and, except as provided by Section 32.03 (b), perfection requires no further action by the taxing unit.

SECTION 5. Section 33.41, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) In a suit brought under Subsection (a), a taxing unit may foreclose any other lien on the property in favor of the taxing unit or enforce personal liability of the property owner for the other lien.

SECTION 6. Section 41.01, Tax Code, is amended to read as follows:

Sec. 41.01. DUTIES [~~SCOPE~~] OF APPRAISAL REVIEW BOARD. The appraisal review board shall [~~examine the appraisal records for the appraisal district to determine whether~~]:

(1) determine protests initiated by property owners [~~appraisals are substantially uniform in terms of their relationship to the appraised value required by law~~];

(2) determine challenges initiated by taxing units [~~an exemption or a partial exemption is improperly granted~~];

(3) correct clerical errors in the appraisal records and the appraisal rolls [~~land is improperly granted appraisal as provided by Subchapter C, D, or E, Chapter 23 of this code~~]; [~~or~~]

(4) act on motions to correct appraisal rolls under Section 25.25;

(5) determine whether an exemption or a partial exemption is improperly granted and whether land is improperly granted appraisal as provided by Subchapter C, D, or E, Chapter 23; and

(6) take any other action or make any other determination that this title specifically authorizes or requires [~~the records do not conform to the requirements of law in any other respect~~].

SECTION 7. Section 41.02, Tax Code, is amended to read as follows:

Sec. 41.02. ACTION BY BOARD. After making a determination or decision under Section 41.01, [~~If after reviewing the appraisal records~~] the appraisal review board [~~finds that appraisals are not substantially uniform or that the records do not conform to the requirements of law in some other respect, the board~~] shall [~~refer the matter to the appraisal office and~~] by written order [~~shall~~] direct the chief appraiser to correct or change the appraisal [~~make the reappraisals or corrections in the~~] records or the appraisal roll [~~that are necessary~~] to conform the appraisal records or the appraisal roll to the board's determination or decision [~~requirements of law~~].

SECTION 8. The heading of Section 41.12, Tax Code, is amended to read as follows:

Sec. 41.12. APPROVAL [~~COMPLETION~~] OF APPRAISAL RECORDS [~~REVIEW~~] BY BOARD.

SECTION 9. Subsection (a), Section 41.12, Tax Code, is amended to read as follows:

(a) By July 20, the [~~The~~] appraisal review board shall:

(1) hear and determine all or substantially all timely filed protests;

(2) determine all timely filed challenges;

(3) [~~complete its review of the appraisal records, approve the records, and~~] submit a list of its approved changes in the records to the chief appraiser; and

(4) approve the records [~~by July 20~~].

SECTION 10. Section 42.225, Tax Code, is amended to read as follows:

Sec. 42.225. PROPERTY OWNER'S RIGHT TO APPEAL THROUGH [~~BINDING~~] ARBITRATION. (a) On motion by a [~~A~~] property owner who appeals an appraisal review board order under this chapter, the court shall submit the appeal to nonbinding [~~is entitled to have the appeal resolved through binding~~] arbitration. The court shall order the nonbinding arbitration to be conducted in accordance with Chapter 154, Civil Practice and Remedies Code. If the appeal proceeds to trial following an arbitration award or finding under this subsection, either party may introduce the award or finding into evidence. In addition, the court shall award the property owner reasonable attorney fees if the trial was not requested by the property owner and the determination of the appeal results in an appraised value for the owner's property that is equal to or less than the appraised value under the arbitration award or finding. However, the amount of an award of attorney fees under this subsection is subject to the same limitations as those provided by Section 42.29.

(b) On motion by the property owner, the court shall order the parties to an appeal of an appraisal review board order under this chapter to submit to binding arbitration if the appraisal district joins in the motion or consents to the arbitration. A binding arbitration award under this subsection is binding and enforceable in the same manner as a contract obligation [~~and shall appoint an impartial third party to conduct the arbitration. The impartial third party is appointed by the court and serves as provided by Subchapter C, Chapter 154, Civil Practice and and Remedies Code~~].

(c) The court shall appoint an impartial third party to conduct an arbitration under this section. The impartial third party is appointed by the court and serves as provided by Subchapter C, Chapter 154, Civil Practice and Remedies Code.

(d) Each party or counsel for the party may present the position of the party before the impartial third party, who must render a specific arbitration award [~~resolving the appeal~~].

[~~(d) Except as provided by Subsection (c), an arbitration award is binding and enforceable in the same manner as a contract obligation if:~~

[~~(1) in a motion filed under Subsection (b), the property owner stipulates that the award is to be binding on all the parties, or~~]

[~~(2) before the rendition of the award, the parties agree to be bound.~~]

(e) Prior to submission of a case to arbitration the court shall determine matters related to jurisdiction, venue, and interpretation of the law. [~~An arbitration award is not binding if it results or would result in an amount of taxes on the property that exceeds the amount of taxes assessed on the property under the order from which the appeal is taken.~~]

(f) Except as provided in this section, an [~~An~~] arbitration award may include any remedy or relief that a court could order under this chapter.

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

Senator Henderson offered the following amendment to the bill:

Floor Amendment No. 2

Amend **H.B. 1158** by striking Section 3 of the bill and substituting the following:

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1993, and applies to a tax bill sent on or after that date. The application of penalties and interest on property taxes for tax bills sent before September 1, 1993, is governed by the law in effect at the time the tax bill was sent, and that law is continued in effect for that purpose.

(b) The amendment to Section 31.01(a), Tax Code, made by Section 2 of this Act takes effect September 1, 1994.

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

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by a viva voce vote.

HOUSE BILL 1158 ON THIRD READING

Senator Henderson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **H.B. 1158** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

COMMITTEE SUBSTITUTE HOUSE BILL 75 ON THIRD READING

Senator Carriker moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 75** be placed on its third reading and final passage:

C.S.H.B. 75, Relating to certain election processes and procedures; providing criminal penalties.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

The bill was read third time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 75** by striking lines 10 through 14 on page 2 of the committee printing of the bill.

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

On motion of Senator Carriker and by unanimous consent, the caption was again amended to conform to the body of the bill as amended.

The bill as amended was finally passed by a viva voce vote.

VOTES RECONSIDERED

On motion of Senator Carriker and by unanimous consent, the vote by which **C.S.H.B. 74** was passed to third reading was reconsidered.

Question—Shall the bill be passed to third reading?

On motion of Senator Carriker and by unanimous consent, the vote by which Floor Amendment No. 4 by Senator Ellis to **C.S.H.B. 74** was adopted was reconsidered.

Question—Shall the amendment be adopted?

On motion of Senator Ellis and by unanimous consent, Floor Amendment No. 4 to **C.S.H.B. 74** was withdrawn.

The bill as amended was again passed to third reading by a viva voce vote.

COMMITTEE SUBSTITUTE HOUSE BILL 74 ON THIRD READING

Senator Carriker moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **C.S.H.B. 74** be placed on its third reading and final passage.

C.S.H.B. 74, Relating to certain processes and procedures connected with the registration of voters; providing a criminal penalty.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Leedom.

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

SENATE BILL 297 WITH HOUSE AMENDMENTS

Senator Barrientos called **S.B. 297** from the President's table for consideration of the House amendments to the bill.

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

Amendment No. 1

Amend **S.B. 297** as follows:

On page 1, line 14, by adding a new SECTION 2 to read as follows:

"SECTION 2. Section 21.753(b), Education Code, is amended to read as follows:

(b) The criteria in the accreditation rules must include consideration of:

(1) goals and objectives of the district;

(2) compliance with statutory requirements and requirements imposed by rule of the State Board of Education under statutory authority;

(3) adequate performance under the indicators adopted under Section 21.7531 of this code;

(4) the relation between the academic excellence indicators adopted by the board under Section 21.7531 of this code and the campus performance objectives established under Section 21.7532 of this code, including the manner in which the campus performance objectives were established and the progress of the campus in meeting the objectives;

(5) the quality of learning on each of the district's campuses based on indicators including scores on achievement tests;

(6) the quality of the district's appraisal of teacher performance and of administrator performance;

(7) the effectiveness of district principals as instructional leaders;

(8) the effectiveness of the district's campuses on the basis of the most current criteria identified by research on effective schools;

(9) the fulfillment of curriculum requirements;

(10) the effectiveness of the district's programs in special education based on the Central Education Agency's most recent compliance review of the district and programs for special populations;

(11) the effectiveness of teacher in-service training;

(12) the effective use of technology to enhance student achievement;

(13) the effectiveness of the district's remedial and support programs under Section 21.557 of this code for students at risk of dropping out of school;

(14) the effectiveness of the district's dropout prevention and recovery programs;

(15) efficient allocation of available resources; and

[~~(16) the presence and quality of comprehensive and developmental guidance and counseling programs on campuses; and~~]

[~~(17)~~] (16) the quality and effectiveness of the district's vocational education program.

Renumber all subsequent sections accordingly.

Floor Amendment No. 1 on Third Reading

Amend **S.B. 297** to read as follows:

On page one, line 8, delete "not less than" between "withhold" and "$7,500,000". After "7,500,000" add "or a greater amount as determined in the General Appropriations Act".

On page one, line 14, add the following after the "." "In distributing those funds, preference shall be given to a school district that received funds for a program under Section 16.152(j) of this code for the preceding school year.".

The amendments were read.

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

The motion prevailed.

The President asked if there were any motions to instruct the conference committee on **S.B. 297** 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; Luna, Lucio, Turner, and Rosson.

COMMITTEE SUBSTITUTE HOUSE BILL 472 ON SECOND READING

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

C.S.H.B. 472, Relating to the exemption of judges and justices from the prohibition against carrying certain weapons.

There was objection.

Senator Patterson then moved to suspend the regular order of business and take up **C.S.H.B. 472** for consideration at this time.

The motion prevailed by the following vote: Yeas 21, Nays 8.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carriker, Harris of Tarrant, Henderson, Lucio, Luna, Madla, Nelson, Parker, Patterson, Ratliff, Shapiro, Shelley, Sims, Truan, Wentworth, Whitmire, Zaffirini.

Nays: Ellis, Haley, Moncrief, Montford, Rosson, Sibley, Turner, West.

Absent: Harris of Dallas.

Absent-excused: Leedom.

The bill was read second time.

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 472** in SECTION 1 of the bill, proposed Subsection (d) of Section 46.03, Penal Code, by inserting between "to" and the colon the following:

a person who is 21 years of age or older and who is

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

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.H.B. 472** as follows:

(1) In SECTION 1 of the bill, proposed Subsection (d) of Section 46.03, Penal Code, insert between "to" and the colon the following:
a person who possesses a certificate of firearms safety and proficiency issued by the Commission on Law Enforcement Officer Standards and Education under Section 415.037, Government Code, and who is

(2) Add a new SECTION 2 to the bill to read as follows:

SECTION 2. Subchapter B, Chapter 415, Government Code, is amended by adding Section 415.037 as follows:

Sec. 415.037. FIREARMS PROFICIENCY: JUDICIAL OFFICERS. (a) The commission shall develop and administer a weapons safety and proficiency program for judges and justices eligible to carry weapons under Section 46.03(d), Penal Code. The program must include not more than 15 hours training in the responsible and accurate use of firearms. The commission shall issue a certificate of firearms safety and proficiency to each judge or justice the commission determines has successfully completed the program.

(b) The commission may establish reasonable and necessary fees for the administration of this section.

(3) Renumber the existing SECTION 2 of the bill and the remaining sections as appropriate.

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

Senator Patterson offered the following amendment to the bill:

Floor Amendment No. 3

Amend **C.S.H.B. 472** in SECTION 1 of the bill, proposed Subsection (d) of Section 46.03, Penal Code, by striking Subdivision (3) and substituting the following:

(3) an active, full-time justice of the peace of a county in which the county commissioners court has authorized its justices of the peace to carry a weapon prohibited by Section 46.02 of this code; or

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

Senator Truan offered the following amendment to the bill:

Floor Amendment No. 4

Amend **C.S.H.B. 472** by adding a new Subsection (e) to read as follows:

(e) The exemption granted under Subsection (d) of this section shall apply only to an eligible person who has demonstrated weapons proficiency as required under Section 415.035 of the Government Code.

The amendment was read.

On motion of Senator Truan and by unanimous consent, Floor Amendment No. 4 was withdrawn.

On motion of Senator Patterson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading by the following vote: Yeas 15, Nays 12.

Yeas: Bivins, Brown, Carriker, Harris of Tarrant, Lucio, Madla, Nelson, Parker, Patterson, Shapiro, Shelley, Sims, Wentworth, Whitmire, Zaffirini.

Nays: Barrientos, Ellis, Haley, Luna, Moncrief, Montford, Ratliff, Rosson, Sibley, Truan, Turner, West.

Absent: Armbrister, Harris of Dallas, Henderson.

Absent-excused: Leedom.

SENATE RESOLUTION 1069

Senator Carriker offered the following resolution:

S.R. 1069, Requesting state-funded medical schools and health science centers, the Texas Department of Health, the Center for Rural Health Initiatives, the Texas Higher Education Coordinating Board, the Texas Academy of Family Physicians, the Texas Pediatric Society, the Texas Society of Internal Medicine, and the Texas Medical Association to heighten public awareness of the continuing need for primary care physicians.

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

SENATE RULE 11.19 SUSPENDED
(Posting Rule)

On motion of Senator Parker and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Economic Development might consider the following bills today:

H.B. 1790
H.B. 1196

SENATE RULE 11.11 SUSPENDED
(Posting Rule)

On motion of Senator Ratliff and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Education might meet at 2:00 p.m. tomorrow.

SENATE RULE 11.19 SUSPENDED
(Posting Rule)

On motion of Senator Zaffirini and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Health and Human Services might consider **H.B. 847** today.

SENATE RULE 11.19 SUSPENDED
(Posting Rule)

On motion of Senator Haley and by unanimous consent, Senate Rule 11.19 was suspended in order that the Committee on Administration might consider the following resolutions tomorrow:

S.R. 1004	**S.C.R. 41**
S.C.R. 8	**S.C.R. 53**
S.C.R. 22	**S.C.R. 55**
S.C.R. 23	**S.C.R. 68**
S.C.R. 90	**S.C.R. 70**
S.C.R. 102	**S.C.R. 77**
S.C.R. 24	**S.C.R. 86**
S.C.R. 32	**S.C.R. 94**

CONFERENCE COMMITTEE REPORT ON SENATE BILL 674

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 25, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 674** 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.

MONCRIEF	BERLANGA
PARKER	CAIN
CARRIKER	COLEMAN
ELLIS	MAXEY
TRUAN	GLAZE
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the regulation of health professions, including the profession of nursing facility administration, and to the abolition of the Texas Board of Licensure for Nursing Home Administrators; providing penalties.

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

ARTICLE 1. HEALTH PROFESSIONS COUNCIL

SECTION 1.01. Title 71, Revised Statutes, is amended by adding Article 4512p to read as follows:

Art. 4512p. HEALTH PROFESSIONS COUNCIL

Sec. 1. HEALTH PROFESSIONS COUNCIL. (a) The Health Professions Council shall administer the functions provided by this article and provide a means for the boards represented on the council to coordinate the boards' administrative and regulatory efforts.

(b) The council consists of one representative appointed by each of the following:

(1) the Texas Board of Chiropractic Examiners;

(2) the State Board of Dental Examiners;

(3) the Texas Optometry Board;

(4) the State Board of Pharmacy;

(5) the Texas State Board of Podiatry Examiners;

(6) the State Board of Veterinary Medical Examiners;

(7) the Texas State Board of Medical Examiners;

(8) the Board of Nurse Examiners;

(9) the Texas State Board of Examiners of Psychologists;

(10) the Board of Vocational Nurse Examiners;

(11) the entity that regulates the practice of physical therapy;

(12) the entity that regulates the practice of occupational therapy;

(13) the health licensing division of the Department of Public Health; and

(14) the governor's office.

(c) The council shall elect from the council's members a presiding officer and assistant presiding officer to conduct the business of the council.

(d) A member of the council is not entitled to compensation or a per diem for the member's service on the council.

(e) The council may employ staff or designate staff for the council from the employees of the boards listed by Subsection (b) of this section as necessary for the council to carry out the council's responsibilities.

(f) The council shall adopt an annual budget that is funded by a prorated assessment paid by the boards listed by Subsection (b) of this section.

Sec. 2. TOLL-FREE TELEPHONE COMPLAINT SYSTEM. (a) The council shall establish and operate a toll-free telephone complaint system to provide assistance and referral services for persons making a complaint relating to a health profession regulated by the state.

(b) After the establishment of a toll-free telephone complaint system under this section, an agency of the state that regulates a health profession shall be required to list the toll-free telephone number of the system with the agency's regular telephone number.

Sec. 3. TRAINING AND GUIDELINES FOR MEMBERS OF STATE BOARDS AND COMMISSIONS. (a) The council shall establish a training program for the members of the boards and commissions in the state that regulate health professions.

(b) Before a member of a board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(c) A training program established under this section shall provide information to a participant regarding:

(1) the enabling legislation that created the board or commission to which the member is appointed;

(2) the programs operated by that state agency;

(3) the role and functions of that state agency;

(4) the rules of that state agency with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for that state agency;

(6) the results of the most recent formal audit of that state agency;

(7) the requirements of the:

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

Sec. 4. UNLAWFUL FALSE, MISLEADING, OR DECEPTIVE ADVERTISING. (a) Advertising that is false, misleading, or deceptive or that is not readily subject to verification is declared unlawful and is subject to action by the appropriate health licensing agency as a ground for revocation or denial of a license and subject to action by the consumer protection division of the office of the attorney general under Sections 17.47, 17.58, 17.60, and 17.61, Business & Commerce Code.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) advertises or represents that the benefits of a health benefit

plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) A violation of this section does not create a private cause of action, including an action for breach of warranty or for an implied contract or warranty for good and workmanlike service.

Sec. 5. BILLING INFORMATION REQUIRED; PROHIBITED PRACTICES. (a) On the written request of a patient, a health care professional shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient.

(b) A health care professional may not persistently or flagrantly overcharge or overtreat a patient.

(c) A violation of this section is subject to action by the appropriate health licensing agency as a ground for revocation or denial of a license.

Sec. 6. CIVIL PENALTY. (a) A person who is in violation of this article is liable to the state for a civil penalty not to exceed $1,000 for each violation. Each day of violation constitutes a separate violation. The attorney general may institute an action under this section.

(b) A civil action filed by the attorney general under this section shall be filed in a district court in Travis County or in the county in which the violation occurred.

(c) The attorney general may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney fees, reasonable investigative costs, witness fees, and deposition expenses.

(d) A civil penalty recovered under this section shall be deposited in the state treasury to the credit of the general revenue fund.

Sec. 7. INJUNCTIVE ACTION. (a) The attorney general or the appropriate health licensing board may bring an injunctive action to stop a violation or threatened violation of this article.

(b) The attorney general or health licensing agency may recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney fees, reasonable investigative costs, witness fees, and deposition expenses.

Sec. 8. REPORTS AND STUDIES. (a) The council shall prepare an annual report to be sent to the governor, the lieutenant governor, and the speaker of the house of representatives not later than February 1 of each year.

(b) A report under this section shall include:

(1) a statistical compilation of enforcement actions taken by a board listed by Section 1(b) of this article;

(2) recommendations for statutory changes to improve the regulation of the health care professions; and

(3) other relevant information and recommendations determined necessary by the council.

(c) The council shall determine and adopt additional relevant information to be included in the reports.

(d) The council shall:

(1) adopt a memorandum of understanding with the General Services Commission to develop and implement a plan to collocate the staffs of the boards listed by Section 1(b) of this article, except that the memorandum shall provide for a study of the feasibility of relocating the health licensing division of the Department of Public Health with the collocated staffs;

(2) study and report to the 74th Legislature those administrative functions performed by the boards listed in Section 1(b) of this article that would be feasible for consolidation, provided that the boards listed in Section 1(b) of this article may adopt memoranda of understanding and contract with each other to share services and personnel at any time prior to submission of the report, subject to approval of the Legislative Budget Board;

(3) study and report to the 74th Legislature, in coordination with the Legislative Budget Board and the governor's office of budget and planning, a uniform budget plan and standardized budget performance objectives, provided the Legislative Budget Board may force compliance with this subdivision at an earlier date;

(4) develop and implement, in coordination with the staffs of the Legislative Budget Board, the governor's office of budget and planning, and the licensing division of the Department of Public Health, information necessary to prepare statistical comparisons of licensing functions and unit costs of all boards represented on the council;

(5) develop and implement a plan to centralize the receipt and referral of complaints for member agencies using the toll-free complaint number established under Section 2 of this article;

(6) study the feasibility of centralizing the investigation of complaints; and

(7) study and report to the 74th Legislature on the consequences to the quality of health care services by third-party review and approval of health care provider treatment decisions and claims submission by nonlicensed personnel and determine the feasibility of establishing a statutory requirement to limit the reviews and approvals to licensed professionals in their respective health care fields within their respective scopes of practice and the feasibility of enacting a statutory limitation or prohibition to prevent individuals who are not licensed health care providers from intervening in health care decisions. The report shall also consider the necessity of requiring due process steps for appeals of claims and treatment denials for health care providers.

(e) To carry out its duties under Subsection (d) of this section, the council shall appoint working groups consisting of the executive director of the member boards who shall report to the council.

(f) The results of the council's studies under Subsection (d) of this section shall be reported to the governor, the lieutenant governor, and the speaker of the house of representatives not later than January 1, 1995.

Sec. 9. REMEDIES NOT EXCLUSIVE. The provisions of this article are in addition to any other remedy provided by any other statute, rule, or common law.

ARTICLE 2. NURSING FACILITY ADMINISTRATION

SECTION 2.01. Title 71, Revised Statutes, is amended by adding Article 4512q to read as follows:

Art. 4512q. NURSING FACILITY ADMINISTRATION

Sec. 1. SHORT TITLE. This article may be cited as the Texas Nursing Facility Administrators Licensure Act.

Sec. 2. DEFINITIONS. In this article:

(1) "Board" means the Texas Board of Nursing Facility Administrators.

(2) "Department" means the Texas Department of Health.

(3) "Nursing facility" means an institution or facility that is licensed as a nursing home, nursing facility, skilled nursing facility, or custodial care home by the department under Chapter 242, Health and Safety Code.

(4) "Nursing facility administrator" or "administrator" means a person who engages in the practice of nursing facility administration without regard to whether the person has an ownership interest in the facility or whether the functions and duties are shared with any other person.

(5) "Practice of nursing facility administration" means the performance of the acts of administering, managing, supervising, or being in general administrative charge of a nursing facility.

Sec. 3. CREATION OF THE BOARD. (a) The Texas Board of Nursing Facility Administrators is created within the department.

(b) The board is composed of nine members appointed by the governor. Three members must be members of the public, and six members must be nursing facility administrators licensed under this article. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, or national origin of the person appointed.

(c) Members of the board serve staggered six-year terms, with the terms of three members expiring on February 1 of each odd-numbered year. A person appointed to fill a vacancy on the board shall serve for the unexpired portion of the term for which the person is appointed.

(d) The board shall include the state long-term care ombudsman of the Texas Department on Aging and the Commissioner of Human Services, or the commissioner's designee, as nonvoting, ex officio members. These ex officio members shall serve at no expense to the department or the board.

Sec. 4. MEMBERSHIP REQUIREMENTS. (a) A member of the board who is an administrator must:

(1) be a resident of this state and a citizen of the United States;

(2) be licensed under this article and currently serving as a nursing facility administrator or have direct supervisory responsibility on a daily basis over an administrator who works in a nursing facility; and

(3) hold a degree from an accredited four-year college or university.

(b) An administrator who does not have a degree as required by Subsection (a)(3) of this section may be qualified to serve as a member of the board if the administrator has two years of practical experience as an administrator for every year less than four that the administrator has completed at a four-year college or university.

(c) At least one administrator member of the board must be associated with and a representative of a nonproprietary nursing facility, and at least one administrator member of the board must have an ownership interest in a nursing facility.

(d) A member or employee of the board may not:

(1) be an officer, employee, or paid consultant of a trade association in the nursing facility industry; or

(2) be related within the second degree by affinity or within the third degree by consanguinity to an officer, employee, or paid consultant of a trade association in the nursing facility industry.

(e) A member of the board who represents the general public may not have a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant or be related within the second degree by affinity or within the third degree by consanguinity to a person who has a financial interest, other than as a consumer, in a nursing facility as an officer, director, partner, owner, employee, attorney, or paid consultant.

(f) A person who 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 may not serve on the board.

Sec. 5. GROUNDS FOR REMOVAL. It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Section 4 of this article for appointment to the board;

(2) does not maintain during service on the board the qualifications required by Section 4 of this article for appointment to the board;

(3) violates a prohibition established by Section 4 of this article;

(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 a majority vote of the board.

Sec. 6. BOARD OFFICERS; MEETINGS; QUORUM; EXPENSES. (a) The board shall elect from its members a presiding officer and assistant presiding officer who serve according to rules adopted by the board.

(b) The board shall hold at least two regular meetings each year as provided by rules adopted by the board.

(c) A majority of the members constitutes a quorum.

(d) Each member of the board is entitled to compensation for transportation expenses as provided by the General Appropriations Act.

Sec. 7. APPLICATION OF OPEN MEETINGS AND ADMINISTRATIVE PROCEDURE ACTS. 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), and its subsequent amendments, and the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 8. POWERS AND DUTIES OF BOARD. (a) The board may adopt rules consistent with this article.

(b) The board shall:

(1) adopt and publish a code of ethics;

(2) establish the qualifications of applicants for licenses and the renewal of licenses;

(3) spend funds necessary for the proper administration of the board's assigned duties;

(4) establish reasonable and necessary fees for the administration and implementation of this article; and

(5) establish a minimum number of hours of continuing education required to renew a license and periodically assess the continuing education needs of license holders to determine whether specific course content should be required.

Sec. 9. ADMINISTRATIVE FUNCTIONS; EXECUTIVE SECRETARY. (a) The department shall provide the personnel and necessary facilities required to administer this article. If necessary to the administration of this article, the department may secure and provide for compensation for services that the department considers necessary and may employ and compensate within available appropriations professional consultants, technical assistants, and employees on a full-time or part-time basis.

(b) The commissioner of health shall designate an employee to serve as executive secretary of the board. The executive secretary must be an employee of the department. The executive secretary is the administrator of the licensing activities under this article. The executive secretary shall carry out other functions as may be required by the board or the department to administer this article.

Sec. 10. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the department under this article 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.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board.

Sec. 11. FEES; FUNDS; ANNUAL REPORT. (a) The board by rule shall set reasonable and necessary fees in amounts necessary to cover the cost of administering this article. The board by rule may set different licensing fees for different categories of licenses.

(b) The board shall receive and account for funds received under this article. The funds shall be deposited in the state treasury to the credit of the general revenue fund in an account known as the licensed nursing facility administrator's account to be used only for the administration of this article.

(c) 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 or the department for the administration of this article during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

(d) The board may receive and disburse funds received from any federal source for the furtherance of the board's functions under this article.

Sec. 12. PRACTICING WITHOUT A LICENSE. A person may not act as a nursing facility administrator or represent to others that the person is a nursing facility administrator unless the person is licensed under this article.

Sec. 13. LICENSE APPLICATION; QUALIFICATIONS. (a) An applicant for a nursing facility administrator's license must submit a sworn application that is accompanied by the application fee.

(b) The board shall prescribe the form of the application and may by rule establish dates by which applications and fees must be received. The rules under this section may not be inconsistent with the rules of the department related to the application dates of other licenses administered by the department.

(c) An applicant for a nursing facility administrator's license must take a licensing examination under this article. To qualify for the licensing examination, the applicant must have satisfactorily completed a course of instruction and training prescribed by the board that is conducted by or in cooperation with an accredited postsecondary educational institution and that is designed and administered to provide sufficient knowledge of:

(1) the needs served by nursing facilities;

(2) the laws governing the operation of nursing facilities and the protection of the interests of facility residents; and

(3) the elements of nursing facility administration.

(d) An applicant who has not completed the course of instruction and training described by Subsection (c) of this section must present evidence satisfactory to the board of having completed sufficient education, training, and experience in the fields described by Subsection (c) of this section to enable the applicant to engage in the practice of nursing facility administration.

Sec. 14. EXAMINATION. (a) The licensing examination shall be prepared or approved by the board and administered by the board to qualified applicants at least twice each calendar year. The board shall have the written portion of the examination, if any, validated by a testing professional.

(b) Not later than the 30th day after the date on which a licensing examination is administered under this article, the board shall notify each examinee of the results of the examination. If an examination is graded or reviewed by a national or state testing service, the board shall notify examinees of the results of the examination not later than two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify the examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails the licensing examination, the board shall furnish the person with an analysis of the person's performance on the examination.

(d) The board may establish by rule additional educational requirements to be met by an applicant who fails the examination three times.

Sec. 15. LICENSES; TEMPORARY LICENSE; INACTIVE STATUS; PROVISIONAL LICENSE. (a) A person who meets the requirements for licensing under this article is entitled to receive a license. A nursing facility administrator's license is not transferable.

(b) A person licensed under this article must notify the board of the license holder's correct mailing address.

(c) A license is valid for two years. The board by rule may adopt a system under which licenses expire on various dates during the two-year period. For the year in which a license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each license holder shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(d) The board by rule may provide for the issuance of a temporary license. Rules adopted under this section shall include a time limit for a licensee to practice under a temporary license.

(e) The board by rule may provide for a license holder to be placed on inactive status.

Sec. 16. PROVISIONAL LICENSE. (a) On application, the board shall grant a provisional license under this article. An applicant for a provisional license under this section must:

(1) be licensed in good standing as a nursing facility administrator in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this article;

(2) have passed a national or other examination recognized by the board relating to the practice of nursing facility administration; and

(3) be sponsored by a person licensed under this article with whom the provisional license holder may practice under this section.

(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this article to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 14 of this article;

(2) the board verifies that the provisional license holder has the academic and experience requirements for a license under this article; and

(3) the provisional license holder satisfies any other license requirements under this article.

(d) The board shall complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend this time in order to receive the results of a national examination or other examination administered or graded by an outside organization recognized by the board.

Sec. 17. LICENSE RENEWAL. (a) A person may renew an unexpired license by paying to the board before the expiration of the license the required renewal fee.

(b) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(c) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(d) If a person's license has been expired for one year or longer, the person may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license. However, the board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.

(e) At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the license holder's last known address according to the records of the board.

Sec. 18. MANDATORY CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this article. The board may assess the continuing education needs of license holders and may require license holders to attend continuing education courses specified by the board.

(b) The board shall identify the key factors for the competent performance by a license holder of the license holder's professional duties. The board shall adopt a procedure to assess a license holder's participation in continuing education programs.

Sec. 19. COMPLAINT RECEIPT, INVESTIGATION, AND DISPOSITION. (a) The board shall keep an information file about each

complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

(e) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(f) The board shall dispose of all complaints in a timely manner. The board by rule shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint, and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(g) The executive secretary shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Sec. 20. SANCTIONS. (a) The board may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing

education, or place an administrator on probation after due notice and hearing on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this article or a rule adopted under this article;

(2) the license holder has wilfully or repeatedly acted in a manner inconsistent with the health and safety of the patients of a facility of which the license holder is an administrator;

(3) the license holder obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;

(4) the intemperate use of alcohol or drugs by the license holder in the board's opinion creates a hazard to the patients of a facility;

(5) a judgment of a court of competent jurisdiction finds that the license holder is mentally incapacitated;

(6) the license holder has been convicted in a court of competent jurisdiction of a misdemeanor or felony involving moral turpitude; or

(7) the license holder has been negligent or incompetent in the license holder's duties as a nursing facility administrator.

(b) If a license suspension is probated, the board may require the license holder to:

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

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

(3) continue or review continuing professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(c) A license holder is entitled to a hearing before the hearings examiner designated by the board before a sanction is imposed under this section.

(d) The board by rule shall adopt a broad schedule of sanctions for violations under this article. The designated hearings examiner shall use the schedule for any sanction imposed as the result of a hearing conducted by the designated hearings examiner.

Sec. 21. WRITTEN REPRIMAND AND CONTINUING EDUCATION AS SANCTIONS. In addition to the other disciplinary actions authorized under this article, the board may issue a written reprimand to a license holder who violates this article or require that a license holder who violates this article participate in continuing education programs. The board shall specify the continuing education programs that may be attended and the number of hours that must be completed by a license holder to fulfill the requirements of this section.

Sec. 22. ADMINISTRATIVE PENALTY. (a) The board may impose an administrative penalty against a person licensed or regulated under this article who violates this article or a rule or order adopted by the board under this article.

(b) The penalty for a violation may be in an amount not to exceed $1,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the executive secretary determines that a violation has occurred, the executive secretary may issue to the board a report that states the facts on which the determination is based and the executive secretary's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(e) Within 14 days after the date the report is issued, the executive secretary shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive secretary or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive secretary, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the board shall set a hearing and give notice of the hearing to the person. The hearing shall be held by a hearings examiner designated by the board. The hearings examiner shall make findings of fact and conclusions of law and promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the board by certified mail.

(l) If the board receives a copy of an affidavit under Subsection (k)(2) of this section, the board may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the board may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the

interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 23. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this section must provide the complainant and the license holder an opportunity to be heard and must require the presence of a legal representative to advise the board or the board's employees.

Sec. 24. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this article. Rules adopted under this section shall include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Sec. 25. CIVIL PENALTY. A person who violates this article is liable to the state for a civil penalty of $1,000 for each day of violation. At the request of the board, the attorney general shall bring an action to recover a civil penalty established by this section.

Sec. 26. ASSISTANCE OF ATTORNEY GENERAL. The attorney general shall provide legal assistance as necessary in enforcing the provisions of this article. This requirement does not relieve a local prosecuting officer of any of the prosecuting officer's duties under the law.

Sec. 27. OFFENSE. (a) A person commits an offense if the person knowingly or intentionally violates Section 12 of this article.

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

Sec. 28. SUNSET PROVISION. The Texas Board of Nursing Facility Administrators is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this article expires September 1, 2005.

ARTICLE 3. EFFECTIVE DATE; TRANSITION; EMERGENCY

SECTION 3.01. This Act takes effect September 1, 1993.

SECTION 3.02. (a) The Texas Board of Licensure for Nursing Home Administrators is abolished on the effective date of this Act. As soon as possible after the effective date of this Act, the governor shall appoint the

initial members of the Texas Board of Nursing Facility Administrators. In making the initial appointments, the governor shall designate members to serve terms as follows:

(1) two licensed nursing facility administrator members and one public member serve terms expiring February 1, 1995;

(2) two licensed nursing facility administrator members and one public member serve terms expiring February 1, 1997; and

(3) two licensed nursing facility administrator members and one public member serve terms expiring February 1, 1999.

(b) On the effective date of this Act, the Texas Board of Nursing Facility Administrators assumes the functions of the Texas Board of Licensure for Nursing Home Administrators. The obligations, right, contracts, and records of the Texas Board of Licensure for Nursing Home Administrators are transferred to the Texas Board of Nursing Facility Administrators. The equipment and other property and personnel of and unspent money appropriated to or for the Texas Board of Licensure for Nursing Home Administrators are transferred to the Texas Board of Health. The rules of the abolished board are continued in effect as rules of the Texas Board of Health or the Texas Board of Nursing Facility Administrators, as appropriate, until superseded by rule of the Texas Board of Health or the Texas Board of Nursing Facility Administrators, as appropriate. A license in effect that was issued by the abolished board is continued in effect as a license of the Texas Board of Nursing Facility Administrators. A complaint, investigation, or other proceeding pending before the abolished board is transferred without change in status to the Texas Board of Nursing Facility Administrators. Any reference in law to the Texas Board of Licensure for Nursing Home Administrators means the Texas Board of Nursing Facility Administrators.

SECTION 3.03. The changes in law made by this Act relating to a penalty that may be imposed apply only to a violation that occurs on or after the effective date of this Act. A violation occurs on or after the effective date of this Act only if each element of the violation occurs on or after that date. A violation that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

SECTION 3.04. 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 filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1374

Senator Bivins submitted the following Conference Committee Report:

Austin, Texas
May 24, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1374** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

BIVINS	CRADDICK
ARMBRISTER	ALEXANDER
ZAFFIRINI	UHER
ELLIS	HEFLIN
RATLIFF	BERLANGA
On the part of the Senate	On the part of the House

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

CONFERENCE COMMITTEE REPORT ON SENATE BILL 1434

Senator Moncrief submitted the following Conference Committee Report:

Austin, Texas
May 25, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 1434** 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.

MONCRIEF	UHER
PARKER	BERLANGA
ELLIS	CLEMONS
SHELLEY	HIRSHI
TRUAN	COLEMAN
On the part of the Senate	On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to the continuation and functions of the Texas State Board of Examiners of Dietitians and the regulation of dietetics.

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

SECTION 1. Section 2, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended by amending Subdivision (6) and adding Subdivisions (10), (11), and (12) to read as follows:

(6) "Dietetics" means the professional discipline of applying and integrating scientific principles of food, nutrition, biochemistry, physiology, management, and behavioral and social sciences under different health, social, cultural, physical, psychological, and economic conditions to the proper nourishment, care, and education of individuals or groups throughout the life cycle to achieve and maintain the health of people. The term includes without limitation the development, management, and provision of nutrition [~~nutritional~~] services.

(10) "Nutrition services" means:

(A) assessing the nutritional needs of individuals and groups and determining resources and constraints in the practice;

(B) establishing priorities, goals, and objectives that meet nutritional needs and are consistent with available resources and constraints;

(C) providing nutrition counseling in health and disease;

(D) developing, implementing, and managing nutritional care systems; or

(E) evaluating, making changes in, and maintaining appropriate standards of quality in food and nutritional care services.

(11) "Nutrition assessment" means the evaluation of the nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake including enteral and parenteral nutrition.

(12) "Nutrition counseling" means advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

SECTION 2. Section 3, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended by amending Subsections (e) through (h) and adding Subsections (i) and (j) to read as follows:

(e) A person is not eligible for appointment as a public member of the board if the person or [~~and~~] the person's spouse:

(1) is registered, certified, or [~~are not~~] licensed by an occupational regulatory agency in the field of dietetics [~~health care~~];

(2) is [~~are not~~] employed by or participates [~~and do not participate~~] in the management of a [~~an agency or~~] business entity or other organization regulated by the board or receiving funds from the board [~~that provides health care services or that sells, manufactures, or distributes health care supplies or equipment~~]; [~~and~~]

(3) owns or controls, directly or indirectly, [~~do not own, control, or have a direct or indirect interest in~~] more than a 10 percent interest in [~~of~~] a business entity or other organization regulated by the board or

receiving funds from the board; or [~~that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment.~~]

(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.

(f) Appointments [~~It is the intent of the legislature that the membership of the board reflect the historical and cultural diversity of the inhabitants of this state; therefore, appointments~~] to the board shall [~~should~~] be made without regard to the [~~discrimination based on~~] race, color, disability [~~creed~~], sex, religion, age, or national origin[~~, or geographical distribution~~] of the appointees.

(g) An officer, employee, or paid consultant of a Texas trade association in the field of dietetics may not be a member or 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 [~~A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the field of health care~~].

(h) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of dietetics may not be a board member and may not be 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.

(i) 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.

(j) [~~(h)~~] A person may not serve as a member of the board or act as general counsel to the board if the person [~~who~~] is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of [~~in a health-related area may not serve as a member of the board or act as the general counsel to~~] the board.

SECTION 3. Section 4, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. GROUNDS FOR REMOVAL. (a) It is a ground for removal from the board if a member:

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

(2) does not maintain during service on the board the qualifications required for appointment to the board; [~~or~~]

(3) violates a prohibition established by 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.

(b) The validity of an action of the board is not affected by the fact that it is taken when [~~If~~] a ground for removal of a member of [~~from~~] the board exists[~~, the board's actions taken during the existence of the ground for removal are valid~~].

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

SECTION 4. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 7A to read as follows:

Sec. 7A. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board 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 by the board; or

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

(c) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

SECTION 5. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 7B to read as follows:

Sec. 7B. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The executive secretary or the secretary'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, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, application, training, and promotion of personnel that are in compliance with the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(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 underutilization.

(b) A policy statement prepared under Subsection (a) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1) of this section, and be filed with the governor's office.

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

SECTION 6. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 7C to read as follows:

Sec. 7C. TRAINING; STANDARDS OF CONDUCT INFORMATION. (a) Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.

(b) 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.

SECTION 7. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 7D to read as follows:

Sec. 7D. PUBLIC PARTICIPATION IN BOARD HEARINGS. 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.

SECTION 8. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 7E to read as follows:

Sec. 7E. DIVISION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

SECTION 9. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 7F to read as follows:

Sec. 7F. PROGRAM ACCESSIBILITY. The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

SECTION 10. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 7G to read as follows:

Sec. 7G. TRAINING AND GUIDELINES FOR MEMBERS OF THE BOARD. (a) The board shall establish a training program for the members of the board.

(b) Before a member of the board may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of the training program established under this section.

(c) A training program established under this section shall provide information to a participant regarding:

(1) the enabling legislation that created the board to which the member is appointed;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of the:

(A) open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;

(B) open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(C) Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;

(8) the requirements of the conflict of interest laws and other laws relating to public officials; and

(9) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(d) In developing the training requirements provided for in this section, the board shall consult with the governor's office, the attorney general's office, and the Texas Ethics Commission.

(e) In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.

SECTION 11. Subsections (a) and (c), Section 8, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) After consultation with the commissioner or the department, the board by rule shall set reasonable and necessary [~~the~~] fees [~~imposed by this Act~~] in amounts that are adequate to collect sufficient revenue to meet the expenses necessary to administer this Act [~~without accumulating an unnecessary surplus in the Licensed Dietitian Act fund created by this section~~]. The fee amounts set by the board may be adjusted so that the total fees collected are sufficient to cover the cost of administering this Act. The board may not set a fee for an amount less than the amount of that fee on September 1, 1993.

(c) The [~~Not later than January 1 each year, the~~] department shall file annually with [~~make a written report to~~] the governor[~~, lieutenant governor,~~] and presiding officer of each [~~speaker of the~~] house of the legislature a complete and detailed written report [~~representatives~~] accounting for all funds received and disbursed by the board or the department for the administration of this Act 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. Subsection (c), Section 9, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) To qualify for the licensing examination under this Act, the applicant must:

(1) possess a baccalaureate or postbaccalaureate degree with a major course of study in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management or an equivalent major course of study approved by the board; and

(2) have completed an internship or preplanned, documented, professional experience program in dietetics practice of not less than 900 hours under the supervision of a licensed dietitian or a registered dietitian approved by the board.

SECTION 13. Section 10, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) To qualify for a license under this Act, an applicant must pass a competency examination. Examinations shall be prepared or approved by the board and administered to qualified applicants at least twice each calendar year. The board shall have the written portion of the examination, if any, validated by an independent testing professional.

(f) The board shall waive the examination requirement for an applicant who, at the time of application, is registered as a registered dietitian by the Commission on Dietetic Registration.

SECTION 14. Section 12, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. LICENSE EXPIRATION; RENEWAL; INACTIVE STATUS. (a) A license is valid for one year from the date it is issued and may be renewed annually.

(b) The board of health by rule may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable on the original expiration date shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

(c) A person may renew an unexpired license by paying to the board before the expiration date of the license the required renewal fee [~~to the department before the expiration date of the license~~].

(d) If a person's license has been expired for [~~not more than~~] 90 days or less, the person may renew the license by paying to the board [~~department~~] the required renewal fee and a [~~penalty~~] fee that is one-half of the examination [~~renewal~~] fee for the license.

(e) If a person's license has been expired for longer [~~more~~] than 90 days but less than one year [~~two years~~], the person may renew the license by paying to the board [~~department~~] all unpaid renewal fees and a [~~penalty~~] fee that is equal to the renewal fee for the license.

(f) If a person's license has been expired one year [~~two years~~] or longer [~~more~~], the person may not renew the license. The person may

obtain a new license by [~~submitting to reexamination and~~] complying with the current requirements and procedures for obtaining an original [~~a~~] license. However, the board may renew without reexamination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.

(g) At [~~The department shall notify each licensee in writing of the license expiration date at~~] least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the licensee's last known address according to the records of the board [~~that date and shall obtain from the licensee a signed receipt confirming receipt of notification~~].

(h) The board by rule may provide for a person who holds a license under this Act to be placed on inactive status. Rules adopted under this section shall include a time limit for a licensee to remain on inactive status.

SECTION 15. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 12A to read as follows:

Sec. 12A. CONTINUING EDUCATION. (a) The board by rule shall establish a minimum number of hours of continuing education required to renew a license under this Act. The board may assess the continuing education needs of licensees and may require licensees to attend continuing education courses specified by the board. The board shall develop a process to evaluate and approve continuing education courses.

(b) The board shall identify the key factors for the competent performance by a licensee of the licensee's professional duties. The board shall adopt a procedure to assess a licensee's participation in continuing education programs.

SECTION 16. Subsection (d), Section 13, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) A provisional license is valid for one year from the date it is issued and may be renewed annually not more than twice by the same procedures established for renewal under Section 12 of this Act if the application for renewal is signed by the supervising licensed dietitian.

SECTION 17. Section 14, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 14. TEMPORARY LICENSE [~~RECIPROCITY~~]. (a) On receipt of an application and application fee, the board may grant a temporary license to [~~shall waive the examination requirement for~~] an applicant who[~~, at the time of application~~]:

(1) is licensed in good standing as a dietitian in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act; [~~registered by the Commission on Dietetic Registration as a registered dietitian; or~~]

(2) has passed a national or other examination recognized by the board relating to dietetics; and

(3) is sponsored by a person licensed by the board under this Act with whom the temporary licensee may practice under this section [~~holds a valid license or certificate as a licensed or registered dietitian issued by another state with which this state has a reciprocity agreement~~].

(b) An applicant for a temporary license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) A temporary license is valid until the date the board approves or denies the temporary licensee's application for a license. The board shall issue a license under this Act to the holder of a temporary license under this section if:

(1) the temporary licensee passes the examination required by Section 10 of this Act;

(2) the board verifies that the temporary licensee has the academic and experience requirements for a license under this Act; and

(3) the temporary licensee satisfies any other license requirements under this Act.

(d) The board must complete the processing of a temporary licensee's application for a license not later than the 180th day after the date the temporary license is issued. The board may extend this deadline to receive pending examination results.

SECTION 18. Section 16, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 16. COMPLAINT FILE AND STATUS. (a) The board [~~department~~] shall keep an information file about each complaint filed with the board [~~related to a licensee~~].

(b) If a written complaint is filed with the board that the board or department has authority to resolve [~~relating to a licensee~~], the board [~~department~~], at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation [~~until final disposition of the complaint~~].

SECTION 19. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 16A to read as follows:

Sec. 16A. COMPLAINT PROCEDURE IN GENERAL. (a) The board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall

prescribe information to be provided to a person when the person files a complaint with the board.

(c) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

SECTION 20. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 16B to read as follows:

Sec. 16B. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:

(1) distinguish between categories of complaints;

(2) ensure that complaints are not dismissed without appropriate consideration;

(3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;

(4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and

(5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The executive secretary of the board shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

SECTION 21. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 16C to read as follows:

Sec. 16C. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

(1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the office of the attorney general or the board's legal counsel to advise the board or board's employees.

SECTION 22. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 16D to read as follows:

Sec. 16D. MONITORING OF LICENSEE. The board by rule shall develop a system for monitoring a licensee's compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a licensee who is ordered by the board to perform certain acts to ascertain that the licensee performs the required acts and to identify and monitor licensees who represent a risk to the public.

SECTION 23. Section 17, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) The board shall revoke or suspend a license, place on probation a person whose [~~probate a~~] license has been suspended [~~suspension~~], or reprimand a licensee for [~~on proof of~~]:

(1) any violation of this Act; or

(2) any violation of a rule or code of ethics adopted by the board.

(e) If a license suspension is probated, the board may require the licensee to:

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

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

(3) continue or review continuing professional education until the licensee attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

(f) The schedule of sanctions adopted by the board by rule shall be used by the State Office of Administrative Hearings for any sanction imposed as the result of a hearing conducted by that office.

SECTION 24. The Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes) is amended by adding Section 18A to read as follows:

Sec. 18A. OFFICIAL SEAL. (a) The board by rule may require that each licensee obtain an authorized seal of the design authorized by the board, bearing the licensee's name and the legend "Licensed Dietitian."

(b) The board by rule may require that formal documentation of nutrition services provided by a licensed dietitian, as determined necessary and appropriate by the board, must include the licensee's seal affixed to the document.

(c) If the board exercises the authority granted by this section, the rules adopted by the board shall authorize a licensed dietitian providing services in a facility licensed under the Health and Safety Code or on behalf of an agency of local, state, or federal government, or in such other circumstances as the board determines reasonable and necessary, to maintain a facsimile of the seal of the licensee on file in such facility or with such agency in satisfaction of the requirements of Subsection (b) of this section. The facsimile of the seal of the licensee shall be maintained on file at all times during which the licensee provides such services.

(d) It shall be unlawful for any person to affix a seal on any document if the license of the licensee named thereon has expired or has been suspended or revoked, unless such license shall have been renewed or reissued.

(e) A violation of this section or the rules adopted by the board pursuant to this section shall subject a licensee to disciplinary action by the board in accordance with this chapter.

(f) Use of a seal authorized by the board by a person not licensed under this Act is a prohibited act under Section 15 of this Act and may be punished accordingly.

SECTION 25. Section 19, Licensed Dietitian Act (Article 4512h, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 19. SUNSET PROVISION. The Texas State Board of Examiners of Dietitians is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2005 [~~1993~~].

SECTION 26. This Act takes effect September 1, 1993.

SECTION 27. 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 filed with the Secretary of the Senate.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 1166

Senator Luna submitted the following Conference Committee Report:

Austin, Texas
May 24, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 1166** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

LUNA	RAYMOND
BARRIENTOS	BAILEY
HARRIS OF TARRANT	CARTER
WEST	DENTON
	OAKLEY
On the part of the Senate	On the part of the House

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

ORDERED NOT PRINTED

On motion of Senator Montford and by unanimous consent, the Conference Committee Report on **S.B. 5** (General Appropriations Bill) was ordered not printed in the Senate Journal.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 5

Senator Montford submitted the following Conference Committee Report:

Austin, Texas
May 23, 1993

Honorable Bob Bullock
President of the Senate

Honorable Pete Laney
Speaker of the House of Representatives

Sirs:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 5** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

MONTFORD	JUNELL
BIVINS	CONLEY
ELLIS	GALLEGO
PARKER	HEFLIN
ZAFFIRINI	McDONALD
On the part of the Senate	On the part of the House

The conference committee report was filed with the Secretary of the Senate.

MEMORIAL RESOLUTIONS

S.R. 1047 - By Montford: In memory of Dr. William Curry Holden.

S.R. 1048 - By Montford, Harris of Dallas: In memory of Ralph F. Wolf of Euless.

S.R. 1049 - By Montford: In memory of Wilburn Vernel "Willie" McAlpin of Sudan.

S.R. 1050 - By Luna: In memory of former city councilman and state boxing commissioner Roy Sanchez Padilla of San Antonio.

S.R. 1061 - By Turner: In memory of Ralph Leroy Stuart of Crockett.

CONGRATULATORY RESOLUTIONS

H.C.R. 110 - (Bivins): Congratulating Scott Hoose on his receipt of a 1993 National Merit Scholarship.

H.C.R. 111 - (Bivins): Commending Alma Marshall for her many contributions as an educator and community leader.

H.C.R. 140 - (Lucio): Honoring Little Joe y La Familia for the group's singular achievements in the universal medium of music.

S.R. 1040 - By Moncrief: Congratulating Michael W. Malthy of Fort Worth on his achievements in school and in scouting.

S.R. 1041 - By Sims: Recognizing Glenn L. Brinkman on the occasion of the 25th anniversary of Brink's Brangus.

S.R. 1042 - By Sims: Recognizing L. D. Brinkman on the occasion of the 25th anniversary of Brink's Brangus.

S.R. 1043 - By Henderson: Congratulating Kelly Rueben Short, who was named Outstanding Male Student from Episcopal High School in Houston.

S.R. 1044 - By Patterson: Congratulating Anthony James and Tammy Robberts Null on the occasion of the birth of their daughter Alexis Lenea Null.

S.R. 1045 - By West: Recognizing New York State Senator David A. Paterson for assisting in the activities at Freedman's Cemetery Memorial Day in Dallas.

S.R. 1046 - By Montford, Harris of Dallas: Recognizing B. J. Murray, who has been an educational leader in the Hurst-Euless-Bedford School District for over 37 years.

S.R. 1051 - By Luna: Congratulating Jefferey Jimenez, who was recently selected as one of 10 finalists in the 36th annual San Antonio Express-News Outstanding Teen Contest.

S.R. 1052 - By Luna: Congratulating Rebecca Lockwood, who was selected as one of the two winners of the 36th annual San Antonio Express-News Outstanding Teen Contest.

S.R. 1053 - By Luna: Congratulating Andrew J. Flores, who was selected as one of the two winners of the 36th annual San Antonio Express-News Outstanding Teen Contest.

S.R. 1054 - By Luna: Congratulating Melanie Simmons, who was recently selected as one of 10 finalists in the 36th annual San Antonio Express-News Outstanding Teen Contest.

S.R. 1055 - By Luna: Congratulating Stefani Chozick, who was recently selected as one of 10 finalists in the 36th annual San Antonio Express-News Outstanding Teen Contest.

S.R. 1056 - By Luna: Congratulating Lindsey Franklin, Jr., who was recently selected as one of 10 finalists in the 36th annual San Antonio Express-News Outstanding Teen Contest.

S.R. 1057 - By Luna: Congratulating David Henderson, who was recently selected as one of 10 finalists in the 36th annual San Antonio Express-News Outstanding Teen Contest.

S.R. 1058 - By Luna: Congratulating Yen-Lin Chen, who was recently selected as one of 10 finalists in the 36th annual San Antonio Express-News Outstanding Teen Contest.

S.R. 1059 - By Luna: Congratulating Sabrena Londres, who was recently selected as one of 10 finalists in the 36th annual San Antonio Express-News Outstanding Teen Contest.

S.R. 1062 - By Barrientos: Congratulating Reagan High School Freshman Basketball Team of Austin for winning the 1993 Class 25 4A District Championship.

S.R. 1063 - By Barrientos: Congratulating Mr. and Mrs. John Otis Bell of Austin on the occasion of their 50th wedding anniversary.

S.R. 1064 - By Barrientos: Congratulating Senator Ralph W. Yarborough on the occasion of his 90th birthday.

S.R. 1065 - By Barrientos: Recognizing the faculty, staff, and students of Laurel Mountain Elementary School for being designated a Blue Ribbon School.

S.R. 1066 - By Barrientos: Congratulating the Institute of Advanced Technology on the occasion of its third anniversary.

S.R. 1067 - By Zaffirini: Recognizing the City of Laredo on the occasion of its being named one of the 10 recipients of the National Civic League's All-American City award.

ADJOURNMENT

On motion of Senator Harris of Dallas, the Senate at 6:09 p.m. adjourned until 10:30 a.m. tomorrow.

APPENDIX

REPORTS OF STANDING COMMITTEES

The following committee reports were received by the Secretary of the Senate:

May 25, 1993

NATURAL RESOURCES — **H.B. 2817** (Amended), **C.S.H.B. 799**, **H.B. 2866** (Amended), **H.B. 1643** (Amended)

INTERGOVERNMENTAL RELATIONS — **H.B. 2083**, **H.B. 2255**, **H.B. 104**, **H.B. 496**, **H.B. 1951**, **H.B. 2631** (Amended), **H.B. 1469**, **H.J.R. 22**, **H.B. 2519**, **C.S.H.B. 2790**, **H.J.R. 21**, **H.J.R. 37**, **H.B. 663**, **C.S.H.B. 1138**, **H.B. 2854**, **H.B. 1379**, **H.B. 2663** (Amended), **H.B. 322**, **H.B. 1803**, **H.B. 1103**, **H.B. 318**, **H.B. 728**

NATURAL RESOURCES — **H.B. 2605** (Amended), **H.B. 2377**, **H.B. 1968** (Amended), **H.B. 1706**, **H.B. 1455**, **H.B. 2433**, **H.B. 2044**, **H.B. 711**, **H.B. 1937**, **H.B. 898**, **H.B. 2874**

INTERGOVERNMENTAL RELATIONS — **C.S.H.B. 2500**

NATURAL RESOURCES — **H.B. 2254**, **H.B. 1739**, **H.B. 658**, **H.B. 2402**, **H.B. 2870**, **H.B. 852** (Amended), **C.S.H.B. 2271**

JURISPRUDENCE — **H.B. 2480**

CRIMINAL JUSTICE — **H.B. 862**, **H.B. 605**, **H.B. 2456**, **H.B. 1182**, **H.B. 2761**, **H.B. 1508**, **H.B. 798**, **H.B. 2111**, **H.B. 2179**, **H.B. 2477**, **H.B. 1088**, **S.R. 879**, **H.B. 2535**, **C.S.H.B. 665**, **C.S.H.B. 2766**

JURISPRUDENCE — **H.B. 2831, H.B. 1565, C.S.H.B. 570, H.B. 931, H.B. 1107, H.B. 2871, H.B. 2844, H.B. 1357, H.B. 2185, H.B. 1564** (Amended), **H.B. 1639** (Amended), **H.B. 674, H.B. 1224, H.B. 2851**

INTERGOVERNMENTAL RELATIONS — **C.S.H.B. 1821**

CRIMINAL JUSTICE — **C.S.H.B. 181**

ECONOMIC DEVELOPMENT — **H.B. 2712** (Amended)

CRIMINAL JUSTICE — **C.S.H.B. 2206, C.S.H.B. 2178, C.S.H.B. 357**

ECONOMIC DEVELOPMENT — **H.B. 1196, C.S.H.B. 1790**

JURISPRUDENCE — **H.B. 575** (Amended), **H.B. 1731** (Amended), **H.B. 2237, H.B. 2259, H.B. 171, C.S.H.B. 7, C.S.H.B. 2529**

HEALTH AND HUMAN SERVICES — **H.B. 847, H.B. 2485**

CRIMINAL JUSTICE — **C.S.H.B. 697**

JURISPRUDENCE — **H.B. 1192, H.B. 2685**

SENT TO GOVERNOR
(May 25, 1993)

S.B. 12	**S.B. 324**	**S.B. 672**	**S.B. 1140**
S.B. 26	**S.B. 332**	**S.B. 729**	**S.B. 1142**
S.B. 46	**S.B. 338**	**S.B. 749**	**S.B. 1169**
S.B. 129	**S.B. 346**	**S.B. 771**	**S.B. 1196**
S.B. 137	**S.B. 386**	**S.B. 784**	**S.B. 1197**
S.B. 202	**S.B. 441**	**S.B. 807**	**S.B. 1243**
S.B. 208	**S.B. 450**	**S.B. 817**	**S.B. 1251**
S.B. 209	**S.B. 493**	**S.B. 826**	**S.B. 1255**
S.B. 213	**S.B. 521**	**S.B. 831**	**S.B. 1272**
S.B. 218	**S.B. 536**	**S.B. 841**	**S.B. 1293**
S.B. 239	**S.B. 558**	**S.B. 842**	**S.B. 1328**
S.B. 243	**S.B. 560**	**S.B. 965**	**S.B. 1334**
S.B. 246	**S.B. 564**	**S.B. 971**	**S.B. 1340**
S.B. 252	**S.B. 586**	**S.B. 976**	**S.B. 1445**
S.B. 271	**S.B. 587**	**S.B. 981**	**S.B. 1470**
S.B. 281	**S.B. 588**	**S.B. 1073**	**S.C.R. 83**
S.B. 284	**S.B. 617**	**S.B. 1074**	**S.C.R. 92**
S.B. 314	**S.B. 667**	**S.B. 1093**	

FILED WITH SECRETARY OF STATE
(May 25, 1993)

S.J.R. 31

SIGNED BY GOVERNOR
(May 22, 1993)

H.B. 752 (Effective September 1, 1993)
S.B. 248 (Effective September 1, 1993)

(May 23, 1993)

H.B. 238 (Effective August 30, 1993)
H.B. 535 (Effective August 30, 1993)

(May 24, 1993)

H.B. 563 (Effective August 30, 1993)
H.B. 790 (Effective September 1, 1993)
H.B. 860 (Effective September 1, 1993)
H.B. 961 (Effective September 1, 1993)
H.B. 979 (Effective September 1, 1993)
H.B. 1211 (Effective immediately)
H.B. 1450 (Effective immediately)
H.B. 2680 (Effective September 1, 1993)
S.B. 813 (Effective September 1, 1993)
S.B. 1324 (Effective immediately)
S.B. 632 (Effective September 1, 1993)
S.B. 141 (Effective immediately)

SEVENTY-SEVENTH DAY
(Wednesday, May 26, 1993)

The Senate met at 10:30 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, Brown, Carriker, Ellis, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Lucio, Luna, Madla, Moncrief, Montford, Nelson, Parker, Patterson, Ratliff, Rosson, Shapiro, Shelley, Sibley, Sims, Truan, Turner, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Leedom.

A quorum was announced present.

Senate Doorkeeper James Morris offered the invocation as follows:

> Heavenly Father, as we assemble, blessed with a new day that will provide opportunities of service, remind us to focus on life's blessings, not its barriers; on its opportunities, not its obstacles. Bless with Your grace the work and the workers here in the Senate today. May they act with courage and boldness, for both are needed. In Your name. Amen.

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

LEAVE OF ABSENCE

On motion of Senator Truan, Senator Leedom was granted leave of absence for today on account of illness in the family.