

SENATE JOURNAL

EIGHTIETH LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

SIXTY-FIFTH DAY

(Continued)

(Monday, May 21, 2007)

AFTER RECESS

The Senate met at 10:42 a.m. and was called to order by the President.

SENATORS ANNOUNCED PRESENT

Senator Carona, who had previously been recorded as "Absent-excused," was announced "Present."

Senator Gallegos, who had previously been recorded as "Absent-excused," was announced "Present."

CO-AUTHORS OF SENATE BILL 1162

On motion of Senator Estes, Senators Brimer, Harris, Hinojosa, Lucio, and Nelson will be shown as Co-authors of **SB 1162**.

CO-AUTHOR OF SENATE BILL 1292

On motion of Senator Nelson, Senator Zaffirini will be shown as Co-author of **SB 1292**.

CO-AUTHOR OF SENATE BILL 1748

On motion of Senator Nichols, Senator Lucio will be shown as Co-author of **SB 1748**.

CO-SPONSORS OF HOUSE BILL 14

On motion of Senator Nelson, Senators Averitt, Deuell, Estes, Harris, Janek, Shapiro, Wentworth, and Williams will be shown as Co-sponsors of **HB 14**.

CO-SPONSOR OF HOUSE BILL 922

On motion of Senator Carona, Senator Estes will be shown as Co-sponsor of **HB 922**.

CO-SPONSORS OF HOUSE BILL 1022

On motion of Senator Williams, Senators Estes and Van de Putte will be shown as Co-sponsors of **HB 1022**.

CO-SPONSOR OF HOUSE BILL 1038

On motion of Senator Fraser, Senator Shapleigh will be shown as Co-sponsor of **HB 1038**.

CO-SPONSOR OF HOUSE BILL 1613

On motion of Senator Carona, Senator Van de Putte will be shown as Co-sponsor of **HB 1613**.

CO-SPONSOR OF HOUSE BILL 2087

On motion of Senator Wentworth, Senator Zaffirini will be shown as Co-sponsor of **HB 2087**.

CO-SPONSOR OF HOUSE BILL 2445

On motion of Senator Williams, Senator West will be shown as Co-sponsor of **HB 2445**.

CO-SPONSOR OF HOUSE BILL 2960

On motion of Senator Fraser, Senator Patrick will be shown as Co-sponsor of **HB 2960**.

CO-SPONSOR OF HOUSE BILL 3367

On motion of Senator Wentworth, Senator Zaffirini will be shown as Co-sponsor of **HB 3367**.

CO-SPONSORS OF HOUSE BILL 3678

On motion of Senator Williams, Senators Deuell, Eltife, Estes, Fraser, Hegar, Janek, Nelson, Nichols, and West will be shown as Co-sponsors of **HB 3678**.

CO-SPONSORS OF HOUSE JOINT RESOLUTION 54

On motion of Senator Williams, Senators Estes, Hinojosa, and Van de Putte will be shown as Co-sponsors of **HJR 54**.

PHYSICIANS OF THE DAY

Senator Deuell was recognized and presented Dr. David McClellan and third-year resident Dr. James Qui of Bryan as the Physicians of the Day.

The Senate welcomed Dr. McClellan and Dr. Qui and thanked them for their participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

SENATE RESOLUTION 1098

Senator Averitt offered the following resolution:

SR 1098, In memory of the life of Captain Todd Tyler Christmas.

The resolution was read.

Senator Averitt was recognized and introduced to the Senate family members of Todd Tyler Christmas.

The Senate welcomed its guests and extended its sympathy.

On motion of Senator Averitt, **SR 1098** was adopted by a rising vote of the Senate.

In honor of the memory of the life of Captain Todd Tyler Christmas, the text of the resolution is printed at the end of today's *Senate Journal*.

SENATE RESOLUTION 1077

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Rodney Swaim, who retired December 31, 2006, after 40 years of outstanding service as county commissioner of McMullen County; and

WHEREAS, Mr. Swaim was sworn in as county commissioner on January 1, 1966; a talented and resourceful individual, he has handled his many responsibilities with exceptional dedication and professionalism; and

WHEREAS, Throughout his career, Mr. Swaim has been noted for his superior administrative skills; his abilities as commissioner and his popularity with his constituents ensured that he never had an opponent during his tenure in office; and

WHEREAS, Mr. Swaim has enjoyed the love and support of his wife, Bobbie, for 55 years, and their three children, three grandchildren, and one great-granddaughter are a source of much pride and joy; and

WHEREAS, Mr. Swaim is admired and respected by his colleagues and his community, and his presence at the commissioners court of McMullen County will be greatly missed; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby commend Rodney Swaim on his exceptional service to McMullen County and our state and extend to him best wishes for the retirement years ahead; and, be it further

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

SR 1077 was read and was adopted without objection.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Rodney Swaim; his wife, Bobbie Swaim; his daughter, Margaret Stephenson; his son-in-law, Jacky Stephenson; his granddaughter, Jordan Stephenson; and his daughter-in-law, Sallie Swaim.

The Senate welcomed its guests.

SENATE RESOLUTION 1078

Senator Zaffirini offered the following resolution:

WHEREAS, Residents of McMullen County are gathering on May 21, 2007, to celebrate McMullen County Day at the State Capitol; and

WHEREAS, Located in South Texas, McMullen County consists of more than 1,000 square miles of flat to rolling terrain covered with mesquite, scrub brush, cacti, chaparral, and grasses; before the county's settlement in the 19th century, the landscape of the area was notably different, dominated chiefly by grasslands; and

WHEREAS, Named for the Irish pioneer John McMullen, the county was officially established in 1858, but settlement was sparse due to unrest and conflict in the region; shortly before the Civil War, settlers began to move into the area to take advantage of its profitable grasslands, cattle, and mustangs; a group of resourceful adventurers established a settlement at the intersection of the Frio River and Leoncita Creek and named it Rio Frio; it was the first permanent settlement in the county and eventually became Tilden, the county seat; and

WHEREAS, At the turn of the century, ranching completely dominated the county's economy; since then, the oil and gas industry has grown in importance; and

WHEREAS, The residents of this fine Texas county have played an important role in preserving their region's past and in preparing for the future, and it is a pleasure to pay tribute to McMullen County and its citizens on this special day; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby recognize May 21, 2007, as McMullen County Day at the State Capitol and extend to those citizens here today sincere best wishes for an enjoyable visit; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of this occasion.

SR 1078 was read and was adopted without objection.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate a delegation of citizens from McMullen County.

The Senate welcomed its guests.

SENATE RESOLUTION 1101

Senator Gallegos offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Lawrence A. Eckert Intermediate School of the Aldine Independent School District for its outstanding physical fitness and wellness programs; and

WHEREAS, Knowing that promoting a healthy school environment could also lead to scholastic improvements, the school has instituted a variety of programs that offer opportunities for teachers and students to develop and maintain a healthy lifestyle; and

WHEREAS, Among the many programs established are an annual Sports Day, a Hoop-A-Thon fundraiser, a 5-A-Day Fruit and Vegetable Tasting Exhibition, a Nutritional Awareness Day, and the First Tee Golf Program; students also attend the Southland Conference basketball tournament, and this year physical education teacher Katie Skala took 120 pupils to participate in the ConocoPhillips Rodeo Run; and

WHEREAS, In addition to the physical education programs, the school began an integrated weekly health class to help students understand the concepts taught in physical education and health education; the physical fitness and wellness programs at Lawrence A. Eckert Intermediate School are improving the health of students and teaching them the importance of incorporating exercise into their daily life; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby commend the Lawrence A. Eckert Intermediate School for its commitment to improving the physical fitness of its students; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the school as an expression of esteem from the Texas Senate.

SR 1101 was read and was adopted without objection.

GUESTS PRESENTED

Senator Gallegos was recognized and introduced to the Senate representatives of Lawrence A. Eckert Intermediate School: Joe Delgado, Physical Education Coach; Mark Herndon, Assistant Principal; Katie Skala, Physical Education Coach; Stacie Strickland, Physical Education Paraprofessional; and Lori Garcia, Assistant Principal.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The President at 10:55 a.m. announced the conclusion of morning call.

HOUSE BILL 2341 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2341** at this time on its second reading:

HB 2341, Relating to certain investment products made available to certain public school employees.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2341 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2341** 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.

HOUSE BILL 2216 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2216** at this time on its second reading:

HB 2216, Relating to the regulation of the sale of certain mobility motor vehicles equipped to transport a person with a disability.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2216 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2216** 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.

HOUSE BILL 264 ON SECOND READING

On motion of Senator Eltife and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 264** at this time on its second reading:

HB 264, Relating to the procedure for rendering certain property for ad valorem taxation if the information contained in the most recently filed rendition statement continues to be accurate.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 264 ON THIRD READING

Senator Eltife moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 264** 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.

HOUSE BILL 2622 ON SECOND READING

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2622** at this time on its second reading:

HB 2622, Relating to eligibility of board members of certain rapid transit authorities to receive insurance benefits.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2622 ON THIRD READING

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2622** 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.

HOUSE BILL 1572 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1572** at this time on its second reading:

HB 1572, Relating to an exception from civil discovery for certain records of a law enforcement agency.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 1572 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1572** 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.

MOTION TO PLACE COMMITTEE SUBSTITUTE HOUSE BILL 1522 ON SECOND READING

Senator Williams moved to suspend the regular order of business to take up for consideration **CSHB 1522** at this time on its second reading:

CSHB 1522, Relating to parking a commercial motor vehicle on certain streets.

(Senator Brimer in Chair)

Senator Williams withdrew the motion to suspend the regular order of business.

HOUSE BILL 1373 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1373** at this time on its second reading:

HB 1373, Relating to creating the Chronic Kidney Disease Task Force.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 1373 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 **HB 1373** 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.

HOUSE BILL 3135 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3135** at this time on its second reading:

HB 3135, Relating to the compensation paid to retired and former judges or justices while assigned as visiting judges in certain courts.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 3135 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3135** 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.

HOUSE BILL 1293 ON SECOND READING

Senator Lucio moved to suspend the regular order of business to take up for consideration **HB 1293** at this time on its second reading:

HB 1293, Relating to licensing and regulation of event coordinators for combative sports.

The motion prevailed.

Senator Patrick asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Patrick.

HOUSE BILL 1293 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 **HB 1293** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Patrick.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

HOUSE BILL 2945 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2945** at this time on its second reading:

HB 2945, Relating to authorizing a method for certain municipalities to compensate a person for the removal of an on-premise sign as required by the municipality.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2945 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2945** 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.

HOUSE BILL 1930 ON SECOND READING

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1930** at this time on its second reading:

HB 1930, Relating to gifts and grants for financing or assisting the operation of the office of county attorney in Brown County.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 1930 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1930** 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.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2445 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2445** at this time on its second reading:

CSHB 2445, Relating to certain employment records maintained by the Commission on Law Enforcement Officer Standards and Education; providing an administrative penalty.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2445 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2445** 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.

**COMMITTEE SUBSTITUTE
HOUSE BILL 142 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 142** at this time on its second reading:

CSHB 142, Relating to imposition of local sales and use taxes on certain taxable items shipped outside a transit authority.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 142 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 142** 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.

HOUSE BILL 401 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 401** at this time on its second reading:

HB 401, Relating to the use of text messages and other electronic media to commit certain sexual offenses against minors or certain students.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 401 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 **HB 401** 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.

HOUSE JOINT RESOLUTION 103 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **HJR 103** at this time on its second reading:

HJR 103, Proposing a constitutional amendment providing for the continuation of the constitutional appropriation for facilities and other capital items at Angelo State University on a change in the governance of the university.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE JOINT RESOLUTION 103 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HJR 103** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE
HOUSE BILL 1038 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1038** at this time on its second reading:

CSHB 1038, Relating to the operation of the Texas Residential Construction Commission; providing penalties.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1038** (Senate committee printing) in SECTION 34 of the bill by striking added Subsection (f), Section 426.005, Property Code (page 11, lines 14-19), and substituting the following:

(f) A homeowner is not required to comply with this subtitle if:

(1) at the time a homeowner and a builder enter into a contract covered by this title the builder was not registered; or

(2) the certificate or registration of the builder has been revoked.

The amendment to **CSHB 1038** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 1038** (Senate committee printing) as follows:

(1) In SECTION 25 of the bill amend Section 418.001, Property Code (page 8, lines 50-51), by striking "or" at the end of the existing Subsection (24); renumbering the existing Subsection (25) as Subsection (26); and adding a new Subsection (25) as follows:

(25) a repeated failure to comply with the requirements of Subtitle F; or

(2) Add the appropriately numbered SECTIONS and renumbering existing SECTIONS accordingly:

SECTION ____ . Title 16, Property Code, is amended by adding Subtitle F to read as follows:

SUBTITLE F. INSPECTION OF NEW RESIDENTIAL CONSTRUCTION
CHAPTER 446. RESIDENTIAL CONSTRUCTION IN UNINCORPORATED
AREAS AND OTHER AREAS NOT SUBJECT TO MUNICIPAL INSPECTIONS

Sec. 446.001. APPLICABILITY OF CHAPTER. This chapter applies to residential construction described by Section 401.003(a)(1), (2) and (3) in an unincorporated area and to other areas not subject to municipal inspections.

Sec. 446.002. INSPECTION REQUIRED. (a) A builder shall have a new home or other improvement to which this chapter applies inspected by a fee inspector.

(b) For new construction subject to this chapter, there shall be a minimum of three inspections performed during the project to ensure code compliance, as applicable, at the following stages of construction:

(i) foundation, prior to the placement of concrete;

(ii) framing and mechanical systems prior to being covered with sheetrock or other interior wall covering; and

(iii) final inspection when the home is completed.

(c) For improvements other than new construction, the inspections described in Subsection (b) shall occur as necessary based upon the scope of work of the project.

(d) The builder shall be responsible for contracting with a fee inspector authorized by this chapter to perform the inspections required by this section.

(e) The commission may establish fees necessary to administer this subtitle. Such fees may be included in the home registration fee required described in Section 426.003(c).

Sec. 446.003. ELECTRONIC REPORTING SYSTEM. (a) The commission shall establish an Internet based process to implement this subtitle. The process shall be password protected. Inspectors will use the Internet based process to report the satisfactory completion of the inspections required by Section 446.002 to the commission. Upon reporting of satisfactory completion of the inspections, the commission shall issue a certificate of completion which shall be forwarded to the homeowner within 30 days following the registration of a home, as required by Section 426.003.

(b) The commission shall allow for an alternative reporting system for persons who demonstrate to the commission an inability to comply with the electronic reporting requirements of Subsection (a).

Sec. 446.004. FEE INSPECTOR. A fee inspector must be either a licensed engineer, a registered architect, a professional inspector licensed by the Texas Real Estate Commission or a third party inspector qualified under Section 427.001(b). A builder may use the same or a different fee inspector for inspections required under this chapter.

Sec. 446.005. ELEMENTS OF INSPECTION. The commission by rule shall:

(1) establish the elements of the construction that must be inspected under this chapter in accordance with Section 446.002 to ensure compliance with the applicable code provisions as required by Section 430.001(d); and

(2) prescribe the form and the manner in which the results of the inspection will be reported in writing.

Sec. 446.006. CONSTRUCTION IN CERTAIN AREAS: ELIGIBILITY FOR CERTAIN WINDSTORM AND HAIL INSURANCE. (a) This section applies only to construction in an unincorporated area in which windstorm and hail insurance coverage is available under Chapter 2210, Insurance Code.

(b) In addition to an inspection required pursuant to Section 446.002, the builder must, if required by statute, obtain a certificate of compliance for the structure in the manner provided under Section 2210.251, Insurance Code.

SECTION ____ . On or before June 1, 2008, the Texas Residential Construction Commission shall adopt all rules necessary to implement Subtitle F, Title 16, Property Code, as added by this Act.

SECTION ____ . Subtitle F, Title 16, Property Code, as added by this Act, applies only to construction commenced on or after September 1, 2008. For the purposes of Subtitle F, Title 16, Property Code, as added by this Act, construction commenced before September 1, 2008, is governed by the law in effect immediately before the effective date of this Act and the former law is continued in effect for such construction.

The amendment to **CSHB 1038** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Seliger offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 1038** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS accordingly:

SECTION ____ Subtitle D, Title 16, Property Code, is amended by adding Chapter 431 to read as follows:

CHAPTER 431. ENERGY-EFFICIENT BUILDING ACCREDITATION
PROGRAM

Sec. 431.001. ENERGY-EFFICIENT BUILDING ACCREDITATION PROGRAM. (a) In this section, "National Housing Act" means Section 203(b), (i), or (k) of the National Housing Act (12 U.S.C. Sections 1709(b), (i), and (k)).

(b) The commission, in consultation with the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System, the Texas Commission on Environmental Quality, and an advisory committee appointed by the commission, may establish an energy-efficient building accreditation program for buildings that exceed the building energy performance standards under Section 388.003, Health and Safety Code, by 15 percent or more.

(c) If the commission establishes a program under this chapter, the commission, in consultation with the Energy Systems Laboratory, shall update the program on or before December 1 of each even-numbered year using the best available energy-efficient building practices.

(d) If the commission establishes a program under this chapter, the program must include a checklist system to produce an energy-efficient building scorecard to help:

(1) home buyers compare potential homes and, by providing a copy of the completed scorecard to a mortgage lender, qualify for energy-efficient mortgages under the National Housing Act; and

(2) communities qualify for emissions reduction credits by adopting codes that meet or exceed the energy-efficient building or energy performance standards established under Chapter 388, Health and Safety Code.

Sec. 431.002. PUBLIC INFORMATION PROGRAM. The commission may establish a public information program to inform homeowners, sellers, buyers, and others regarding energy-efficient building ratings.

Sec. 431.003. MEASUREMENT SYSTEM FOR REDUCTION IN ENERGY AND EMISSIONS. If the commission establishes a program under this chapter, the Energy Systems Laboratory shall establish a system to measure the reduction in energy and emissions produced under the energy-efficient building program and report those savings to the commission.

Sec. 431.004. CERTIFICATION FEE. If the commission establishes a program under this chapter, the commission may set a certification fee sufficient to cover the cost of administering the program and pay for any education efforts conducted under this chapter.

SECTION _____. Section 388.009, Health and Safety Code, is repealed.

The amendment to **CSHB 1038** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

On motion of Senator Fraser and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 1038 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1038 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1038** 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.

COMMITTEE SUBSTITUTE HOUSE BILL 2819 ON SECOND READING

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2819** at this time on its second reading:

CSHB 2819, Relating to the management and protection of coastal public land and other coastal resources; providing for administrative penalties.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2819** (Senate committee printing) as follows:

(1) In SECTION 6 of the bill, in the recital to the section (page 3, line 12), strike "and (h)" and substitute "(h), and (i)".

(2) In SECTION 6 of the bill, in amended Section 33.607, Natural Resources Code, between added Subsections (f) and (g) of the section (page 3, between lines 36 and 37), insert the following:

(g) A county may establish and implement a building set-back line under this section only outside the corporate limits of a municipality.

(3) In SECTION 6 of the bill, in added Subsection (g), Section 33.607, Natural Resources Code (page 3, line 37), strike "(g)" and substitute "(h)".

(4) In SECTION 6 of the bill, in added Subsection (h), Section 33.607, Natural Resources Code (page 3, line 39), strike "(h)" and substitute "(i)".

The amendment to **CSHB 2819** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 2819** (Senate committee printing) as follows:

(1) In SECTION 14 of the bill, amended Subsection (a), Section 61.025, Natural Resources Code (page 8, line 36), strike "A" and substitute "Except as provided by Subsection (b), a [A]".

(2) In SECTION 14 of the bill, amended Subsection (b), Section 61.025, Natural Resources Code (page 9, line 34), between "If" and "there", insert "the statement is not included in the executory contract for conveyance or".

The amendment to **CSHB 2819** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

On motion of Senator Jackson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 2819 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 2819 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2819** 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.

HOUSE BILL 3350 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3350** at this time on its second reading:

HB 3350, Relating to payment of costs incurred in the operation and administration of the Texas Lottery Commission.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3350** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) The comptroller of public accounts, with the assistance of the Texas Lottery Commission, the Department of Information Resources, and the Department of Public Safety, shall conduct a study on the feasibility and viability of establishing an Internet lottery game program through the Texas Lottery Commission. The study must include an examination of the following matters regarding Internet lottery game transactions:

(1) the experience of other jurisdictions that have sold lottery tickets through the Internet;

(2) the security of those transactions;

(3) means of verifying the age of purchasers of lottery tickets;

(4) procedures for the sale of lottery tickets;

(5) means of verifying that all aspects of an Internet lottery ticket purchase occur within the State of Texas and of prohibiting interstate lottery transactions through the Internet;

(6) means of payment for lottery ticket purchases;

(7) procedures for prize claims and ticket validation;

(8) the potential impact on current lottery sales and sales agents;

(9) the capability of an Internet lottery game system to interface with the current lottery operator's computer systems;

(10) the ability of the Texas Lottery Commission to develop and operate an internal system to sell lottery tickets or pay lottery prizes directly through the Internet;

(11) the availability of persons in the private sector capable of providing an Internet lottery game system;

(12) the potential fiscal impact on the foundation school fund;

(13) compliance with all applicable state and federal laws; and

(14) any other matter the comptroller determines appropriate after consultation with the Texas Lottery Commission.

(b) Not later than January 1, 2009, the comptroller shall report the results of the study conducted under this section to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives; and

(4) the Texas Lottery Commission.

(c) This section expires January 1, 2010.

SECTION _____. (a) The Texas Lottery Commission and the comptroller of public accounts jointly shall conduct a study on the feasibility of and benefits and costs to this state of assessing a prize fee in the amount of five percent of the amount of a lottery prize that exceeds \$600. The study shall consider whether dedication of the revenue from the prize fee to TEXAS grants awarded under Subchapter M, Chapter 56, Education Code, would be an appropriate use of the revenue to enable this state to provide TEXAS grants to eligible students. The Texas Higher Education Coordinating Board shall provide the commission and the comptroller on request with information relating to the possible dedication of prize fee revenue to TEXAS grants.

(b) Not later than January 1, 2009, the Texas Lottery Commission shall report the results of the study conducted under this section to:

(1) the governor;

- (2) the lieutenant governor; and
- (3) the speaker of the house of representatives.
- (c) This section expires January 1, 2010.

The amendment to **HB 3350** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Nays: Patrick.

On motion of Senator West and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 3350 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 3350 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3350** 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.

HOUSE BILL 1586 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1586** at this time on its second reading:

HB 1586, Relating to the creation of the offense of illumination of an aircraft by intense light.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 1586 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 **HB 1586** 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.

HOUSE BILL 3537 ON SECOND READING

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3537** at this time on its second reading:

HB 3537, Relating to the adoption of a child by a person serving in the military.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 3537 ON THIRD READING

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3537** 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.

HOUSE BILL 2691 ON SECOND READING

On motion of Senator Uresti and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2691** at this time on its second reading:

HB 2691, Relating to grants provided to local guardianship programs.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2691 ON THIRD READING

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2691** 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.

COMMITTEE SUBSTITUTE

HOUSE BILL 567 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 567** at this time on its second reading:

CSHB 567, Relating to the state registry of paternity.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 567 ON THIRD READING**

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 567** 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.

HOUSE BILL 56 ON SECOND READING

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 56** at this time on its second reading:

HB 56, Relating to the operation of crematory establishments by commercial embalming establishments.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 56 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 56** 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.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3011 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3011** at this time on its second reading:

CSHB 3011, Relating to the creation of ship channel security districts by certain populous counties.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 3011** by adding the following section:

SECTION _____. Subsection (a), Section 217.042, Local Government Code, is amended to read as follows:

(a) The municipality may define and prohibit any nuisance within the limits of the municipality and, for a nuisance the definition of which does not address levels of emissions authorized in an air permit issued by the Texas Commission on Environmental Quality, within 5,000 feet outside the limits.

SECTION 2. Section 382.113, Health and Safety Code, is amended to read as follows:

Sec. 382.113. AUTHORITY OF MUNICIPALITIES. (a) Subject to Section 381.002, a municipality has the powers and rights as are otherwise vested by law in the municipality to:

(1) abate a nuisance; and

(2) enact and enforce an ordinance for the control and abatement of air pollution, or any other ordinance, not inconsistent with this chapter or the commission's rules, permits, or orders.

(b) An ordinance enacted by a municipality:

(1) must be consistent with this chapter and the commission's rules, permits, and orders;

(2) ~~and~~ may not make unlawful a condition or act approved or authorized under this chapter or the commission's rules, permits, or orders; and

(3) does not apply outside the corporate limits of the municipality.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment to **CSHB 3011** was read.

POINT OF ORDER

Senator Ellis raised a point of order that Floor Amendment No. 1 was not germane to the body of the bill.

POINT OF ORDER WITHDRAWN

Senator Ellis withdrew the point of order.

Question – Shall Floor Amendment No. 1 to **CSHB 3011** be adopted?

Senator Jackson withdrew Floor Amendment No. 1.

CSHB 3011 was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 3011 ON THIRD READING

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3011** 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.

HOUSE BILL 2694 ON SECOND READING

On motion of Senator Janek and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2694** at this time on its second reading:

HB 2694, Relating to the disaster contingency fund.

The bill was read second time.

Senator Janek offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2694** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in added Subsection (c)(2)(A), Government Code (page 1, line 32), strike ":" and substitute "; and".

(2) In SECTION 1 of the bill, in added Subsection (c)(2)(B), Government Code (page 1, line 34), strike "; and" and substitute an underlined period.

(3) In SECTION 1 of the bill, strike added Subsection (c)(2)(C), Government Code (page 1, lines 35-37).

The amendment to **HB 2694** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Janek and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 2694 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2694 ON THIRD READING

Senator Janek moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2694** 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.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3849 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 3849** at this time on its second reading:

CSHB 3849, Relating to the registration of all-terrain vehicles by the Texas Department of Transportation.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 3849 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 3849** 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.

(Senator Carona in Chair)

HOUSE BILL 1734 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1734** at this time on its second reading:

HB 1734, Relating to cancellation or suspension of an alcoholic beverage license or permit.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 1734 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 **HB 1734** 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.

HOUSE BILL 434 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 434** at this time on its second reading:

HB 434, Relating to the appointment of certain employees of the Texas Department of Criminal Justice as peace officers for certain purposes.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 434 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 434** 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.

HOUSE BILL 2398 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2398** at this time on its second reading:

HB 2398, Relating to the issuance of specialty license plates to immediate family members of a person who dies while serving in the United States armed forces.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2398 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2398** 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.

HOUSE BILL 2796 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2796** at this time on its second reading:

HB 2796, Relating to the authority of certain counties to create or finance museums.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2796 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 **HB 2796** 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.

HOUSE BILL 2471 ON SECOND READING

Senator Deuell moved to suspend the regular order of business to take up for consideration **HB 2471** at this time on its second reading:

HB 2471, Relating to the treatment and sale of certain bedding.

The motion prevailed.

Senator Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Shapiro.

HOUSE BILL 2471 ON THIRD READING

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2471** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Shapiro.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

HOUSE BILL 887 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 887** at this time on its second reading:

HB 887, Relating to the statute of limitations for the offenses of credit card or debit card abuse, false statement to obtain property or credit, and fraudulent use or possession of identifying information.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 887 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 887** 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.

HOUSE BILL 119 ON THIRD READING

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 119** at this time on its third reading and final passage:

HB 119, Relating to the exemption from competitive bidding for certain purchases.

The bill was read third time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend **HB 119** on third reading (Senate committee printing) as follows:

(1) Strike SECTION 1 of the bill (page 1, lines 11 through 17) and substitute the following:

SECTION 1. Section 2155.132, Government Code, is amended by amending Subsection (e) and adding Subsection (i) to read as follows:

(e) Competitive bidding, whether formal or informal, is ~~[not]~~ required for a purchase by a state agency if the purchase:

(1) exceeds \$5,000; or

(2) is made under a written contract ~~[does not exceed \$2,000, or a greater amount prescribed by commission rule].~~

(i) For purposes of this section, "written contract" means a contract awarded by a state agency on the basis of a competitive bidding process.

(2) In SECTION 2 of the bill, in amended Section 2157.0611, Government Code (page 1, line 21), between "POSSIBLE." and "A catalog", insert "(a)".

(3) In SECTION 2 of the bill, following amended Section 2157.0611, Government Code (page 1, between lines 30 and 31), insert the following:

(b) For purposes of this section, "written contract" means a contract awarded by a state agency on the basis of a competitive bidding process.

The amendment to **HB 119** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading.

On motion of Senator Ogden and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 119 as amended was finally passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE

HOUSE BILL 1955 ON SECOND READING

On motion of Senator Hegar and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1955** at this time on its second reading:

CSHB 1955, Relating to the licensing of certain peace officers by the Commission on Law Enforcement Officer Standards and Education.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1955 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1955** 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.

HOUSE BILL 3492 ON SECOND READING

On motion of Senator Janek and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3492** at this time on its second reading:

HB 3492, Relating to the determination of the total taxable value of property in a school district under the property value study conducted by the comptroller of public accounts.

The bill was read second time.

Senator Patrick offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3492** (Senate committee printing) by adding the following SECTION to the bill, appropriately numbered, and renumbering subsequent SECTIONS accordingly:

SECTION __. Section 403.302(c), Government Code, is amended to read as follows:

(c) If after conducting the annual study the comptroller determines that the local value for a school district is valid, the local value is presumed to represent taxable value for the school district. In the absence of that presumption, taxable value for a school district is the state value for the school district determined by the comptroller under Subsections (a) and (b) unless the local value exceeds the state value, in which case the taxable value for the school district is the district's local value. In determining whether the local value for a school district is valid, the comptroller shall use a margin of error of 10 ~~[that does not exceed five]~~ percent unless the comptroller determines that the size of the sample of properties necessary to make the determination makes the use of such a margin of error not feasible, in which case the comptroller may use a larger margin of error.

The amendment to **HB 3492** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Janek and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 3492 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

VOTES RECONSIDERED

On motion of Senator Hinojosa and by unanimous consent, the vote by which **HB 3492** was passed to third reading was reconsidered.

Question — Shall **HB 3492** as amended be passed to third reading?

Senator Hinojosa moved to reconsider the vote by which Floor Amendment No. 1 was adopted.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hegar, Hinojosa, Janek, Lucio, Nelson, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Nays: Harris, Jackson, Patrick, Wentworth, Williams.

Absent: Fraser.

Question — Shall Floor Amendment No. 1 to **HB 3492** be adopted?

Senator Patrick withdrew Floor Amendment No. 1.

HB 3492 was again passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 3492 ON THIRD READING

Senator Janek moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3492** 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.

HOUSE BILL 3514 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3514** at this time on its second reading:

HB 3514, Relating to the disclosure by the Texas Department of Public Safety to appraisal districts of driver's license records and personal identification certificate records, or certain information in those records, for use in determining an individual's eligibility for a residence homestead exemption from ad valorem taxation.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 3514 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3514** 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.

HOUSE BILL 2010 ON SECOND READING

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2010** at this time on its second reading:

HB 2010, Relating to declaratory relief for businesses in this state for liability for sales and use taxes of other states.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2010 ON THIRD READING

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2010** 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.

COMMITTEE SUBSTITUTE HOUSE BILL 1977 ON SECOND READING

Senator Averitt moved to suspend the regular order of business to take up for consideration **CSHB 1977** at this time on its second reading:

CSHB 1977, Relating to the Texas Health Insurance Risk Pool.

The motion prevailed.

Senator Harris asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Averitt offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1977** (Senate committee printing) as follows:

(1) Add the following new SECTIONS to the bill, appropriately numbered:

SECTION __. Section 1506.001, Insurance Code, is amended by adding Subdivisions (1-a) through (1-e) and (8) to read as follows:

(1-a) "Church plan" has the meaning assigned by Section 3(33), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(33)).

(1-b) "Creditable coverage" means, with respect to an individual, coverage of the individual provided under any of the following:

(A) a group health plan;

(B) health insurance coverage;

(C) Part A or Part B, Title XVIII, Social Security Act (42 U.S.C. Section 1395c et seq.);

(D) Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), other than coverage consisting solely of benefits under Section 1928 of that Act (42 U.S.C. Section 1396s);

(E) 10 U.S.C. Section 1071 et seq.;

(F) a medical care program of the Indian Health Service or a tribal organization;

(G) a state health benefits risk pool;

(H) a health benefits plan offered under 5 U.S.C. Section 8901 et seq.;

(I) a public health plan as defined in federal regulations;

(J) a health benefit plan under Section 5(e), Peace Corps Act (22 U.S.C. Section 2504(e)); or

(K) a state child health plan provided under Title XXI, Social Security Act (42 U.S.C. Section 1397aa et seq.).

(1-c) "Federally defined eligible individual" means an individual:

(A) for whom, as of the date on which the individual seeks coverage under this chapter, the aggregate period of creditable coverage is 18 months or more;

(B) whose most recent prior creditable coverage was under:

(i) a group health plan, governmental plan, or church plan; or

(ii) health insurance coverage offered in connection with a plan described by Subparagraph (i);

(C) who is not eligible for coverage under a group health plan, Part A or Part B, Title XVIII, Social Security Act (42 U.S.C. Section 1395c et seq.), or a state plan under Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), or any successor program, and who does not have other health benefit plan coverage;

(D) with respect to whom the most recent coverage within the aggregate creditable coverage was not terminated based on a factor relating to nonpayment of premiums or fraud;

(E) who, if offered the option of continuation coverage under a continuation provision required by Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.) (COBRA), or under a similar state program, elected that coverage; and

(F) who has exhausted continuation coverage, if elected, under Paragraph (E).

(1-d) "Governmental plan" has the meaning assigned by Section 3(32), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(32)), and includes any United States governmental plan.

(1-e) "Group health plan" means an employee welfare benefit plan as defined by Section 3(1), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(1)), to the extent that the plan provides health benefit plan coverage to employees or their dependents as defined under the terms of the plan, directly or through insurance, reimbursement, or otherwise.

(8) "Significant break in coverage" means a period of 63 consecutive days during all of which the individual does not have health benefit plan coverage, except that a waiting period or an affiliation period is not considered in determining a significant break in coverage.

SECTION __. Section 1506.002, Insurance Code, is amended by amending Subsection (b) and adding Subsections (c) and (d) to read as follows:

(b) In this chapter, "health benefit plan" does not include one or more or any combination of the following:

(1) coverage only for accident or disability income insurance or any combination of those coverages;

(2) credit-only [a plan providing coverage only for dental or vision care;

[~~(3) fixed indemnity insurance, including hospital indemnity insurance;~~

[~~(4) credit~~] insurance;

(3) [~~(5) long term care insurance;~~

[~~(6) disability income insurance;~~

[~~(7) other limited benefit coverage, including specified disease coverage;~~

[~~(8)~~] coverage issued as a supplement to liability insurance;

(4) liability insurance, including general liability insurance and automobile liability insurance;

(5) [~~(9) insurance arising out of a~~] workers' compensation [~~law~~] or similar insurance [~~law~~];

(6) coverage for on-site medical clinics;

(7) [~~(10)~~] automobile medical payment insurance; [~~or~~]

(8) [~~(11)~~] insurance coverage under which benefits are payable with or without regard to fault and that is statutorily required to be contained in a liability insurance policy or equivalent self-insurance; or

(9) other similar insurance coverage, specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), under which benefits for medical care are secondary or incidental to other insurance benefits.

(c) In this chapter, "health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the coverage:

(1) limited scope dental or vision benefits;

(2) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these benefits; or

(3) other similar, limited benefits specified by federal regulations issued under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191).

(d) In this chapter, "health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate, or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

- (1) coverage only for a specified disease or illness; or
- (2) hospital indemnity or other fixed indemnity insurance.

SECTION __. Subsection (a), Section 1506.151, Insurance Code, is amended to read as follows:

(a) The pool shall offer coverage consistent with major medical expense coverage to each eligible individual ~~[who is under the age of 65].~~

SECTION __. Subsection (a), Section 1506.152, Insurance Code, is amended to read as follows:

(a) An individual who is a legally domiciled resident of this state is eligible for coverage from the pool if the individual:

(1) provides to the pool evidence that the individual is a federally defined eligible individual who has not experienced a significant break in coverage ~~[maintained health benefit plan coverage for the preceding 18 months with no gap in coverage longer than 63 days and with the most recent coverage being provided through an employer sponsored plan, church plan, or government plan];~~

(2) is younger than 65 years of age and provides to the pool evidence that the individual maintained health benefit plan coverage under another state's qualified Health Insurance Portability and Accountability Act health program that was terminated because the individual did not reside in that state and submits an application for pool coverage not later than the 63rd day after the date the coverage described by this subdivision was terminated;

(3) is younger than 65 years of age and has been a legally domiciled resident of this state for the preceding 30 days, is a citizen of the United States or has been a permanent resident of the United States for at least three continuous years, and provides to the pool:

(A) a notice of rejection of, or refusal to issue, substantially similar individual health benefit plan coverage from a health benefit plan issuer, other than an insurer that offers only stop-loss, excess loss, or reinsurance coverage, if the rejection or refusal was for health reasons;

(B) certification from an agent or salaried representative of a health benefit plan issuer that states that the agent or salaried representative cannot obtain substantially similar individual coverage for the individual from any health benefit plan issuer that the agent or salaried representative represents because, under the underwriting guidelines of the health benefit plan issuer, the individual will be denied coverage as a result of a medical condition of the individual;

(C) an offer to issue substantially similar individual coverage only with conditional riders;

(D) a diagnosis of the individual with one of the medical or health conditions on the list adopted under Section 1506.154; or

(E) evidence that the individual is covered by substantially similar individual coverage that excludes one or more conditions by rider; or

(4) provides to the pool evidence that, on the date of application to the pool, the individual is certified as eligible for trade adjustment assistance or for pension benefit guaranty corporation assistance, as provided by the Trade Adjustment Assistance Reform Act of 2002 (Pub. L. No. 107-210).

SECTION __. Section 1506.153, Insurance Code, as amended by Chapters 728 and 824, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

Sec. 1506.153. INELIGIBILITY FOR COVERAGE. Notwithstanding Section 1506.152 [~~Sections 1506.152(a) (d)~~], an individual is not eligible for coverage from the pool if:

(1) on the date pool coverage is to take effect, the individual has health benefit plan coverage from a health benefit plan issuer or health benefit arrangement in effect, except as provided by Section 1506.152(a)(3)(E);

(2) at the time the individual applies to the pool, the individual is eligible for other health care benefits, including an offer of benefits from the continuation of coverage under Title X, Consolidated Omnibus Budget Reconciliation Act of 1985 (29 U.S.C. Section 1161 et seq.), as amended (COBRA), other than:

(A) coverage, including COBRA or other continuation coverage or conversion coverage, maintained for any preexisting condition waiting period under a pool policy or during any preexisting condition waiting period or other waiting period of the other coverage;

(B) employer group coverage conditioned by a limitation of the kind described by Section 1506.152(a)(3)(A) or (C); or

(C) individual coverage conditioned by a limitation described by Section 1506.152(a)(3)(C) or (D);

(3) within 12 months before the date the individual applies to the pool, the individual terminated coverage in the pool, unless the individual:

(A) demonstrates a good faith reason for the termination; or

(B) is a federally defined eligible individual;

(4) the individual is confined in a county jail or imprisoned in a state or federal prison;

(5) any of the individual's premiums are paid for or reimbursed under a government-sponsored program or by a government agency or health care provider~~[- other than as an otherwise qualifying full-time employee of a government agency or health care provider or as a dependent of such an employee];~~

(6) the individual's prior coverage with the pool was terminated:

(A) during the 12-month period preceding the date of application for nonpayment of premiums; or

(B) for fraud; or

(7) the individual is eligible for health benefit plan coverage provided in connection with a policy, plan, or program paid for or sponsored by an employer, even though the employer coverage is declined.

SECTION __. Subsection (a), Section 1506.154, Insurance Code, is amended to read as follows:

(a) The board shall adopt a list of medical or health conditions for which an individual is eligible for pool coverage under Section 1506.152(a)(3)(D) [~~1506.152(a)(3)(E)~~] without applying for health benefit plan coverage.

SECTION __. Subsections (b) and (c), Section 1506.155, Insurance Code, are amended to read as follows:

(b) The exclusion provided by Subsection (a) does not apply to a federally defined eligible individual or an individual who:

(1) was continuously covered for a period of at least 12 months, excluding any waiting period, by creditable [health benefit plan] coverage that terminated not earlier than the 63rd day before the effective date of coverage under the pool; and

(2) applied for pool coverage not later than the 63rd day after the date the creditable [health benefit plan] coverage described by Subdivision (1) terminated.

(c) If an individual was covered by creditable [health benefit plan] coverage that was in effect at any time during the 12-month period preceding the effective date of the individual's coverage under the pool, the pool shall subtract from the exclusion period required under Subsection (a) the period that the individual was covered under that creditable coverage [health benefit plan] and any waiting period that applied before that creditable [health benefit plan] coverage became effective.

SECTION __. Subsection (a), Section 1506.202, Insurance Code, is amended to read as follows:

(a) The board may, on a competitive bid basis, contract with [select] one or more health benefit plan issuers or [a] third-party administrators [administrator] authorized by the department to administer the pool. [The selection must be made under a competitive bidding process in accordance with the plan of operation.]

SECTION __. Section 1506.203, Insurance Code, is amended to read as follows:

Sec. 1506.203. ADMINISTRATOR'S CONTRACT [TERM; SUCCEEDING TERM]. (a) A person selected as a pool administrator shall serve [serves] in that capacity for a period specified in the contract between the pool and the pool administrator, subject to removal for cause and subject to any terms, conditions, and limitations of the contract between the pool and the pool administrator. The term of the contract must be at least three years and may be extended, in the board's sole discretion, for up to a total term of six years [three year term beginning on the date the board issues its order making the selection].

(b) Not later than one year before the expiration date of a pool administrator's contract, including any board-authorized extensions of that contract [term], the board shall invite all health benefit plan issuers, including the pool administrator, to submit bids to serve as a pool administrator for the succeeding administration period. The selection of the succeeding pool administrator must be made not later than the sixth calendar month preceding the month in which the pool administrator's contract [term] expires.

SECTION __. Subsection (b), Section 1506.254, Insurance Code, is amended to read as follows:

(b) Interest accrues on the unpaid amount of an assessment at a rate equal to the prime lending rate, as published in the most recent issue of the Wall Street Journal and determined as of the first day of each month during which [date] the assessment is [becomes] delinquent, plus three percent.

(2) In SECTION 6 of the bill, between "SECTION 6." and "The change" (page 2, line 36), insert "(a)".

(3) In SECTION 6 of the bill, at the end of that SECTION (page 2, between lines 43 and 44), insert:

(b) This Act applies only to an application for initial or renewal coverage through the Texas Health Insurance Risk Pool under Chapter 1506, Insurance Code, as amended by this Act, that is filed with the pool on or after January 1, 2008. An application filed before January 1, 2008 is governed by the law in effect on the date on which the application was filed, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act to Subsection (b), Section 1506.254, Insurance Code, applies to an assessment under Subchapter F, Chapter 1506, Insurance Code, for a calendar year beginning on or after January 1, 2008. An assessment for a calendar year before January 1, 2008, is governed by the law in effect during the period for which the assessment is made, and the former law is continued in effect for that purpose.

(4) In SECTION 7 of the bill, strike "This Act takes effect" (page 2, line 44) and substitute "(a) Except as provided by Subsection (b) of this section, this Act takes effect".

(5) In SECTION 7 of the bill, at the end of that SECTION (page 2, between lines 48 and 49), insert:

(b) The change in law made by this Act to Sections 1506.001, 1506.002, 1506.151, 1506.152, 1506.153, 1506.154, 1506.155, 1506.202, 1506.203, and 1506.254, Insurance Code, takes effect January 1, 2008.

The amendment to **CSHB 1977** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Averitt and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 1977 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Harris.

COMMITTEE SUBSTITUTE HOUSE BILL 1977 ON THIRD READING

Senator Averitt moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1977** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Harris.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

HOUSE BILL 3060 ON SECOND READING

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3060** at this time on its second reading:

HB 3060, Relating to issuance by a court of a capias or a capias pro fine.

The bill was read second time.

Senator Watson offered the following amendment to the bill:

Floor Amendment No. 1

Amend the **HB 3060** (Senate committee report) by adding the following and renumbering accordingly:

SECTION _____. Subsection (a), Article 102.011, Code of Criminal Procedure, is amended to read as follows:

(a) A defendant convicted of a felony or a misdemeanor shall pay the following fees for services performed in the case by a peace officer:

(1) \$5 for issuing a written notice to appear in court following the defendant's violation of a traffic law, municipal ordinance, or penal law of this state, or for making an arrest without a warrant;

(2) \$50 for executing or processing an issued arrest warrant or capias, with the fee imposed for the services of:

(A) the law enforcement agency that executed the arrest warrant or capias, if the agency requests of the court, not later than the 15th day after the date of the execution of the arrest warrant or capias, the imposition of the fee on conviction; or

(B) the law enforcement agency that processed the arrest warrant or capias, if:

(i) the arrest warrant or capias was not executed; or

(ii) the executing law enforcement agency failed to request the fee within the period required by Paragraph (A) of this subdivision;

(3) \$5 for summoning a witness;

(4) \$35 for serving a writ not otherwise listed in this article;

(5) \$10 for taking and approving a bond and, if necessary, returning the bond to the courthouse;

(6) \$5 for commitment or release;

(7) \$5 for summoning a jury, if a jury is summoned; and

(8) \$8 for each day's attendance of a prisoner in a habeas corpus case if the prisoner has been remanded to custody or held to bail.

SECTION _____. The change in law made by this Act applies only to a fee imposed for the execution or processing of a warrant or capias issued for an offense committed on or after the effective date of this Act. A fee imposed for the execution or processing of a warrant or capias issued for 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 is committed before the effective date of this Act if any element of the offense occurs before that date.

The amendment to **HB 3060** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Watson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 3060 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 3060 ON THIRD READING

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3060** 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.

Senator Watson moved to postpone further consideration of the bill to a time certain of 1:30 p.m. today.

The motion prevailed.

Question — Shall **HB 3060** be finally passed?

COMMITTEE SUBSTITUTE

HOUSE BILL 1188 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1188** at this time on its second reading:

CSHB 1188, Relating to the Texas emerging technology fund.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

COMMITTEE SUBSTITUTE

HOUSE BILL 1188 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1188** 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.

(Senator Brimer in Chair)

HOUSE BILL 1585 ON SECOND READING

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1585** at this time on its second reading:

HB 1585, Relating to administrative penalties imposed by a public health district or a county for violations of health and safety provisions relating to retail food service.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 1585 ON THIRD READING

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1585** 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.

HOUSE BILL 922 ON SECOND READING

Senator Carona moved to suspend the regular order of business to take up for consideration **HB 922** at this time on its second reading:

HB 922, Relating to the power of a municipality to enforce compliance with speed limits by an automated traffic control system.

The motion prevailed.

Senators Averitt, Eltife, Ogden, and Seliger asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Averitt, Eltife, Ogden, Seliger.

HOUSE BILL 922 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 922** be placed on its third reading and final passage.

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

Yeas: Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Patrick, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Averitt, Eltife, Ogden, Seliger.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4. (Same as previous roll call)

COMMITTEE SUBSTITUTE HOUSE BILL 888 ON SECOND READING

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 888** at this time on its second reading:

CSHB 888, Relating to the cost of obtaining copies of an injured employee's medical records for use by an ombudsman under the office of injured employee counsel's ombudsman program; providing an administrative violation.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 888 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 888** 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.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 21, 2007

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 41 (143 Yeas, 0 Nays, 2 Present, not voting)

HB 44 (127 Yeas, 10 Nays, 3 Present, not voting)

HB 188 (137 Yeas, 0 Nays, 1 Present, not voting)

HB 273 (132 Yeas, 0 Nays, 1 Present, not voting)

HB 323 (141 Yeas, 0 Nays, 2 Present, not voting)

HB 413 (140 Yeas, 0 Nays, 1 Present, not voting)

HB 530 (139 Yeas, 0 Nays, 2 Present, not voting)

HB 536 (143 Yeas, 0 Nays, 2 Present, not voting)

HB 587 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 604 (143 Yeas, 0 Nays, 2 Present, not voting)

HB 662 (141 Yeas, 0 Nays, 2 Present, not voting)

HB 902 (137 Yeas, 0 Nays, 2 Present, not voting)

HB 921 (141 Yeas, 0 Nays, 1 Present, not voting)

HB 1355 (135 Yeas, 5 Nays, 2 Present, not voting)

HB 1602 (145 Yeas, 0 Nays, 1 Present, not voting)

HB 1634 (141 Yeas, 1 Nays, 1 Present, not voting)

HB 1720 (132 Yeas, 9 Nays, 2 Present, not voting)

HB 2144 (141 Yeas, 0 Nays, 3 Present, not voting)

HB 2345 (140 Yeas, 1 Nays, 2 Present, not voting)

HB 3140 (138 Yeas, 0 Nays, 2 Present, not voting)

HB 3446 (142 Yeas, 1 Nays, 2 Present, not voting)

HB 3505 (138 Yeas, 1 Nays, 2 Present, not voting)

HB 3827 (142 Yeas, 0 Nays, 2 Present, not voting)

HB 3900 (141 Yeas, 0 Nays, 2 Present, not voting)

THE HOUSE HAS REFUSED TO CONCUR IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES AND REQUESTS THE APPOINTMENT OF A CONFERENCE COMMITTEE TO ADJUST THE DIFFERENCES BETWEEN THE TWO HOUSES:

HB 447 (non-record vote)

House Conferees: Callegari - Chair/Escobar/Macias/Murphy/Smith, Wayne

HB 479 (non-record vote)

House Conferees: Flores - Chair/Geren/Hamilton/Pena/Puente

HB 1090 (non-record vote)

House Conferees: Swinford - Chair/Christian/Heflin/Hopson/King, Phil

HB 1610 (non-record vote)

House Conferees: Madden - Chair/Hodge/Jones, Delwin/McReynolds/Pena

HB 1973 (non-record vote)

House Conferees: Delisi - Chair/Hopson/McReynolds/Truitt/Zerwas

HB 2458 (non-record vote)

House Conferees: Cook, Byron - Chair/Eissler/Flynn/Jones, Delwin/Ritter

THE HOUSE HAS GRANTED THE REQUEST OF THE SENATE FOR THE APPOINTMENT OF A CONFERENCE COMMITTEE ON THE FOLLOWING MEASURES:

SB 1896 (non-record vote)

House Conferees: Delisi - Chair/Gonzales/Homer/Hopson/Zerwas

THE HOUSE HAS ADOPTED THE FOLLOWING CONFERENCE COMMITTEE REPORTS:

HB 88 (142 Yeas, 1 Nays, 2 Present, not voting)

HB 1270 (128 Yeas, 13 Nays, 3 Present, not voting)

SB 426 (121 Yeas, 19 Nays, 1 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

HOUSE BILL 1052 ON SECOND READING

Senator Carona moved to suspend the regular order of business to take up for consideration **HB 1052** at this time on its second reading:

HB 1052, Relating to requiring warning signs before intersections at which a municipality uses a photographic traffic monitoring system to enforce compliance with a traffic-control signal.

The motion prevailed.

Senators Shapiro and Wentworth asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Shapiro, Wentworth.

HOUSE BILL 1052 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1052** be placed on its third reading and final passage.

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

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Shapiro, Wentworth.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

COMMITTEE SUBSTITUTE

HOUSE BILL 1316 ON SECOND READING

Senator Carona moved to suspend the regular order of business to take up for consideration **CSHB 1316** at this time on its second reading:

CSHB 1316, Relating to a fee exemption under the Public Accountancy Act for accountants in this state who are employed by certain governmental entities.

The motion prevailed.

Senator Patrick asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Patrick.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1316 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1316** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Patrick.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
HOUSE BILL 957 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 957** at this time on its second reading:

CSHB 957, Relating to participation by certain state employees in a default investment product under a deferred compensation plan.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 957 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 957** 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.

HOUSE BILL 155 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 155** at this time on its second reading:

HB 155, Relating to correcting errors in the distribution of benefits by a public retirement system.

The bill was read second time.

Senator Hegar offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 155** as follows:

(1) On page 1, line 12, replace "(a-1) and" with "(a-1),".

(2) On page 1, line 13, between "(a-2)" and "to", insert the words ", and (d)".

(3) On page 2, line 3, after "Section 802.1025." insert a new subsection (d) to read as follows: "(d) Subsections (a-1), (a-2), and (b)(3) apply only to a public retirement system located in county with a population of 650,000 or more that is located within 50 miles of an international border."

(4) On page 2, line 50, after "district court." insert a new subsection (f) to read as follows: "(f) This section applies only to a public retirement system located in a county with a population of 650,000 or more that is located within 50 miles of an international border."

The amendment to **HB 155** was read and was adopted by the following vote: Yeas 25, Nays 5.

Yeas: Averitt, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hegar, Jackson, Janek, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Brimer, Hinojosa, Lucio, Shapleigh, Uresti.

Absent: Fraser.

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 155 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 155 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 **HB 155** 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.

GUESTS PRESENTED

Senator Ellis was recognized and introduced to the Senate representatives of the 100 Black Men of America, Incorporated.

The Senate welcomed its guests.

HOUSE BILL 590 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 590** at this time on its second reading:

HB 590, Relating to standards of conduct for and conflicts of interest of state officers and employees.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 590 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 **HB 590** 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.

COMMITTEE SUBSTITUTE

HOUSE BILL 1944 ON SECOND READING

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1944** at this time on its second reading:

CSHB 1944, Relating to the elimination of sexual assault against inmates confined in a facility operated by or under contract with the Texas Department of Criminal Justice.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

COMMITTEE SUBSTITUTE

HOUSE BILL 1944 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1944** 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.

HOUSE BILL 550 ON SECOND READING

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **HB 550** at this time on its second reading:

HB 550, Relating to the eligibility of certain victims of family violence for unemployment compensation.

The motion prevailed.

Senators Harris, Patrick, and Williams asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 550** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Subsection (a), Section 204.022, Labor Code (page 2, line 4), strike "or" and substitute "[~~or~~]".

(2) In SECTION 1 of the bill, in amended Subsection (a), Section 204.022, Labor Code (page 2, line 8), between "423" and the period, insert the following:

"; or

(14) resulted from the employee leaving the employee's workplace to care for the employee's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available".

(3) In SECTION 3 of the bill, in amended Subsection (a), Section 207.046, Labor Code (page 2, line 20), strike "or" and substitute "[~~or~~]".

(4) In SECTION 3 of the bill, in amended Subsection (a), Section 207.046, Labor Code (page 2, line 35), between "patient" and the period, insert the following:

"; or

(3) the individual leaves the workplace to care for the individual's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available".

The amendment to **HB 550** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

(President in Chair)

Senator West offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 550** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION _____. Subtitle D, Title 2, Labor Code, is amended by adding Chapter 84 to read as follows:

CHAPTER 84. EMPLOYEE RIGHT TO TIME OFF FOLLOWING VIOLENCE AGAINST EMPLOYEE OR CERTAIN FAMILY OR HOUSEHOLD MEMBERS

Sec. 84.001. DEFINITION. In this chapter, "family violence" has the meaning assigned by Section 71.004, Family Code.

Sec. 84.002. APPLICATION. This chapter applies only to an employee:

(1) employed by an employer who employs at least 50 employees;

(2) who has been employed by the employer from whom the employee seeks leave under this chapter for at least three months; and

(3) who is a victim of family violence or whose spouse, child, parent, or household member is a victim of family violence.

Sec. 84.003. RIGHT TO TIME OFF; LIMITATIONS. (a) Except as provided by Subsections (b) and (c), an employee to whom this chapter applies is entitled to time off as provided by this section to:

(1) seek an injunction, protective order, or other order against the perpetrator of family violence against the employee or the employee's family or household member;

(2) obtain medical care or mental health counseling, or both, for physical or psychological injuries suffered by the employee or the employee's family or household member as a result of family violence;

(3) obtain services from a victim services organization, including a family violence center or program or a rape crisis center, for the employee or the employee's family or household member in relation to the occurrence of family violence;

(4) participate in safety planning or temporary or permanent relocation or take any other action necessary to increase the safety of the employee or the employee's family or household member following the occurrence of family violence;
or

(5) seek legal assistance to address issues arising from the occurrence of family violence.

(b) Before taking time off under this section, an employee must provide the employer with reasonable advance notice of the planned absence of the employee, unless the employee determines that providing notice is impracticable under the circumstances.

(c) An employee is entitled under this section to not more than five days of leave, excluding weekend days and legal holidays, in any 12-month period.

Sec. 84.004. USE OF LEAVE TIME; EFFECT ON EMPLOYEE PAY. (a) An employee who has existing vacation leave time, personal leave time, sick leave time, or compensatory leave time must use that leave time for a planned absence authorized by this chapter. An employer may waive the requirements of this subsection.

(b) An employer is not required to compensate an employee during a planned absence authorized by this chapter unless the employee is using leave time under Subsection (a).

Sec. 84.005. CONFIDENTIALITY. An employer shall maintain the confidentiality of the fact that an employee has requested or obtained time off under this chapter and any written document or record submitted to the employer by the employee relating to a request for time off under this chapter, except to the extent that disclosure is:

(1) requested or consented to in writing by the employee; or

(2) required by other state or federal law.

Sec. 84.006. UNLAWFUL ACTION AGAINST EMPLOYEE. (a) An employer may not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided to an employee under this chapter.

(b) An employer may not suspend or terminate the employment of, retaliate against, or otherwise discriminate against an employee who takes time off authorized by this chapter if the employee has provided written notice as required by this chapter.

(c) An employee who takes time off under this chapter has no greater right to continued employment or to other benefits and conditions of employment than if the employee were not entitled to time off under this chapter.

(d) This chapter does not limit an employer's right to discipline or terminate an employee for any reason, including due to a reduction in workforce or for cause, other than for the exercise by the employee of a right to which the employee is entitled under this chapter or as prohibited by other law.

Sec. 84.007. CIVIL REMEDY. (a) Notwithstanding any other law, the sole remedy for a person claiming to be aggrieved by a violation of this chapter by an employer is to bring a civil suit for damages or equitable relief, or both, in district court. The person may claim as damages all wages and benefits lost as a result of the violation by the employer, up to and including the date of the judgment, except that the person may not claim wages or benefits that accrued during a period of leave granted without pay under this chapter.

(b) This section does not relieve a claimant from any obligation to mitigate damages.

The amendment to **HB 550** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Nays: Fraser.

VOTE RECONSIDERED

On motion of Senator Duncan and by unanimous consent, the vote by which Floor Amendment No. 2 was adopted was reconsidered.

(Senator Brimer in Chair)

On motion of Senator Zaffirini, further consideration of **HB 550** was postponed to a time certain of 4:00 p.m. today.

Question — Shall Floor Amendment No. 2 to **HB 550** be adopted?

HOUSE BILL 3060 ON THIRD READING

The Presiding Officer laid before the Senate **HB 3060** by Senator Watson on its third reading and final passage. The bill had been read third time and further consideration postponed to a time certain of 1:30 p.m. today:

HB 3060, Relating to issuance by a court of a capias or a capias pro fine.

Question — Shall **HB 3060** be finally passed?

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend **HB 3060** on third reading by inserting the following sections and renumbering accordingly.

SECTION __. Chapter 43, Code of Criminal Procedure, is amended by adding Article 43.27 to read as follows:

Art. 43.27. TEXAS INNOCENCE COMMISSION

Sec. 1. CREATION. The Texas Innocence Commission is created.

Sec. 2. COMPOSITION. (a) The commission is composed of nine members. The governor shall appoint two members, one of whom must be a dean of a law school and one of whom must be a law enforcement officer. The lieutenant governor shall appoint one member, who may be a member of the legislature. The speaker of the house of representatives shall appoint one member, who may be a member of the legislature. The presiding judge of the court of criminal appeals shall appoint one member, who must be a member of the judiciary. The presiding officer of the Texas Forensic Science Commission shall appoint one member, who must work in the forensic science field. The Texas District and County Attorneys Association shall appoint one member, who must be a prosecuting attorney. The Texas Criminal Defense Lawyers Association shall appoint one member, who must be a criminal defense lawyer. The president of the Texas Center for Actual Innocence at The University of Texas School of Law, the director of the innocence project at the University of Houston Law Center, or the director of the innocence project at the Texas Tech University School of Law, on a rotating basis, shall appoint one member, who must be an attorney with experience in filing successful appellate claims based on actual innocence.

(b) Each member serves a two-year term.

(c) The governor shall designate a member to serve as presiding officer.

Sec. 3. DUTIES. (a) The commission shall investigate thoroughly all postconviction exonerations, including convictions vacated based on a plea to time served, to:

(1) ascertain errors and defects in the criminal procedure used to prosecute the defendant's case at issue;

(2) identify errors and defects in the criminal justice process in this state generally;

(3) develop solutions and methods to correct the identified errors and defects; and

(4) identify procedures and programs to prevent future wrongful convictions.

(b) The commission may enter into contracts for research services as considered necessary to complete the investigation of a particular case, including forensic testing and autopsies.

Sec. 4. REPORT. (a) The commission shall compile a detailed annual report of its findings and recommendations, including any proposed legislation to implement procedures and programs to prevent future wrongful convictions or executions.

(b) The report shall be made available to the public on request.

(c) The findings and recommendations contained in the report may not be used as binding evidence in a subsequent civil or criminal proceeding.

Sec. 5. SUBMISSION. The commission shall submit the report described by Section 4 to the governor, the lieutenant governor, and the speaker of the house of representatives not later than December 1 of each even-numbered year.

Sec. 6. REIMBURSEMENT. A member of the commission is not entitled to compensation but is entitled to reimbursement for the member's travel expenses as provided by Chapter 660, Government Code, and the General Appropriations Act.

Sec. 7. ASSISTANCE. The Texas Legislative Council, the Legislative Budget Board, and The University of Texas at Austin shall assist the commission in performing the commission's duties.

Sec. 8. OTHER LAW. The commission is not subject to Chapter 2110, Government Code.

SECTION __. (a) The purpose of this section is to establish the rotating basis for appointments by law schools as required by Section 2, Article 43.27, Code of Criminal Procedure, as added by this Act.

(b) The president of the Texas Center for Actual Innocence at The University of Texas School of Law shall make the first appointment under Section 2, Article 43.27, Code of Criminal Procedure, as added by this Act. After the expiration of the appointee's two-year term, the director of the innocence project at the University of Houston Law Center shall make the second appointment under Section 2, Article 43.27, Code of Criminal Procedure, as added by this Act. After the expiration of the second appointment, the director of the innocence project at Texas Tech University School of Law shall make the third appointment.

SECTION __. The appointments to the Texas Innocence Commission as required by Article 43.27, Code of Criminal Procedure, as added by this Act, shall be made not later than the 60th day after the effective date of this Act.

SECTION __. This Act takes effect September 1, 2007.

The amendment to **HB 3060** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 2 on Third Reading

Amend **HB 3060** on third reading by inserting the following and renumbering accordingly.

SECTION __. Section 133.003, Local Government Code, is amended to read as follows:

Sec. 133.003. CRIMINAL FEES. This chapter applies to the following criminal fees:

- (1) the consolidated fee imposed under Section 133.102;
- (2) the time payment fee imposed under Section 133.103;
- (3) fees for services of peace officers employed by the state imposed under Article 102.011, Code of Criminal Procedure, and forwarded to the comptroller as provided by Section 133.104;
- (4) costs on conviction imposed in certain statutory county courts under Section 51.702, Government Code, and deposited in the judicial fund;
- (5) costs on conviction imposed in certain county courts under Section 51.703, Government Code, and deposited in the judicial fund;
- (6) the administrative fee for failure to appear or failure to pay or satisfy a judgment imposed under Section 706.006, Transportation Code;
- (7) fines on conviction imposed under Section 621.506(g), Transportation Code;

(8) the fee imposed under Article 102.0045, Code of Criminal Procedure; ~~and~~

(9) the cost on conviction imposed under Section 133.105 and deposited in the judicial fund; and

(10) the cost on conviction imposed under Section 133.107.

SECTION __. Section 133.004, Local Government Code, is amended to read as follows:

Sec. 133.004. CIVIL FEES. This chapter applies to the following civil fees:

(1) the consolidated fee on filing in district court imposed under Section 133.151;

(2) the filing fee in district court for basic civil legal services for indigents imposed under Section 133.152;

(3) the filing fee in courts other than district court for basic civil legal services for indigents imposed under Section 133.153;

(4) the filing fees for the judicial fund imposed in certain statutory county courts under Section 51.702, Government Code;

(5) the filing fees for the judicial fund imposed in certain county courts under Section 51.703, Government Code;

(6) the filing fees for the judicial fund imposed in certain statutory probate courts under Section 51.704, Government Code;

(7) fees collected under Section 118.015;

(8) marriage license fees for the family trust fund collected under Section 118.018;

(9) marriage license or declaration of informal marriage fees for the child abuse and neglect prevention trust fund account collected under Section 118.022; ~~and~~

(10) the filing fee for the judicial fund imposed in district court, statutory county court, and county court under Section 133.154; and

(11) the filing fee imposed in district court, statutory county court, and county court under Section 133.155.

SECTION __. Subchapter C, Chapter 133, Local Government Code, is amended by adding Section 133.107 to read as follows:

Sec. 133.107. FEE FOR SUPPORT OF PROGRAMS FOR INDIGENT DEFENDANTS. (a) A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay as a court cost, in addition to all other costs, a fee of \$2 to be used for programs serving indigent defendants.

(b) The treasurer shall remit the fees collected under this section to the comptroller in the manner provided by Subchapter B. The comptroller shall deposit the fees as provided by Subsection (c).

(c) The comptroller shall:

(1) credit remitted fees to the fair defense account established under Section 71.058, Government Code, to be used, subject to all requirements of Section 71.062, Government Code, for demonstration or pilot projects that develop and promote best practices for the efficient delivery of quality representation to indigent defendants in criminal cases at trial, on appeal, and in postconviction proceedings.

SECTION __. Subchapter D, Chapter 133, Local Government Code, is amended by adding Section 133.155 to read as follows:

Sec. 133.155. ADDITIONAL FILING FEE IN DISTRICT COURT, STATUTORY COUNTY COURT, OR COUNTY COURT FOR SUPPORT OF PROGRAMS FOR INDIGENT DEFENDANTS. (a) In addition to other fees authorized or required by law, the clerk of a district court, statutory county court, or county court shall collect a fee of \$5 on the filing of any civil suit to be used to support programs for indigent defendants.

(b) The treasurer shall remit the fees collected under this section to the comptroller in the manner provided by Subchapter B. The comptroller shall deposit the fees as provided by Subsection (c).

(c) The comptroller shall:

(1) credit the remitted fees to the fair defense account established under Section 71.058, Government Code, to be used, subject to all requirements of Section 71.062, Government Code, for demonstration or pilot projects that develop and promote best practices for the efficient delivery of quality representation to indigent defendants in criminal cases at trial, on appeal, and in postconviction proceedings.

SECTION __. Subchapter D, Chapter 101, Government Code, is amended by adding Section 101.063 to read as follows:

Sec. 101.063. DISTRICT COURT FEES: ADDITIONAL FILING FEE FOR SUPPORT OF INDIGENT DEFENDANT PROGRAMS. The clerk of a district court shall collect on the filing of a civil suit an additional filing fee of \$5 under Section 133.155, Local Government Code, to be used for support of indigent defendant programs.

SECTION __. Subchapter E, Chapter 101, Government Code, is amended by adding Section 101.084 to read as follows:

Sec. 101.084. STATUTORY COUNTY COURT FEES: ADDITIONAL FILING FEE FOR SUPPORT OF INDIGENT DEFENDANT PROGRAMS. The clerk of a statutory county court shall collect on the filing of a civil suit an additional filing fee of \$5 under Section 133.155, Local Government Code, to be used for support of indigent defendant programs.

SECTION __. Subchapter G, Chapter 101, Government Code, is amended by adding Section 101.124 to read as follows:

Sec. 101.124. COUNTY COURT FEES: ADDITIONAL FILING FEE FOR SUPPORT OF INDIGENT DEFENDANT PROGRAMS. The clerk of a county court shall collect on the filing of a civil suit an additional filing fee of \$5 under Section 133.155, Local Government Code, to be used for support of indigent defendant programs.

SECTION __. Subchapter B, Chapter 102, Government Code, is amended by adding Section 102.023 to read as follows:

Sec. 102.023. COURT COST ON CONVICTION FOR SUPPORT OF INDIGENT DEFENDANT PROGRAMS. A person convicted of any offense, other than an offense relating to a pedestrian or the parking of a motor vehicle, shall pay a cost on conviction of \$2 under Section 133.107, Local Government Code.

SECTION __. The imposition of a cost of court under Section 133.107, Local Government Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. 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 was committed before that date.

SECTION __. This Act takes effect September 1, 2007.

The amendment to **HB 3060** was read.

Senator Ellis withdrew Floor Amendment No. 2 on Third Reading.

VOTE RECONSIDERED

On motion of Senator Patrick and by unanimous consent, the vote by which Floor Amendment No. 1 on Third Reading was adopted was reconsidered.

Question — Shall Floor Amendment No. 1 on Third Reading to **HB 3060** be adopted?

Senator Ellis withdrew Floor Amendment No. 1 on Third Reading.

HB 3060 was finally passed by the following vote: Yeas 31, Nays 0.

HOUSE BILL 1678 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1678** at this time on its second reading:

HB 1678, Relating to the operation of a system of community supervision.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 1678 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1678** 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.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 21, 2007

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

SB 1119, Relating to the authority of a local authority to implement a photographic traffic signal enforcement system; providing for the imposition of civil penalties.
(Amended)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

HOUSE BILL 2235 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2235** at this time on its second reading:

HB 2235, Relating to the creation of a technology center grant program for rural counties.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2235 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 **HB 2235** 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.

COMMITTEE SUBSTITUTE

HOUSE BILL 2328 ON SECOND READING

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2328** at this time on its second reading:

CSHB 2328, Relating to the offenses of cruelty to livestock and nonlivestock animals.

The bill was read second time.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2328** as follows:

In Section 1 of the bill, amend Sec. 42.09(a)(4) as follows:

(4) transports or confines a livestock ~~and~~ animal in a cruel and unusual manner;

In Section 1 of the bill, amend Sec. 42.09(a)(9) as follows:

(9) ~~(10)~~ seriously overworks a livestock ~~and~~ animal.

In Section 1 of the bill, amend Sec. 42.09(b)(2) as follows:

(2) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

In Section 1 of the bill, amend Sec. 42.09(b)(7) as follows:

(7) "Torture" includes any act that causes unjustifiable pain or suffering.

In Section 1 of the bill, amend Sec. 42.09(b)(9) in Section 1 of the bill, add new subsection (g) as follows:

(g) This section does not create a civil cause of action for damages or enforcement of this section.

In Section 2 of the bill, amend Sec. 42.092(a)(3) as follows:

(3) "Cruel manner" includes a manner that causes or permits unjustified or unwarranted pain or suffering.

In Section 2 of the bill, amend Sec. 42.092(a)(8) as follows:

(8) "Torture" includes any act that causes unjustifiable pain or suffering.

In Section 2 of the bill, add a new subsection (g) as follows:

(g) This section does not create a civil cause of action for damages or enforcement of the section.

In Section 3 of the bill, delete SECTION 8 and renumber subsequent sections accordingly.

The amendment to **CSHB 2328** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Whitmire and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 2328 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2328 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2328** 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.

COMMITTEE SUBSTITUTE HOUSE BILL 1522 ON SECOND READING

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1522** at this time on its second reading:

CSHB 1522, Relating to parking a commercial motor vehicle on certain streets.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 1522** (Senate committee printing) in SECTION 2 of the bill, Section 545.307, Transportation Code (page 1, lines 59 through 61), by striking proposed Subsection (h) and substituting the following:

(h) This section does not apply to:

(1) a vehicle owned by a utility that an employee of the utility who is on call 24 hours a day parks at the employee's residence; or

(2) a commercial motor vehicle that is registered to a person who lives in a residence located in the residential subdivision.

The amendment to **CSHB 1522** was read.

Senator Uresti offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **CSHB 1522** as follows:

(1) At page 1, line 8, after "residence;" strike "or";

(2) At page 1, line 11, after the word "subdivision", insert the following:
"; or

(3) a vehicle owned by a commercial establishment that is parked on the street adjacent to where the establishment is located".

The amendment to Floor Amendment No. 1 to **CSHB 1522** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Question recurring on the adoption of Floor Amendment No. 1 to **CSHB 1522**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 as amended.

On motion of Senator Williams and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 1522 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1522 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1522** 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.

HOUSE BILL 3955 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3955** at this time on its second reading:

HB 3955, Relating to the delegation of a county commissioners court's powers to regulate traffic on county roads.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3955** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 2301.476, Occupations Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) In order to deal with increasing traffic regulation duties on municipal and county roads posed by illegally sold heavy duty trucks, the director, in determining whether a manufacturer is acting in the capacity of a dealer of new trucks that have a gross vehicle weight rating of 16,000 pounds or more, may consider all of the circumstances surrounding the retail sale of a new truck that has a gross vehicle weight of 16,000 pounds or more, including the solicitation and negotiations preceding the retail sale and the delivery, registration, and titling of the truck after the retail sale. This subsection does not prohibit the sale of a used truck as otherwise permitted by law.

The amendment to **HB 3955** was read.

Senator Wentworth withdrew Floor Amendment No. 1.

Senator Wentworth moved to postpone further consideration of the bill to a time certain of 4:00 p.m. today.

The motion prevailed.

Question — Shall **HB 3955** be passed to third reading?

**SENATE RULES SUSPENDED
(Posting Rules)**

On motion of Senator Whitmire and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Criminal Justice might meet and consider the following bills and resolution today:

HB 2300, HB 946, HB 3584, HCR 96.

**SENATE RULES SUSPENDED
(Posting Rules)**

On motion of Senator Ogden and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Finance might meet and consider **HB 735** today.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Duncan and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on State Affairs might meet and consider **HB 2265** today.

SENATE RULE 11.10(a) SUSPENDED
(Public Notice of Committee Meetings)

On motion of Senator Nelson and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Health and Human Services might meet today.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Ellis and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Government Organization might meet and consider **HB 2543** today.

SENATE RULE 11.10(a) SUSPENDED
(Public Notice of Committee Meetings)

On motion of Senator Seliger and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Administration might meet today.

HOUSE BILL 1287 REREFERRED

Senator Estes submitted a Motion In Writing requesting that **HB 1287** be withdrawn from the Committee on Education and rereferred to the Committee on International Relations and Trade.

The Motion In Writing prevailed without objection.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Lucio and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on International Relations and Trade might meet and consider **HB 1287** today.

RECESS

On motion of Senator Whitmire, the Senate at 3:00 p.m. recessed until 4:00 p.m. today.

AFTER RECESS

The Senate met at 4:22 p.m. and was called to order by Senator Brimer.

COMMITTEE SUBSTITUTE
HOUSE BILL 1498 ON SECOND READING

On motion of Senator Eltife and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1498** at this time on its second reading:

CSHB 1498, Relating to the creation of the Panola County Groundwater Conservation District; providing authority to impose a tax and issue bonds.

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

All Members are deemed to have voted "Yea" on the passage to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1498 ON THIRD READING

Senator Eltife moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1498** 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.

HOUSE BILL 550 ON SECOND READING

The Presiding Officer laid before the Senate **HB 550** by Senator Zaffirini on its second reading. The bill had been read second time, an amendment reconsidered, and further consideration postponed to a time certain of 4:00 p.m. today:

HB 550, Relating to the eligibility of certain victims of family violence for unemployment compensation.

Question — Shall Floor Amendment No. 2 to **HB 550** be adopted?

Senator West withdrew Floor Amendment No. 2.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 550 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Nays: Harris, Patrick, Williams.

HOUSE BILL 550 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 **HB 550** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Patrick, Williams.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

HOUSE BILL 2542 ON SECOND READING

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2542** at this time on its second reading:

HB 2542, Relating to the continuation and functions of the Office of Rural Community Affairs.

The bill was read second time.

Senator Estes offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2542** on page 1, line 20, by striking "2015" and substituting "2011".

BRIMER
ESTES

The amendment to **HB 2542** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Estes offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 2542** (Senate committee printing) as follows:

(1) In SECTION 3 of the bill, strike amended Subdivisions (2) and (3), Subsection (b), Section 487.021, Government Code (page 1, lines 36 through 47), and substitute the following:

(2) three public members appointed by the ~~[lieutenant]~~ governor from a list of nominees submitted by the lieutenant governor; ~~and~~

(3) three public members appointed by the governor from a list of nominees submitted by the speaker of the house of representatives; and

(2) In SECTION 3 of the bill, strike added Subsection (b-1), Section 487.021, Government Code (page 1, lines 50 and 51), and substitute the following:

(b-1) The individuals nominated by the lieutenant governor and the speaker of the house of representatives must reside in a rural city or county and be interested in rural issues. In making an appointment under Subsection (b)(2) or (3), the governor may reject one or more of the nominees on a list submitted by the lieutenant governor or the speaker of the house of representatives and request a new list of different nominees.

The amendment to **HB 2542** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 2542** (Senate committee printing), in SECTION 3 of the bill, by striking amended Subsection (g), Section 487.021, Government Code (page 2, lines 8 through 11), and substituting the following:

(g) The commissioner of agriculture or the commissioner's designee shall serve as ~~[members of] the [executive committee annually shall elect a]~~ presiding officer ~~[from among the members] of the board [executive committee]~~.

The amendment to **HB 2542** was read.

Senator Estes moved to table Floor Amendment No. 3.

The motion to table was lost by the following vote: Yeas 12, Nays 16.

Yeas: Ellis, Estes, Fraser, Jackson, Lucio, Patrick, Seliger, Shapiro, Uresti, Wentworth, Williams, Zaffirini.

Nays: Brimer, Carona, Deuell, Duncan, Eltife, Harris, Hegar, Hinojosa, Janek, Nelson, Nichols, Ogden, Shapleigh, Van de Putte, Watson, West.

Absent: Averitt, Gallegos, Whitmire.

Question recurring on the adoption of Floor Amendment No. 3 to **HB 2542**, the amendment was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

On motion of Senator Estes and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 2542 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2542 ON THIRD READING

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2542** 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 30, Nays 1.

Nays: Patrick.

REPORT OF COMMITTEE ON NOMINATIONS

Senator Jackson submitted the following report from the Committee on Nominations:

We, your Committee on Nominations, to which were referred the following appointments, have had same under consideration and report them back to the Senate with a recommendation that they be confirmed:

Member, Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments: Gabriel Holguin, Ph.D., Bexar County.

Members, Aging and Disability Services Council: Sharon Swift Butterworth, El Paso County; John A. Cuellar, Dallas County; Jean L. Freeman, Ph.D., Galveston County; Nancy L. Lund, Bowie County.

Members, Angelina and Neches River Authority Board of Directors: Louis Alan Bronaugh, Angelina County; Greg James, Nacogdoches County.

Members, Assistive and Rehabilitative Services Council: David Coco, Williamson County; Timothy J. Flannery, Harris County; Lance L. Goetz, M.D., Dallas County; Connie Hughes, Lubbock County; Joseph Muniz, Cameron County; Diane Marie Novy, Fort Bend County; Robert K. Peters, Smith County; Robin Riccardi, Harris County.

Members, Automobile Theft Prevention Authority: Carlos Luis Garcia, Cameron County; Jason Hartgraves, Denton County; Cindy Ramos-Davidson, El Paso County; Richard L. Watson, Travis County.

Presiding Officer, Central Texas Regional Mobility Authority Board of Directors: Robert E. "Bob" Tesch, Williamson County.

Members, Coastal Coordination Council: Robert Elliott Jones, Nueces County; James R. Matz, Cameron County; Victor Ray Pierson, Galveston County; John L. Sullivan, Galveston County.

Members, Council on Cardiovascular Disease and Stroke: Carolyn Hutchinson, Cameron County; Sheila M. Tello, Nueces County.

Members, Credit Union Commission: William Wayne "Rusty" Ballard II, Ellis County; Thomas Felton Butler, Harris County; Manuel Cavazos IV, Travis County; Dale E. Kimble, Denton County; Allyson Truax Morrow, Cameron County.

Members, Finance Commission of Texas: Jonathan Bennett Newton, Harris County; Stanley D. Rosenberg, Bexar County.

Members, Guadalupe-Blanco River Authority Board of Directors: Grace G. Kunde, Guadalupe County; Tilmon Lee Walker, Comal County.

Members, Health and Human Services Council: Kathleen Angel, Travis County; Mi Yun "Maryann" Choi, M.D., M.P.H., Williamson County; Fernando M. Treviño, Tarrant County; Robert A. Valadez, Bexar County.

Members, Nueces River Authority Board of Directors: Yale Leland Kerby, Uvalde County; Lindsey Alfred Koenig, Jim Wells County; James R. Marmion, Dimmit County; Rolando B. Pablos, Bexar County; Betty Ann Howard Peden, Medina County; Fidel R. Rul, Jr., Jim Wells County.

Inspector General, Office of Inspector General for the Health and Human Services Commission: Brian Glenn Flood, Travis County.

Member, Parks and Wildlife Commission: Mark Bivins, Randall County.

Pecos River Compact Commissioner for Texas: Julian W. "J. W." Thrasher, Jr., Ward County.

Member, Sabine River Authority Board of Directors: Stanley N. Mathews, Orange County.

Members, State Seed and Plant Board: Aubrey James Allison, Burnet County; Kelly A. Book, Bastrop County; Mark A. Hussey, Brazos County; Ellen B. Peffley, Lubbock County.

Members, State Soil and Water Conservation Board: Larry D. Jacobs, Montgomery County; Joe L. Ward, Fannin County.

Members, Texas Statewide Emergency Services Personnel Retirement Fund State Board of Trustees: Patrick James Hull, Lavaca County; Francisco "Frank" Torres, Willacy County.

Members, Sulphur River Basin Authority Board of Directors: Brad Drake, Lamar County; Mike E. Russell, Lamar County; Richard Douglas "Doug" Smith, Red River County.

Members, Texas Agricultural Finance Authority Board of Directors: Darwin Dallas "Dal" DeWees, Tom Green County; Sydney Michael "Mike" Golden, Brazoria County; Susan Kay Kennedy, Nacogdoches County; Victoria Salin, Brazos County.

Members, Texas Appraiser Licensing and Certification Board: William A. Faulk, Jr., Cameron County; Larry D. Kokel, Williamson County; James B. Ratliff, Dallas County; Shirley J. Ward, Brewster County.

Members, Texas Board of Chiropractic Examiners: Kenneth Mack Perkins, D.C., Montgomery County; Kathleen S. Summers, D.C., Andrews County; Kenya S. Woodruff, Collin County.

Members, Texas Board of Criminal Justice: Charles Lewis Jackson, Harris County; Tom Mechler, Armstrong County; Leopoldo R. Vasquez III, Harris County.

Members, Texas Board of Orthotics and Prosthetics: Erin Elizabeth Berling, Dallas County; Kenneth Mueller, Washington County; Richard Michael Neider, Lubbock County.

Members, Texas Board of Professional Land Surveying: Nedra J. Foster, Hardin County; Paul P. Kwan, Harris County; Anthony Trevino, Jr., Webb County; Douglas William Turner, Galveston County.

Members, Texas Department of Housing and Community Affairs Board: Dionicio Vidal Flores, Harris County; Gloria L. Ray, Bexar County.

Members, Texas Diabetes Council: Maria Duarte-Gardea, El Paso County; Dora Rivas, Dallas County.

Members, Texas Farm and Ranch Lands Conservation Council: Daniel Dierschke, Travis County; Thomas R. Kelsey, Harris County, Bob McCan, Victoria County; Glen David Webb, Taylor County; R. Neal Wilkins, Brazos County.

Members, Texas Forensic Science Commission: Samuel E. Bassett, Travis County; Alan L. Levy, Tarrant County; Sridhar Natarajan, Lubbock County.

Members, Texas Military Preparedness Commission: William J. Ehrie, Taylor County; Howard C. Ham, Jr., Bexar County; Ronald D. Henson, Bowie County; Alvin W. Jones, Brazos County; James P. Maloney, El Paso County; Samuel Loyd Neal, Jr., Nueces County; Paul F. Paine, Parker County; Charles E. Powell, Tom Green County; Josue Robles, Jr., Bexar County; Eugene N. Tulich, Harris County.

Members, Texas Optometry Board: Carolyn R. Carman-Merrifield, Tarrant County; Melvin G. Cleveland, Jr., Tarrant County; John Coble, O.D., Rockwall County; Virigina Sosa, O.D., Uvalde County.

Members, Texas Physician Assistant Board: Margaret K. Bentley, Dallas County; Ron Bryce, M.D., Ellis County; Anna Arredondo Chapman, Val Verde County; Dwight M. Deter, El Paso County; Michael Allen Mitchell, D.O., Clay County; Richard R. Rahr, Galveston County; Timothy Webb, Harris County; Pamela Welch, Franklin County.

Members, Texas Public Finance Authority Board of Directors: Carin Marcy Barth, Harris County; D. Joseph Meister, Dallas County; Robert Thomas "Tom" Roddy, Jr., Bexar County; Ruth Corry Schiermeyer, Lubbock County.

Member, Texas Racing Commission: David Gregorio Cabrales, Dallas County.

Members, Texas State Affordable Housing Corporation Board of Directors: Jesse A. Coffey, Denton County; Thomas A. Leeper, Walker County; Jo Van Hovel, Bell County.

Members, Texas State Board of Acupuncture Examiners: Chung-Hwei Chernly, Tarrant County; Donald Ray Counts, M.D., Travis County; Pedro V. Garcia, Jr., Collin County; Raymond J. Graham, El Paso County; Meng-Sheng Linda Lin, Collin County.

Members, Texas State Board of Examiners of Marriage and Family Therapists: Kaye W. Nelson, Nueces County; Michael R. Puhl, Collin County.

Members, Texas State Board of Plumbing Examiners: Enrique Castro, El Paso County; Ricardo Jose Guerra, Travis County; Carol Lynne McLemore, Galveston County.

Members, Texas State Board of Social Worker Examiners: Kimberly Hernandez, El Paso County; Dorinda N. Noble, Hays County.

Members, Texas Underground Facility Notification Corporation Board of Directors: Dean D. Bernal, Travis County; John Dao, Harris County; Billy Ray Daugette, Jr., Walker County; Deborah Ellison Farris, Dallas County; Steven F. Landon, Tarrant County; John A. Menchaca II, Travis County; Virginio Ortega, Lubbock County; Christopher J. Rourk, Dallas County.

Member, Texas Woman's University Board of Regents: Cecilia May Moreno, Webb County.

Members, Upper Colorado River Authority Board of Directors: Fred R. Campbell, Concho County; Ralph Edward Hoelscher, Runnels County; William Ray Hood, Coke County; Hope Wilson Huffman, Tom Green County; John Nikolauk, Schleicher County; Jeffie Harmon Roberts, Coke County; Hyman Dale Sauer, Schleicher County; Dorris Sonnenberg, Coke County.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Jackson gave notice that he would tomorrow at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

HOUSE BILL 2399 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2399** at this time on its second reading:

HB 2399, Relating to teacher retention demonstration projects under the awards for student achievement program in public schools.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2399** by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION _____. Subchapter I, Chapter 21, Education Code, is amended by adding Section 21.4021 to read as follows:

Sec. 21.4021. SALARIES IN DISTRICTS ESTABLISHING LOCAL MINIMUM HIRING SCHEDULE. (a) This section applies only to a school district that establishes a local minimum hiring schedule that prescribes the minimum salary, based on the employee's level of experience, that the district will pay a new employee, without prescribing a minimum salary applicable to subsequent years of that employee's employment with the district.

(b) A school district to which this section applies that pays each classroom teacher, full-time librarian, full-time counselor certified under Subchapter B, or full-time nurse a greater amount than the minimum monthly salary to which the employee is entitled under Section 21.402 is not required by this code to provide annual pay increases based on the employee's level of experience.

(c) If the minimum salaries prescribed by Section 21.402 are increased and the state provides additional funding for the amount of that increase, a school district to which this section applies is not required to pay an employee more than the sum of the additional funding per employee provided by the state and the employee's salary for the school year immediately preceding the school year for which the additional state funding is provided.

(d) To the extent of any conflict between Section 21.402 and this section, Section 21.402 prevails.

The amendment to **HB 2399** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Shapiro and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 2399 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 2399 ON THIRD READING

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2399** 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 RESOLUTION 941 ON SECOND READING

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **SR 941** at this time on its second reading:

WHEREAS, From 1945 to 1991, the world witnessed a military, economic, and ideological confrontation known as the Cold War; waged most prominently by the United States and the Soviet Union, the struggle involved almost every nation on earth to some degree and had a profound impact on the course of world history over the latter half of the 20th century; and

WHEREAS, Although the Cold War never erupted into a full-scale armed conflict between the world's superpowers, it gave impetus to a number of localized hot wars, as well as to a massive, long-term arms race; and

WHEREAS, Throughout the Cold War, the State of Texas played a significant role in this country's military preparedness by contributing personnel to the armed forces, serving as the site of important military facilities, and providing material support by way of private industry; and

WHEREAS, Tens of thousands of Texans served in the military during the course of the Cold War, and many made the ultimate sacrifice; the loss of Texans in Korea from 1950 to 1957 numbered 1,719, and in Vietnam, 3,415; and

WHEREAS, The state currently has 16 military installations that figured notably in the country's defense system during the period of the Cold War; moreover, Texas was home to Nike and Atlas Ballistic Missile silos, as well as to Strategic Air Command units at Biggs, Carswell, Sheppard, Dyess, Amarillo, and Bergstrom Air Force Bases; other air force bases located in the state during that time included Brooks, Goodfellow, Kelly, Lackland, Laredo, Laughlin, Randolph, Reese, and Webb; and

WHEREAS, All 15 of those air force facilities constituted first-strike targets for the Soviet military; secondary targets in Texas included Beeville, Corpus Christi, Kingsville, Sherman-Denison, Texarkana, Fort Bliss, Fort Hood, and the Houston petrochemical complex; and

WHEREAS, Many industrial enterprises in Texas made vital contributions during the Cold War years; the state's oil industry had a major role in supplying the Strategic Petroleum Reserve, while a number of key defense contractors were either based in Texas or had large Texas operations; among such companies were Texas Instruments, Lockheed, EDS, Bell Helicopter, and Textron; and

WHEREAS, One dimension of the Cold War involved a race for leadership in space exploration; crucial to American efforts in this arena was the Johnson Space Center in Houston, the National Aeronautics and Space Administration headquarters for manned spaceflight; and

WHEREAS, Eight successive American presidents grappled with the challenges of the Cold War; two of these—Dwight D. Eisenhower and Lyndon B. Johnson—were born in Texas and led the nation during the Korean War and Vietnam War, respectively; and

WHEREAS, Military veterans of the Cold War have continued to contribute to this country as private citizens and as public servants; a number of them have been elected to leadership posts at both the state and national levels; and

WHEREAS, It is essential that the history of the Cold War decades be preserved, for the events of that time touched the lives of millions of people and helped to set the stage for the 21st century; in reflecting on that long and difficult confrontation, it is also fitting that tribute be paid to the men and women of the United States armed forces, who served selflessly and heroically in that epic struggle; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby recognize May 1, 2007, as Cold War Victory Day and extend to all Cold War veterans of the American military sincere appreciation for their exemplary service; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of Cold War veterans.

SR 941 was read second time.

Senator Seliger offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **SR 941** by adding the following:

WHEREAS, On May 1, 1834, the British colonies abolished slavery; and

WHEREAS, May 1, 1886 was the start of the general strike which eventually wins the eight hour workday in the United States; and

WHEREAS, On May 1, 1898, the Battle of Manila Bay took place, and the U.S. Navy destroyed the Spanish Pacific fleet in the first battle of the war; and

WHEREAS, On May 1, 1927, the first cooked meals on a scheduled flight are introduced on an Imperial Airways flight from London to Paris; and

WHEREAS, On May 1, 1930, the dwarf planet Pluto was officially named; and

WHEREAS, On May 1, 1956, the polio vaccine developed by Jonas Salk was made available to the public; and

WHEREAS, On May 1, 1978, the first unsolicited bulk commercial e-mail (which would later become known as "spam") was sent; and

WHEREAS, On May 1, 1939, Max Robinson, an American broadcast journalist, was born; and

WHEREAS, On May 1, 1949, Paul Teutul, Sr., founder of Orange County Choppers, was born

The amendment to **SR 941** was read.

POINT OF ORDER

Senator Patrick raised a point of order that Floor Amendment No. 1 was not germane to the resolution.

POINT OF ORDER WITHDRAWN

Senator Patrick withdrew the point of order.

Question — Shall Floor Amendment No. 1 to **SR 941** be adopted?

Senator Seliger withdrew Floor Amendment No. 1.

Senator Ellis offered the following amendment to the resolution:

Floor Amendment No. 2

Amend **SR 941** on page 2, line 5 insert the following:

WHEREAS, Slavery was a morally abominable institution; and

WHEREAS, Slavery as practiced in the United States was especially brutalizing and dehumanizing, permitting as it did the denial to slaves of all human rights, including the right to marry and to maintain families; and

WHEREAS, Slavery was introduced into Texas by American settlers in the early 1820s and persisted until June, 1865, more than two years after the issuance of the Emancipation Proclamation; and

WHEREAS, on May 1, 1834 slavery was abolished in the non-American British colonies; and

WHEREAS, Through 1865, the institution of slavery was protected by the constitution and laws of the State of Texas; and

WHEREAS, The experience of slavery in Texas should be adequately reflected in the teaching of the state's history; and

WHEREAS, In spite of the suffering that they were forced to endure, slaves contributed greatly to the economic and cultural development of the state; and

WHEREAS, The contributions made by slaves should be adequately reflected in the teaching of the state's history; and

WHEREAS, The experiences and contributions of Hispanics and Native Americans in Texas should also receive appropriate recognition in the teaching of the state's history; now, therefore, be it

RESOLVED, That the 80th Legislature of the State of Texas hereby express profound regret for the role that the government of Texas played in maintaining the institution of slavery; and, be it further

RESOLVED, That, in order to document and publicize the experience of slavery in Texas and to help the public appreciate the contributions that slaves and former slaves made to the economic and cultural development of the state throughout the 19th century and beyond, the Texas Education Agency, the Texas Historical Commission, and other appropriate state agencies shall cooperate in designing and developing public exhibits and/or acknowledgments at the State Capitol, at the Bob Bullock Museum, and at certain public institutions of higher education to recognize the contributions of slaves in Texas history, with the initial public exhibits and acknowledgments to be in place not later than December 31, 2008; and, be it further

RESOLVED, That the legislature hereby request that the lieutenant governor and the speaker of the house of representatives create a joint interim committee to study and document the specific contributions of African slaves and their descendants to the economic and cultural development of the State of Texas; and, be it further

RESOLVED, That the Senate of Texas, 80th Legislature, hereby recognize May 1, 2007 as Texas Regret for Slavery Day, to document and publicize the experiences and contributions of Hispanics and Native Americans in Texas during the 18th and 19th centuries; and, be it further

The amendment to **SR 941** was read.

POINT OF ORDER

Senator Patrick raised a point of order that Floor Amendment No. 2 was not germane to the resolution.

POINT OF ORDER RULING

The Presiding Officer, Senator Brimer in Chair, ruled that the point of order was well-taken and sustained.

SR 941 was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

HOUSE BILL 1519 ON SECOND READING

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1519** at this time on its second reading:

HB 1519, Relating to including within the offense of barratry and solicitation of professional employment certain solicitations made during certain periods.

The bill was read second time.

Senator Carona moved to postpone further consideration of the bill until tomorrow.

The motion prevailed.

Question — Shall **HB 1519** be passed to third reading?

COMMITTEE SUBSTITUTE

HOUSE BILL 2994 ON SECOND READING

Senator Hegar moved to suspend the regular order of business to take up for consideration **CSHB 2994** at this time on its second reading:

CSHB 2994, Relating to certain agreements made with electric power generation facilities under the Property Redevelopment and Tax Abatement Act and to similar agreements and compliance reports under the Texas Economic Development Act.

The motion prevailed.

Senators Eltife and Watson asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Hegar moved to postpone further consideration of the bill to a time certain of 10:30 a.m. tomorrow.

The motion prevailed.

Question — Shall **CSHB 2994** be passed to third reading?

SENATE BILL 222 WITH HOUSE AMENDMENTS

Senator Ellis called **SB 222** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Brimer in Chair, laid the bill and the House amendments before the Senate.

Floor Amendment No. 1

Amend **SB 222** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 20.037, Business & Commerce Code, is amended by amending Subsections (a) and (b) and adding Subsection (b-1) to read as follows:

(a) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 20.034, a consumer reporting agency shall remove a security freeze not later than the third business day after the date the agency receives the request, if the request is in writing, or not later than 15 minutes after the agency receives the request, if the request is by telephone.

(b) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 20.034, a consumer reporting agency, not later than the third business day after the date the agency receives the request, if the request is in writing, or not later than 15 minutes after the agency receives the request, if the request is by telephone, shall temporarily lift the security freeze for:

- (1) a certain properly designated period; or
- (2) a certain properly identified requester.

(b-1) A consumer reporting agency responding to a telephone request under Subsection (a) or (b) need not remove a security freeze within 15 minutes if the consumer reporting agency's ability to remove the security freeze within that time is prevented by:

(1) an act of God, including fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon;

(2) unauthorized or illegal act by a third party, including terrorism, sabotage, riot, vandalism, labor strike or dispute disrupting operations, or similar occurrence;

(3) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failure inhibiting response time, or similar disruption;

(4) governmental action, including emergency order, judicial or law enforcement action, or similar directives;

(5) regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems;

(6) commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled; or
(7) receipt of a removal request outside of normal business hours.

Floor Amendment No. 1 on Third Reading

Amend **SB 222** on third reading on page 2, between lines 16 and 17, insert the following:

(c) Notwithstanding Section 20.12 of this chapter, a violation of this section is not a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

The amendments were read.

Senator Ellis 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 222** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ellis, Chair; Hinojosa, Fraser, Harris, and Eltife.

SENATE BILL 1562 WITH HOUSE AMENDMENTS

Senator Hinojosa called **SB 1562** 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 **SB 1562** (House committee report) in SECTION 1 of the bill, immediately following proposed Section 829.001, Health and Safety Code (page 1, between lines 13 and 14), by inserting the following:

Sec. 829.0015. APPLICABILITY OF CHAPTER. This chapter applies only to a county:

(1) that has a population of more than 80,000; or

(2) in which the commissioners court by order has adopted this chapter.

Floor Amendment No. 2

Amend **SB 1562** (Senate engrossment) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 38.151(c), Penal Code, is amended to read as follows:

(c) An offense under this section is:

(1) a Class C misdemeanor if the person commits an offense under Subsection (b)(1);

(2) a Class B misdemeanor if the person commits an offense under Subsection (b)(2);

(3) a Class A misdemeanor if the person commits an offense under Subsection (b)(3), (4), or (5);

(4) except as provided by Subdivision (5), a state jail felony if the person commits an offense under Subsection (b)(6) or (7) by injuring a police service animal or by engaging in conduct likely to injure the animal; or

(5) a felony of the second ~~third~~ degree if the person commits an offense under Subsection (b)(6) or (7) by:

(A) killing a police service animal or ~~by~~ engaging in conduct likely to kill the animal;

(B) injuring a police service animal in a manner that materially and permanently affects the ability of the animal to perform as a police service animal; or

(C) engaging in conduct likely to injure a police service animal in a manner that would materially and permanently affect the ability of the animal to perform as a police service animal.

SECTION _____. The changes in law made to Section 38.151(c), Penal Code, by this Act apply only to an offense committed on or after the effective date of this Act. 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 was committed before that date.

Floor Amendment No. 3

Amend **SB 1562** (House committee printing) as follows:

(1) In SECTION 1 of the bill in added Subsection (a), Section 829.003, Health and Safety Code (page 2, line 8) between "courses." and "The" insert "The department shall ensure that the basic and continuing education courses are made available to be completed on the department's internet website."

(2) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Notwithstanding Section 829.002, Health and Safety Code, as added by this Act, a person is not required to complete animal control officer training until the training is available to be completed online in accordance with Section 829.003, Health and Safety Code, as added by this Act.

Floor Amendment No. 1 on Third Reading

Amend **SB 1562** on third reading, in added Section 829.003(d), Health and Safety Code, by striking "and other animal control and animal protection organizations as the department considers appropriate" and substituting "the Department of Agriculture, and the Texas Animal Health Commission".

Floor Amendment No. 2 on Third Reading

Amend **SB 1562** on third reading, in added Section 829.003(a), Health and Safety Code, following added Subdivision (10), by adding the following subdivision and renumbering subsequent subdivisions of that subsection appropriately:

(11) methods for notifying owners of captured animals and returning captured animals to owners;

The amendments were read.

Senator Hinojosa 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1562** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Averitt, Eltife, Van de Putte, and Whitmire.

SENATE BILL 199 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 199** 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 **SB 199** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to certain convictions barring employment at certain facilities serving the elderly or persons with disabilities.

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

SECTION 1. Sections 250.006(a) and (b), Health and Safety Code, are amended to read as follows:

(a) A person for whom the facility is entitled to obtain criminal history record information may not be employed in a facility if the person has been convicted of an offense listed in this subsection:

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
- (3) an offense under Section 21.11, Penal Code (indecent with a child);
- (4) an offense under Section 22.011, Penal Code (sexual assault);
- (5) an offense under Section 22.02, Penal Code (aggravated assault);
- (6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
- (7) an offense under Section 22.041, Penal Code (abandoning or endangering child);
- (8) an offense under Section 22.08, Penal Code (aiding suicide);
- (9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
- (10) an offense under Section 25.08, Penal Code (sale or purchase of a child);
- (11) an offense under Section 28.02, Penal Code (arson);
- (12) an offense under Section 29.02, Penal Code (robbery);

(13) an offense under Section 29.03, Penal Code (aggravated robbery); ~~[or]~~
 (14) an offense under Section 21.08, Penal Code (indecent exposure);
 (15) an offense under Section 21.12, Penal Code (improper relationship
 between educator and student);
 (16) an offense under Section 21.15, Penal Code (improper photography or
 visual recording);
 (17) an offense under Section 22.05, Penal Code (deadly conduct);
 (18) an offense under Section 22.021, Penal Code (aggravated sexual
 assault);
 (19) an offense under Section 22.07, Penal Code (terroristic threat);
 (20) an offense under Section 33.021, Penal Code (online solicitation of a
 minor);
 (21) an offense under Section 34.02, Penal Code (money laundering);
 (22) an offense under Section 35A.02, Penal Code (Medicaid fraud);
 (23) an offense under Section 42.09, Penal Code (cruelty to animals); or
 (24) a conviction under the laws of another state, federal law, or the
 Uniform Code of Military Justice for an offense containing elements that are
 substantially similar to the elements of an offense listed by this subsection ~~[under~~
~~Subdivisions (1) (13)]~~.

(b) A person may not be employed in a position the duties of which involve direct contact with a consumer in a facility before the fifth anniversary of the date the person is convicted of:

(1) an offense under Section 22.01, Penal Code (assault), that is punishable as a Class A misdemeanor or as a felony;
 (2) an offense under Section 30.02, Penal Code (burglary);
 (3) an offense under Chapter 31, Penal Code (theft), that is punishable as a felony;
 (4) an offense under Section 32.45, Penal Code (misapplication of fiduciary property or property of a financial institution), that is punishable as a Class A misdemeanor or a felony; ~~[or]~~
 (5) an offense under Section 32.46, Penal Code (securing execution of a document by deception), that is punishable as a Class A misdemeanor or a felony;
 (6) an offense under Section 37.12, Penal Code (false identification as peace officer); or
 (7) an offense under Section 42.01(a)(7), (8), or (9), Penal Code (disorderly conduct).

SECTION 2. This Act takes effect September 1, 2007.

Floor Amendment No. 1

Amend **CSSB 199** (House committee printing) by inserting the following new SECTION to the bill, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. The change in law made by this Act to Section 250.006, Health and Safety Code, does not apply to the employment of a person by a facility before January 1, 2008, if the person:

- (1) is employed by the facility on the effective date of this Act; and
- (2) remains continuously employed by that facility.

Floor Amendment No. 2

Amend **CSSB 199** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in the introductory text (page 1, line 5), strike "Sections 250.006(a) and (b)" and substitute "Section 250.006".

(2) In SECTION 1 of the bill, in the introductory text (page 1, line 6) strike "are amended" and substitute "is amended by amending Subsections (a) and (b) and adding Subsection (d)".

(3) In SECTION 1 of the bill, after amended Subsection (b), Section 250.006, Health and Safety Code (page 4, between line 4 or 5) insert the following:

(d) For purposes of this section, a person who is placed on deferred adjudication community supervision for an offense listed in this section, successfully completes the period of deferred adjudication community supervision, and receives a dismissal and discharge in accordance with Section 5(c), Article 42.12, Code of Criminal Procedure, is not considered convicted of the offense for which the person received deferred adjudication community supervision.

The amendments were read.

Senator Nelson 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 199** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Deuell, Williams, Shapleigh, and Shapiro.

SENATE BILL 1520 WITH HOUSE AMENDMENTS

Senator Wentworth called **SB 1520** 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 **SB 1520** on page 2, line 7 by striking "and" and inserting "or".

Floor Amendment No. 2

Amend **SB 1520** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in the recital to the section (page 1, line 5), between "(f)," and "(i)", insert "(g)".

(2) In SECTION 1 of the bill, in the recital to the section (page 1, line 5), between "(i)," and "and", insert "(j)".

(3) In SECTION 1 of the bill, in the recital to the section (page 1, lines 6 and 7), strike "(f-1), (f-2), (f-3), (f-4)".

(4) In SECTION 1 of the bill, in proposed Subsection (b-1), Section 32.06, Tax Code (page 4, line 2), strike "any mortgage servicer" and substitute "any recorded mortgage servicer".

(5) In SECTION 1 of the bill, in proposed Subsection (b-1), Section 32.06, Tax Code (page 4, line 3), between "a" and "first", insert "recorded".

(6) In SECTION 1 of the bill, in proposed Subsection (c-1), Section 32.06, Tax Code (page 4, line 22, through page 5, line 14), strike proposed Subdivisions (1) and (2) of the subsection and substitute the following:

(1) the application for the foreclosure must:

(A) allege that the lien is an ad valorem tax lien instead of a lien created under Section 50, Article XVI, Texas Constitution;

(B) state that the applicant does not seek a court order required by Section 50, Article XVI, Texas Constitution; and

(C) state that the transferee has provided notice to cure the default and notice of intent to accelerate to the property owner, and notice of acceleration of the maturity of the debt to the property owner, any recorded mortgage servicer, and each holder of a recorded lien on the property in the manner required for notice to a debtor under Section 51.002, Property Code; and

(2) the holder of a recorded preexisting lien must be provided at least 60 days' notice before the date of the proposed foreclosure and, notwithstanding any contractual agreement with the property owner, is entitled to payoff information to the greatest extent permitted by 15 U.S.C. Section 6802 and 12 C.F.R. Part 216.

The amendments were read.

Senator Wentworth 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1520** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Wentworth, Chair; Hinojosa, Carona, Harris, and Watson.

SENATE BILL 344 WITH HOUSE AMENDMENTS

Senator Carona called **SB 344** 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 **SB 344** (House committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 243.002, Health and Safety Code, is amended by amending Subdivision (3) and adding Subdivisions (3-a), (3-b), and (5) to read as follows:

(3) "Department" means the ~~[Texas]~~ Department of State Health Services.

(3-a) "Designated physician group" means any business entity formed exclusively by one or more physicians licensed to practice medicine in this state, including a professional association, a professional corporation, a professional limited liability company, or a professional limited liability partnership.

(3-b) "Facility" means the physical premises that the department determines constitutes an ambulatory surgical center.

(5) "Sublicense agreement" means a written and executed agreement between a licensed ambulatory surgical center and a designated physician group under which the ambulatory surgical center allows the designated physician group to use its facility to provide surgical services to the designated physician group's patients.

SECTION _____. The heading to Section 243.003, Health and Safety Code, is amended to read as follows:

Sec. 243.003. LICENSE REQUIRED; SUBLICENSE AGREEMENTS.

SECTION _____. Section 243.003, Health and Safety Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) Except as provided by Subsection (d), a [A] license is not transferable or assignable.

(d) An ambulatory surgical center may share its license with a designated physician group under a written sublicense agreement if:

(1) the sublicense agreement is filed with and approved by the department;
and

(2) the sublicense agreement provides that:

(A) the ambulatory surgical center remains responsible for ensuring that the facility and all surgical and other services provided by the ambulatory surgical center or in the facility by any designated physician group complies with this chapter and applicable department rules; and

(B) all surgical services provided by the designated physician group as an ambulatory surgical center sublicense holder are provided in the facility.

SECTION _____. Section 843.002, Insurance Code, is amended by adding Subdivision (1-a) and amending Subdivision (24) to read as follows:

(1-a) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code. The term includes a designated physician group operating under a sublicense agreement under Section 243.003, Health and Safety Code.

(24) "Provider" means:

(A) a person, other than a physician, who is licensed or otherwise authorized to provide a health care service in this state, including:

(i) a chiropractor, registered nurse, pharmacist, optometrist, registered optician, or acupuncturist; or

(ii) a pharmacy, hospital, ambulatory surgical center, or other institution or organization;

(B) a person who is wholly owned or controlled by a provider or by a group of providers who are licensed or otherwise authorized to provide the same health care service; or

(C) a person who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

SECTION _____. Section 1301.001, Insurance Code, is amended by amending Subdivisions (1) and (4) and adding Subdivision (1-a) to read as follows:

(1) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code. The term includes a designated physician group operating under a sublicense agreement under Section 243.003, Health and Safety Code.

(1-a) "Health care provider" means a practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state. The term does not include a physician.

(4) "Institutional provider" means an ambulatory surgical center, [a] hospital, nursing home, or other medical or health-related service facility that provides care for the sick or injured or other care that may be covered in a health insurance policy.

SECTION _____. Section 401.011, Labor Code, is amended by adding Subdivision (4-a) and amending Subdivision (20) to read as follows:

(4-a) "Ambulatory surgical center" means a facility licensed under Chapter 243, Health and Safety Code. The term includes a designated physician group operating under a sublicense agreement under Section 243.003, Health and Safety Code.

(20) "Health care facility" means a hospital, ambulatory surgical center, emergency clinic, outpatient clinic, or other facility providing health care.

SECTION _____. The change in law made by this Act applies only to a sublicense agreement under Section 243.003, Health and Safety Code, as amended by this Act, that is entered into and approved by the Department of State Health Services on or after the effective date of this Act. A sublicense agreement entered into before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

Floor Amendment No. 2

Amend **SB 344** (House committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 247.050, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) The department may not delete or permanently remove any information or data pertaining to an unlicensed assisted living facility, including any information required for the report prepared under Subsection (a)(2), from the registry maintained by the department as required under Subsection (a)(1) or from any electronic database, file, or other data storage location of the department.

Floor Amendment No. 1 on Third Reading

Amend **SB 344** on third reading as follows:

(1) Strike the SECTION added by the Davis amendment on second reading that amends Section 243.002, Health and Safety Code.

(2) Strike the SECTION added by the Davis amendment on second reading that amends the heading to Section 243.003, Health and Safety Code.

(3) Strike the SECTION added by the Davis amendment on second reading that amends Section 243.003, Health and Safety Code.

(4) Strike the SECTION added by the Davis amendment on second reading that amends Section 843.002, Insurance Code.

(5) Strike the SECTION added by the Davis amendment on second reading that amends Section 1301.001, Insurance Code.

(6) Strike the SECTION added by the Davis amendment on second reading that amends Section 401.011, Labor Code.

(7) Strike the SECTION added by the Davis amendment on second reading that provides transition provisions relating to Section 243.003, Health and Safety Code.

(8) Renumber subsequent SECTIONS accordingly.

The amendments were read.

Senator Carona 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 344** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Nelson, Deuell, Nichols, and Zaffirini.

SENATE BILL 759 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 759** 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 **SB 759** (House committee printing), in SECTION 2 of the bill, in amended Subsection (d), Section 263.501, Family Code, by striking Subdivisions (5) and (6) (page 2, lines 4 through 8), and substituting the following:

(5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; ~~and~~

(6) the licensed administrator of the child-placing agency responsible for placing the child for adoption; and

(7) any other person or agency named by the court as having an interest in the child's welfare.

Floor Amendment No. 1 on Third Reading

Amend **SB 759** on third reading in SECTION 2 of the bill, by striking amended Subsection (d), Section 263.501, Family Code, as amended by Floor Amendment No. 1 by Parker, and substituting the following:

(d) The following are entitled to not less than 10 days' notice of a placement review hearing and are entitled to present evidence and be heard at the hearing:

- (1) the department;
- (2) the foster parent, preadoptive parent, relative of the child providing care, or director of the group home or institution in which the child is residing;
- (3) each parent of the child;
- (4) each possessory conservator or guardian of the child;
- (5) the child's attorney ad litem and volunteer advocate, if the appointments were not dismissed in the final order; ~~and~~
- (6) the licensed administrator of the child-placing agency responsible for placing the child for adoption;

(7) the following individuals, if the individual has filed with the department a written request to receive notice:

- (A) an adult sibling of the child;
- (B) a grandparent of the child;
- (C) an aunt who is a sister of a parent of the child; or
- (D) an uncle who is a brother of a parent of the child; and

(8) any other person or agency named by the court as having an interest in the child's welfare.

The amendments were read.

Senator Nelson 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 759** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Nelson, Chair; Deuell, Uresti, Nichols, and Shapleigh.

CONFERENCE COMMITTEE ON HOUSE BILL 930

Senator Uresti 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 **HB 930** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 930** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Uresti, Chair; Harris, Hinojosa, Watson, and Wentworth.

HOUSE BILL 3955 ON SECOND READING

The Presiding Officer laid before the Senate **HB 3955** by Senator Wentworth on its second reading. The bill had been read second time, an amendment withdrawn, and further consideration postponed to a time certain of 4:00 p.m. today:

HB 3955, Relating to the delegation of a county commissioners court's powers to regulate traffic on county roads.

Question — Shall **HB 3955** be passed to third reading?

HB 3955 was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 3955 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3955** 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 1097 WITH HOUSE AMENDMENT

Senator Whitmire called **SB 1097** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1 on Third Reading

Amend **SB 1097** on third reading by adding the following appropriately numbered SECTIONS to the bill and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Section 30.05(b), Penal Code, is amended by adding Subdivision (8) to read as follows:

(8) "Residential land" means real property improved by a dwelling and zoned for or otherwise authorized for single-family or multifamily use.

SECTION _____. Section 30.05, Penal Code, is amended by amending Subsection (c) and adding Subsections (d-1) and (k) to read as follows:

(c) It is a defense to prosecution under this section that the actor at the time of the offense was:

(1) a fire fighter or emergency medical services personnel, as [that term is] defined by Section 773.003, Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances;

(2) an employee or agent of an electric utility, as defined by Section 31.002, Utilities Code, or an employee or agent of a gas utility, as defined by Section 101.003 or 121.001, Utilities Code, who was performing a duty within the scope of employment or agency; or

(3) a person who was:

(A) employed by or acting as agent for an entity that had, or that the person reasonably believed had, effective consent or authorization provided by law to enter the property; and

(B) performing a duty within the scope of that employment or agency.

(d-1) An offense under Subsection (k) is a Class C misdemeanor unless it is committed in a building or habitation or unless the actor carries a deadly weapon on or about the actor's person during the commission of the offense, in which event it is a Class A misdemeanor.

(k) A person commits an offense if without express consent or if without authorization provided by any law, whether in writing or other form, the person:

(1) enters or remains on residential land of another; and

(2) had notice that the entry was forbidden or received notice to depart but failed to do so.

The amendment was read.

Senator Whitmire moved to concur in the House amendment to **SB 1097**.

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

SENATE BILL 688 WITH HOUSE AMENDMENT

Senator Shapleigh called **SB 688** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 688** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the area served by certain municipal drainage utility systems.

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

SECTION 1. Section 402.044(8), Local Government Code, is amended to read as follows:

(8) "Service area" means the municipal boundaries and any other land areas outside the municipal boundaries which, as a result of topography or hydraulics, contribute overland flow into the watersheds served by the drainage system of a municipality; provided, however, that in no event may a service area extend farther than the boundaries of a municipality's current extraterritorial jurisdiction, nor, except as provided by Section 402.0451, may a service area of one municipality extend into the boundaries of another municipality. The service area is to be established in the ordinance establishing the drainage utility. Provided, that no municipality shall extend a service area outside of its municipal boundaries except:

(A) a municipality of more than 500,000 ~~[400,000]~~ population located within 50 miles of an international border ~~[in one or more counties of less than 600,000 population according to the most recent federal census];~~

(B) a municipality all or part of which is located over or within the Edwards Aquifer recharge zone or the Edwards Aquifer transition zone, as designated by the Texas Natural Resource Conservation Commission; or

(C) as provided by Section 402.0451.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Shapleigh moved to concur in the House amendment to **SB 688**.

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

SENATE BILL 545 WITH HOUSE AMENDMENTS

Senator Carona called **SB 545** 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 **SB 545** (House committee report) in SECTION 1 of the bill as follows:

(1) In amended Subdivision (3), Subsection (b), Section 644.101, Transportation Code (page 1, line 19), strike "or" and substitute "[~~or~~]".

(2) In amended Subdivision (4), Subsection (b), Section 644.101, Transportation Code (page 1, line 20), between "(4)" and "a", insert the following:
a municipality with a population of at least 34,000 that is located in a county that borders two or more states; or

(5)

Floor Amendment No. 2

Amend **SB 545** by adding an appropriately numbered section to read as follows and renumber the subsequent sections appropriately:

SECTION 1. Section 45.051(f), Code of Criminal Procedure, as amended by Chapters 281 and 357, Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(f) This article does not apply to:

(1) an offense to which Section 542.404 [~~or 729.004(b)~~], Transportation Code, applies; or

(2) a violation of a state law or local ordinance relating to motor vehicle control, other than a parking violation, committed by a person who:

(A) holds a commercial driver's license; or

(B) held a commercial driver's license when the offense was committed.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 545**.

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

SENATE BILL 323 WITH HOUSE AMENDMENT

Senator Deuell called **SB 323** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 323** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED**AN ACT**

relating to the creation of the Fairfields Municipal Utility District of Kaufman County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

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

SECTION 1. Subtitle F, Title 6, Special District Local Laws Code, is amended by adding Chapter 8162 to read as follows:

CHAPTER 8162. FAIRFIELDS MUNICIPAL UTILITY DISTRICT OF KAUFMAN COUNTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8162.001. DEFINITIONS. In this chapter:

(1) "Board" means the district's board of directors.

(2) "Director" means a board member.

(3) "District" means the Fairfields Municipal Utility District of Kaufman County.

Sec. 8162.002. NATURE OF DISTRICT. The district is a municipal utility district in Kaufman County created under and essential to accomplish the purposes of Section 52, Article III, and Section 59, Article XVI, Texas Constitution.

Sec. 8162.003. FINDING OF PUBLIC USE AND BENEFIT. The district is created to serve a public use and benefit.

Sec. 8162.004. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8162.023 before September 1, 2009:

(1) the district is dissolved September 1, 2009, except that the district shall:

(A) pay any debts incurred;

(B) transfer to Kaufman County any assets that remain after the payment of debts; and

(C) maintain the organization of the district until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2012.

Sec. 8162.005. INITIAL DISTRICT TERRITORY. (a) The district is initially composed of the territory described by Section 2 of the Act creating this chapter.

(b) The boundaries and field notes contained in Section 2 of the Act creating this chapter form a closure. A mistake made in the field notes or in copying the field notes in the legislative process does not affect:

(1) the organization, existence, or validity of the district;

(2) the right of the district to impose taxes; or

(3) the legality or operation of the board.

[Sections 8162.006-8162.020 reserved for expansion]

SUBCHAPTER A-I. TEMPORARY PROVISIONS

Sec. 8162.021. TEMPORARY DIRECTORS. (a) The temporary board consists of:

- (1) Anthony Francis Apollaro Jr.;
- (2) John Ryan Brown;
- (3) Mary Patricia Carson;
- (4) Paris Milton Rutherford IV; and
- (5) Marcus Lee Scroggins.

(b) If a temporary director fails to qualify for office, the temporary directors who have qualified shall appoint a person to fill the vacancy. If at any time there are fewer than three qualified temporary directors, the Texas Commission on Environmental Quality shall appoint the necessary number of persons to fill all vacancies on the board.

(c) Temporary directors serve until the earlier of:

- (1) the date directors are elected under Section 8162.023; or
- (2) the date this chapter expires under Section 8162.004.

Sec. 8162.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 49.055, Water Code, the temporary directors shall convene the organizational meeting of the district at a location in the district agreeable to a majority of the directors. If a location cannot be agreed upon, the organizational meeting shall be at the Kaufman County Courthouse.

Sec. 8162.023. CONFIRMATION AND INITIAL DIRECTORS' ELECTION. The temporary directors shall hold an election to confirm the creation of the district and to elect five directors as provided by Section 49.102, Water Code.

Sec. 8162.024. INITIAL ELECTED DIRECTORS; TERMS. The directors elected under Section 8162.023 shall draw lots to determine which two shall serve until the first regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8162.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2012.

[Sections 8162.026-8162.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8162.051. DIRECTORS; TERMS. (a) The district is governed by a board of five directors.

(b) Directors serve staggered four-year terms.

[Sections 8162.052-8162.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8162.101. MUNICIPAL UTILITY DISTRICT POWERS AND DUTIES. The district has the powers and duties provided by the general law of this state, including Chapters 49 and 54, Water Code, applicable to municipal utility districts created under Section 59, Article XVI, Texas Constitution.

Sec. 8162.102. ROAD PROJECTS. (a) The district may construct, acquire, improve, maintain, or operate macadamized, graveled, or paved roads or improvements in aid of those roads.

(b) A road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each municipality in whose corporate limits or extraterritorial jurisdiction the district is located. If the district is not located in the corporate limits or extraterritorial jurisdiction of a municipality, a road project must meet all applicable construction standards, zoning and subdivision requirements, and regulations of each county in which the district is located.

(c) The district may not undertake a road project unless each municipality in whose corporate limits or extraterritorial jurisdiction the district is located consents by resolution. If the district is not located in the corporate limits or extraterritorial jurisdiction of a municipality, the district may not undertake a road project unless each county in which the district is located consents by resolution.

Sec. 8162.103. ROAD CONTRACTS. The district may contract for a road project in the manner provided by Subchapter I, Chapter 49, Water Code.

[Sections 8162.104-8162.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8162.151. OPERATION AND MAINTENANCE TAX. The district may impose a tax for any district operation and maintenance purpose in the manner provided by Section 49.107, Water Code.

Sec. 8162.152. TAX TO REPAY BONDS. The district may impose a tax to pay the principal of and interest on bonds issued under Section 8162.201.

Sec. 8162.153. UTILITY PROPERTY EXEMPT FROM IMPACT FEES AND ASSESSMENTS. The district may not impose an impact fee or assessment on the property, including the equipment, rights-of-way, facilities, or improvements, of:

(1) an electric utility or a power generation company as defined by Section 31.002, Utilities Code;

(2) a gas utility as defined by Section 101.003 or 121.001, Utilities Code;

(3) a telecommunications provider as defined by Section 51.002, Utilities Code;

(4) a cable operator as defined by 47 U.S.C. Section 522; or

(5) a person who provides to the public advanced telecommunications services.

[Sections 8162.154-8162.200 reserved for expansion]

SUBCHAPTER E. BONDS

Sec. 8162.201. AUTHORITY TO ISSUE BONDS AND OTHER OBLIGATIONS. (a) The district may issue bonds or other obligations as provided by Chapters 49 and 54, Water Code, and to finance the construction, maintenance, or operation of projects under Section 8162.102.

(b) The district may issue bonds or other obligations payable wholly or partly from ad valorem taxes, impact fees, revenue, grants, or other district money.

(c) The district may not issue bonds or other obligations secured wholly or partly by ad valorem taxation to finance projects authorized by Section 8162.102 unless the issuance is approved by a vote of a two-thirds majority of district voters voting at an election called for that purpose.

(d) Bonds or other obligations issued or incurred to finance projects authorized by Section 8162.102 may not exceed one-fourth of the assessed value of the real property in the district.

[Sections 8162.202-8162.250 reserved for expansion]

SUBCHAPTER F. DIVISION OF DISTRICT INTO MULTIPLE DISTRICTS

Sec. 8162.251. DIVISION OF DISTRICT; REQUIREMENTS. (a) At any time before the district issues indebtedness secured by taxes or net revenue, the district may be divided into two or more new districts.

(b) A new district created by division of the district must be at least 100 acres.

(c) Any new district created by the division of the district may not, at the time the new district is created, contain any land outside the area described by Section 2 of the Act creating this chapter.

(d) The board may consider a proposal to divide the district on:

(1) a petition of a landowner in the district; or

(2) a motion by the board.

(e) If the board decides to divide the district, the board shall:

(1) set the terms of the division, including names for the new districts and a plan for the payment or performance of any outstanding district obligations; and

(2) prepare a metes and bounds description for each proposed district.

Sec. 8162.252. ELECTION FOR DIVISION OF DISTRICT. (a) After the board has complied with Section 8162.251(e), the board shall hold an election in the district to determine whether the district should be divided as proposed.

(b) The board shall give notice of the election not later than the 35th day before the date of the election. The notice must state:

(1) the date and location of the election; and

(2) the proposition to be voted on.

(c) If a majority of the votes cast are in favor of the division:

(1) the district is divided; and

(2) not later than the 30th day after the date of the election, the district shall provide written notice of the division to:

(A) the Texas Commission on Environmental Quality;

(B) the attorney general;

(C) the commissioners court of each county in which a new district is located; and

(D) any municipality having extraterritorial jurisdiction over territory in each new district.

(d) If a majority of the votes cast are not in favor of the division, the district may not be divided.

Sec. 8162.253. ELECTION OF DIRECTORS OF NEW DISTRICTS. (a) Not later than the 90th day after the date of an election in favor of the division of the district, the board shall:

(1) appoint itself as the board of one of the new districts; and

(2) appoint five directors for each of the other new districts.

(b) Directors appointed under Subsection (a)(1) serve the staggered terms to which they were elected in the original district. Directors appointed under Subsection (a)(2) serve until the election for directors under Subsection (c).

(c) On the uniform election date in May of the first even-numbered year after the year in which the directors are appointed, the appointed board shall hold an election to elect five directors in each district for which directors were appointed under Subsection (a)(2). The directors shall draw lots to determine which two shall serve until the next regularly scheduled election of directors and which three shall serve until the second regularly scheduled election of directors.

Sec. 8162.254. CONTINUING POWERS AND OBLIGATIONS OF NEW DISTRICTS. (a) Each new district may incur and pay debts and has all powers of the original district created by this chapter.

(b) If the district is divided as provided by this subchapter, the current obligations and any bond authorizations of the district are not impaired. Debts shall be paid by revenue or by taxes or assessments imposed on real property in the district as if the district had not been divided or by contributions from each new district as stated in the terms set by the board under Section 8162.251(e).

(c) Any other district obligation is divided pro rata among the new districts on an acreage basis or on other terms that are satisfactory to the new districts.

Sec. 8162.255. CONTRACT AUTHORITY OF NEW DISTRICTS. The new districts may contract with each other for:

(1) water and wastewater services; or

(2) any other matter the boards of the new districts consider appropriate.

SECTION 2. The Fairfields Municipal Utility District of Kaufman County initially includes all the territory contained in the following described area:

TRACT 1

BEING a tract of and situated in the Benjamin Kimberling Survey, Abstract No. 265, Joseph Russell Survey, Abstract No. 429, William Clement Survey, Abstract No. 104, Hudson Tabor Survey, Abstract No. 542, J. H. Hamilton Survey, Abstract No. 207, A. J. Paschall Survey, Abstract No. 396, E. Helmstetter Survey, Abstract No. 229, W. C. Moody Survey, Abstract No. 322, William McMurry Survey, Abstract No. 348, and the James W. Cude Survey, Abstract No. 90, Kaufman County, Texas, and being a portion of a 834.0416 acre tract of land as described in instrument to H. L. Hunt and recorded in Volume 318, Page 542, a portion of a tract of land as described in instrument to Hunt Oil Company and recorded in Volume 458, Page 2, all of a tract of land as described in instrument to H. L. Hunt as recorded in Volume 1034, Page 877, all of a tract of land as described in instrument to Hunt Oil Company and recorded in Volume 2466, Page 210, a portion of a tract of land to H. L. Hunt as described in instrument Volume 322, Page 182, all of a tract of land as described in instrument to H. L. Hunt and recorded in Volume 328, Page 299, all of a tract of land as described in instrument to Hunt Oil Company and recorded in Volume 482, Page 410, all of a tract of land as described in instrument to Hunt Oil Company and recorded in Volume 2484, Page 320, all of a tract of land as described in instrument to Hunt Oil Company and recorded in Volume 2489, Page 349, all of a tract of land as described in instrument to Hunt Oil Company and recorded in Volume 2468, Page 127, all of the Deed Records of Kaufman County, Texas, and being more particularly described as follows:

BEGINNING at concrete right-of-way monument found at the intersection of the southerly right-of-way line of the Union Pacific Railroad (formerly the Texas & Pacific Railroad) with the westerly right-of-way line of Farm-to-Market Highway No. 429 (F.M. 429), a 90 foot wide right-of-way as established by instrument recorded in Volume 355, Page 203 of the Deed Records of Kaufman County, Texas;

THENCE, along the westerly right-of-way line of said F.M. 429, South 03 degrees 04 minutes 11 seconds East a distance of 3,527.31 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the beginning of a curve to the left having a radius of 565.87 feet;

THENCE, continuing along the southwesterly right-of-way line of F.M. 429 and along said curve to the left through a central angle of 43 degrees 43 minutes 48 seconds, an arc length of 431.89 feet, being subtended by a chord of South 24 degrees 56 minutes 05 seconds East a distance of 421.48 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars";

THENCE, South 46 degrees 47 minutes 59 seconds East continuing along the Southwesterly right-of-way line of F.M. 429 a distance of 2,248.36 feet to a 3/8 inch iron rod found for the most Northerly corner of a 5 acre tract of land as described in General Warranty Deed to Harless Steven Rattan and wife, Reva O. Rattan as recorded in Volume 1881, Page 1, Deed Records of Kaufman County, Texas;

THENCE, departing the Southwesterly right-of-way line of said FM 429, South 43 degrees 22 minutes 31 seconds West along the Northwesterly line of said Rattan Tract, a distance of 838.79 feet to a 3/8 inch iron rod found for the most Westerly corner of said Rattan Tract;

THENCE, South 46 degrees 46 minutes 43 seconds East a distance of 259.56 feet to a point for a corner on the southeasterly line of said McCaghren Tract, from which a 3/8 inch iron rod found bears North 87 degrees 13 minutes 08 seconds East, a distance of 0.68 feet and a second 3/8 inch iron rod found bears South 49 degrees 11 minutes 33 seconds West, a distance of 2.24 feet;

THENCE, South 43 degrees 21 minutes 30 seconds West a distance of 1,275.46 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the North corner of said tract of land to H. L. Hunt, as recorded in Volume 1034, Page 877, said point being the North corner of the said William Clements Survey;

THENCE, South 47 degrees 03 minutes 28 seconds East with the Northeast line of the said William Clements Survey and continuing with the Northerly Northeast line of the said Joseph Russell Survey a distance of 5,301.60 feet to a bent 5/8 iron rod found, said rod being in the Northwest line of the H. L. Hunt tract as described in Volume 318, Page 542;

THENCE, North 43 degrees 07 minutes 35 seconds East along the Northwest line of the H. L. Hunt tract as described in Volume 318, Page 542 a distance of 3,067.25 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" in the Southwest right-of-way line of F.M. 429 and being the beginning of a non-tangent curve to the left having a radius of 1,190.92 feet;

THENCE, in a Southeasterly direction along the Southwest right-of-way line of F.M. 429 along said curve to the left through a central angle of 04 degree 12 minutes 53 seconds, an arc length of 87.61 feet, being subtended by a chord of South 73 degrees

11 minutes 23 seconds East a distance of 87.59 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" in a North line of said H. L. Hunt tract as described in Volume 318, Page 542;

THENCE, South 58 degrees 51 minutes 00 seconds East along the North line of the last mentioned H. L. Hunt tract a distance of 58.41 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the beginning of a curve to the left having a radius of 364.54 feet;

THENCE, continuing along the North line of the last mentioned H. L. Hunt tract along said curve to the left through a central angle of 56 degrees 25 minutes 53 seconds, an arc length of 359.04 feet, being subtended by a chord of South 87 degrees 03 minutes 57 seconds East a distance of 344.70 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" in the Southwest right-of-way line of F. M. 429;

THENCE, continuing along the Southwest right-of-way line of F.M. 429 the following courses and distances:

South 86 degrees 09 minutes 28 seconds East a distance of 77.03 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the beginning of a curve to the right having a radius of 671.20 feet;

along said curve to the right through a central angle of 40 degrees 09 minutes 57 seconds, an arc length of 470.53 feet, being subtended by a chord of South 66 degrees 04 minutes 29 seconds East a distance of 460.95 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars";

South 45 degrees 59 minutes 30 seconds East a distance of 2,629.80 feet to a point for corner, from which a concrete Texas Department of Transportation (TxDOT) monument found bears North 37 degrees 36 minutes 31 seconds East, 0.48 feet, said point being the beginning of a non-tangent curve to the right having a radius of 2,819.79 feet;

along said curve to the right through a central angle of 06 degrees 48 minutes 00 seconds, an arc length of 334.66 feet, being subtended by a chord of South 42 degrees 35 minutes 30 seconds East a distance of 334.46 feet to a point for corner, from which a concrete Texas Department of Transportation (TxDOT) monument found bears North 71 degrees 55 minutes 44 seconds West, 0.48 feet;

South 39 degrees 11 minutes 30 seconds East a distance of 115.12 feet to a point for corner, from which a concrete Texas Department of Transportation (TxDOT) monument found bears North 14 degrees 10 minutes 37 seconds West, 0.26 feet, said point being the beginning of a curve to the left having a radius of 2,909.79 feet;

along said curve to the left through a central angle of 06 degrees 12 minutes 00 seconds, an arc length of 314.87 feet, being subtended by a chord of South 42 degrees 17 minutes 30 seconds East a distance of 314.72 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars";

South 45 degrees 23 minutes 30 seconds East a distance of 705.00 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the beginning of a curve to the left having a radius of 2,909.83 feet;

along said curve to the left through a central angle of 05 degrees 27 minutes 28 seconds, an arc length of 277.18 feet, being subtended by a chord of South 48 degrees 06 minutes 43 seconds East a distance of 277.07 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars";

South 50 degrees 32 minutes 30 seconds East a distance of 154.67 feet to a point for corner, from which a concrete Texas Department of Transportation (TxDOT) monument found bears North 66 degrees 02 minutes 36 seconds West, 0.30 feet at the beginning of a curve to the right having a radius of 1,387.64 feet; along said curve to the right through a central angle of 07 minutes 40 minutes 00 seconds, an arc length of 185.68 feet, being subtended by a chord of South 46 degrees 42 minutes 30 seconds East a distance of 185.54 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars"

South 42 degrees 52 minutes 30 seconds East a distance of 316.47 feet to a point for corner, said point being in Northwest line of a tract of land described in instrument to Ernest V. Rogers and wife, Cynthia Sue Rogers and recorded in Volume 952, Page 788 of the Deed Records of Kaufman County, Texas, from which a 1/2 inch iron rod found bears South 44 degrees 48 minutes 38 seconds, 0.48 feet;

THENCE, South 44 degrees 48 minutes 38 seconds West along the Northwest line of the said Rogers and the southeast line of the said H. L. Hunt tract as described in Volume 458, Page 2, a distance of 2,422.47 feet to a fence corner post;

THENCE, North 45 degrees 19 minutes 53 seconds West a distance of 1,756.49 feet to a fence corner post;

THENCE, South 42 degrees 59 minutes 38 seconds West a distance of 1,465.41 feet to a fence corner post;

THENCE, South 46 degrees 07 minutes 41 seconds East a distance of 1,642.52 feet to a fence corner post;

THENCE, South 43 degrees 02 minutes 42 seconds West a distance of 888.12 feet to a 10" Hackberry Tree found on the north line of Interstate Highway 20;

THENCE, along the north right-of-way line of Interstate Highway 20 the following courses and distance:

North 74 degrees 59 minutes 38 seconds West a distance of 2,680.90 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 75 degrees 26 minutes 04 seconds West a distance of 1,300.04 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 74 degrees 59 minutes 38 seconds West a distance of 1,600.00 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 66 degrees 27 minutes 38 seconds West a distance of 303.36 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 27 degrees 15 minutes 38 seconds West a distance of 148.64 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 35 degrees 13 minutes 22 seconds East a distance of 249.92 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 44 degrees 22 minutes 22 seconds East a distance of 107.90 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 45 degrees 51 minutes 38 seconds West a distance of 368.81 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars at the most Westerly Northwest corner of a tract of land as described in instrument to H. L. Hunt and recorded in Volume 318, Page 542;

THENCE, North 43 degrees 06 minutes 41 seconds East along the northwest line of said H. L. Hunt tract as recorded in Volume 318, Page 542 a distance of 24.21 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars at the south corner of said H. L. Hunt tract as recorded in Volume 1034, Page 877;

THENCE, North 46 degrees 18 minutes 38 seconds West along the Southwest line of said H. L. Hunt tract as recorded in Volume 1034, Page 877 a distance of 5,289.65 feet to a 1/2 iron rod found at the west corner of the last mentioned H. L. Hunt tract;

THENCE, North 43 degrees 04 minutes 01 seconds East along the Northwest line of the last mentioned H. L. Hunt tract a distance of 0.56 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars in the north right-of-way line of Airport Road as established by instrument to the City of Terrell for road right-of-way dated July 27, 2004;

THENCE, along the North right-of-way line of Airport Road the following courses and distances:

North 46 degrees 42 minutes 19 seconds West a distance of 136.81 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 46 degrees 21 minutes 25 seconds West a distance of 480.30 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 46 degrees 08 minutes 50 seconds West a distance of 582.25 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 46 degrees 42 minutes 43 seconds West a distance of 195.07 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 48 degrees 12 minutes 12 seconds West a distance of 100.52 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 49 degrees 05 minutes 54 seconds West a distance of 151.43 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

North 45 degrees 04 minutes 36 seconds West a distance of 1,121.91 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars in the Northwest line of the said Hunt Oil Company tract as recorded in Volume 2466, Page 210;

THENCE, South 43 degrees 35 minutes 44 seconds West along the Northwest line of the last mentioned Hunt Oil Company tract a distance of 91.96 feet to a cut cross found in concrete at the West corner of the said Hunt Oil Company tract as recorded in Volume 2466, Page 210, said corner also being the south corner of the said H. L. Hunt tract as recorded in Volume 328, Page 299;

THENCE, North 42 degrees 27 minutes 27 seconds West along the Southwest line of the said H. L. Hunt tract as recorded in Volume 328, Page 299 a distance of 769.09 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

THENCE, North 46 degrees 19 minutes 18 seconds West continuing along the Southwest line of the last mention H. L. Hunt tract a distance of 2,272.73 feet to a cut cross set in concrete at the west corner of the last mentioned H. L. Hunt tract;

THENCE, North 64 degrees 21 minutes 57 seconds East along a Northwest line of the last mention H. L. Hunt tract a distance of 1,775.49 feet to a fence corner, same being a large tree;

THENCE, North 30 degrees 23 minutes 40 seconds East along a West line of the last mention H. L. Hunt tract a distance of 166.50 feet to a railroad spike set in tree root;

THENCE, North 14 degrees 01 minute 46 seconds West continuing along a Southwest line of the last mention H. L. Hunt tract a distance of 226.95 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars in fence line;

THENCE, North 21 degrees 49 minutes 11 seconds West continuing along a Southwest line of the last mention H. L. Hunt tract and along a fence line a distance of 294.75 feet to a fence corner post;

THENCE, North 27 degrees 38 minutes 46 seconds West continuing along a Southwest line of the last mention H. L. Hunt tract and along a fence line a distance of 785.05 feet to a fence corner post;

THENCE, North 25 degrees 07 minutes 59 seconds West continuing along a Southwest line of the last mention H. L. Hunt tract and along a fence a distance of 520.74 feet to a 1/2 iron rod found with cap stamped "Neagles RPLS 5239";

THENCE, North 73 degrees 05 minutes 55 seconds West a distance of 742.11 feet to a 5/8 inch iron rod found;

THENCE, South 64 degrees 39 minutes 12 seconds West continuing a Southeast line of the last mention H. L. Hunt tract a distance of 382.45 feet to a fence corner post;

THENCE, North 46 degrees 40 minutes 18 seconds West continuing along a Southwest line of the last mention H. L. Hunt tract and along a fence line and an extension thereof a distance of 287.37 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars in the centerline of a road at the most northerly west corner of the last mentioned H. L. Hunt tract, from which a 1/2 inch iron rod found bears North 63 degrees 28 minutes 24 seconds West, 2.38 feet;

THENCE, North 43 degrees 13 minutes 19 seconds East along a Northwest line of the last mentioned H.L. Hunt and along the centerline of a road a distance of 1,259.54 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars in the centerline of College Mound Road;

THENCE, South 47 degrees 34 minutes 51 seconds East along a Northeast line of the last mentioned H.L. Hunt and along the centerline of College Mound Road a distance of 1,080.86 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars;

THENCE, South 73 degrees 23 minutes 16 seconds East continuing along a Northerly line of the last mentioned H.L. Hunt and along the centerline of College Mound Road a distance of 691.14 feet to a metal bar found in the center of a wooden bridge, same being the centerline of Kings Creek;

THENCE, North 13 degrees 19 minutes 44 seconds East along the centerline of Kings Creek a distance of 30.33 feet to the Southeast corner of the Greenbelt Addition, recorded in Cabinet 1, Sleeve 324 of the Plat Records of Kaufman County, Texas;

THENCE, with the Northeasterly line of the said Greenbelt Addition and the centerline of Kings Creek the following courses and distances:

North 09 degrees 03 minutes 42 seconds East a distance of 47.11 feet to a point for corner;

North 36 degrees 13 minutes 18 seconds West a distance of 36.15 feet to a point for corner;

North 74 degrees 58 minutes 16 seconds West a distance of 307.46 feet to a point for corner;

North 02 degrees 53 minutes 41 seconds West a distance of 38.38 feet to a point for corner;

North 44 degrees 58 minutes 25 seconds East a distance of 107.34 feet to a point for corner;
North 02 degrees 08 minutes 44 seconds East a distance of 45.54 feet to a point for corner;
North 42 degrees 29 minutes 01 second West a distance of 100.80 feet to a point for corner;
North 34 degrees 15 minutes 02 seconds East a distance of 116.47 feet to a point for corner;
North 10 degrees 59 minutes 15 seconds East a distance of 55.00 feet to a point for corner;
North 31 degrees 10 minutes 25 seconds West a distance of 171.33 feet to a point for corner;
North 25 degrees 01 minutes 25 seconds East a distance of 70.09 feet to a point for corner;
North 74 degrees 52 minutes 25 seconds East a distance of 120.41 feet to a point for corner;
North 01 degree 02 minutes 44 seconds East a distance of 52.80 feet to a point for corner;
North 18 degrees 07 minutes 02 seconds West a distance of 111.02 feet to a point for corner;
North 40 degrees 43 minutes 56 seconds East a distance of 40.31 feet to the confluence of Kings Creek and a branch for corner;
THENCE, with the Northeasterly line of the said Greenbelt Addition and the centerline of Branch the following courses and distances:
North 14 degrees 09 minutes 42 seconds West a distance of 122.13 feet to a point for corner;
North 73 degrees 19 minutes 07 seconds West a distance of 22.83 feet to a point for corner;
North 45 degrees 24 minutes 53 seconds West a distance of 127.01 feet to a point for corner;
North 07 degrees 38 minutes 33 seconds West a distance of 15.00 feet to a point for corner;
North 49 degrees 28 minutes 56 seconds West a distance of 46.17 feet to a point for corner;
North 18 degrees 48 minutes 09 seconds West a distance of 59.93 feet to a point for corner;
North 34 degrees 18 minutes 35 seconds West a distance of 203.21 feet to a point for corner;
North 74 degrees 55 minutes 58 seconds West a distance of 73.06 feet to a point for corner;
North 37 degrees 01 minute 03 seconds West a distance of 284.75 feet to the north corner of said Greenbelt Addition;
THENCE, South 42 degrees 27 minutes 36 seconds West along the northwest side of the said Greenbelt Addition a distance of 48.18 feet to a fence corner post, said post being in the southwest line of the Hunt Oil Company tract as recorded in Volume 482, Page 410;

THENCE, North 46 degrees 55 minutes 28 seconds West along a southwest line of the last mentioned Hunt Oil Company tract and along a fence line a distance of 2,111.39 feet to a fence corner post;

THENCE, North 51 degrees 15 minutes 08 seconds East along a northwesterly line of the last mentioned Hunt Oil Company tract and along a fence line passing at 310.00 feet a 5/8 inch iron rod set, in all a distance of 320.00 feet to an inner ell corner of the Hunt Oil Company tract as recorded in Volume 482, Page 410;

THENCE, North 63 degrees 38 minutes 20 seconds West along a southwest line of the last mentioned Hunt Oil Company tract a distance of 324.26 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars";

THENCE, North 61 degrees 09 minutes 01 second West continuing along a southwest line of the last mentioned Hunt Oil Company tract a distance of 445.60 feet to a fence corner post in the southerly right-of-way line of the Union Pacific Railroad spur, said post being the beginning of a non-tangent curve to the right having a radius of 795.00 feet;

THENCE, along the southerly right-of-way line of the Texas & Pacific Railroad spur and along a curve to the right through a central angle of 20 degrees 21 minutes 36 seconds, an arc length of 282.50 feet, being subtended by a chord of North 77 degrees 21 minutes 05 seconds East a distance of 281.02 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" in the south right-of-way line of the Union Pacific Railroad, a 100.00 foot wide right-of-way;

THENCE, South 82 degrees 57 minutes 54 seconds East along the south right-of-way line of the Union Pacific Railroad a distance of 3,744.63 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the northwest corner of a tract of land as described in instrument to Texas Power and Light Company as recorded in Volume 526, Page 665 of the Deed Records of Kaufman County, Texas;

THENCE, South 11 degrees 36 minutes 24 seconds West departing the south right-of-way line of the Union Pacific Railroad and along the west line of the said Texas Power and Light Company tract a distance of 300.79 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the southwest corner of the said Texas Power and Light Company Tract;

THENCE, along the southerly line of said Texas Power and Light Company Tract, South 83 degrees 00 minutes 21 seconds East along the south line of the said Texas Power and Light Company tract passing at 110.00 feet a concrete Texas Power & Light Company monument with a brass cap found at the southeast corner of the last mentioned Texas Power and Light Company tract, said monument also being the southwest corner of a tract of land as described in instrument to Texas Power & Light Company as recorded in Volume 195, Page 158 of the Deed Records of Kaufman County, Texas, in all a distance of 410.66 feet to a galvanized steel post in concrete stamped "T P & L Co. prop. corner" at the southeast corner of said Texas Power and Light Company Tract;

THENCE, along the easterly line of said Texas Power and Light Company Tract (Vol. 195, Page 158) and continuing along the aforementioned Texas Power and Light Company Tract (Vol. 206, Page 380) North 11 degrees 27 minutes 59 seconds East a

distance of 300.44 feet (Deed North 13 degrees 27 minutes 16 seconds East, 300.00 feet) to a one inch iron rod found in the south right-of-way line of the Union Pacific Railroad;

THENCE, South 82 degrees 57 minutes 54 seconds East along the south right-of-way line of the Union Pacific Railroad a distance of 2,270.17 feet to the POINT OF BEGINNING and CONTAINING 2,352.6 acres of land, more or less.

TRACT 2

BEING a tract of land situated in the Benjamin Kimberling Survey, Abstract No. 265, Kaufman County, Texas, and being a portion of a 834.0416 acre tract of land as described in instrument to H. L. Hunt as recorded in Volume 318, Page 542, subsequently deeded to Hunt Oil Company in Volume 427, Page 119 of the Deed Records of Kaufman County, Texas, and being a portion of a 22.634 acre tract of land as described in instrument to Hunt Oil Company as recorded in Volume 2622, Page 444 of the Deed Records of Kaufman County, Texas, and being all of a 65.24 acre tract of land as described in instrument to Hunt Oil Company as recorded in Volume 2723, Page 294 of the Deed Records of Kaufman County, Texas, and being more particularly described as follows:

BEGINNING 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the intersection of the south right-of-way line of Interstate Highway 20, a variable width right-of-way, with the east line of the Kaufman-Van Zandt Baptist Area Church, Inc. tract as described in instrument recorded in Volume 1470, Page 1 of the Deed Records of Kaufman County, Texas;

THENCE, along the south right-of-way of Interstate Highway 20 the following:

South 74 degrees 59 minutes 38 seconds East a distance of 1,388.56 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars";

South 74 degrees 06 minutes 45 seconds East a distance of 1,300.15 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars", from which a Texas Department of Transportation concrete highway monument found bears South 33 degrees 20 minutes 55 seconds East, 1.16 feet;

South 74 degrees 59 minutes 38 seconds East a distance of 2,473.19 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" in a southeast line of the said H. L. Hunt tract, from which a Texas Department of Transportation concrete highway monument found bears South 78 degrees 07 minutes 55 seconds East, 1.47 feet;

South 74 degrees 59 minutes 38 seconds East a distance of 326.81 feet to a five-eighths inch iron rod set with cap stamped "Huitt-Zollars", from which a TxDOT concrete monument found bears South 84 degrees 10 minutes 06 seconds East, 1.13 feet;

South 74 degrees 30 minutes 59 seconds East a distance of 600.02 feet to a point for corner, from which a TxDOT concrete monument found bears North 47 degrees 49 minutes 51 seconds East, 0.33 feet;

South 74 degrees 59 minutes 38 seconds East a distance of 600.00 feet to a point for corner, from which a TxDOT concrete monument found bears South 75 degrees 52 minutes 04 seconds East, 0.48 feet;

South 73 degrees 33 minutes 42 seconds East a distance of 400.12 feet to a point for corner, from which a TxDOT concrete monument found bears North 13 degrees 14 minutes 53 seconds East, 0.48 feet;

South 74 degrees 59 minutes 38 seconds East a distance of 78.53 feet to a five-eighths inch iron rod found with cap stamped "Huitt-Zollars" in the southeasterly line of said Hunt Oil Company tract (Vol. 2723, Pg. 294);

THENCE, South 46 degrees 58 minutes 57 seconds West along the southeast line of the last mentioned Hunt Oil Company tract a distance of 2,162.15 feet to a fence corner post at the south corner of the said last mentioned Hunt Oil Company tract;

THENCE, North 46 degrees 30 minutes 03 seconds West along the southwest line of the last mentioned Hunt Oil Company tract a distance of 1,628.60 feet to a fence corner post at the west corner of the last mentioned Hunt Oil Company tract, said corner also being a south corner of the said Hunt Oil Company Tract (Vol. 427, Pg. 119) and the west corner of said Hunt Oil Company tract (Vol. 2723, Pg. 294);

THENCE, North 46 degrees 52 minutes 48 seconds West along a southwest line of the said Hunt Oil Company tract (Vol. 427, Pg. 119) and along a fence line a distance of 744.85 feet to the southeast line of the said Hunt Oil Company tract (Vol. 2622, Pg. 444);

THENCE, South 44 degrees 33 minutes 51 seconds West along a southeast of the last mentioned Hunt Oil Company tract a distance of 1,374.94 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars";

THENCE, North 46 degrees 22 minutes 46 seconds West a distance of 200.00 feet to a five-eighths inch iron rod found with cap stamped "Huitt-Zollars";

THENCE, South 44 degrees 33 minutes 51 seconds West a distance of 217.83 feet to a five-eighths inch iron rod found with cap stamped "Huitt-Zollars" on the south line of the last mentioned Hunt Oil Company tract;

THENCE, North 46 degrees 22 minutes 46 seconds West a distance of 419.46 feet to the west corner of the last mentioned Hunt Oil Company tract, and being on the southeast line of the said Hunt Oil Company (Vol. 427, Pg. 119), from which a five-eighths inch iron rod found with cap stamped "Huitt-Zollars", bears North 44 degrees 37 minutes 00 seconds East a distance of 20.77 feet;

THENCE, South 44 degrees 37 minutes 00 seconds West a distance of 5.65 feet to the southern most corner of the last mentioned Hunt Oil Company tract, and being in the centerline of County Road 136;

THENCE, North 45 degrees 58 minutes 05 seconds West along a southwest line of the last mentioned Hunt Oil Company tract and generally along the centerline of said County Road 136, a distance of 3,081.35 feet to a PK nail found at the most southerly corner of said Kaufman-Van Zandt Baptist Area Church, Inc. tract;

THENCE, North 43 degrees 49 minutes 13 seconds East along the east line of said Kaufman-Van Zandt Baptist Area Church, Inc. tract a distance of 195.34 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars";

THENCE, North 14 degrees 34 minutes 18 seconds East continuing along the east line of said Kaufman-Van Zandt Baptist Area Church, Inc. tract a distance of 168.66 feet to a the POINT OF BEGINNING and CONTAINING 201.3 acres of land, more or less.

TRACT 3

BEING a tract of land situated in the Benjamin Kimberling Survey, Abstract No. 265 and the Joseph Russell Survey, Abstract No. 429, Kaufman County, Texas, and being a portion of a tract of 110.5 acre tract of land as described in instrument to H. L. Hunt as recorded in Volume 322, Page 129 of the Deed Records of Kaufman County, Texas, and being more particularly described as follows:

BEGINNING 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the west corner of said Hunt tract, said point being at the intersection of the projected centerline of F.M. 429 (formerly known as College Mound Road) with the centerline of Kaufman County Road No. 309;

THENCE, North 43 degrees 58 minutes 52 seconds East along the northwest line of said Hunt tract a distance of 2,252.13 feet to a fence corner post;

THENCE, South 46 degrees 32 minutes 42 seconds East along the northeast line of said Hunt tract and along a fence line a distance of 2,129.12 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the east corner of said Hunt tract;

THENCE, South 44 degrees 17 minutes 57 seconds West along the southeast line of said Hunt tract and along a fence line a distance of 2,227.72 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" in the northerly right-of-way line of F.M. 429, a 90.0 foot wide right-of-way, as established deed recorded in Volume 355, Page 221 of the Deed Records of Kaufman County, Texas;

THENCE, North 45 degrees 59 minutes 30 seconds West along the northerly right-of-way line of F.M. 429 a distance of 1,623.46 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" at the beginning of a curve to the left having a radius of 761.20 feet;

THENCE, continuing along the northerly right-of-way line of F.M. 429 and along said curve to the left through a central angle of 19 degrees 47 minutes 59 seconds, arc length of 263.05 feet, being subtended by a chord of North 55 degrees 53 minutes 30 seconds West a distance of 261.74 feet to a 5/8 inch iron rod set with cap stamped "Huitt-Zollars" in the southwest line of the said Hunt tract;

THENCE, North 45 degrees 59 minutes 30 seconds West along the southwest line of the said Hunt tract a distance of 235.34 feet to the POINT OF BEGINNING and CONTAINING 108.39 acres of land, more or less.

SECTION 3. (a) The 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 under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor, one of the required recipients, has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, the lieutenant governor, and the speaker of the house of representatives within the required time.

(d) 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. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Deuell moved to concur in the House amendment to **SB 323**.

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

SENATE BILL 350 WITH HOUSE AMENDMENT

Senator Ellis called **SB 350** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Brimer in Chair, laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 350** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the abatement of certain nuisances involving junked vehicles.

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

SECTION 1. Section 683.071, Transportation Code, is amended to read as follows:

Sec. 683.071. DEFINITION. In this subchapter, "junked vehicle" means a vehicle that is self-propelled and:

- (1) does not have lawfully attached to it:
 - (A) an unexpired license plate; and ~~and~~ ~~or~~
 - (B) a valid motor vehicle inspection certificate; and
- (2) is:
 - (A) wrecked, dismantled or partially dismantled, or discarded; or
 - (B) inoperable and has remained inoperable for more than:
 - (i) 72 consecutive hours, if the vehicle is on public property; or
 - (ii) 30 consecutive days, if the vehicle is on private property.

SECTION 2. Section 683.074(b), Transportation Code, is amended to read as follows:

(b) The procedures must:

(1) prohibit a vehicle from being reconstructed or made operable after removal;

(2) require a public hearing on request of a person who receives notice as provided by Section 683.075 if the request is made not later than the date by which the nuisance must be abated and removed ~~[before removal of the public nuisance];~~ and

(3) require that notice identifying the vehicle or part of the vehicle be given to the department not later than the fifth day after the date of removal.

SECTION 3. This Act takes effect September 1, 2007.

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 350**.

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

SENATE BILL 143 WITH HOUSE AMENDMENT

Senator West called **SB 143** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1 on Third Reading

Amend **SB 143** on third reading (House committee printing) by striking SECTION 2 of the bill (page 9, lines 10 through 22) and substituting the following:

SECTION 2. Section 161.084, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) The sign must include the statement:

PURCHASING OR ATTEMPTING TO PURCHASE TOBACCO PRODUCTS BY A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. SALE OR PROVISION OF TOBACCO PRODUCTS TO A MINOR UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED. VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN PREMATURE OR WITH LOW BIRTH WEIGHT.

(f) The comptroller may accept gifts or grants from any public or private source to perform the comptroller's duties under this section.

The amendment was read.

Senator West moved to concur in the House amendment to **SB 143**.

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

SENATE BILL 12 WITH HOUSE AMENDMENTS

Senator Averitt called **SB 12** 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 **SB 12** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to programs for the enhancement of air quality, including energy efficiency standards in state purchasing and energy consumption; providing penalties.

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

ARTICLE 1. LOW-INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

SECTION 1.01. Section 382.003, Health and Safety Code, is amended by adding Subdivisions (7-a), (9-a), and (10-a) to read as follows:

(7-a) "Hybrid motor vehicle" means a motor vehicle that draws propulsion energy from both gasoline or conventional diesel fuel and a rechargeable energy storage system.

(9-a) "Motor vehicle" means a fully self-propelled vehicle having four wheels that has as its primary purpose the transport of a person or persons, or property, on a public highway.

(10-a) "Qualifying motor vehicle" means a motor vehicle that has a current emissions inspection sticker and meets the requirements of Section 382.210(b).

SECTION 1.02. Subsection (b), Section 382.0622, Health and Safety Code, is amended to read as follows:

(b) Except as provided by Subsection ~~[Subsections]~~ (b-1) ~~[and (e)]~~, Clean Air Act fees shall be deposited in the state treasury to the credit of the clean air account and shall be used to safeguard the air resources of the state.

SECTION 1.03. Subsection (a), Section 382.203, Health and Safety Code, is amended to read as follows:

(a) The inspection and maintenance program applies to any ~~[gasoline-powered]~~ vehicle that is:

(1) required to be registered in and is primarily operated in an affected county; and

(2) at least two years old and newer ~~[less]~~ than model year 1980 ~~[25 years old]~~; or

(3) subject to test-on-resale requirements under Section 548.3011, Transportation Code.

SECTION 1.04. Section 382.209, Health and Safety Code, is amended by amending Subsections (b), (e), and (g) and adding Subsections (i) and (j) to read as follows:

(b) The commission shall provide funding for local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs with available funds collected under Section 382.202, 382.302, or other designated and available funds. The programs shall be administered in accordance with Chapter 783, Government Code. Program ~~[Programmatic]~~ costs may include call center management, application oversight, invoice analysis, education, outreach, and advertising. In a county with a vehicle emissions inspection and maintenance program under Section 382.202, not more than 10 percent of the money provided to a local low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program under this section may be used for the administration of the programs. In a county with a vehicle emissions inspection and maintenance program under Section 382.302, the commission shall provide 10 percent of all the fees collected in that county for a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program under this section for the administration of the program.

(e) A vehicle is not eligible to participate in a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program established under this section unless:

- (1) the vehicle is capable of being operated;
- (2) the registration of the vehicle:
 - (A) is current; and

(B) reflects that the vehicle has been registered in the county implementing the program for the 12 months preceding the application for participation in the program;

(3) the commissioners court of the county administering the program determines that the vehicle meets the eligibility criteria adopted by the commission, the Texas Department of Transportation, and the Public Safety Commission; ~~and~~

(4) if the vehicle is to be repaired, the repair is done by a repair facility recognized by the Department of Public Safety, which may be an independent or private entity licensed by the state; and

(5) if the vehicle is to be retired under this subsection and Section 382.213, the replacement vehicle is a qualifying motor vehicle.

(g) A participating county may contract with any appropriate entity, including the regional council of governments or the metropolitan planning organization in the appropriate region, or with another county for services necessary to implement the participating county's low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program. The participating counties in a nonattainment region or counties participating in an early action compact under Subchapter H may agree to have the money collected in any one county be used in any other participating county in the same region. ~~[The participating counties may also agree to contract with any appropriate entity, including the regional metropolitan planning organization or council of governments, to implement a program under Section 382.217.]~~

(i) Notwithstanding the vehicle replacement requirements provided by Subsection (d)(2), the commission by rule may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program, subject to the availability of funds, for the replacement of a vehicle that meets the following criteria:

- (1) the vehicle is at least 10 years old;
- (2) the vehicle owner meets applicable financial eligibility criteria;
- (3) the vehicle meets the requirements provided by Subsections (e)(1) and

(2); and

(4) the vehicle has passed a Department of Public Safety motor vehicle safety inspection or safety and emissions inspection within the 15-month period before the application is submitted.

(j) The commission may provide monetary or other compensatory assistance under the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program for a replacement vehicle or replacement assistance for a pre-1996 model year replacement vehicle that passes the required United States Environmental Protection Agency Start-Up Acceleration Simulation Mode Standards emissions test but that would have failed the United States Environmental Protection Agency Final Acceleration Simulation Mode Standards emissions test or failed to meet some other criterion determined by the commission; provided, however, that a replacement vehicle under this subsection must be a qualifying motor vehicle.

SECTION 1.05. Section 382.210, Health and Safety Code, is amended to read as follows:

Sec. 382.210. IMPLEMENTATION GUIDELINES AND REQUIREMENTS.

(a) The commission by rule shall adopt guidelines to assist a participating county in implementing a low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program authorized under Section 382.209. The guidelines at a minimum shall recommend:

(1) a minimum and maximum amount for repair assistance;

(2) a minimum and maximum amount toward the purchase price of a replacement vehicle qualified for the accelerated retirement program, based on vehicle type and model year, with the maximum amount not to exceed:

(A) \$3,000 for a replacement vehicle of the latest model year, except as provided by Paragraph E;

(B) \$2,500 for a replacement vehicle of the previous two model years, except as provided by Paragraph F;

(C) \$2,000 for a replacement vehicle the model year of which is more than two years but is five years or less before the year in which the vehicle is purchased as a replacement vehicle, except as provided by Paragraph F;

(D) \$1,500 for a replacement vehicle the model year of which is more than five years but is 10 years or less before the year in which the vehicle is purchased as a replacement vehicle;

(E) \$5,000 for a replacement hybrid motor vehicle of the latest model year; and

(F) \$3,500 for a replacement hybrid motor vehicle of the preceding five model years;

(3) criteria for determining eligibility, taking into account:

(A) the vehicle owner's income, provided that an eligible vehicle owner's income may not exceed 300 percent of the federal poverty level;

(B) the fair market value of the vehicle; and

(C) any other relevant considerations;

(4) safeguards for preventing fraud in the repair, purchase, or sale of a vehicle in the program; and

(5) procedures for determining the degree and amount of repair assistance a vehicle is allowed, based on:

(A) the amount of money the vehicle owner has spent on repairs;

(B) the vehicle owner's income; and

(C) any other relevant factors.

(b) A replacement vehicle described by Subsection (a)(2) must have a gross vehicle weight rating of less than 10,000 pounds.

(c) A participating county shall provide an electronic means for distributing vehicle repair or replacement funds once all program criteria have been met with regard to the repair or replacement. The county shall ensure that funds are transferred to a participating dealer under this section not later than five business days after the date the county receives proof of the sale and any required administrative documents from the participating dealer.

(d) In rules adopted under this section, the commission shall require a procedure that:

(1) produces a document confirming that a person is eligible to purchase a replacement vehicle in the manner provided by this chapter, and the amount of money available to the participating purchaser;

(2) provides that a person who seeks to purchase a replacement vehicle in the manner provided by this chapter is required to have the document required by Subdivision (1) before the person enters into negotiation for a replacement vehicle in the manner provided by this chapter; and

(3) provides that a participating dealer who relies on a document issued as required by Subdivision (1) has no duty to otherwise confirm the eligibility of a person to purchase a replacement vehicle in the manner provided by this chapter.

SECTION 1.06. Section 382.213, Health and Safety Code, is amended by adding Subsections (d) through (i) to read as follows:

(d) Notwithstanding Subsection (a)(3), the dismantler of a vehicle shall scrap the emissions control equipment, power train, and engine. The dismantler shall certify that those parts have been scrapped and not resold into the marketplace. A person who causes, suffers, allows, or permits a violation of this subsection or of a rule adopted under this section is subject to a civil penalty under Subchapter D, Chapter 7, Water Code, for each violation. For purposes of this subsection, a separate violation occurs with each fraudulent certification or prohibited resale.

(e) Except as provided by Subsection (d), vehicle parts may be resold in any state.

(f) Any dismantling of vehicles or salvaging of steel under this section must be performed at a facility located in this state.

(g) In dismantling a vehicle under this section, the dismantler shall remove any mercury switches in accordance with state and federal law.

(h) For purposes of this section, the commission shall adopt rules defining "emissions control equipment," "power train," and "engine."

(i) Notwithstanding any other provision of this section, and except as provided by this subsection, a dealer is in compliance with this section and incurs no civil or criminal liability as a result of the disposal of a replaced vehicle if the dealer produces proof of transfer of the replaced vehicle by the dealer to a dismantler. The defense provided by this subsection is not available to a dealer who knowingly and intentionally conspires with another person to violate this section.

SECTION 1.07. Subchapter G, Chapter 382, Health and Safety Code, is amended by adding Section 382.219 to read as follows:

Sec. 382.219. PURCHASE OF REPLACEMENT VEHICLE; AUTOMOBILE DEALERSHIPS. (a) An amount described by Section 382.210(a)(2) may be used as a down payment toward the purchase of a replacement vehicle.

(b) An automobile dealer that participates in the procedures and programs offered by this chapter must be located in this state. A dealer is not required to participate in the procedures and programs provided by this chapter.

SECTION 1.08. Subchapter G, Chapter 382, Health and Safety Code, is amended by adding Section 382.220 to read as follows:

Sec. 382.220. USE OF FUNDING FOR LOCAL INITIATIVE PROJECTS.

(a) Money that is made available to participating counties under Section 382.202(g) or 382.302 may be appropriated only for programs administered in accordance with Chapter 783, Government Code, to improve air quality. A participating county may agree to contract with any appropriate entity, including a metropolitan planning organization or a council of governments to implement a program under Section 382.202, 382.209, or this section.

(b) A program under this section must be implemented in consultation with the commission and may include a program to:

(1) expand and enhance the AirCheck Texas Repair and Replacement Assistance Program;

(2) develop and implement a program or system that remotely determines vehicle emissions and notifies the vehicle's operator;

(3) develop and implement projects to implement the commission's smoking vehicle program;

(4) develop and implement projects for coordinating with local law enforcement officials to reduce the use of counterfeit state inspection stickers by providing local law enforcement officials with funds to identify vehicles with counterfeit state inspection stickers and to carry out appropriate actions;

(5) develop and implement programs to enhance transportation system improvements; or

(6) develop and implement new air control strategies designed to assist local areas in complying with state and federal air quality rules and regulations.

(c) Money that is made available for the implementation of a program under Subsection (b) may be expended for call center management, application oversight, invoice analysis, education, outreach, or advertising purposes.

(d) Fees collected under Sections 382.202 and 382.302 may be used, in an amount not to exceed \$10 million per fiscal year, for projects described by Subsection (b). The fees may be made available only to counties participating in the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement programs created under Section 382.209.

SECTION 1.09. Subsection (b), Section 152.002, Tax Code, is amended to read as follows:

(b) "Total consideration" does not include:

(1) a cash discount;

(2) a full cash or credit refund to a customer of the sales price of a motor vehicle returned to the seller;

(3) the amount charged for labor or service rendered in installing, applying, remodeling, or repairing the motor vehicle sold;

(4) a financing, carrying, or service charge or interest on credit extended on a motor vehicle sold under a conditional sale or other deferred payment contract;

(5) the value of a motor vehicle taken by a seller as all or a part of the consideration for sale of another motor vehicle, including any cash payment to the buyer under Section 348.404, Finance Code;

(6) a charge for transportation of the motor vehicle after a sale; ~~or~~

(7) motor vehicle inventory tax; or

(8) an amount made available to the customer under Subchapter G, Chapter 382, Health and Safety Code.

SECTION 1.10. Section 7.102, Water Code, is amended to read as follows:

Sec. 7.102. MAXIMUM PENALTY. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to Chapter 37 of this code, Chapter 366, 371, or 372, Health and Safety Code, Subchapter G, Chapter 382, Health and Safety Code, or Chapter 1903, Occupations Code, shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$5,000 for each day of each violation as the court or jury considers proper. A person who causes, suffers, allows, or permits a violation of a statute, rule, order, or permit relating to any other matter within the commission's jurisdiction to enforce, other than violations of Chapter 11, 12, 13, 16, or 36 of this code, or Chapter 341, Health and Safety Code, shall be assessed for each violation a civil penalty not less than \$50 nor greater than \$25,000 for each day of each violation as the court or jury considers proper. Each day of a continuing violation is a separate violation.

SECTION 1.11. The following provisions of the Health and Safety Code are repealed:

- (1) Subsection (e), Section 382.0622;
- (2) Subsections (q) and (r), Section 382.202; and
- (3) Section 382.217.

SECTION 1.12. The Texas Commission on Environmental Quality shall review its current cutpoint levels for nitrogen oxide emissions and determine whether a lower cutpoint standard would best serve the interest of the public health and welfare. The determination shall be made by rule not later than January 1, 2008. If the commission adopts a lower cutpoint standard, the commission shall make the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program under Section 382.209, Health and Safety Code, as amended by this article, available to owners of vehicles that did not meet the prior, more stringent standard.

SECTION 1.13. (a) The Texas Commission on Environmental Quality shall seek to work in partnership with automobile manufacturers and dealers in the state to increase public awareness of and participation in the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program under Section 382.209, Health and Safety Code, as amended by this article.

(b) Funding for the partnership described by Subsection (a) of this section shall be used exclusively for the purpose of publicizing the program.

SECTION 1.14. (a) The Texas Commission on Environmental Quality shall seek to work in partnership with the steel industry and automobile dismantlers to ensure that vehicles being replaced are scrapped and that proof of scrapping is provided to the commission.

(b) Not later than January 1, 2008, the Texas Commission on Environmental Quality shall adopt procedures for certifying that emissions control equipment and vehicle engines have been scrapped and not resold into the marketplace and shall by rule define "emissions control equipment," "power train," and "engine," as required by Section 382.213, Health and Safety Code, as amended by this article.

ARTICLE 2. TEXAS EMISSIONS REDUCTION PLAN

SECTION 2.01. Section 386.002, Health and Safety Code, is amended to read as follows:

Sec. 386.002. EXPIRATION. This chapter expires August 31, 2013 ~~[2010]~~.

SECTION 2.02. Subsection (a), Section 386.052, Health and Safety Code, is amended to read as follows:

(a) In administering the plan established under this chapter and in accordance with the requirements of this chapter, the commission shall:

- (1) manage plan funds and oversee the plan;
- (2) produce guidelines, protocols, and criteria for eligible projects;
- (3) develop methodologies for evaluating project cost-effectiveness;
- (4) prepare reports regarding the progress and effectiveness of the plan;

~~[and]~~

(5) take all appropriate and necessary actions so that emissions reductions achieved through the plan are credited by the United States Environmental Protection Agency to the appropriate emissions reduction objectives in the state implementation plan; and

(6) hire staff and consultants needed to complete the commission's duties under this section and ensure timely review of applications and reimbursement of grant applicants' eligible project costs.

SECTION 2.03. Subsection (d), Section 386.053, Health and Safety Code, is amended to read as follows:

(d) The commission may propose revisions to the guidelines and criteria adopted under this section as necessary to improve the ability of the plan to achieve its goals. Revisions may include, among other changes, adding additional pollutants, adding stationary engines or engines used in stationary applications, adding vehicles and equipment that use fuels other than diesel, or adjusting eligible program categories, as appropriate, to ensure that incentives established under this chapter achieve the maximum possible emissions reductions. The commission shall make a proposed revision available to the public before the 30th ~~[45th]~~ day preceding the date of final adoption of the revision and shall hold at least one public meeting to consider public comments on the proposed revision before final adoption.

SECTION 2.04. Subsection (c), Section 386.104, Health and Safety Code, is amended to read as follows:

(c) For a proposed project as described by Section 386.102(b), other than a project involving a marine vessel or engine, not less than 50 ~~[75]~~ percent of vehicle miles traveled or hours of operation projected for the five years immediately following the award of a grant must be projected to take place in a nonattainment area or affected county of this state. The commission may also allow vehicle travel on highways and roadways, or portions of a highway or roadway, designated by the commission and located outside a nonattainment area or affected county to count towards the percentage of use requirement in this subsection. For a proposed project involving a marine vessel or engine, the vessel or engine must be operated in the intercoastal waterways or bays adjacent to or in an area within nine miles of a

nonattainment area or affected county of this state for a sufficient amount of time over the lifetime of the project, as determined by the commission, to meet the cost-effectiveness requirements of Section 386.105.

SECTION 2.05. Subsection (a), Section 386.106, Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 386.107 and except for infrastructure projects and infrastructure purchases that are part of a broader retrofit, repower, replacement, or add-on equipment project, the commission may not award a grant for a proposed project the cost-effectiveness of which, calculated in accordance with Section 386.105 and criteria developed under that section, exceeds \$15,000 [~~\$13,000~~] per ton of oxides of nitrogen emissions reduced in the nonattainment area or affected county for which the project is proposed. This subsection does not restrict commission authority under other law to require emissions reductions with a cost-effectiveness that exceeds \$15,000 [~~\$13,000~~] per ton.

SECTION 2.06. Section 386.109, Health and Safety Code, is amended to read as follows:

Sec. 386.109. ELIGIBLE INFRASTRUCTURE PROJECTS. (a) The commission may consider for funding under Section 386.108:

(1) the purchase and installation at a site of equipment that is designed primarily to dispense qualifying fuel, other than standard gasoline or diesel, or the purchase of on-site mobile fueling equipment;

(2) infrastructure projects, including auxiliary power units, designed to dispense electricity to:

(A) motor vehicles;

(B) [~~and~~] on-road and non-road diesels; and

(C) marine vessels; and

(3) a project that involves a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine.

(b) The commission may provide funding to other state agencies to implement projects under Subsection (a)(3), including funding for the lease, purchase, or installation of idle reduction technologies and facilities at rest areas and other public facilities on major highway transportation routes located in areas eligible for funding or for marine vessels operating on water routes eligible for funding. Funding under this subsection may include reasonable operational costs determined by the commission to be needed for the initial start-up and proper operation of the idle reduction technologies. The state agency leasing, owning, or operating the idle reduction facility constructed with funds provided under this subsection may, but is not required to, charge reasonable fees for the provision of idle reduction services provided that those fees are used to directly offset the cost of providing the services.

(c) In evaluating a request for funding of an eligible infrastructure project, the commission shall encourage the use of a technology that allows a vehicle to replace with electric power, while the vehicle is parked, the power normally supplied by the vehicle's internal combustion engine at the state's ports and border crossings in affected areas.

SECTION 2.07. Section 386.117, Health and Safety Code, is amended by amending Subsections (a) and (c) and adding Subsections (e) and (f) to read as follows:

(a) The commission shall adopt a process for awarding grants under this subchapter in the form of rebates to streamline the grant application, contracting, reimbursement, and reporting processes for certain projects. The process adopted under this section must:

(1) designate certain types of projects, such as repowers, replacements, and retrofits, as eligible for rebates;

(2) project standardized oxides of nitrogen emissions reductions for each designated project type;

(3) assign a standardized rebate amount for each designated project type;

(4) process and fund ~~[allow for processing]~~ rebates on an ongoing first-come, first-served basis; ~~[and]~~

(5) set aside funds for projects with non-road engines used in construction or related activities;

(6) encourage projects with non-road engines used in construction or related activities by ensuring that the percentage of rebate grant funding for those projects is commensurate with the percentage of emissions sources in the mobile inventory in the state implementation plan or early action compact, as applicable, that are non-road engines used in construction or related activities; and

(7) consolidate, simplify, and reduce the administrative work for applicants and the commission associated with grant application, contracting, reimbursement, and reporting processes for designated project types.

(c) The commission may award rebate grants ~~[as a pilot project]~~ for a specific region or may award the grants statewide.

(e) The commission shall:

(1) investigate the requirements for establishing an Internet-based application process for rebate grants and report those requirements to the legislature not later than December 31, 2007; or

(2) implement an Internet-based application process for rebate grants not later than June 1, 2008.

(f) The commission or its designee shall notify potential applicants of any changes to the rebate grant process by its e-mail list service and posting those changes on its Internet website at least 30 days before the changes become effective.

SECTION 2.08. Subsection (b), Section 386.251, Health and Safety Code, is amended to read as follows:

(b) The fund is administered by the commission ~~[controller]~~ for the benefit of the plan established under this chapter. The fund is exempt from the application of Section 403.095, Government Code. Interest earned on the fund shall be credited to the fund.

SECTION 2.09. Subsection (a), Section 386.252, Health and Safety Code, as amended by Section 3, Chapter 766, Section 3, Chapter 1095, and Section 11, Chapter 1125, Acts of the 79th Legislature, Regular Session, 2005, is reenacted and amended to read as follows:

(a) Money in the fund may be used only to implement and administer programs established under the plan and shall be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which not more than four percent may be used for the clean school bus program and not more than 10 percent may be used for on-road diesel purchase or lease incentives;

(2) for the new technology research and development program, 9.5 percent of the money in the fund, of which up to \$250,000 is allocated for administration, up to \$200,000 is allocated for a health effects study, \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties, not less than 20 percent is to be allocated each year to support research related to air quality for the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas by a nonprofit organization based in Houston of which \$216,000 each year shall be contracted to the Energy Systems Laboratory at the Texas Engineering Experiment Station for the development and annual calculation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the State Implementation Plan, and the balance is to be allocated each year to a ~~that~~ nonprofit organization or an institution of higher education based in Houston to be used to implement and administer the new technology research and development program under a contract with the commission for the purpose of identifying, testing, and evaluating new emissions-reducing technologies with potential for commercialization in this state and to facilitate their certification or verification; and

(3) for administrative costs incurred by the commission and the laboratory, three percent of the money in the fund.

SECTION 2.10. Section 387.003, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (c) through (h) to read as follows:

(a) A ~~The~~ nonprofit organization or institution of higher education described by Section 386.252(a)(2), under a contract with the commission as described by that section, shall establish and administer a new technology research and development program as provided by this chapter. The commission may contract with more than one entity and may limit the amount of each grant contract accordingly.

(c) The board of directors of a nonprofit organization under contract with the commission to establish and administer a new technology research and development program as provided by this chapter must include not more than three county judges selected from counties in the Houston-Galveston-Brazoria nonattainment area and two persons of relevant scientific expertise to be nominated by the commission. The two persons of relevant scientific expertise to be nominated by the commission may be employees or officers of the commission, provided that they do not participate in funding decisions affecting the granting of funds by the commission to a nonprofit organization on whose board they serve.

(d) The commission may enter into a grant contract with an institution of higher education described by Section 386.252(a)(2) for the institution to operate a testing facility which would be available for demonstration of eligible projects receiving grants under this chapter.

(e) The commission shall provide oversight as appropriate for grants provided to a nonprofit organization under this program.

(f) A nonprofit organization shall submit to the commission for approval a budget for the disposition of funds granted under this program.

(g) The commission shall limit the use of grants for administrative costs incurred by a nonprofit organization to an amount not to exceed 10 percent of the funding provided to the nonprofit organization under this program.

(h) A nonprofit organization that receives grants from the commission under this program is subject to Chapters 551 and 552, Government Code.

SECTION 2.11. Section 387.004, Health and Safety Code, is amended to read as follows:

Sec. 387.004. SOLICITATION OF NEW TECHNOLOGY PROPOSALS. The commission from time to time shall issue or contract with a nonprofit organization described by Section 386.252(a)(2) to issue specific requests for proposals (RFPs) or program opportunity notices (PONs) for technology projects to be funded under the program.

SECTION 2.12. Section 387.005, Health and Safety Code, is amended to read as follows:

Sec. 387.005. ELIGIBLE PROJECTS; PRIORITIES. (a) Grants awarded under this chapter shall be directed toward a balanced mix of:

(1) retrofit and add-on technologies and other advanced technologies that ~~to~~ reduce emissions from the existing stock of engines and vehicles targeted by the Texas emissions reduction plan;

(2) the establishment of a testing facility to evaluate retrofits, add-ons, advanced technologies, and fuels, or combinations of retrofits, add-ons, advanced technologies, and fuels, to determine their effectiveness in producing emissions reductions, with emphasis on the reduction of oxides of nitrogen; and

(3) advanced technologies for new engines and vehicles that produce very-low or zero emissions of oxides of nitrogen, including stationary and mobile fuel cells;

~~[(3) studies to improve air quality assessment and modeling; and~~

~~[(4) advanced technologies that reduce emissions from other significant sources].~~

(b) The commission, directly or through a nonprofit organization described by Section 386.252(a)(2), shall identify and evaluate and may consider making grants for technology projects that would allow qualifying fuels to be produced from energy resources in this state. In considering projects under this subsection, the commission shall give preference to projects involving otherwise unusable energy resources in this state and producing qualifying fuels at prices lower than otherwise available and low enough to make the projects to be funded under the program economically attractive to local businesses in the area for which the project is proposed.

(c) In soliciting proposals under Section 387.004 and determining how to allocate grant money available for projects under this chapter, the commission shall give special consideration to advanced technologies and retrofit or add-on projects that provide multiple benefits by reducing emissions of particulates and other air pollutants.

(d) A project that involves publicly or privately owned vehicles or vessels is eligible for funding under this chapter if the project meets all applicable criteria.

~~(e) [Studies authorized under Subsection (a)(3) shall be consistent with air quality research priorities identified by the commission and conducted in an independent and objective manner.]~~

~~[(f)]~~ If a commissioner is an employee or owner of an entity that applies for a grant under this chapter, the commissioner, before a vote on the grant, shall disclose the fact of the commissioner's employment or ownership. The disclosure must be entered into the minutes of the meeting. The commissioner may not vote on or otherwise participate in the awarding of the grant. If the commissioner does not comply with this subsection, the entity is not eligible for the grant.

(f) Selection of grant recipients by a nonprofit organization described by Section 386.252(a)(2) under contract with the commission for the purpose of establishing and administering a new technology research and development program as provided by this chapter is subject to the commission's review and to the other requirements of this chapter. A grant contract under this chapter using funds described by Section 386.252 may not be made by a nonprofit organization if the commission or executive director of the commission does not consent to the grant or contract.

SECTION 2.13. Subsection (d), Section 151.0515, Tax Code, is amended to read as follows:

(d) This section expires August 31, 2013 ~~[September 30, 2010]~~.

SECTION 2.14. Subsection (c), Section 152.0215, Tax Code, is amended to read as follows:

(c) This section expires August 31, 2013 ~~[September 30, 2010]~~.

SECTION 2.15. Subsections (a), (b), and (b-1), Section 501.138, Transportation Code, are amended to read as follows:

(a) An applicant for a certificate of title, other than the state or a political subdivision of the state, must pay the county assessor-collector a fee of:

(1) \$33 if the applicant's residence is a county located within a nonattainment area as defined under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended, or is an affected county, as defined by Section 386.001, Health and Safety Code; or

(2) \$28 if the applicant's residence is any other county~~[-or~~

~~[(3) on or after September 1, 2010, \$28 regardless of the county in which the applicant resides].~~

(b) The county assessor-collector shall send:

(1) \$5 of the fee to the county treasurer for deposit in the officers' salary fund;

(2) \$8 of the fee to the department:

(A) together with the application within the time prescribed by Section 501.023; or

(B) if the fee is deposited in an interest-bearing account or certificate in the county depository or invested in an investment authorized by Subchapter A, Chapter 2256, Government Code, not later than the 35th day after the date on which the fee is received; and

(3) the following amount to the comptroller at the time and in the manner prescribed by the comptroller:

(A) \$20 of the fee if the applicant's residence is a county located within a nonattainment area as defined under Section 107(d) of the federal Clean Air Act (42 U.S.C. Section 7407), as amended, or is an affected county, as defined by Section 386.001, Health and Safety Code; or

(B) \$15 of the fee if the applicant's residence is any other county ~~[- or
(C) on or after September 1, 2010, \$15 regardless of the county in which the applicant resides].~~

(b-1) Fees collected under Subsection (b) to be sent to the comptroller shall be deposited as follows:

(1) before September 1, 2008, to the credit of the Texas emissions reduction plan fund; ~~[and]~~

(2) on or after September 1, 2008, and before September 1, 2010, to the credit of the Texas Mobility Fund, except that \$5 of each fee imposed under Subsection (a)(1) and deposited on or after September 1, 2008, and before September 1, 2010, shall be deposited to the credit of the Texas emissions reduction plan fund; and

(3) on or after September 1, 2010, to the credit of the Texas emissions reduction plan fund.

SECTION 2.16. Subsection (c), Section 502.1675, Transportation Code, is amended to read as follows:

(c) This section expires August 31, 2013 ~~[2010]~~.

SECTION 2.17. Subsection (c), Section 548.5055, Transportation Code, is amended to read as follows:

(c) This section expires August 31, 2013 ~~[2010]~~.

SECTION 2.18. Section 12, Chapter 1125, Acts of the 79th Legislature, Regular Session, 2005, amending Subsection (a), Section 386.252, Health and Safety Code, is repealed.

ARTICLE 3. ENERGY EFFICIENCY

SECTION 3.01. Section 388.003, Health and Safety Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) If the State Energy Conservation Office determines, based on written recommendations from the laboratory, that the latest published edition of the International Residential Code energy efficiency provisions or the latest published edition of the International Energy Conservation Code will result in residential or commercial energy efficiency and air quality that is equivalent to or better than the commercial energy efficiency and air quality achievable under the editions adopted under Subsection (a) or (b), the office may by rule adopt the equivalent or more stringent editions and substitute them for the initial editions described by Subsection (a) or (b). The rule, if adopted, shall establish an effective date for the new editions but not earlier than nine months after the date of adoption. The laboratory shall make its recommendations not later than six months after publication of new editions at the end of each three-year code development cycle of the International Residential Code and the International Energy Conservation Code.

(b-2) The State Energy Conservation Office shall by rule establish a procedure for persons who have an interest in the adoption of energy efficiency codes under Subsection (b-1), including commercial and residential builders, architects and engineers, county and other local government authorities, and environmental groups, to have an opportunity to comment on the codes under consideration and to have the commentary considered by the laboratory in developing its recommendations.

SECTION 3.02. Section 388.005, Health and Safety Code, is amended to read as follows:

Sec. 388.005. ENERGY EFFICIENCY PROGRAMS IN INSTITUTIONS OF HIGHER EDUCATION, STATE AGENCIES, AND CERTAIN POLITICAL SUBDIVISIONS. (a) In this section:

(1) "Institution of higher education" includes an institution of higher education as defined by Section 61.003, Education Code, and a private institution of higher education that receives funding from the state.

(2) "Political[, ~~political~~] subdivision" means:

(A) [~~(1)~~] an affected county; or

(B) [~~(2)~~] any political subdivision in a nonattainment area or in an affected county other than:

(i) [~~(A)~~] a school district; or

(ii) [~~(B)~~] a district as defined by Section 36.001 or 49.001, Water Code, that had a total annual electricity expense of less than \$200,000 in the previous fiscal year of the district.

(3) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state.

(b) Each political subdivision, institution of higher education, or state agency shall implement all energy efficiency measures that meet the standards established for a contract for energy conservation measures under Section 302.004(b), Local Government Code, in order to reduce electricity consumption by the existing facilities of the entity [~~the political subdivision~~].

(c) Each political subdivision, institution of higher education, or state agency shall establish a goal to reduce the electric consumption by the entity [~~political subdivision~~] by five percent each year for six [~~five~~] years, beginning September 1, 2007 [~~January 1, 2002~~].

(d) A political subdivision, institution of higher education, or state agency that does not attain the goals under Subsection (c) must include in the report required by Subsection (e) justification that the entity [~~political subdivision~~] has already implemented all available measures. An entity that submits a report under this subsection indicating it has already implemented all available measures is exempt from the annual reporting requirement of Subsection (e) if a subsequent report would indicate no change in status. An entity may be required to provide notice that it is exempt to the State Energy Conservation Office.

(e) A political subdivision, institution of higher education, or state agency annually shall report to the State Energy Conservation Office, on forms provided by that office, regarding the entity's [~~political subdivision's~~] efforts and progress under

this section. The State Energy Conservation Office shall provide assistance and information to the entity [political subdivisions] to help it [the political subdivisions] meet the goals set under this section.

SECTION 3.03. Subsection (b), Section 44.901, Education Code, is amended to read as follows:

(b) The board of trustees of a school district shall establish a goal to reduce the annual electric consumption by five percent each year for six years, beginning September 1, 2007. The board of trustees of a school district may enter into an energy savings performance contract in accordance with this section.

SECTION 3.04. Subsection (d), Section 2155.068, Government Code, is amended to read as follows:

(d) As part of the standards and specifications program, the commission shall review contracts for opportunities to recycle waste produced at state buildings, shall develop and update a list of equipment and appliances that meet the energy efficiency standards of Section 2158.301, and shall assist state agencies in selecting products under that section as appropriate.

SECTION 3.05. Chapter 2158, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ENERGY AND EFFICIENCY STANDARDS
FOR EQUIPMENT AND APPLIANCES

Sec. 2158.301. ENERGY CONSERVATION. If available and cost effective, the commission or another state agency shall purchase equipment and appliances for state use that meet or exceed the federal Energy Star standards designated by the United States Environmental Protection Agency and the United States Department of Energy.

SECTION 3.06. (a) The State Energy Conservation Office shall adopt rules implementing a procedure for stakeholder participation as required under Subsection (b-2), Section 388.003, Health and Safety Code, as added by this article, as soon as practicable after the effective date of this Act.

(b) The State Energy Conservation Office shall adopt rules as necessary to implement Subsection (b), Section 44.901, Education Code, as amended by this article, as soon as practicable after the effective date of this Act.

SECTION 3.07. (a) The energy conservation standards for equipment and appliances under Section 2158.301, Government Code, as added by this article, apply to a purchase by a state agency on or after the effective date of this Act.

(b) The Texas Building and Procurement Commission shall develop a list of equipment and appliances under Section 2155.068, Government Code, as amended by this article, as soon as practicable after the effective date of this Act.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Floor Amendment No. 1

Amend **CSSB 12** (House committee printing) as follows:

(1) In the recital to SECTION 3.03 of the bill (page 30, lines 15 and 16), strike "Subsection (b), Section 44.901, Education Code, is amended" and substitute "Section 44.901, Education Code, is amended by amending Subsection (b) and adding Subsection (b-1)".

(2) In SECTION 3.03 of the bill (page 30, between lines 21 and 22), insert the following:

(b-1) Not later than January 30 of each year, the board of trustees of a school district shall report to the State Energy Conservation Office:

(1) the electric consumption of the district for the preceding year; and

(2) a description of the district's plan for reducing annual electric consumption as required under Subsection (b).

Floor Amendment No. 3

Amend **CSSB 12** in Section 2.15 of the bill by striking amended Subsection (b-1), Section 501.138, Transportation Code (House committee printing, page 26, line 21 through page 27, line 5), and substituting:

(b-1) Fees collected under Subsection (b) to be sent to the comptroller shall be deposited as follows:

(1) before September 1, 2008, to the credit of the Texas emissions reduction plan fund; and

(2) on or after September 1, 2008, to the credit of the Texas Mobility Fund, except that \$5 of each fee imposed under Subsection (a)(1) and deposited on or after September 1, 2008, and before September 1, 2015 ~~2010~~, shall be deposited to the credit of the Texas emissions reduction plan fund.

Floor Amendment No. 4

Amend **CSSB 12** (House committee printing) by adding the following appropriately numbered SECTIONS to ARTICLE 3 of the bill and renumbering the subsequent SECTIONS of the article accordingly:

SECTION _____. Chapter 202, Property Code, is amended by adding Section 202.008 to read as follows:

Sec. 202.008. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section, "solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) Except as otherwise provided by this section, a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) A provision that violates Subsection (b) is void.

(d) This section does not prohibit the inclusion or enforcement of a provision in a dedicatory instrument that prohibits a solar energy device that:

(1) threatens the public health or safety;

(2) violates a law;

(3) is located on property owned or maintained by the property owners' association;

(4) is located on property owned in common by the members of the property owners' association;

(5) is located in an area on the property owner's property other than:

(A) on the roof of the home; or

(B) in a fenced yard or patio maintained by the property owner; or

(6) is mounted on a device that is taller or more visually obtrusive than is necessary for the solar energy device to operate at not less than 90 percent of its rated efficiency.

SECTION _____. Section 202.008, Property Code, as added by this article, applies to a dedicatory instrument without regard to whether the dedicatory instrument takes effect or is renewed before, on, or after the effective date of this Act.

Floor Amendment No. 5

Amend **CSSB 12** by adding the following sections, numbered appropriately, and renumbering the sections of the bill accordingly:

SECTION _____. Chapter 39, Utilities Code, is amended by adding Section 39.9051 to read as follows:

Sec. 39.9051. ENERGY EFFICIENCY DEMONSTRATION PROJECTS FOR SOLAR ELECTRIC SYSTEM; GRANT PROGRAM. (a) The commission by rule shall establish grant programs for:

(1) a demonstration project for installation of solar electric systems for new residential subdivisions;

(2) a demonstration project for installation of solar electric systems for new or established affordable housing for persons with low incomes; and

(3) a demonstration project for installation of solar electric systems for not more than three small businesses.

(b) To qualify for a grant under this section, the solar electric system must be a device that:

(1) generates electricity using solar resources;

(2) has a generating capacity of not more than 1,000 kilowatts; and

(3) is installed with a warranty against breakdown or undue degradation for a period of at least five years.

(c) A demonstration project grant program established under this section must provide for full or partial payment of the cost of equipment and installation for the solar electric systems. The commission shall establish for each grant program a competitive bidding process for grant applicants. The commission shall consider the value of funding demonstration projects in different parts of this state, after considering the demographic and geographic diversity of this state.

(d) To qualify for a grant under Subsection (a)(1) the applicant:

(1) must be a person whose primary business activity is the building of residential housing developments; and

(2) must have installed or must be contractually obligated to install qualifying solar electric systems in each residence constructed in a residential subdivision.

(e) To qualify for a grant under Subsection (a)(2) the applicant must have installed or be contractually obligated to install a qualifying solar electric system for residential real property:

(1) appraised in accordance with Section 23.21, Tax Code, as affordable housing property; or

(2) subject to a contractual obligation that the property will be appraised in accordance with Section 23.21, Tax Code, as affordable housing property within a reasonable time after the grant is received.

(f) To qualify for a grant under Subsection (a)(3), the applicant must be a small business or owner of a small business that meets qualifications adopted by the commission after consideration of federal Small Business Administration standards for qualification for loans from that administration.

(g) The commission shall issue a report to the governor, lieutenant governor, and speaker of the house of representatives not later than December 1 of each even-numbered year summarizing the status of the grant programs established under Subsection (a). The report must include the amount of money granted to each demonstration project and an evaluation of whether the projects demonstrate the economic and ecologic viability of solar electric system installations.

(h) This section expires December 31, 2010.

SECTION _____. (a) The Public Utility Commission of Texas may apply to a demonstration project grant program established under Section 39.9051, Utilities Code, as added by this Act, any money appropriated to the commission that may be used for that purpose.

(b) The Public Utility Commission of Texas may solicit and accepts gifts, grants, and other donations from any source to carry out the demonstration grant program established under Section 39.9051, Utilities Code, as added by this Act.

(c) Contingent on the passage and becoming law of S.B. No. 482, Acts of the 80th Legislature, Regular Session, 2007, or similar legislation that enacts a provision that establishes a fee on a retail electric provider related to the number of customers the provider gains in a given period, notwithstanding any law dedicating that fee revenue for a particular purpose, that fee revenue may be appropriated for use by the Public Utility Commission of Texas for a demonstration project grant program under Section 39.914, Utilities Code, as added by this Act.

(c) This section expires December 31, 2010.

SECTION _____. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.9032 to read as follows:

Sec. 39.9032. INTERCONNECTION OF DISTRIBUTED RENEWABLE GENERATION. (a) In this section:

(1) "Distributed renewable generation" means electric generation with a capacity of not more than 2,000 kilowatts provided by a renewable energy technology, as defined by Section 39.904, that is installed on a retail electric customer's side of the meter.

(2) "Distributed renewable generation owner" means the owner of distributed renewable generation.

(3) "Interconnection" means the right of a distributed renewable generation owner to physically connect distributed renewable generation to an electricity distribution system, and the technical requirements, rules, or processes for the connection.

(b) A transmission and distribution utility or electric utility shall allow interconnection if:

(1) the distributed renewable generation to be interconnected has a five-year warranty against breakdown or undue degradation; and

(2) the rated capacity of the distributed renewable generation does not exceed the service entrance capacity.

(c) A customer may request interconnection by filing an application for interconnection with the transmission and distribution utility or electric utility. Procedures of a transmission and distribution utility or electric utility for the submission and processing of a customer's application for interconnection shall be consistent with rules adopted by the commission regarding interconnection.

(d) The commission by rule shall establish safety, technical, and performance standards for distributed renewable generation that may be interconnected. In adopting the rules, the commission shall consider standards published by the Underwriters Laboratories, the National Electric Code, the National Electric Safety Code, and the Institute of Electrical and Electronics Engineers.

(e) A transmission and distribution utility, electric utility, or retail electric provider may not require a distributed renewable generation owner whose distributed renewable generation meets the standards established by rule under Subsection (d) to purchase an amount, type, or classification of liability insurance the distributed renewable generation owner would not have in the absence of the distributed renewable generation.

(f) A transmission and distribution utility shall make available to a distributed renewable generation owner for purposes of this section metering required for services provided under this section, including separate meters that measure the load and generator output or a single meter capable of measuring separately in-flow and out-flow at the point of common coupling meter point. The distributed renewable generation owner must pay the differential cost of the metering unless the meters are provided at no additional cost. Except as provided by this section, Section 39.107 applies to metering under this section.

(g) A renewable energy credit that is earned by a distributed renewable generation owner through the interconnection of a renewable electric system is the sole property of the distributed renewable generation owner unless the distributed renewable generation owner engages in a transaction to sell or trade the credit under Section 39.904.

(h) A transmission and distribution utility, an electric utility or retail electric provider shall provide for net metering and may contract with a distributed renewable generation owner so that:

(1) surplus electricity produced by distributed renewable generation is made available for sale to the transmission grid and distribution system; and

(2) the net value of that surplus electricity is credited to the distributed renewable generation owner.

(j) For distributed renewable generation owners in areas in which customer choice has been introduced, the distributed renewable generation owner must sell the owner's surplus electricity produced to the retail electric provider that serves the distributed renewable generation owner's load at a value agreed to between the

distributed renewable generation owner and the provider that serves the owner's load. Without limiting any mutually agreed commercial arrangement, the agreed value may be based on the clearing price of energy at the time of day that the electricity is made available to the grid or may be a credit applied to an account during a billing period that may be carried over to subsequent billing periods until the credit has been redeemed. The independent organization identified in Section 39.151 shall develop procedures so that the amount of electricity purchased from a distributed renewable generation owner under this section is accounted for in settling the total load served by the provider that serves that owner's load by January 1, 2009. A distributed renewable generation owner requesting net metering services for purposes of this section must have metering devices capable of providing measurements consistent with the independent organization's settlement requirements.

SECTION _____. Section 39.9032, Utilities Code, as added by this Act, takes effect January 1, 2009.

Floor Amendment No. 6

Amend **CSSB 12** (House committee printing) by adding the following appropriately numbered ARTICLE to the bill and renumbering the subsequent ARTICLES accordingly:

ARTICLE _____. CONTROL OF EMISSIONS OF AIR CONTAMINANTS

SECTION _____.01. Section 382.0205, Health and Safety Code, is amended to read as follows:

Sec. 382.0205. SPECIAL PROBLEMS RELATED TO AIR CONTAMINANT EMISSIONS. Consistent with applicable federal law, the commission by rule shall ~~may~~ control air contaminants as necessary to protect against adverse effects related to:

- (1) acid deposition;
- (2) stratospheric changes, including depletion of ozone; ~~and~~
- (3) climatic changes, including global warming; and
- (4) air pollution.

SECTION _____.02. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0206 and 382.0207 to read as follows:

Sec. 382.0206. AIR POLLUTANT WATCH LIST. (a) The commission shall establish and maintain an air pollutant watch list. The air pollutant watch list must identify:

(1) each air contaminant that the commission determines, on the basis of federal or state ambient air quality standards or effects screening levels for the contaminant, should be included on the air pollutant watch list; and

(2) each geographic area of the state for which ambient air quality monitoring data indicates that the individual or cumulative emissions of one or more air contaminants identified by the commission under Subdivision (1) may cause short-term or long-term adverse human health effects or odors in that area.

(b) The commission shall publish notice of and allow public comment on:

(1) an addition of an air contaminant to or removal of an air contaminant from the air pollutant watch list; or

(2) an addition of an area to or removal of an area from the air pollutant watch list.

(c) Each year, the commission shall hold a public meeting in each area listed on the air pollutant watch list to provide residents of the area with information regarding:

(1) the reasons for the area's inclusion on the air pollutant watch list; and
(2) commission actions to reduce the emissions of air contaminants contributing to the area's inclusion on the air pollutant watch list.

(d) Not later than December 1 of each year, the commission shall prepare an electronic report regarding the air pollutant watch list and provide the report to the governor, the lieutenant governor, and the speaker of the house of representatives. The report must include:

(1) the areas and air contaminants currently listed on the air pollutant watch list;

(2) the areas and air contaminants added to or removed from the air pollutant watch list during the preceding fiscal year;

(3) the actions taken by the commission during the preceding fiscal year to reduce the ambient air concentration levels of air contaminants included on the air pollutant watch list; and

(4) any additional monitoring that is needed in a particular area of the state to determine whether the area should be included on the air pollutant watch list.

(e) The air pollutant watch list and the addition of or removal of a pollutant or area to or from the list are not matters subject to the procedural requirements of Subchapter B, Chapter 2001, Government Code.

Sec. 382.0207. PUBLICATION OF AMBIENT AIR QUALITY STANDARDS ON INTERNET WEBSITE. The commission shall promptly publish on its Internet website any ambient air quality data collected by the commission from mobile or stationary ambient air quality monitors.

SECTION ____ .03. Not later than December 1, 2008, the Texas Commission on Environmental Quality shall prepare and provide to the governor, the lieutenant governor, and the speaker of the house of representatives the initial report required under Section 382.0206(d), Health and Safety Code, as added by this article.

SECTION ____ .04. Notwithstanding any other provision of this Act, the change in law made by this Article to Section 382.0205, Health and Safety Code, takes effect September 1, 2010.

Floor Amendment No. 7

Amend **CSSB 12** (House committee printing) in Article 3 of the bill by inserting the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION 3. ____ . Subtitle C, Title 5, Health and Safety Code, is amended by adding Chapter 392 to read as follows:

CHAPTER 392. APPLIANCE EFFICIENCY STANDARDS

Sec. 392.001. MINIMUM EFFICIENCY STANDARDS FOR CERTAIN APPLIANCES. Not later than September 1, 2008, the comptroller, in consultation with the state energy conservation office, shall adopt rules establishing minimum efficiency standards for each type of new product described by Section 392.002(a). The standards adopted must be the same standards as have been adopted in at least one other state to reduce energy use.

Sec. 392.002. APPLICABILITY; EXEMPTIONS. (a) This chapter applies to the following new products sold, offered for sale, or installed in this state:

- (1) bottle-type water dispensers;
- (2) commercial hot food holding cabinets;
- (3) compact audio products;
- (4) DVD players and recorders;
- (5) metal halide lamp fixtures;
- (6) portable electric spas;
- (7) residential pool pumps;
- (8) single-voltage external AC to DC power supplies; and
- (9) state-regulated incandescent reflector lamps.

(b) This chapter does not apply to:

- (1) a new product manufactured in this state and sold outside this state;
- (2) a new product manufactured outside this state and sold at wholesale inside this state for final retail sale and installation outside this state; or
- (3) a product installed in a mobile manufactured home at the time of the home's construction.

Sec. 392.003. PRODUCT COMPLIANCE. (a) A new product described by Section 392.002(a) may not be sold or offered for sale in this state unless the efficiency of the new product meets or exceeds the applicable efficiency standards prescribed by the rules adopted under this chapter.

(b) On or after the first anniversary of the date the sale or offering for sale of a new product becomes subject to an efficiency standard adopted under this chapter, that product may not be installed for compensation in this state unless the efficiency of the product meets or exceeds the applicable efficiency standards prescribed by the rules adopted under this chapter.

Sec. 392.004. PRODUCT CERTIFICATION. (a) Except as provided by Subsection (c), the manufacturer of a new product subject to an efficiency standard adopted under this chapter shall certify in writing to the comptroller that the product is in compliance with that standard. The comptroller shall accept as an alternative certification a product's certification to another state with like standards if that state publishes a database of compliant products.

(b) The comptroller shall adopt rules governing the certification of products under this section and shall coordinate certification by this state with the certification programs of other states and federal agencies with similar standards.

(c) Subsection (a) does not apply to a manufacturer of single-voltage external AC to DC power supplies.

Sec. 392.005. COMPLAINTS. The comptroller shall investigate a complaint received concerning a violation of this chapter and shall report the results of the investigation to the attorney general.

Sec. 392.006. ATTORNEY GENERAL ENFORCEMENT. The attorney general may institute proceedings to enforce this chapter.

Sec. 392.007. VIOLATIONS AND PENALTIES. (a) The comptroller shall issue a warning to a person for the person's first violation of this chapter.

(b) A person's second and subsequent violations are subject to a civil penalty of not more than \$250.

(c) Each violation constitutes a separate violation, and each day that a violation continues constitutes a separate violation.

Sec. 392.008. RULES FOR IMPLEMENTATION AND ENFORCEMENT. The comptroller may adopt additional rules necessary to ensure the proper implementation and enforcement of this chapter.

SECTION 3.____. (a) The efficiency standards prescribed by rules adopted under Chapter 392, Health and Safety Code, as added by this article, apply only to the sale or offer of sale of a new product to which that chapter applies that occurs on or after January 1, 2009.

(b) Notwithstanding Subsection (a) of this section:

(1) a new residential pool pump that does not meet the efficiency standards adopted under Chapter 392, Health and Safety Code, as added by this article, may be sold in this state through December 31, 2009; and

(2) a new single-voltage external AC to DC power supply made available by a manufacturer directly to a consumer or to a service or repair facility after and separate from the original sale of a product requiring the power supply as a service part or spare part is not required to meet the standards adopted under Chapter 392, Health and Safety Code, as added by this article, until January 1, 2013.

Floor Amendment No. 8

Amend **CSSB 12** (House committee printing) as follows:

(1) Strike SECTION 1.03 of the bill (page 2, lines 2-11) and renumber subsequent SECTIONS accordingly.

(2) In SECTION 2.10 of the bill, in proposed Subsection (c), Section 387.003, Health and Safety Code (page 21, lines 16-19), strike from "must include" through the period at the end of that sentence and substitute the following:

may not have more than 11 members, must include two persons of relevant scientific expertise to be nominated by the commission, and may not include more than four county judges selected from counties in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas.

(3) In SECTION 3.01 of the bill, in proposed Subsection (b-1), Section 388.003, Health and Safety Code (page 27, line 24), strike "commercial".

(4) In SECTION 3.01 of the bill, in proposed Subsection (b-1), Section 388.003, Health and Safety Code (page 27, line 27), strike "initial editions" and substitute "energy codes".

(5) In SECTION 3.01 of the bill, in proposed Subsection (b-1), Section 388.003, Health and Safety Code (page 28, line 2), strike "editions" and substitute "energy codes".

(6) In SECTION 3.01 of the bill, in amended Section 388.003, Health and Safety Code, strike proposed Subsection (b-2) (page 28, lines 8-15) and substitute the following:

(b-2) The State Energy Conservation Office by rule shall establish a procedure for persons who have an interest in the adoption of energy codes under Subsection (b-1) to have an opportunity to comment on the codes under consideration and to have the commentary considered by the laboratory in developing its recommendations. The office shall consider persons who have an interest in adoption of those codes to include:

- (1) commercial and residential builders, architects, and engineers;
- (2) municipal, county, and other local government authorities; and
- (3) environmental groups.

Floor Amendment No. 2 on Third Reading

Amend **CSSB 12** on third reading by adding the following appropriately numbered ARTICLE to the bill and renumbering the subsequent ARTICLES of the bill accordingly:

ARTICLE ____ . TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
NOTIFICATION REQUIREMENTS

SECTION ____ .01. Section 382.0516, Health and Safety Code, is amended to read as follows:

Sec. 382.0516. NOTICE TO STATE SENATOR, STATE ~~[AND]~~ REPRESENTATIVE, AND CERTAIN LOCAL OFFICIALS. (a) On receiving an application for a construction permit or an amendment to a construction permit, a special permit, or an operating permit for a facility that may emit air contaminants, the commission shall send notice of the application to the state senator and representative who represent the area in which the facility is or will be located.

(b) In addition to the notice required by Subsection (a), for an application that relates to an existing or proposed concrete batch plant, on receiving an application for a construction permit, an amendment to a construction permit, an operating permit, or an authorization to use a standard permit, the commission shall send notice of the application:

(1) to the county judge of the county in which the facility is or will be located; and

(2) if the facility is or will be located in a municipality or the extraterritorial jurisdiction of a municipality, to the presiding officer of the municipality's governing body.

SECTION ____ .02. The notice provisions under Section 382.0516, Health and Safety Code, as amended by this article, apply only to an application for a permit that is submitted to the Texas Commission on Environmental Quality on or after the effective date of this article.

SECTION ____ .03. This article takes effect September 1, 2007.

Floor Amendment No. 3 on Third Reading

Amend **CSSB 12** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ____ . Section 7.0025, Water Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) If the commission determines that there are multiple violations based on information it receives from a private individual, only those violations that require initiation of formal enforcement may be included in any proposed enforcement action.

(f) The commission may not include in an enforcement action initiated on information received under this section:

(1) a violation that is not a repeat violation resulting from the same root cause in two consecutive investigations in the most recent five-year period; or

(2) a violation that has been corrected in the time specified by the commission or for which the facility has not had the time specified by the commission to correct the violation.

Floor Amendment No. 4 on Third Reading

Amend **CSSB 12** on third reading by adding the following appropriately numbered SECTION to the bill, and renumbering subsequent SECTIONS accordingly:

SECTION _____. Sections 382.0191(b), (c), and (d), Health and Safety Code, are amended to read as follows:

(b) The commission may not prohibit or limit the idling of a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period. Idling is not necessary to power a heater or air conditioner if the vehicle is within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available.

(c) No driver using the vehicle's sleeper berth may idle the vehicle in a residential area as defined by Section 244.001, Local Government Code, or in a school zone or within 1,000 feet of a hospital or a public school during its hours of operation. An offense under this subsection shall be punishable by a fine not to exceed \$500.

(d) This section expires September 1, 2009 [~~2007~~].

Floor Amendment No. 5 on Third Reading

Amend **CSSB 12** on third reading, Section 2.06, as follows:

(1) On page 17, line 2, following "combustion engine" insert the following:
and;

(4) transportation congestion mitigation projects.

(2) On page 16, line 25, strike "and".

Floor Amendment No. 6 on Third Reading

Amend **CSSB 12** on third reading (House committee printing) by adding the following appropriately numbered SECTION to ARTICLE 3 of the bill and renumbering the subsequent SECTIONS of the article accordingly:

SECTION _____. Chapter 39.905(f) of the Utilities Code is reenacted in its entirety and the following sentences shall be added: Funding levels for low-income energy efficiency services as determined by the commission shall be implemented with oversight by the Texas Department of Housing and Community Affairs. The Department shall designate a statewide association of community action agencies to directly receive those funds and shall ensure the timely implementation of weatherization assistance contracts through local provider agencies.

Floor Amendment No. 7 on Third Reading

Amend **CSSB 12** on third reading (House committee printing) by adding the following appropriately numbered article and renumbering subsequent articles accordingly:

ARTICLE _____. CONSIDERATION OF CERTAIN CUMULATIVE EFFECTS

SECTION _____.01. Section 382.0518, Health and Safety Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In making its finding under Subsection (b)(2) as to whether emissions from the facility will contravene the intent of this chapter, the commission shall consider the cumulative effects on the public's health and physical property of expected air contaminant emissions from the facility or proposed facility and from other facilities located less than three miles from the facility or proposed facility.

SECTION _____.02. Section 382.055(d), Health and Safety Code, is amended to read as follows:

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) the performance of the owner or operator of the facility according to the method developed by the commission under Section 5.754, Water Code; ~~and~~

(2) the condition and effectiveness of existing emission control equipment and practices; and

(3) the cumulative effects on the public's health and physical property of expected air contaminant emissions from the facility and from other facilities located less than three miles from the facility.

SECTION _____.03. The changes in law made by this article apply only to the issuance or renewal of a permit the application for which is filed with the Texas Commission on Environmental Quality on or after the effective date of this article. The issuance or renewal of a permit the application for which is filed with the Texas Commission on Environmental Quality before the effective date of this article is governed by the law in effect when the application is filed, and the former law is continued in effect for that purpose.

SECTION _____.04. Notwithstanding any other provision of this Act, this article takes effect September 1, 2007.

Floor Amendment No. 8 on Third Reading

Amend **CSSB 12** on third reading as follows:

1) Strike all references to "Sec. 39.9032" in Subchapter Z, Chapter 39, Utilities Code and replace with "Sec. 39.911";

2) In 39.911(b)(2), by striking Subsection (b)(2) as drafted and inserting the following: "(2) the rated capacity of the distributed renewable generation does not exceed the transmission and distribution utility or electric utility service capacity."

3) In Sec. 39.911 by striking subsection (f) and inserting a new subsection (f) to read as follows: "(f) A transmission and distribution utility or electric utility shall make available to a distributed renewable generation owner for purposes of this section metering required for services provided under this section, including separate meters that measure the load and generator output or a single meter capable of measuring in-flow and out-flow at the point of common coupling meter point. The distributed renewable generation owner must pay the differential cost of the metering unless the meters are provided at no additional cost. Except as provided by this section, Section 39.107 applies to metering under this section."

4) In 39.911, Subsection (g) after the period following "39.904." by inserting the following: "For electric utilities, the commission shall address the ownership of renewable energy credits associated with power sold to the utility."

5) By striking 39.911 Subsection (h) and inserting a new Subsection (h) to read as follows: "(h) An electric utility or retail electric provider may contract with a distributed renewable generation owner so that:

(1) surplus electricity produced by distributed renewable generation is made available for sale to the transmission grid and distribution system; and

(2) the net value of that surplus electricity is credited to the distributed renewable generation owner."

6) By striking 39.911, Subsection (j) and inserting a new subsection (i) to read as follows: "(i) For distributed renewable generation owners in areas in which customer choice has been introduced, the distributed renewable generation owner must sell the owner's surplus electricity produced to the retail electric provider that serves the distributed renewable generation owner and the provider that serves the owner's load which may include, but is not limited to, an agreed value based on the clearing price of energy at the time of day that the electricity is made available to the grid or it may be a credit applied to an account during a billing period that may be carried over to subsequent billing periods until the credit has been redeemed. The independent organization identified in Section 39.151 shall develop procedures so that the amount of electricity purchased from a distributed renewable generation owner under this section is accounted for in settling the total load served by the provider that serves that owner's load by January 1, 2009. A distributed renewable generation owner requesting net metering services for purposes of this section must have metering devices capable of providing measurements consistent with the independent organizations's settlement requirements."

Floor Amendment No. 9 on Third Reading

Amend **CSSB 12** on third reading (House committee printing) by inserting the following appropriately numbered article and renumbering subsequent articles accordingly:

ARTICLE ____ . CLEAN AIR ACT

SECTION ____ .01. Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.0203 to read as follows:

Sec. 382.0203. REGULATION OF TOXIC POLLUTION. (a) Not later than December 31, 2009, the commission shall adopt, as necessary for the protection of public health, ambient air quality standards for toxic air contaminants, including:

(1) benzene;

(2) 1,3 butadiene;

(3) ethylene dichloride;

(4) formaldehyde; and

(5) nickel.

(b) In developing standards for a contaminant under Subsection (a), the commission shall ensure that the allowed average concentration level of the contaminant does not result in an increased risk of cancer greater than one chance in one million for a person exposed to the contaminant over a specified period determined by commission rule.

(c) Standards adopted under Subsection (a) apply to permits issued before, on, or after the date the standards are adopted.

Floor Amendment No. 10 on Third Reading

Amend **CSSB 12** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS accordingly: SECTION _____. Section 501.138(b-3), Transportation Code, is amended to read as follows:

(b-3) This subsection and Subsection (b-2) expire September 1, 2015 ~~[2010]~~.

The amendments were read.

Senator Averitt 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 12** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Averitt, Chair; Brimer, Watson, Duncan, and Eltife.

SENATE BILL 1670 WITH HOUSE AMENDMENT

Senator Averitt called **SB 1670** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Brimer in Chair, laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1670** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to certificates of compliance issued by the Railroad Commission of Texas to owners or operators of certain wells subject to the jurisdiction of the commission.

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

SECTION 1. Subchapter E, Chapter 85, Natural Resources Code, is redesignated as Subchapter P, Chapter 91, Natural Resources Code, and amended to read as follows:

SUBCHAPTER P ~~[E]~~. CERTIFICATE OF COMPLIANCE

Sec. 91.701 ~~[85.161]~~. WELL OWNERS AND OPERATORS CERTIFICATES. The owner or operator of any well subject to the jurisdiction of the commission under this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, shall secure from the commission a certificate showing compliance with that title, section, or subchapter, as applicable, rules adopted and orders issued under that title, section, or subchapter, as applicable, and any license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable ~~[the oil or gas conservation laws of the state and conservation rules and orders of the commission]~~.

Sec. 91.702 ~~[85.162]~~. PROHIBITED CONNECTION. No operator of a pipeline or other carrier shall connect with any ~~[oil or gas]~~ well subject to the jurisdiction of the commission under this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, until the owner or operator of the well furnishes a certificate from the commission that the owner or operator has complied with that title, section, or subchapter, as applicable, rules adopted and orders issued under that title, section, or subchapter, as applicable, and any license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable ~~[the conservation laws of this state and the rules and orders of the commission]~~.

Sec. 91.703 ~~[85.163]~~. TEMPORARY CONNECTION. The provisions of this subchapter do not prevent a temporary connection with a well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of the well to secure the certificate.

Sec. 91.704 ~~[85.164]~~. CANCELLATION OF CERTIFICATE. The commission may cancel any certificate of compliance issued under the provisions of this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, a rule adopted or order issued under that title, section, or subchapter, as applicable, or a license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable ~~[the oil and gas conservation laws of this state or rules or orders of the commission adopted under those laws]~~. Before canceling a certificate of compliance, the commission shall give notice to the owner or operator by personal service or by registered or certified mail of the facts or conduct alleged to warrant the cancellation and shall give the owner or operator an opportunity to show compliance with all requirements of law for retention of the certificate as required by Section 2001.054, Government Code.

Sec. 91.705 ~~[85.165]~~. EFFECT OF CANCELLATION ON OPERATOR OF PIPELINE OR OTHER CARRIER. (a) On notice from the commission to the operator of a pipeline or other carrier connected to a ~~[an oil or gas]~~ well that the certificate of compliance pertaining to that well has been cancelled, the operator of the pipeline or other carrier shall disconnect from the well.

(b) It shall be unlawful for the operator of a pipeline or other carrier to reconnect to ~~[transport oil from]~~ the well until a new certificate of compliance has been issued by the commission.

Sec. 91.706 ~~[85.166]~~. EFFECT OF CANCELLATION ON OWNER OR OPERATOR OF WELL. (a) On notice from the commission that a certificate of compliance for a ~~[an oil or gas]~~ well has been cancelled, it shall be unlawful for the owner or operator of the well to use ~~[produce oil or gas from]~~ the well for production, injection, or disposal until a new certificate of compliance covering the well has been issued by the commission.

(b) If an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been cancelled, the commission may refuse to renew the operator's organization report required by Section 91.142 until the operator pays the fee required by Section 91.707 and the commission issues the certificate of compliance required for that well.

Sec. 91.707 ~~[85.167]~~. FEE FOR REISSUED CERTIFICATE. (a) If a certificate of compliance for a ~~[an oil lease or gas]~~ well has been canceled for ~~[violation of]~~ one or more violations of provisions of this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, rules adopted or orders issued under that title, section, or subchapter, as applicable, or licenses, permits, or certificates issued to the owner or operator of the well under that title, section, or subchapter, as applicable ~~[commission rules]~~, the commission may not issue a new certificate of compliance until the owner or operator submits to the commission a nonrefundable fee of \$300 for each severance or seal order issued for the ~~[lease or]~~ well.

(b) Fees collected under this section shall be deposited to the oil-field cleanup fund.

SECTION 2. Subsection (a), Section 85.3855, Natural Resources Code, is amended to read as follows:

(a) The commission may impose an administrative penalty on a person who:

(1) violates Section 91.705 ~~[85.165]~~ or 91.706 ~~[85.166]~~ or a rule or order adopted under Section 91.705 ~~[85.165]~~ or 91.706 ~~[85.166]~~; or

(2) knowingly destroys, breaks, removes, or otherwise tampers with, or attempts to destroy, break, remove, or otherwise tamper with, a cap, seal, or other device placed by the commission on an oil well, gas well, oil and gas well, or other associated oil or gas gathering equipment.

SECTION 3. Section 86.004, Natural Resources Code, is amended to read as follows:

Sec. 86.004. APPLICABILITY. The provisions in this chapter do not impair the authority of the commission to prevent waste under the oil and gas conservation laws of this state and do not repeal, modify, or impair any of the provisions relating to oil and gas conservation in Sections 85.002, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, and 85.381 through 85.385, Subchapter ~~[of this code and Subchapters E and J of Chapter 85, and Subchapter P of Chapter 91 ~~[of this code]~~~~.

SECTION 4. Subsection (c), Section 91.111, Natural Resources Code, is amended to read as follows:

(c) The fund consists of:

(1) penalties imposed under Section 85.381 for violation of a law, order, or rule relating to well plugging requirements;

(2) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies, subject to the refund provisions of Section 91.1091, if applicable;

(3) private contributions, including contributions made under Section 89.084;

(4) expenses collected under Section 89.083;

(5) fees imposed under Section 85.2021;

(6) civil penalties collected for violations of Chapter 89 or of rules or orders relating to plugging that are adopted under this code;

(7) proceeds collected under Sections 89.085 and 91.115;

(8) interest earned on the funds deposited in the fund;

- (9) civil penalties or costs recovered under Section 91.457 or 91.459;
- (10) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;
- (11) costs recovered under Section 91.113(f);
- (12) hazardous oil and gas waste generation fees collected under Section 91.605;
- (13) oil-field cleanup regulatory fees on oil collected under Section 81.116;
- (14) oil-field cleanup regulatory fees on gas collected under Section 81.117;
- (15) fees for a reissued certificate collected under Section 91.707 [~~85.167~~];
- (16) fees collected under Section 91.1013;
- (17) fees collected under Section 89.088;
- (18) penalties collected under Section 81.0531;
- (19) fees collected under Section 91.142;
- (20) fees collected under Section 91.654;
- (21) costs recovered under Sections 91.656 and 91.657;
- (22) two-thirds of the fees collected under Section 81.0521; and
- (23) legislative appropriations.

SECTION 5. Subsections (a) and (h), Section 91.114, Natural Resources Code, are amended to read as follows:

(a) Except as provided by Subsection (d), the commission may not accept an organization report required under Section 91.142 or an application for a permit under this Chapter, Chapter 85, or Chapter 26, 27, or 29, Water Code, or approve a certificate of compliance under Section 91.701 [~~85.161~~] if:

(1) the organization that submitted the report, application, or certificate violated a statute or commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) a person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization and during that period of ownership or control the other organization violated a statute or commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(h) If the commission is prohibited by Subsection (a) from accepting an organization's organization report or application or approving the organization's certificate or would be prohibited from doing so by that subsection if the organization submitted a report, application, or certificate, the commission, after notice and opportunity for a hearing, by order may revoke:

(1) the organization's organization report filed under Section 91.142;

(2) a permit issued to the organization under this chapter, Chapter 85, or Chapter 26, 27, or 29, Water Code; or

(3) any certificate of compliance approved under Section 91.701 [~~85.161~~].

SECTION 6. Subsection (f), Section 91.142, Natural Resources Code, is amended to read as follows:

(f) If an entity described by Subsection (a) [~~of this section~~] does not maintain on file with the commission an organization report and financial security as required by this chapter:

(1) the entity may not perform operations under the jurisdiction of the commission except as necessary to remedy a violation of law or commission rules and as authorized by the commission; and

(2) the commission, on written notice, may suspend:

(A) any permits held by the entity; or

(B) any certificates of compliance approved under Subchapter P [Chapter 85 of this code].

SECTION 7. Section 101.003, Natural Resources Code, is amended to read as follows:

Sec. 101.003. APPLICABILITY. None of the provisions in this chapter impair the power of the commission to prevent waste under the oil and gas conservation laws of the state except as provided in Section 101.004 ~~[of this code]~~ or repeal, modify, or impair any of the provisions of Sections 85.002 through 85.003, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, or 85.381 through 85.385, Subchapter [of this code or Subchapters E and] J of Chapter 85, or Subchapter P of Chapter 91 [of this code], relating to oil and gas conservation.

SECTION 8. This Act takes effect September 1, 2007.

The amendment was read.

Senator Averitt moved to concur in the House amendment to **SB 1670**.

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

SENATE BILL 914 WITH HOUSE AMENDMENTS

Senator Shapleigh called **SB 914** 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 **SB 914** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the continuation and functions of the Texas Real Estate Commission and the regulation of real estate brokers, salespersons, inspectors, appraisers, residential service companies, and timeshares; providing administrative penalties.

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

SECTION 1. Section 1101.006, Occupations Code, is amended to read as follows:

Sec. 1101.006. APPLICATION OF SUNSET ACT. The Texas Real Estate Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter, ~~[and] Chapter 1102, and Chapter 1303 of this code and Chapter 221, Property Code,~~ expire September 1, 2019 [2007].

SECTION 2. Subchapter A, Chapter 1101, Occupations Code, is amended by adding Section 1101.007 to read as follows:

Sec. 1101.007. COMPLIANCE WITH SUNSET RECOMMENDATIONS. (a)

The commission shall:

(1) comply with and implement the management action recommendations regarding the commission adopted by the Sunset Advisory Commission on January 10, 2007, as a result of its review of the commission; and

(2) report to the Sunset Advisory Commission not later than November 1, 2008, the information the Sunset Advisory Commission requires regarding the commission's implementation of the recommendations under Subdivision (1).

(b) This section expires June 1, 2009.

SECTION 3. Section 1101.053, Occupations Code, is amended to read as follows:

Sec. 1101.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a ~~[nonprofit,]~~ cooperative~~[,]~~ and voluntarily joined statewide 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.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, ~~[A state-elected president, president-elect, vice president, or secretary-treasurer,]~~ employee, or paid consultant of a Texas trade association in the real estate industry; or

(2) the person's spouse ~~[may not be a commission member and may not be a commission employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule.]~~

~~[(c) A person who] is [the spouse of] an officer, manager, or paid consultant of a Texas trade association in the real estate industry ~~[may not be a commission member and may not be a commission employee who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group A17, of the position classification salary schedule].~~~~

(c) ~~(d)~~ A person may not serve as a commission member or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

SECTION 4. Sections 1101.057(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the commission that a member:

(1) does not have at the time of appointment the qualifications required by Section 1101.051(a) or (b) or 1101.052;

(2) does not maintain during service on the commission the qualifications required by Section 1101.051(a) or (b) or 1101.052;

(3) is ineligible for membership under [violates a prohibition established by] Section 1101.053;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

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

(c) If the administrator has knowledge that a potential ground for removal ~~[of a commission member]~~ exists, the administrator shall notify the presiding officer of the commission of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the administrator shall notify the next highest ranking officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. Subchapter B, Chapter 1101, Occupations Code, is amended by adding Section 1101.059 to read as follows:

Sec. 1101.059. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter and other laws regulated by the commission;

(2) the programs, functions, rules, and budget of the commission;

(3) the results of the most recent formal audit of the commission;

(4) the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and

(5) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 6. Section 1101.101(a), Occupations Code, is amended to read as follows:

(a) The commission shall ~~[may]~~ appoint an administrator.

SECTION 7. Section 1101.102, Occupations Code, is amended to read as follows:

Sec. 1101.102. DIVISION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the administrator and the ~~[define the respective responsibilities of the commission and the commission]~~ staff of the commission.

SECTION 8. Section 1101.151(b), Occupations Code, is amended to read as follows:

(b) The commission may:

(1) adopt and enforce rules necessary to administer this chapter and Chapter 1102; and

(2) establish standards of conduct and ethics for persons licensed under this chapter and Chapter 1102 to:

(A) fulfill the purposes of this chapter and Chapter 1102; and

(B) ensure compliance with this chapter and Chapter 1102;~~and~~

~~[(3) authorize specific employees to conduct hearings and issue final decisions in contested cases].~~

SECTION 9. Sections 1101.152(a) and (b), Occupations Code, are amended to read as follows:

(a) The commission shall adopt rules to charge and collect reasonable fees, including a fee for [the following fees]:

(1) ~~[for]~~ filing an original application for a broker license~~[-, not more than \$100];~~

(2) ~~[for]~~ annual renewal of a broker license~~[-, not more than \$100];~~

(3) ~~[for]~~ filing an original application for a salesperson license~~[-, not more than \$75];~~

(4) ~~[for]~~ annual renewal of a salesperson license~~[-, not more than \$50];~~

(5) ~~[for]~~ annual registration~~[-, \$80];~~

(6) filing ~~[for]~~ an application for a license examination~~[-, not more than \$100];~~

(7) ~~[for]~~ filing a request for a branch office license~~[-, not more than \$20];~~

(8) ~~[for]~~ filing a request for a change of place of business, change of name, return to active status, or change of sponsoring broker~~[-, not more than \$20];~~

(9) ~~[for]~~ filing a request to replace a lost or destroyed license or certificate of registration~~[-, not more than \$20];~~

(10) ~~[for]~~ filing an application for approval of an education program under Subchapter G~~[-, not more than \$400];~~

(11) ~~[for]~~ annual operation of an education program under Subchapter G~~[-, not more than \$200];~~

(12) ~~[for]~~ filing an application for approval of an instructor of core real estate courses~~[-, not more than \$40];~~

(13) ~~[for]~~ transcript evaluation~~[-, \$20];~~

(14) ~~[for]~~ preparing a license or registration history~~[-, not more than \$20];~~
~~[and]~~

(15) ~~[for]~~ filing an application for a moral character determination; and

(16) conducting a criminal background check in connection with the annual renewal of a license under this chapter [-, not more than \$50].

(b) The commission shall adopt rules to ~~may~~ set and collect reasonable fees to implement the continuing education requirements for license holders, including a fee for [the following fees]:

(1) ~~[for]~~ an application for approval of a continuing education provider~~[-, not more than \$400];~~

(2) ~~for~~ an application for approval of a continuing education course of study[, ~~not more than \$100~~];

(3) ~~for~~ an application for approval of an instructor of continuing education courses[, ~~not more than \$40~~]; and

(4) ~~for~~ attendance at a program to train instructors of a continuing education course prescribed under Section 1101.455[, ~~not more than \$100~~].

SECTION 10. Subchapter D, Chapter 1101, Occupations Code, is amended by adding Sections 1101.158, 1101.159, and 1101.160 to read as follows:

Sec. 1101.158. ADVISORY COMMITTEES. (a) The commission may appoint advisory committees to perform the advisory functions assigned to the committees by the commission. An advisory committee under this section is subject to Section 2110, Government Code.

(b) A member of an advisory committee who is not a member of the commission may not receive compensation for service on the committee. The member may receive reimbursement for actual and necessary expenses incurred in performing committee functions as provided by Section 2110.004, Government Code.

(c) A member of an advisory committee serves at the will of the commission.

(d) An advisory committee may hold a meeting by telephone conference call or other video or broadcast technology.

(e) Advisory committee meetings are subject to Chapter 551, Government Code.

Sec. 1101.159. USE OF TECHNOLOGY. The commission shall implement a policy requiring the commission to use appropriate technological solutions to improve the commission's ability to perform its functions. The policy must ensure that the public is able to interact with the commission on the Internet.

Sec. 1101.160. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the commission.

SECTION 11. Section 1101.201(a), Occupations Code, is amended to read as follows:

(a) The commission shall prepare information of public interest describing the functions of the commission ~~[and the procedures by which complaints are filed with and resolved by the commission].~~

SECTION 12. Section 1101.203, Occupations Code, is amended to read as follows:

Sec. 1101.203. COMPLAINT INFORMATION. (a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall maintain a file on each complaint. The file must include:

- (1) information relating to the parties to the complaint;
- (2) the subject matter of the complaint;
- (3) a summary of the results of the review or investigation of the complaint;

and

(4) the disposition of the complaint ~~[an information file about each complaint filed with the commission that the commission has authority to resolve].~~

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The ~~[If a written complaint is filed with the commission that the commission has authority to resolve, the] commission[, at least quarterly and until final disposition of the complaint,] shall periodically notify the parties to the complaint of the status of the complaint until final disposition, unless the notice would jeopardize an undercover investigation authorized under Section 1101.204.~~

SECTION 13. Section 1101.204, Occupations Code, is amended by amending Subsection (a) and adding Subsection (h) to read as follows:

(a) The commission or commission staff may file a complaint and conduct an investigation as necessary to enforce this chapter, Chapter 1102, or a rule adopted under those chapters ~~[, on its own motion, investigate the actions and records of a license holder].~~

(h) The commission shall ensure that the commission gives priority to the investigation of a complaint filed by a consumer and an enforcement case resulting from the consumer complaint. The commission shall assign priorities and investigate complaints using a risk-based approach based on the:

- (1) degree of potential harm to a consumer;
- (2) potential for immediate harm to a consumer;
- (3) overall severity of the allegations in the complaint;
- (4) number of license holders potentially involved in the complaint;
- (5) previous complaint history of the license holder; and
- (6) number of potential violations in the complaint.

SECTION 14. Section 1101.301, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) In establishing accreditation standards for an educational program under Subsection (a), the commission shall adopt rules that require a program to establish that at least 55 percent of the program's graduates have passed a licensing exam the first time the exam has been taken by the graduates before the commission may renew the program's accreditation.

SECTION 15. Section 1101.303, Occupations Code, is amended to read as follows:

Sec. 1101.303. APPROVAL OF CONTINUING EDUCATION PROVIDER OR COURSE OF STUDY. (a) If the commission determines that an applicant for approval as a continuing education provider satisfies the requirements of this subchapter or Section 1102.205 and any rule adopted under this subchapter or Section 1102.205, the commission may authorize the applicant to offer continuing education for a two-year period.

(b) If the commission determines that an applicant for approval of a continuing education course of study satisfies the requirements of this subchapter or Section 1102.205 and any rule adopted under this subchapter or Section 1102.205, the commission may authorize the applicant to offer the course of study for a two-year period.

SECTION 16. Subchapter G, Chapter 1101, Occupations Code, is amended by adding Sections 1101.304 and 1101.305 to read as follows:

Sec. 1101.304. EXAMINATION PASSAGE RATE DATA. (a) The commission shall adopt rules regarding the collection and publication of data relating to examination passage rates for graduates of accredited educational programs.

(b) Rules adopted under this section must provide for a method to:

- (1) calculate the examination passage rate;
- (2) collect the relevant data from the examination administrator or the accredited program; and
- (3) post the examination passage rate data on the commission's Internet website, in a manner aggregated by educational program and by license group.

(c) In determining the educational program a graduate is affiliated with for purposes of this section, the educational program is the program the graduate last attended.

Sec. 1101.305. REVIEW COMMITTEE. (a) The commission may appoint a committee to review the performance of an educational program performing below the standards set by the commission under Section 1101.301. The committee shall consist of:

- (1) at least one commission member;
- (2) at least one member of the commission staff;
- (3) individuals licensed under this chapter or Chapter 1102; and
- (4) a representative from the Texas Real Estate Research Center.

(b) A committee formed under this section shall review and evaluate any factor causing an educational program's poor performance and report findings and recommendations to improve performance to the program and to the commission.

(c) A committee formed under this section may not revoke the accreditation of an educational program. The commission may temporarily suspend a program in the same manner as a license under Subchapter N.

SECTION 17. Section 1101.364(b), Occupations Code, is amended to read as follows:

(b) A person whose license application is denied under this section is entitled to a hearing under Section 1101.657. [Before the applicant may appeal under Section 1101.658, the applicant must file, not later than the 10th day after the date the applicant receives the notice, an appeal requesting a time and place for a hearing before the commission. If the applicant fails to request a hearing as provided by this subsection, the commission's decision becomes final and is not subject to judicial review.]

SECTION 18. The heading to Section 1101.451, Occupations Code, is amended to read as follows:

Sec. 1101.451. LICENSE EXPIRATION AND RENEWAL.

SECTION 19. Section 1101.451, Occupations Code, is amended by amending Subsection (d) and adding Subsections (e) and (f) to read as follows:

(d) Except as provided by Subsection (e), a [A] renewal fee for a license under this chapter may not exceed, calculated on an annual basis, the amount of the sum of the fees established under Sections 1101.152, 1101.154, and 1101.603.

(e) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a fee equal to 1-1/2 times the required renewal fee. If a license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the commission a fee equal to two times the required renewal fee.

(f) 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 submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

SECTION 20. Section 1101.457(b), Occupations Code, is amended to read as follows:

(b) The commission may require an applicant under this section to:

(1) pay a [an additional] fee, not to exceed \$200, in addition to any fee for late renewal of a license under this chapter; and

(2) complete the required continuing education not later than the 60th day after the date the license is issued, renewed, or returned to active status.

SECTION 21. Section 1101.657(a), Occupations Code, is amended to read as follows:

(a) If the commission proposes to deny, suspend, or revoke a person's license or certificate of registration, the person is entitled to a hearing conducted by the State Office of Administrative Hearings [before the commission or a hearings officer appointed by the commission].

SECTION 22. Section 1101.658(a), Occupations Code, is amended to read as follows:

(a) A person aggrieved by a ruling, order, or decision under this subchapter [of the commission] is entitled to appeal to a district court in the county in which the administrative hearing was held.

SECTION 23. Subchapter N, Chapter 1101, Occupations Code, is amended by adding Sections 1101.659, 1101.660, 1101.661, and 1101.662 to read as follows:

Sec. 1101.659. REFUND. (a) Subject to Subsection (b), the commission may order a person regulated by the commission to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference or an enforcement order may not exceed the amount the consumer paid to the person for a service or accommodation regulated by this commission. The commission may not require payment of other damages or estimate harm in a refund order.

Sec. 1101.660. INFORMAL PROCEEDINGS. (a) The commission by rule shall adopt procedures governing informal disposition of a contested case.

(b) Rules adopted under this section must:

(1) provide the complainant and the license holder, certificate holder, or regulated entity an opportunity to be heard; and

(2) require the presence of:

(A) a public member of the commission for a case involving a consumer complaint; and

(B) at least two staff members of the commission with experience in the regulatory area that is the subject of the proceeding.

Sec. 1101.661. FINAL ORDER. The commission may issue a final order in a proceeding under this subchapter or Subchapter O regarding a person whose license has expired during the course of an investigation or administrative proceeding.

Sec. 1101.662. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

SECTION 24. Section 1101.701, Occupations Code, is amended to read as follows:

Sec. 1101.701. IMPOSITION OF ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(b) The commission shall periodically review the commission's enforcement procedures and ensure that administrative penalty and disciplinary proceedings are combined into a single enforcement procedure.

(c) The commission may combine a proceeding to impose an administrative penalty with another disciplinary proceeding, including a proceeding to suspend or revoke a license.

SECTION 25. Section 1101.702, Occupations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) The amount of an administrative penalty may not exceed \$5,000 ~~[\$1,000]~~ for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty ~~[if the commission determines that the person charged:~~

~~[(1) engaged in an activity for which a broker or salesperson license is required without holding a license; and~~

~~[(2) was not licensed by the commission as a broker or salesperson at any time in the four years preceding the date of the violation].~~

(c) The commission by rule shall adopt a schedule of administrative penalties based on the criteria listed in Subsection (b) for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation. The rules adopted under this subsection must provide authority for the commission to suspend or revoke a license in addition to or instead of imposing an administrative penalty.

SECTION 26. The heading to Section 1101.703, Occupations Code, is amended to read as follows:

Sec. 1101.703. ~~[REPORT AND]~~ NOTICE OF VIOLATION AND PENALTY.

SECTION 27. Section 1101.703(a), Occupations Code, is amended to read as follows:

(a) If, after investigation of a possible violation and the facts relating to that violation, the administrator determines that a violation has occurred, the administrator may issue a notice of violation ~~[report]~~ stating:

(1) a brief summary of the alleged violation ~~[the facts on which the determination is based]; [and]~~

(2) the administrator's recommendation on the imposition of the administrative penalty or another disciplinary sanction, including a recommendation on the amount of the penalty; and

(3) that the respondent has the right to a hearing to contest the alleged violation, the recommended penalty, or both.

SECTION 28. Section 1101.704, Occupations Code, is amended to read as follows:

Sec. 1101.704. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice under Section 1101.703, the person may:

(1) accept the administrator's determination, including the recommended administrative penalty; or

(2) request in writing a hearing on the occurrence of the violation, the amount of the penalty, or both ~~[determination]~~.

(b) If the person accepts the administrator's determination, or fails to respond in a timely manner to the notice, the commission by order shall approve the determination and order payment of the recommended penalty or impose the recommended sanction.

SECTION 29. The heading to Section 1101.705, Occupations Code, is amended to read as follows:

Sec. 1101.705. HEARING; DECISION [~~BY COMMISSION~~].

SECTION 30. Sections 1101.705(a), (b), (c), and (e), Occupations Code, are amended to read as follows:

(a) If the person requests a hearing [~~or fails to timely respond to the notice~~], the administrator shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings [~~A hearings examiner designated by the administrator~~] shall conduct the hearing. The administrative law judge [~~hearings examiner~~] shall:

(1) make findings of fact and conclusions of law; and

(2) promptly issue to the commission a proposal for decision regarding the occurrence of the violation and the amount of any proposed administrative penalty.

(c) Based on the findings of fact, conclusions of law, and proposal for decision of the administrative law judge [~~hearings examiner~~], the commission by order may determine that:

(1) a violation occurred and impose an administrative penalty; or

(2) a violation did not occur.

(e) The notice of the commission's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order. [~~The commission may authorize the hearings examiner to conduct the hearing and enter a final decision.~~]

SECTION 31. Section 1101.707, Occupations Code, is amended to read as follows:

Sec. 1101.707. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. (a) Not later than the 30th day after the date the commission's order becomes final, the person shall:

(1) pay the administrative penalty; or

(2) file a petition for judicial review [~~with a district court in Travis County~~] contesting the occurrence [~~fact~~] of the violation, the amount of the penalty, or both.

(b) Within the 30-day period prescribed by Subsection (a), a person who files a petition for judicial review [~~acts under Subsection (a)(2)~~] may:

(1) stay enforcement of the penalty by:

(A) [~~(+)~~] paying the penalty to the court [~~administrator~~] for placement in an escrow account; or

(B) [~~(2)~~] giving the court [~~administrator~~] a supersedeas bond in a form approved by the court [~~administrator~~] that:

(i) [~~(A)~~] is for the amount of the penalty; and

(ii) [~~(B)~~] is effective until judicial review of the order is final; or

(2) request the court to stay enforcement by:

(A) ~~(3)~~ filing with the court ~~administrator~~ an affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the administrator by certified mail.

(c) If the administrator receives a copy of an affidavit under Subsection (b)(2), the administrator may file with the court, within five days after the date the copy is received, a contest to the affidavit ~~[A person who fails to take action as provided by this section waives the right to judicial review of the commission's order].~~

(d) 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 penalty and to give a supersedeas bond.

SECTION 32. Subchapter O, Chapter 1101, Occupations Code, is amended by adding Section 1101.7085 to read as follows:

Sec. 1101.7085. DETERMINATION BY COURT. (a) If the court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty.

(b) If the court does not sustain the finding that a violation occurred, the court shall order that a penalty is not owed.

SECTION 33. Section 1101.709, Occupations Code, is amended to read as follows:

Sec. 1101.709. REMITTANCE OF PENALTY AND INTEREST. (a) If after judicial review the administrative penalty is reduced or is not upheld by the court, the court ~~administrator~~ shall:

~~(1) remit the appropriate amount, plus accrued interest, to the person if the person paid the penalty; or~~

~~(2) execute a release of the bond if the person gave a supersedeas bond].~~

(b) The interest ~~Interest~~ accrues ~~under Subsection (a)(1)]~~ at the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(c) The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

(d) If the person gave a supersedeas bond and the penalty is not upheld by the court, the court shall order, when the court's judgment becomes final, the release of the bond.

(e) If the person gave a supersedeas bond and the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the reduced amount.

SECTION 34. Subchapter O, Chapter 1101, Occupations Code, is amended by adding Section 1101.710 to read as follows:

Sec. 1101.710. ADMINISTRATIVE PROCEDURE. A proceeding under this subchapter is subject to Chapter 2001, Government Code.

SECTION 35. Subchapter P, Chapter 1101, Occupations Code, is amended by adding Section 1101.759 to read as follows:

Sec. 1101.759. CEASE AND DESIST ORDER. (a) If it appears to the commission that a person is violating this chapter or Chapter 1102 or a rule adopted under this chapter or Chapter 1102, the commission, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under Subchapter O.

SECTION 36. Section 1102.051(a), Occupations Code, is amended to read as follows:

(a) The Texas Real Estate Inspector Committee is an advisory committee ~~[consists of nine members]~~ appointed by the commission.

SECTION 37. Section 1102.205, Occupations Code, is amended to read as follows:

Sec. 1102.205. CONTINUING EDUCATION REQUIREMENTS. (a) The commission shall approve, recognize, prepare, or administer a continuing education program for inspectors.

(b) As a prerequisite for renewal of a real estate inspector license, professional inspector license, or apprentice inspector license, the inspector must participate in the continuing education program and submit evidence satisfactory to the commission of successful completion of at least 16 classroom hours of core real estate inspection courses or continuing education courses for each year of the license period preceding the renewal.

SECTION 38. Section 1102.251, Occupations Code, is amended to read as follows:

Sec. 1102.251. ~~[AMOUNT OF]~~ FEES. The commission shall charge and collect reasonable and necessary fees to cover the cost of administering this chapter for ~~[as follows]:~~

(1) ~~[for]~~ filing an original application for an apprentice inspector license~~[-not more than \$75];~~

(2) ~~[for]~~ filing an original application for a real estate inspector license~~[-not more than \$125];~~

(3) ~~[for]~~ filing an original application for a professional inspector license~~[-not more than \$150];~~

(4) ~~[for]~~ renewal of an apprentice inspector license~~[-not more than \$125];~~

(5) ~~[for]~~ renewal of a real estate inspector license~~[-not more than \$175];~~

(6) ~~[for]~~ renewal of a professional inspector license~~[-not more than \$200];~~

(7) ~~[for]~~ a license examination~~[-not more than \$100];~~

(8) ~~[for]~~ a request to change a place of business or to replace a lost or destroyed license~~[-not more than \$20];~~ and

(9) ~~[for]~~ filing a request for issuance of a license because of a change of name, return to active status, or change in sponsoring professional inspector~~[-not more than \$20].~~

SECTION 39. The heading to Subchapter I, Chapter 1102, Occupations Code, is amended to read as follows:

SUBCHAPTER I. DISCIPLINARY PROCEEDINGS, PENALTIES, AND
ENFORCEMENT PROVISIONS

SECTION 40. Subchapter I, Chapter 1102, Occupations Code, is amended by adding Section 1102.408 to read as follows:

Sec. 1102.408. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

SECTION 41. Section 1103.101(a), Occupations Code, is amended to read as follows:

(a) The administrator of the Texas Real Estate Commission shall serve as [board shall employ a] commissioner.

SECTION 42. Section 1103.103(a), Occupations Code, is amended to read as follows:

(a) The administrator of the Texas Real Estate Commission [board] shall determine the salaries of the [commissioner,] officers[,] and employees of the board.

SECTION 43. Section 1103.104, Occupations Code, is amended to read as follows:

Sec. 1103.104. DUTIES OF COMMISSIONER. The commissioner shall:

(1) disseminate information;

(2) administer rules adopted by the board under this chapter;

(3) review each application for a certificate or license and make a recommendation for final action to the board;

(4) review and make recommendations to the board regarding the adoption of rules relating to:

(A) the examination required by Subchapter F;

(B) education and experience requirements for issuance of certificates and licenses;

(C) continuing education for a certified or licensed appraiser;

(D) standards of professional practice and ethics for a certified or licensed appraiser;

(E) standards for a real estate appraisal performed by a certified or licensed appraiser; and

- (F) the fees established by the board under Section 1103.156;
- (5) collect fees established by the board; ~~[and]~~
- (6) manage the staff and employees of the board; and
- (7) perform any other duty prescribed by the board under this chapter.

SECTION 44. Section 1103.504, Occupations Code, is amended to read as follows:

Sec. 1103.504. ATTORNEY GENERAL REPRESENTATION. The attorney general ~~[shall provide legal representation for the public interest in all proceedings before the board and]~~ may not represent the board in a contested case before the State Office of Administrative Hearings [board].

SECTION 45. Sections 1103.508(a) and (d), Occupations Code, are amended to read as follows:

(a) A contested case hearing shall [may] be conducted before an administrative law judge of the State Office of Administrative Hearings [a majority of the board members].

(d) The administrative law judge [designated presiding officer] shall control the proceedings and may:

- (1) administer oaths;
- (2) admit or exclude testimony or other evidence; and
- (3) rule on all motions and objections.

SECTION 46. Section 1103.510(a), Occupations Code, is amended to read as follows:

(a) If an appraiser or appraiser trainee receives proper notice of a contested case hearing but does not appear in person at the hearing, the administrative law judge [board and presiding officer] may conduct the hearing or enter an order, as the judge [board] determines appropriate.

SECTION 47. Section 1103.512(c), Occupations Code, is amended to read as follows:

(c) Before testimony may be presented, the record must:

- (1) show the identities of:
 - (A) any [the] board members present;
 - (B) the administrative law judge [presiding officer]; and
 - (C) the parties and their representatives; and
- (2) state that all testimony is being recorded.

SECTION 48. Section 1103.513, Occupations Code, is amended to read as follows:

Sec. 1103.513. ORDER OF PROCEEDINGS. A contested case hearing shall be conducted in the following order, subject to modification at the discretion of the administrative law judge [board]:

- (1) the administrative law judge [presiding officer] shall read a summary of the charges and answers to the charges and other responsive pleadings filed by the appraiser or appraiser trainee before the hearing;
- (2) the attorney representing the board shall make a brief opening statement, including a summary of the charges and a list of the witnesses and documents to support the charges;

(3) the appraiser or appraiser trainee may make an opening statement, including the names of any witnesses the appraiser or appraiser trainee may call;

(4) the attorney representing the board shall present evidence, concluding with a summary of the evidence for the state;

(5) the appraiser or appraiser trainee shall present evidence;

(6) the attorney representing the board may present rebuttal evidence;

(7) the appraiser or appraiser trainee may present rebuttal evidence; and

(8) the closing arguments shall be made in the following order:

(A) the attorney representing the board;

(B) the appraiser or appraiser trainee; and

(C) the attorney representing the board on rebuttal.

SECTION 49. Section 1103.516, Occupations Code, is amended to read as follows:

Sec. 1103.516. DIRECT EXAMINATION. In a contested case hearing, the administrative law judge ~~[presiding officer]~~ may conduct a direct examination of a witness at any stage of the witness's testimony.

SECTION 50. Section 1103.518, Occupations Code, is amended to read as follows:

Sec. 1103.518. ~~[BOARD]~~ ACTION AFTER HEARING. On conclusion of a contested case hearing and on submission of all written responses allowed under Section 1103.515, the administrative law judge shall ~~[board]~~:

(1) ~~[shall]~~ make findings of fact and conclusions of law; and

(2) issue to the board a proposal for decision that the board ~~[may]~~ take one or more of the following actions:

(A) dismiss the charges, including issuing an order declaring that the case file is confidential;

(B) suspend or revoke the appraiser's certificate or license or the appraiser trainee's approval;

(C) impose a period of probation with or without conditions;

(D) require the appraiser to submit to reexamination for a certificate or license;

(E) require the appraiser or appraiser trainee to participate in additional professional education or continuing education;

(F) issue a public or private reprimand or a warning;

(G) issue a consent order; or

(H) impose an administrative penalty as prescribed by Section 1103.552.

SECTION 51. Section 1103.520(c), Occupations Code, is amended to read as follows:

(c) On rehearing, the administrative law judge ~~[board]~~ shall consider facts not presented in the original hearing if:

(1) the facts arose after the original hearing was concluded;

(2) the party offering the evidence could not reasonably have provided the evidence at the original hearing; or

(3) the party offering the evidence was misled by a party regarding the necessity for offering the evidence at the original hearing.

SECTION 52. Section 1103.521(a), Occupations Code, is amended to read as follows:

(a) The administrative law judge ~~[board]~~ shall file the judge's ~~[its]~~ final decision in a contested case hearing with the commissioner.

SECTION 53. Sections 1303.052(a) and (b), Occupations Code, are amended to read as follows:

(a) A residential service company must pay to the commission a fee for filing an application for a license or an amendment to the application ~~[-, not to exceed \$3,500].~~

(b) A residential service company shall pay to the commission a fee for:

(1) filing an annual report under Section 1303.202 ~~[-, not to exceed \$3,500];~~
and

(2) any other filing required by this chapter ~~[-, not to exceed \$500].~~

SECTION 54. Subchapter H, Chapter 1303, Occupations Code, is amended by adding Sections 1303.355 and 1303.356 to read as follows:

Sec. 1303.355. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty as provided by Subchapter O, Chapter 1101, on a person who violates this chapter or a rule adopted or order issued by the commission under this chapter.

(b) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

(c) In determining the amount of the penalty, the administrator shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter a future violation;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The commission by rule shall adopt a schedule of administrative penalties based on the criteria listed in Subsection (c) for violations subject to an administrative penalty under this section to ensure that the amount of a penalty imposed is appropriate to the violation.

Sec. 1303.356. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether a person's license to practice under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a person licensed to practice under this chapter would, by the person's continued practice, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the license of that person.

(c) A license may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

SECTION 55. Subchapter C, Chapter 221, Property Code, is amended by adding Section 221.027 to read as follows:

Sec. 221.027. TEMPORARY SUSPENSION. (a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether the registration for a timeshare plan under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a timeshare plan registered under this chapter would, by the continued disposition of the timeshare property, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the registration of the timeshare plan.

(c) A registration may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the commission is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

SECTION 56. The following provisions of the Occupations Code are repealed:

- (1) Section 1101.204(g);
- (2) Sections 1101.364(c), (d), and (e);
- (3) Sections 1101.657(b), (c), and (d);
- (4) Section 1101.703(b);
- (5) Sections 1102.051(b), (c), and (d);
- (6) Section 1102.052;
- (7) Section 1102.053;
- (8) Section 1102.054;
- (9) Section 1102.055;
- (10) Section 1102.056;
- (11) Section 1102.057;
- (12) Section 1102.058(a);
- (13) Section 1102.059;
- (14) Section 1102.061;
- (15) Section 1102.062; and
- (16) Section 1103.508(c).

SECTION 57. (a) Not later than January 1, 2008, the Texas Real Estate Commission shall:

(1) adopt the policies required by Sections 1101.159 and 1101.160, Occupations Code, as added by this Act; and

(2) adopt the rules required by Chapter 1101, Occupations Code, as amended by this Act.

(b) As soon as practicable after the effective date of this Act, the administrator of the Texas Real Estate Commission shall assume the administrative and management duties over the Texas Appraiser Licensing and Certification Board, as required by Sections 1103.101 and 1103.104, Occupations Code, as amended by this Act.

SECTION 58. (a) The changes in law made by this Act to Section 1101.053, Occupations Code, regarding the prohibitions on or qualifications of members of the Texas Real Estate Commission do not affect the entitlement of a member serving on the commission immediately before September 1, 2007, to continue to serve and function as a member of the commission for the remainder of the member's term. The changes in law made by that section apply only to a member appointed on or after September 1, 2007.

(b) The changes in law made by this Act regarding the filing, investigation, or resolution of a complaint under Chapter 1101, Occupations Code, as amended by this Act, apply only to a complaint filed with the Texas Real Estate Commission on or after the effective date of this Act. A complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act regarding conduct that is grounds for imposition of a disciplinary sanction, including a refund, temporary license suspension, or cease and desist order, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

(d) The changes in law made by this Act regarding the procedure for an administrative penalty apply only to a proceeding commenced on or after the effective date of this Act. A proceeding commenced before the effective date of this Act is governed by the law in effect on the date the proceeding commenced, and the former law is continued in effect for that purpose.

(e) The change in law made by this Act regarding the renewal of an expired license applies only to a license that expires on or after the effective date of this Act. A license that expires before the effective date of this Act is governed by the law in effect on the date the license expired, and the former law is continued in effect for that purpose.

(f) The change in law made by this Act regarding accreditation standards for educational programs under Chapter 1101, Occupations Code, as amended by this Act, applies only to an accreditation granted or renewed on or after September 1, 2009. An educational program renewing an accreditation on or after the effective date of this Act but before September 1, 2009, should strive to meet the new accreditation standards under Chapter 1101, Occupations Code, as amended by this Act, but an accreditation granted or renewed before September 1, 2009, is governed by the law in effect on the date the accreditation expired, and the former law is continued in effect for that purpose.

(g) The change in law made by this Act to the authority of the Texas Real Estate Inspector Committee to develop and recommend rules under Chapter 1102, Occupations Code, as amended by this Act, applies only to a rule proposed for adoption on or after the effective date of this Act. A rule proposed for adoption before the effective date of this Act is governed by the law in effect on the date the rule was proposed for adoption, and the former law is continued in effect for that purpose.

SECTION 59. This Act takes effect September 1, 2007.

Floor Amendment No. 1

Amend **CSSB 914** (House committee printing) by inserting the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 1102.114, Occupations Code, is amended to read as follows:

Sec. 1102.114. ISSUANCE OF LICENSE. The commission shall issue the appropriate license to an applicant who:

- (1) meets the required qualifications; ~~[and]~~
- (2) pays the fee required by Section 1102.352(a); and
- (3) offers proof that the applicant carries liability insurance with a minimum limit of \$100,000 per occurrence to protect the public against a violation of Subchapter G.

SECTION _____. Section 1102.203(a), Occupations Code, is amended to read as follows:

- (a) A person may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license and providing proof of liability insurance as required by Section 1102.114(3).

Floor Amendment No. 2

Amend **CSSB 914** (House committee printing) by inserting the following appropriately numbered SECTION and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 1101.455, Occupations Code, is amended by adding Subsection (k) to read as follows:

- (k) An online course offered under this section may not be completed in less than 24 hours.

The amendments were read.

Senator Shapleigh moved to concur in the House amendments to **SB 914**.

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

SENATE BILL 976 WITH HOUSE AMENDMENT

Senator Carona, on behalf of Senator Brimer, called **SB 976** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Brimer in Chair, laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 976** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the public retirement system of certain municipalities.

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

SECTION 1. Title 109, Revised Statutes, is amended by adding Article 6243i to read as follows:

Art. 6243i. UNITARY RETIREMENT SYSTEM FOR CERTAIN MUNICIPALITIES

PART 1. GENERAL PROVISIONS

Sec. 1.01. APPLICABILITY. This article applies only to a municipality with a population of 500,000 or more that on January 1, 2007, has a single unitary public retirement system established by municipal ordinance for employees of all departments of the municipality.

Sec. 1.02. DEFINITIONS. In this article:

(1) "Administrative rules" means the rules adopted to govern a public retirement system, including rules regarding the participation in, contributions to, and benefits from the public retirement system.

(2) "Board of trustees" means the persons elected or appointed to administer the public retirement system.

(3) "Governing body" means the governing body of a municipality to which this article applies.

(4) "Participating member" means a person who makes contributions to the public retirement system as an employee of a municipality to which this article applies.

(5) "Participating retiree" means a person who receives or who is eligible to receive a service retirement annuity from the retirement fund.

(6) "Pension office" means the administrative office of the public retirement system.

(7) "Public retirement system" means a continuing, organized program or plan of service retirement, disability retirement, or death benefits for employees of a municipality to which this article applies but does not include:

(A) a program for which benefits are administered by a life insurance company;

(B) a program providing only workers' compensation benefits;

(C) a program administered by the federal government;

(D) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986;

(E) a plan described by Section 401(d) of the Internal Revenue Code of 1986;

(F) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986; or

(G) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986.

(8) "Retirement fund" means the trust fund established by or in conjunction with the public retirement system for the purpose of holding assets to be used to provide benefits payable by the public retirement system.

(9) "Rule amendment" includes any amendment of, repeal of, addition to, deletion of, modification of, or change to an administrative rule.

(10) "Survivor" means a person, including the surviving spouse or dependent, who receives survivor benefits from a retirement fund.

(11) "Vested" means the accrued right of a participating member who has met the age and length-of-service requirements for service retirement required by the public retirement system. A member whose retirement rights are vested may withdraw from employment with the municipality, leave the member's accumulated contributions on deposit with the public retirement system, and begin to receive the member's service retirement annuity.

PART 2. MEMBERSHIP

Sec. 2.01. GENERAL MEMBERSHIP REQUIREMENT. (a) Except as otherwise provided by administrative rule, municipal ordinance, or this section, a person becomes a participating member of the public retirement system on the date of the person's employment by the municipality.

(b) A person employed by the municipality is not eligible to be a participating member if the person is:

(1) an independent contractor or an employee of an independent contractor doing work for the municipality;

(2) an elected officer or a nonsalaried, appointed member of an administrative board or commission of the municipality, except an employee who serves as a member of the board or commission;

(3) an employee serving on a part-time basis of less than one-half the time required to serve as a full-time employee;

(4) an employee who is paid in part by the municipality and in part by a county, state, or other governmental agency; or

(5) a temporary employee, as determined by the records of the municipality, on the payroll of the municipality.

(c) A person may appeal a determination regarding the person's eligibility to be a participating member to the board of trustees. The board's decision regarding eligibility is final.

PART 3. CREDITABLE SERVICE

Sec. 3.01. TYPES OF CREDITABLE SERVICE. The board of trustees by rule shall establish the types of service for which a participating member earns credit.

Sec. 3.02. BENEFIT ELIGIBILITY BASED ON CREDITED SERVICE. A participating member's eligibility to receive a service retirement benefit is based on credited service at the time of retirement.

PART 4. BENEFITS

Sec. 4.01. TYPES OF BENEFITS. The types and calculation of benefits provided by the public retirement system are determined in accordance with applicable laws, municipal ordinances, and administrative rules.

Sec. 4.02. AMENDMENTS INCREASING BENEFITS. Before taking effect, any amendment to the administrative rules proposed by the board of trustees that increases the benefits provided by the public retirement system must be reviewed and approved by the governing body.

Sec. 4.03. AMENDMENTS REDUCING BENEFITS. (a) Only the governing body may adopt an amendment to the administrative rules that reduces a benefit provided by the public retirement system.

(b) At least 90 days before the date the governing body is scheduled to vote on an amendment to the administrative rules that would reduce a benefit provided by the public retirement system, the governing body must give notice to the board of trustees of the governing body's intention to consider and vote on the amendment.

PART 5. ADMINISTRATION

Sec. 5.01. COMPOSITION OF BOARD OF TRUSTEES. (a) The board of trustees is composed of 13 members.

(b) Each of the following groups of participating members shall elect one vested, participating member from their respective group to serve as a member of the board of trustees:

(1) police officers; and

(2) firefighters.

(c) The group of participating members who are general employees of the municipality and who are not employed as police officers or firefighters shall elect two vested, participating members from the group to serve as members of the board of trustees.

(d) Each of the following groups of participating retirees shall elect one participating retiree from their respective group to serve as a member of the board of trustees:

(1) retired police officers;

(2) retired firefighters; and

(3) other retired general employees of the municipality who did not retire from service as a police officer or firefighter.

(e) The mayor shall nominate and the governing body shall confirm, by majority vote, five residents of the municipality to serve as members of the board of trustees. A person appointed under this subsection may not be a member of the governing body.

(f) The governing body shall designate the chief financial officer of the municipality to serve as a member of the board of trustees.

(g) Members of the board of trustees hold office for terms of two years.

Sec. 5.02. BOARD POWERS AND DUTIES. (a) The board of trustees shall administer the public retirement system, including the retirement fund of the public retirement system.

(b) The board of trustees may adopt amendments to the administrative rules in accordance with Sections 5.06, 5.07, 5.09, and 5.10 of this article.

Sec. 5.03. BOARD CHAIR. The board of trustees shall elect a chair from the membership of the board.

Sec. 5.04. QUORUM; VOTING. (a) Each member of the board of trustees is entitled to one vote.

(b) Except as provided by Subsection (c) of this section, seven members of the board of trustees constitute a quorum to transact the business of the board.

(c) In the event of a vacancy on the board of trustees, the number of members required to constitute a quorum is reduced by the number of vacancies on the board of trustees.

Sec. 5.05. QUALIFIED ACTUARY; ACTUARIAL ASSUMPTIONS. (a) The board of trustees may employ a qualified actuary.

(b) To be a qualified actuary, an actuary must be:

(1) a fellow of the Society of Actuaries; or

(2) a member of the American Academy of Actuaries.

(c) At least 30 days before the date the board of trustees adopts actuarial assumptions to be used by the public retirement system, the board must submit to the governing body a detailed report regarding the proposed actuarial assumptions. The report must include the fiscal impact of the proposed actuarial assumptions on the public retirement system.

Sec. 5.06. RULE AMENDMENTS ADOPTED BY BOARD OF TRUSTEES.

(a) Except as provided by Sections 4.03, 5.07, 5.09, and 5.10 of this article and subject to Section 4.02 of this article, the board of trustees may adopt amendments to the administrative rules if:

(1) a qualified actuary performs an actuarial analysis of the fiscal impact of the proposed amendment and determines that the amendment will not impact the actuarial soundness of the retirement fund;

(2) the proposed amendment is placed on the agenda of the board of trustees for at least two consecutive meetings of the board that are not less than 30 days apart for the purpose of giving participating members an opportunity to comment on the proposed amendment; and

(3) the proposed amendment is approved by a majority vote of the full membership of the board of trustees.

(b) An amendment to the administrative rules adopted in accordance with this section becomes effective immediately unless otherwise provided by the amendment.

Sec. 5.07. AMENDMENTS CONCERNING CONTRIBUTIONS BY MUNICIPALITY. (a) An amendment to the administrative rules governing municipal contributions, including an amendment to the rate or manner of making contributions, may be made only if:

(1) a qualified actuary performs an actuarial analysis of the fiscal impact of the proposed amendment;

(2) the board of trustees or the governing body, by majority vote, calls a special election of all participating members to approve the amendment;

(3) the amendment is approved by a majority of the participating members eligible to vote in the special election; and

(4) the amendment is approved by a majority vote of:

(A) the board of trustees, if the governing body called the special election under Subdivision (2) of this subsection; or

(B) the governing body, if the board of trustees called the special election under Subdivision (2) of this subsection.

(b) The board of trustees or the governing body, as applicable, shall approve or reject the proposed amendment under Subsection (a)(4) of this section by the 90th day after the date the votes of the special election are canvassed.

(c) The pension office shall conduct a special election under Subsection (a) of this section by secret ballot. The board of trustees shall canvass the vote.

(d) A person who is a participating member on the date of the special election is eligible to vote in the special election.

(e) Unless otherwise provided by the proposed amendment, an amendment to the administrative rules becomes effective on approval by the board of trustees or the governing body, as appropriate, under Subsection (a)(4) of this section.

(f) Notwithstanding Subsections (a) through (e) of this section, only the governing body may adopt an amendment to the administrative rules that increases municipal contributions.

Sec. 5.08. AMENDMENTS BY GOVERNING BODY IN EVENT OF FISCAL EMERGENCY. (a) Notwithstanding Section 5.07 of this article, in the event a municipality to which this article applies has a fiscal emergency that requires an amendment to the administrative rules governing municipal contributions, the governing body may amend the administrative rules to address the emergency if the governing body:

(1) determines that the emergency exists and approves the proposed amendment by the unanimous vote of all members of the governing body; and

(2) provides written notice to the administrative head of the public retirement system at least five business days before the date the proposed amendment takes effect.

(b) On the 90th day after the date an amendment under this section takes effect and for each subsequent 90-day period while the amendment is in effect, the governing body shall determine whether the emergency continues to exist. If the governing body does not determine by a unanimous vote that the emergency continues to exist or if the governing body fails to vote on whether the emergency exists as required by this subsection, the amendment automatically expires on the date the vote is taken or on the date the vote should have been taken, as applicable.

Sec. 5.09. AMENDMENTS INCREASING CONTRIBUTIONS BY MEMBERS. (a) An amendment to the administrative rules that increases member contributions must be adopted in accordance with the procedures provided by Sections 5.07(a) through (e) of this article for adopting an amendment governing municipal contributions.

(b) Notwithstanding any other law, an amendment made in accordance with Subsection (a) of this section may require a participating member to contribute an amount that exceeds 10 percent of the compensation paid to the participating member for each payroll period.

Sec. 5.10. EMERGENCY, ROUTINE, OR STATUTORILY REQUIRED AMENDMENTS BY BOARD. (a) Unless an amendment to the administrative rules requires adoption in accordance with Section 5.07 or 5.09 of this article, the board of trustees may adopt emergency or routine amendments to the administrative rules or amendments that are required by federal or state law if the board of trustees by unanimous vote of the members present and voting:

(1) agrees that the proposed amendment is an emergency, routine, or statutorily required amendment; and

(2) approves the proposed amendment.

(b) An amendment adopted in accordance with this section is an automatic agenda item for the next regular meeting of the board of trustees and is subject to review or repeal by the board at that meeting.

Sec. 5.11. SEMIANNUAL MEETING OF BOARD AND GOVERNING BODY. At least once every six months, the board of trustees and the governing body shall meet to review the performance of the retirement fund and determine how to address the unfunded liabilities, if any, of the public retirement system.

SECTION 2. (a) The administrative rules governing the public retirement system of a municipality to which this Act applies under Section 1.01, Article 6243i, Revised Statutes, as added by this Act, in effect on May 31, 2007, shall continue in effect on and after the effective date of this Act.

(b) The changes in law made by Sections 4.02, 4.03, 5.06, 5.07, 5.08, 5.09, and 5.10, Article 6243i, Revised Statutes, as added by this Act, apply to a change in the administrative rules governing a public retirement system of a municipality to which this Act applies under Section 1.01, Article 6243i, Revised Statutes, as added by this Act, adopted on or after the effective date of this Act.

SECTION 3. (a) As soon as practicable after the effective date of this Act, a new board of trustees charged with administering the public retirement system of a municipality described by Section 1.01, Article 6243i, Revised Statutes, as added by this Act, shall be elected or appointed in accordance with Section 5.01, Article 6243i, Revised Statutes, as added by this Act.

(b) The term of a member of the board of trustees or other board administering the public retirement system described by Subsection (a) of this section who is serving on the board on the effective date of this Act expires on the date that a majority of the new board of trustees has been elected or appointed under Subsection (a) of this section.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Carona, on behalf of Senator Brimer, moved to concur in the House amendment to **SB 976**.

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

SENATE BILL 1424 WITH HOUSE AMENDMENT

Senator Carona, on behalf of Senator Brimer, called **SB 1424** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1424** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the municipalities authorized to use the other events trust fund to attract certain sporting events.

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

SECTION 1. Subdivision (2), Section 1, Chapter 1507, Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), as amended by Chapters 579 and 814, Acts of the 78th Legislature, Regular Session, 2003, is reenacted and amended to read as follows:

(2) "Endorsing municipality" means an endorsing municipality for purposes of Section 4, 5, ~~or 5A, or 5B~~ of this Act ~~[a municipality that has a population of 850,000 or more according to the most recent federal decennial census and that authorizes a bid by a local organizing committee for selection of the municipality as the site of the 2011 Pan American Games or the 2012 Olympic Games].~~

SECTION 2. Subdivision (2), Subsection (a), Section 5A, Chapter 1507, Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) "Endorsing municipality" means a municipality ~~[that has a population of one million or more and]~~ that contains a site selected by a site selection organization for one or more games.

SECTION 3. Subsection (b), Section 5A, Chapter 1507, Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If a site selection organization selects a site for a game in this state pursuant to an application by a local organizing committee, endorsing municipality, or endorsing county, not later than three months before the date of the game or six months before the date of the game upon request of a local organizing committee, endorsing municipality, or endorsing county, the comptroller shall determine for the two-week period that ends at the end of the day after the date on which the game will be held, in accordance with procedures developed by the comptroller:

(1) the incremental increase in the receipts to the state from taxes imposed under Chapters 151, 152, 156, and 183, Tax Code, and under Title 5, Alcoholic Beverage Code, within the market areas designated under Subsection (c) of this section, that is directly attributable, as determined by the comptroller, to the preparation for and presentation of the game and related events;

(2) the incremental increase in the receipts collected by the state on behalf of each endorsing municipality in the market area from the sales and use tax imposed by each endorsing municipality under Section 321.101(a), Tax Code, and the mixed beverage tax revenue to be received by each endorsing municipality under Section 183.051(b), Tax Code, that is directly attributable, as determined by the comptroller, to the preparation for and presentation of the game and related events;

(3) the incremental increase in the receipts collected by the state on behalf of each endorsing county in the market area from the sales and use tax imposed by each endorsing county under Section 323.101(a), Tax Code, and the mixed beverage

tax revenue to be received by each endorsing county under Section 183.051(b), Tax Code, that is directly attributable, as determined by the comptroller, to the preparation for and presentation of the game and related events;

(4) the incremental increase in the receipts collected by each endorsing municipality in the market area from the hotel occupancy tax imposed under Chapter 351, Tax Code, that is directly attributable, as determined by the comptroller, to the preparation for and presentation of the game and related events; and

(5) the incremental increase in the receipts collected by each endorsing county in the market area from the hotel occupancy tax imposed under Chapter 352, Tax Code, that is directly attributable, as determined by the comptroller, to the preparation for and presentation of the game and related events.

SECTION 4. Subsection (j), Section 5A, Chapter 1507, Acts of the 76th Legislature, Regular Session, 1999 (Article 5190.14, Vernon's Texas Civil Statutes), is amended to read as follows:

(j) The comptroller shall provide an estimate not later than three months before the date of a game or six months before the date of the game upon request of a local organizing committee, endorsing municipality, or endorsing county of the total amount of tax revenue that would be deposited in the Other Events trust fund under this section in connection with that game, if the game were to be held in this state at a site selected pursuant to an application by a local organizing committee, endorsing municipality, or endorsing county. The comptroller shall provide the estimate on request to a local organizing committee, endorsing municipality, or endorsing county. A local organizing committee, endorsing municipality, or endorsing county may submit the comptroller's estimate to a site selection organization.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Carona, on behalf of Senator Brimer, moved to concur in the House amendment to **SB 1424**.

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

SENATE BILL 204 WITH HOUSE AMENDMENTS

Senator Nelson called **SB 204** 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 **SB 204** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to certain electronic medical records systems.

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

SECTION 1. Subchapter A, Chapter 161, Health and Safety Code, is amended by adding Sections 161.0107 and 161.0108 to read as follows:

Sec. 161.0107. ELECTRONIC MEDICAL RECORDS SYSTEMS. (a) In this section:

(1) "Electronic medical records software package or system" means an electronic system for maintaining medical records in the clinical setting.

(2) "Medical records" has the meaning assigned by Section 151.002, Occupations Code.

(b) A person who sells, leases, or otherwise provides an electronic medical records software package or system to a person who administers immunizations in this state or to an entity that manages records for the person shall provide, as part of the electronic medical records software package or system, the ability to:

(1) electronically interface with the immunization registry created under this subchapter; and

(2) generate electronic reports that contain the fields necessary to populate the immunization registry.

(c) The executive commissioner of the Health and Human Services Commission by rule shall specify:

(1) the fields necessary to populate the immunization registry; and

(2) the data standards that must be used for electronic submission of immunization information.

(d) The data standards specified under Subsection (b) must be compatible with the standards for immunization information transmission adopted by the Healthcare Information Technology Standards Panel sponsored by the American National Standards Institute and included in certification criteria by the Certification Commission for Healthcare Information Technology.

Sec. 161.0108. INJUNCTION. (a) The attorney general may bring an action in the name of the state to enjoin a violation of Section 161.0107.

(b) If the state prevails in a suit under this section, the attorney general may recover on behalf of the state reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.

SECTION 2. The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of rules adopted by the executive commissioner of the Health and Human Services Commission under Section 161.0107, Health and Safety Code, as added by this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

Floor Amendment No. 1

Amend **CSSB 204** in SECTION 1 of the bill, in added Section 161.0107(c), Health and Safety Code (House committee printing, page 2, line 3), between "registry" and "; and", by inserting ", including a field that indicates the patient's consent to be listed in the immunization registry has been obtained".

The amendments were read.

Senator Nelson moved to concur in the House amendments to **SB 204**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 382 WITH HOUSE AMENDMENT

Senator Carona called **SB 382** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 382** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to certain refund requirements regarding credit insurance.

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

SECTION 1. Section 1153.202, Insurance Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Each individual policy or group policy and group certificate must include a written notice stating ~~shall provide~~ that:

(1) if the underlying debt or the insurance terminates before the originally scheduled termination [maturity] date of the insurance [debt], including the termination of a debt by renewing or refinancing the debt, the debtor shall be entitled to a refund of unearned premium; and

(2) in the event that the underlying debt or the insurance terminates before the originally scheduled termination date of the insurance, including the termination of a debt by renewing or refinancing the debt, the person who is the holder of the underlying debt instrument on the date the debt terminates shall, no later than 60 days after the termination of the insurance, provide notice to the insurer of the termination of the debt, that includes the name and address of the insured and the payoff date of the underlying debt.

(a-1) The refund of any amount of unearned premium paid by or charged to the debtor for insurance shall be paid or credited promptly to the person entitled to the refund no later than 30 days after receipt of the notice required to be sent to the insurer under Subsection (a)(2).

(a-2) In any claim or action asserted by an insured against an insurer for failure to refund any unearned premium in accordance with this section, the insurer shall be entitled to indemnity from a holder who failed to provide the notice required under Subsection (a)(2).

SECTION 2. This Act applies only to a credit life or credit accident and health insurance policy evidenced by an individual policy or group certificate of insurance that is delivered, issued for delivery, or renewed on or after January 1, 2008. A policy or certificate delivered, issued for delivery, or renewed before January 1, 2008, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 2007.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 382**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 324 WITH HOUSE AMENDMENT

Senator Deuell called **SB 324** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 324** by striking proposed Section 35.521(h), Business & Commerce Code (House committee printing, page 4, lines 20-23), and substituting the following:

(h) A contingent payor or its surety may not enforce a contingent payment clause if the contingent payor is in a sham relationship with the obligor, as described by the sham relationships in Section 53.026, Property Code.

The amendment was read.

Senator Deuell moved to concur in the House amendment to **SB 324**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 1781 WITH HOUSE AMENDMENT

Senator Carona called **SB 1781** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 2

Amend **SB 1781** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Subdivision (8), Subsection (a), Section 16.033, Civil Practice and Remedies Code (page 2, lines 7 and 8), strike "or include".

(2) In SECTION 1 of the bill, in added Subsection (c), Section 16.033, Civil Practice and Remedies Code (page 2, line 13), between "containing a" and "defect", insert "ministerial".

(3) In SECTION 1 of the bill, in added Subsection (c), Section 16.033, Civil Practice and Remedies Code (page 2, lines 14 and 15), strike "or failing to contain a certificate of acknowledgment and".

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1781**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 2016 WITH HOUSE AMENDMENT

Senator Eltife called **SB 2016** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 2016** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED**AN ACT**

relating to the compensation paid to a statutory county court judge in Gregg County.

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

SECTION 1. Section 25.0942(d), Government Code, is amended to read as follows:

(d) The judge of a county court at law shall be paid an annual salary that is not less than \$1,000 less than ~~[does not exceed the amount that is 90 percent of]~~ the total annual salary received by a district judge in the county. The salary may not be more than the total annual salary received by a district judge in the county. The salary may be paid in equal monthly installments.

SECTION 2. This Act takes effect October 1, 2007.

The amendment was read.

Senator Eltife moved to concur in the House amendment to **SB 2016**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 1461 WITH HOUSE AMENDMENT

Senator Seliger called **SB 1461** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1461** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED**AN ACT**

relating to certain matters regarding a clean coal project, including contracting authority and indemnification requirements, liability, representation of a state agency by the attorney general, and monitoring of sequestered carbon dioxide.

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

SECTION 1. Section 490.301, Government Code, as added by Chapter 1097, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

Sec. 490.301. DEFINITION. In this subchapter ~~[section]~~, "clean coal project" has the meaning assigned by Section 5.001, Water Code.

SECTION 2. Subchapter G, Chapter 490, Government Code, as added by Chapter 1097, Acts of the 79th Legislature, Regular Session, 2005, is amended by adding Section 490.304 to read as follows:

Sec. 490.304. CONTRACTING AUTHORITY; FRANCHISE TAX CREDIT.

(a) The governor may contract for the state with an organization exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code, including the FutureGen Industrial Alliance, Incorporated, for a purpose related to implementing a clean coal project, including an innovative energy demonstration program described by Section 2305.037.

(b) The governor and the comptroller jointly may adopt provisions for issuing to the entity with which the governor contracts under Subsection (a), including the FutureGen Industrial Alliance, Incorporated, franchise tax credits to promote research and development activities related to a clean coal project in this state. The governor and comptroller must act under this subsection not later than December 31, 2007. The franchise tax credits to be issued under this subsection in any year may not have a value that exceeds the amount a retail electric provider pays in that year to the entity for electricity generated for the clean coal project's research and development purposes. A franchise tax credit may be issued, in accordance with the governor's and comptroller's provisions, to the entity, irrespective of whether the entity owes or pays a franchise tax under Chapter 171, Tax Code. The entity may assign the tax credits to a taxable entity, as defined by Section 171.0002, Tax Code, in accordance with the governor's and comptroller's provisions.

(c) This section expires on the date the FutureGen Industrial Alliance, Incorporated, loses its qualification as being exempt from federal taxation under Section 501(a), Internal Revenue Code of 1986, by being listed as an exempt entity under Section 501(c)(3) of that code.

SECTION 3. Chapter 119, Natural Resources Code, is amended by adding Section 119.0025 to read as follows:

Sec. 119.0025. MONITORING OF SEQUESTERED CARBON DIOXIDE. The Bureau of Economic Geology of The University of Texas at Austin shall monitor, measure, and verify the permanent status of sequestered carbon dioxide in which the commission has acquired the right, title, and interest under Section 119.002.

SECTION 4. Section 119.004, Natural Resources Code, is amended to read as follows:

Sec. 119.004. LIABILITY. (a) The transfer of title to the state under Section 119.002 does not relieve an owner or operator of a clean coal project of liability for any act or omission regarding the generation of carbon dioxide performed before the carbon dioxide was captured.

(b) On the date the commission acquires the right, title, and interest in carbon dioxide captured by a clean coal project under Section 119.002, the owner or operator of the clean coal project is relieved from liability for any act or omission regarding the carbon dioxide injection location, and the method or means of performing carbon dioxide injection, if the injection location and method or means of injection comply with the terms of a license or permit issued by the state and applicable state law and regulations.

(c) Notwithstanding Subsection (b), no owner, operator or contractor of the clean coal project is immune from liability for personal injury or death that results from construction of the site, or drilling or operation of the injection wells.

SECTION 5. Section 119.006, Natural Resources Code, is amended to read as follows:

Sec. 119.006. INDEMNIFICATION. The University of Texas System, ~~and~~ the permanent university fund, and the Texas Board of Criminal Justice may enter into a lease with the commission~~;~~ or with an owner or operator of a clean coal project~~;~~ for the use of lands owned or controlled by the system, the ~~or~~ fund, or the board for permanent storage of carbon dioxide captured by a clean coal project, provided that such lease adequately indemnifies the system, the ~~and~~ fund, the board, and the Texas Department of Criminal Justice against liability for personal injury or property damage incurred by the system, the ~~or~~ fund, the board, or the department as a result of the escape or migration of the carbon dioxide after it is injected into a zone or reservoir. This section does not affect the application of Chapter 101, Civil Practice and Remedies Code, to any activity carried out by a governmental unit, as defined by that chapter.

SECTION 6. Chapter 119, Natural Resources Code, is amended by adding Section 119.007 to read as follows:

Sec. 119.007. REPRESENTATION BY ATTORNEY GENERAL. (a) In this section, "state agency" includes:

(1) a department, commission, board, office, or other agency in the legislative, executive, or judicial branch of state government; and

(2) a university system or institution of higher education as defined by Section 61.003, Education Code.

(b) A state agency may request the attorney general to represent the state agency in a legal proceeding that arises from an escape or migration of carbon dioxide captured or sequestered in connection with a clean coal project.

(c) If the attorney general declines to represent the state agency, the state agency may obtain outside counsel in accordance with Section 402.0212, Government Code, and for purposes of that section, the attorney general's declination to represent the agency constitutes the attorney general's approval of the outside counsel for the matter.

SECTION 7. This Act takes effect September 1, 2007.

The amendment was read.

Senator Seliger moved to concur in the House amendment to **SB 1461**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 813 WITH HOUSE AMENDMENT

Senator Janek called **SB 813** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 813** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to child protective services.

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

SECTION 1. Section 107.013, Family Code, is amended by adding Subsection (d) to read as follows:

(d) A parent who claims indigence under Subsection (a) must file an affidavit of indigence in accordance with Rule 145(b) of the Texas Rules of Civil Procedure before the court can conduct a hearing to determine the parent's indigence under this section.

SECTION 2. Section 263.405, Family Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) Not later than the 15th day after the date a final order is signed by the trial judge, a party who intends to request a new trial or ~~[intending to]~~ appeal the order must file with the trial court:

(1) a request for a new trial; or

(2) if an appeal is sought, a statement of the point or points on which the party intends to appeal.

(b-1) The statement under Subsection (b)(2) may be combined with a motion for a new trial.

SECTION 3. Section 264.106, Family Code, is amended by adding Subsection (l) to read as follows:

(l) Notwithstanding any other law, the department or an independent administrator may contract with a child welfare board established under Section 264.005, a local governmental board granted the powers and duties of a child welfare board under state law, or a children's advocacy center established under Section 264.402 for the provision of substitute care and case management services in this state if the board or center provided direct substitute care or case management services under a contract with the department before September 1, 2006.

SECTION 4. Subsection (a), Section 265.004, Family Code, is amended to read as follows:

(a) To the extent that money is appropriated for the purpose, the department shall fund evidence-based programs offered by community-based organizations that are designed to prevent or ameliorate child abuse and neglect. The evidence-based programs funded under this subsection may be offered by a child welfare board established under Section 264.005, a local governmental board granted the powers and duties of a child welfare board under state law, or a children's advocacy center established under Section 264.402.

SECTION 5. Subchapter A, Chapter 45, Human Resources Code, is amended by adding Sections 45.005 and 45.006 to read as follows:

Sec. 45.005. PROVISION OF SUBSTITUTE CARE AND CASE MANAGEMENT SERVICES BY CERTAIN PERSONS. Notwithstanding any other law, the department or an independent administrator may contract with a child welfare board established under Section 264.005, Family Code, a local governmental board granted the powers and duties of a child welfare board under state law, or a children's advocacy center established under Section 264.402, Family Code, for the provision of

substitute care and case management services in this state if the board or center provided direct substitute care or case management services under a contract with the department before September 1, 2006.

Sec. 45.006. VALUE-ADDED SERVICES. A substitute care or case management services provider that contracts with the department or an independent administrator to provide substitute care or case management services may provide value-added services that supplement the substitute care or case management services required to be provided under the contract.

SECTION 6. The changes in law made by Subsection (d), Section 107.013, Family Code, as added by this Act, and Section 263.405, Family Code, as amended by this Act, apply only to a suit affecting the parent-child relationship filed on or after the effective date of this Act. A suit affecting the parent-child relationship filed before the effective date of this Act is governed by the law in effect on the date the suit was filed, and the former law is continued in effect for that purpose.

SECTION 7. The authority provided by Section 45.005, Human Resources Code, and Subsection (l), Section 264.106, Family Code, as added by this Act, applies to a contract described by those sections, regardless of whether the contract is executed before or after September 1, 2011, and the authority does not expire on September 1, 2012, notwithstanding the expiration of Chapter 45, Human Resources Code.

SECTION 8. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Janek moved to concur in the House amendment to **SB 813**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 660 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 660** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 660** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the creation of an additional statutory county court in Travis County.

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

SECTION 1. Subsection (a), Section 25.2291, Government Code, is amended to read as follows:

(a) Travis County has the following statutory county courts:

- (1) County Court at Law No. 1 of Travis County, Texas;
- (2) County Court at Law No. 2 of Travis County, Texas;

- (3) County Court at Law No. 3 of Travis County, Texas;
- (4) County Court at Law Number 4 of Travis County;
- (5) County Court at Law Number 5 of Travis County;
- (6) The County Court at Law Number 6 of Travis County; ~~[and]~~
- (7) The County Court at Law Number 7 of Travis County; and
- (8) The County Court at Law Number 8 of Travis County.

SECTION 2. Section 25.2292, Government Code, is amended by adding Subsection (n) to read as follows:

(n) The County Court at Law Number 8 of Travis County shall give preference to criminal cases.

SECTION 3. The County Court at Law Number 8 of Travis County is created on the effective date of this Act.

SECTION 4. This Act takes effect January 1, 2008.

The amendment was read.

Senator Wentworth moved to concur in the House amendment to **SB 660**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 1735 WITH HOUSE AMENDMENT

Senator Shapiro called **SB 1735** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1735** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the effect of a charter provision relating to the sale of alcoholic beverages for off-premise consumption on a subsequent local option election for the sale of alcoholic beverages in certain home-rule municipalities.

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

SECTION 1. Subchapter D, Chapter 215, Local Government Code, is amended by adding Section 215.076 to read as follows:

Sec. 215.076. CHARTER PROVISIONS AND LOCAL OPTION ELECTIONS IN CERTAIN MUNICIPALITIES. (a) This section applies only to a home-rule municipality with a population of less than 15,000:

(1) that is wholly located in a county that:

(A) has a population of two million or more; and

(B) is adjacent to a county with a population of one million or more;

(2) in only part of which the sale of distilled spirits for off-premise consumption is legal; and

(3) that on April 3, 1982, adopted or enacted a home-rule charter or home-rule charter amendment that restricts the sale of alcoholic beverages for off-premise consumption to a portion of the municipality.

(b) A local option election for or against the sale of alcoholic beverages for off-premise consumption that is held in a county or in a justice precinct in which all or part of a home-rule municipality described by Subsection (a) is located does not alter, modify, or supersede a home-rule charter restriction of the municipality described by Subsection (a) regardless of whether the election was held before, on, or after the effective date of this section or the charter restriction. A charter restriction described by Subsection (a) is in all respects validated.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Shapiro moved to concur in the House amendment to **SB 1735**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 1297 WITH HOUSE AMENDMENT

Senator Wentworth called **SB 1297** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1297** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to additional criminal law magistrates in Bexar County.

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

SECTION 1. Subchapter N, Chapter 54, Government Code, is amended by adding Section 54.9001 to read as follows:

Sec. 54.9001. APPLICABILITY OF SUBCHAPTER. The provisions of this subchapter apply only to a criminal law magistrate in Bexar County who is appointed under this subchapter.

SECTION 2. Chapter 54, Government Code, is amended by adding Subchapter AA to read as follows:

SUBCHAPTER AA. ADDITIONAL CRIMINAL LAW MAGISTRATES IN BEXAR COUNTY

Sec. 54.1301. APPLICABILITY OF SUBCHAPTER. The provisions of this subchapter apply only to a criminal law magistrate in Bexar County who is appointed under this subchapter.

Sec. 54.1302. APPOINTMENT; PRESIDING MAGISTRATE. (a) The judges of the district courts of Bexar County that give preference to criminal cases and the judges of the county courts at law of Bexar County that give preference to criminal cases, with the consent and approval of the Commissioners Court of Bexar County, may:

(1) appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter; and

(2) select one magistrate appointed under Subdivision (1) to serve as the presiding magistrate to supervise the other magistrates appointed under that subdivision.

(b) Each magistrate's appointment, as well as the selection of the presiding magistrate, must be made with the approval of two-thirds of the judges described by Subsection (a).

(c) The term of appointment of a magistrate under this section may not exceed two years, subject to Section 54.1307.

(d) If the number of magistrates appointed under this section is less than the number of the appointing judges, each judge described by Subsection (a) shall have equal access to the services of the magistrates appointed under this section.

Sec. 54.1303. QUALIFICATIONS. To be eligible for appointment as a magistrate under this subchapter, a person must:

(1) be a resident of Bexar County; and

(2) have been licensed to practice law in this state for at least four years.

Sec. 54.1304. COMPENSATION. (a) A magistrate appointed under this subchapter is entitled to the salary determined by the Commissioners Court of Bexar County.

(b) The magistrate's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54.1305. JUDICIAL IMMUNITY. A magistrate appointed under this subchapter has the same judicial immunity as a district judge.

Sec. 54.1306. CLERK. (a) The district clerk shall perform the statutory duties described by Section 51.303 with respect to all cases and matters referred to the magistrates appointed under this subchapter from the district courts, county courts at law, and, if authorized under Section 54.1309, municipal courts, subject to Subsection (b).

(b) At the conclusion of a proceeding, the district clerk shall transmit to the referring court any papers relating to the case or matter referred to a magistrate appointed under this subchapter, including the magistrate's findings, conclusions, orders, recommendations, or other action taken, except when the magistrate is performing the duties of a magistrate under the Code of Criminal Procedure.

Sec. 54.1307. TERMINATION OF SERVICES. The services of a magistrate appointed under this subchapter may be terminated by a majority vote of the appointing judges.

Sec. 54.1308. PROCEEDINGS THAT MAY BE REFERRED. (a) Except as provided by Subsection (b), a judge described by Section 54.1302(a) may refer to a magistrate appointed under this subchapter any criminal cases or matters the judge considers necessary and proper, including a criminal case for drug court proceedings.

(b) A magistrate appointed under this subchapter may not preside over a contested trial on the merits, regardless of whether the trial is before a jury.

(c) A person in custody who is brought before a magistrate appointed under this subchapter in a proceeding referred under this section must be in the custody of a jailer who is certified by the Commission on Law Enforcement Officer Standards and

Education and appointed by the county sheriff. The person in custody must remain in the custody of the jailer until the person is released from custody or the custody of the person is transferred in accordance with a court order.

Sec. 54.1309. CERTAIN MUNICIPAL COURT PROCEEDINGS THAT MAY BE REFERRED. (a) A municipality that has any portion of the municipality's territory located within the boundaries of Bexar County may:

(1) enter into an interlocal agreement with Bexar County providing for the referral of cases from the municipal courts of that municipality to a magistrate appointed under this subchapter; and

(2) by ordinance, authorize one or more municipal court judges to refer cases pending in the municipal courts to a magistrate appointed under this subchapter.

(b) A municipal court judge who is authorized to refer a case to a magistrate as provided by Subsection (a) may refer one or more cases to a magistrate in the manner provided by Section 54.1310. The magistrate to whom the case is referred may exercise any power conferred on the magistrate under Section 54.1311, except as limited by the order of referral.

Sec. 54.1310. ORDER OF REFERRAL. (a) To refer one or more criminal cases or matters to a magistrate appointed under this subchapter, a judge must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may relate to a single case or to a specified type of criminal cases or matters.

(c) An order of referral may:

(1) limit the powers of the magistrate and direct the magistrate to report on specific issues, perform particular acts, or receive and report on evidence only;

(2) set the time and place for the hearing;

(3) prescribe a closing date for the hearing;

(4) provide a date for filing the magistrate's findings;

(5) designate proceedings for more than one case over which the magistrate shall preside;

(6) direct the magistrate to call the court's docket; and

(7) set forth general powers and limitations of authority of the magistrate applicable to any cases or matters referred.

(d) Any magistrate appointed under this subchapter may carry out the duties specified in an order of referral issued under this subchapter.

Sec. 54.1311. POWERS. (a) Except as limited by an order of referral, a magistrate appointed under this subchapter may:

(1) perform the duties of a magistrate under the Code of Criminal Procedure;

(2) conduct hearings;

(3) hear evidence;

(4) compel production of relevant evidence;

(5) rule on admissibility of evidence;

(6) issue summons for the appearance of witnesses;

(7) examine witnesses;

(8) swear witnesses for hearings;

(9) make findings of fact on evidence;

- (10) formulate conclusions of law;
- (11) rule on preliminary motions;
- (12) recommend the rulings, orders, or judgment to be made in a case;
- (13) regulate proceedings in a hearing;
- (14) set bonds;
- (15) in any case referred from a municipal court as authorized by Section

54.1309:

- (A) accept a plea of guilty or nolo contendere;
- (B) enter a finding of guilt, impose or suspend a sentence, and establish conditions of community supervision;
- (C) defer adjudication of guilt and establish conditions of community supervision; or
- (D) dismiss the case; and
- (16) perform any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) Except when performing the duties of a magistrate under the Code of Criminal Procedure or as provided by Subsection (a)(15)(D), a magistrate appointed under this subchapter may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but the magistrate may make findings, conclusions, and recommendations on those issues, subject to Section 54.1314.

Sec. 54.1312. COURT REPORTER. The court shall provide a court reporter to record the proceedings before a magistrate appointed under this subchapter if:

- (1) the appointment of a court reporter is required by other law; or
- (2) a party to a case involving an offense that is a Class B misdemeanor or higher category of offense requests the appointment of a court reporter, unless the magistrate appointed under this subchapter is performing the duties of a magistrate under the Code of Criminal Procedure.

Sec. 54.1313. WITNESS. (a) A witness who appears before a magistrate appointed under this subchapter and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54.1314. JUDICIAL ACTION. (a) Unless otherwise prohibited by law and except when a magistrate appointed under this subchapter is performing the duties of a magistrate under the Code of Criminal Procedure, a referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

SECTION 3. Article 2.09, Code of Criminal Procedure, is amended to read as follows:

Art. 2.09. WHO ARE MAGISTRATES. Each of the following officers is a magistrate within the meaning of this Code: The justices of the Supreme Court, the judges of the Court of Criminal Appeals, the justices of the Courts of Appeals, the

judges of the District Court, the magistrates appointed by the judges of the district courts of Bexar County, Dallas County, or Tarrant County that give preference to criminal cases, the criminal law hearing officers for Harris County appointed under Subchapter L, Chapter 54, Government Code, the criminal law hearing officers for Cameron County appointed under Subchapter BB, Chapter 54, Government Code, the magistrates appointed by the judges of the district courts of Lubbock County, Nolan County, or Webb County, the magistrates appointed by the judges of the criminal district courts of Dallas County or Tarrant County, the masters appointed by the judges of the district courts and the county courts at law that give preference to criminal cases in Jefferson County, the magistrates appointed by the judges of the district courts and the statutory county courts of Brazos County or Williamson County, the magistrates appointed by the judges of the district courts and statutory county courts that give preference to criminal cases in Travis County or Bexar County, the county judges, the judges of the county courts at law, judges of the county criminal courts, the judges of statutory probate courts, the associate judges appointed by the judges of the statutory probate courts under Subchapter G, Chapter 54, Government Code, the justices of the peace, and the mayors and recorders and the judges of the municipal courts of incorporated cities or towns.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Wentworth moved that the Senate do not concur in the House amendment.

The motion prevailed without objection.

SENATE BILL 218 WITH HOUSE AMENDMENT

Senator Carona called **SB 218** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Brimer in Chair, laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 218** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to licensing and inspection requirements of the Department of Family and Protective Services for certain facilities.

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

SECTION 1. Subsection (b), Section 42.041, Human Resources Code, is amended to read as follows:

(b) This section does not apply to:

- (1) a state-operated facility;
- (2) an agency foster home or agency foster group home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the ~~[Texas]~~ Department of State Health Services;

(6) a facility licensed, operated, certified, or registered by another state agency;

(7) an educational facility accredited by the Texas Education Agency, the Texas Private School Accreditation Commission, or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above~~[-an after school program operated directly by an accredited educational facility, or an after school program operated by another entity under contract with the educational facility, if the Texas Education Agency or Southern Association of Colleges and Schools has approved the curriculum content of the after school program operated under the contract];~~

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;

(10) a family home, whether registered or listed;

(11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers educational programs for children age five and above in one or more of the following: kindergarten through at least grade three, elementary, or secondary grades;

(12) an emergency shelter facility providing shelter to minor mothers who are the sole support of their natural children under Section 32.201, Family Code, unless the facility would otherwise require a license as a child-care facility under this section;

(13) a juvenile detention facility certified under Section 51.12, Family Code, or Section 141.042(d), a juvenile facility providing services solely for the Texas Youth Commission, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such

standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility; ~~or~~]

(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless; or

(16) a public school that provides before-school or after-school programs, child care, or other extended day activities on a tuition-free basis.

SECTION 2. Section 42.044, Human Resources Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Notwithstanding Subsection (b), the department is required to inspect only as necessary a licensed child-care facility that offers only an after-school program operated directly by an educational facility accredited by the Texas Education Agency, the Texas Private School Accreditation Commission, or the Southern Association of Colleges and Schools.

SECTION 3. Subsection (c), Section 42.054, Human Resources Code, is amended to read as follows:

(c) The department shall charge each licensed child-care facility an annual license fee in the amount of \$35 plus \$2 ~~[\$+]~~ for each child the child-care facility is permitted to serve. The fee is due on the date on which the department issues the child-care facility's initial license and on the anniversary of that date.

SECTION 4. This Act takes effect September 1, 2007.

The amendment was read.

Senator Carona 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 218** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Carona, Chair; Shapiro, Van de Putte, Deuell, and Shapleigh.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Zapata County officials: County Judge Rosalva Guerra; County Commissioners, Joe Rathmell and Norberto Garza; and County Auditor Doroteo Garza; accompanied by Laura Guerra and Ramiro Martinez.

The Senate welcomed its guests.

SENATE BILL 763 WITH HOUSE AMENDMENT

Senator Duncan called **SB 763** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 763** (House committee printing) by adding the following appropriately numbered SECTION (page 2, between lines 6 and 7) and renumbering the subsequent SECTIONS accordingly:

SECTION _____. Chapter 30, Civil Practice and Remedies Code, is amended by adding Section 30.013 to read as follows:

Sec. 30.013. NONDISCLOSURE OF CERTAIN INFORMATION. (a) The supreme court shall adopt rules prohibiting a court or the clerk of a court from requiring a party in a civil action to disclose a social security number or driver's license number or any part of a social security number or driver's license number in the records or pleadings of the court unless the party consents to the disclosure in any document, including a document filed as provided by Title 2 of this code or Chapter 52, Property Code.

(b) This section expires August 31, 2009.

The amendment was read.

Senator Duncan 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 763** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Duncan, Chair; Wentworth, Hinojosa, Carona, and Watson.

SENATE BILL 943 WITH HOUSE AMENDMENTS

Senator Janek called **SB 943** 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 **SB 943** (House committee report) as follows:

(1) In SECTION 10 of the bill, in amended Subsection (a), Section 431.412, Health and Safety Code (page 15, line 12), between "prescription drug" and "that", insert "for human consumption".

(2) In SECTION 11 of the bill, in amended Subsection (a), Section 431.413, Health and Safety Code (page 16, lines 3 through 5), strike "or from the manufacturer's third-party logistics provider, co-licensed product partner, or exclusive distributor,".

(3) In SECTION 11 of the bill, in amended Subsection (c), Section 431.413, Health and Safety Code (page 16, line 26), strike "fifth" and substitute "second".

(4) Strike SECTION 13 of the bill amending Section 431.415, Health and Safety Code (page 17, line 27, through page 18, line 20).

(5) In SECTION 16 of the bill (page 21, line 23), strike "December 1, 2007." and substitute "May 1, 2008."

(6) Renumber SECTIONS of the bill appropriately.

Floor Amendment No. 2

Amend **SB 943** (House committee report) as follows:

(1) In SECTION 1 of the bill, strike added Paragraph (C), Subdivision (5), Section 431.401, Health and Safety Code (page 3, lines 20 through 25), and substitute the following:

(C) [a manufacturer to] an authorized distributor of record to a pharmacy warehouse to the pharmacy warehouse's intracompany pharmacy [one other authorized distributor of record to a pharmacy or practitioner to a patient]; [or]

(2) In SECTION 1 of the bill, at the end of added Paragraph (D), Subdivision (5), Section 431.401, Health and Safety Code (page 4, line 3), strike "or".

(3) In SECTION 1 of the bill, at the end of added Paragraph (E), Subdivision (5), Section 431.401, Health and Safety Code (page 4, line 6), between "prescriber" and the period, insert the following:

; or

(F) an authorized distributor of record to one other authorized distributor of record to a licensed practitioner for office use

(4) In SECTION 1 of the bill, strike added Paragraph (H), Subdivision (11), Section 431.401, Health and Safety Code (page 5, line 22, through page 6, line 3), and substitute the following:

(H) the sale, purchase, or trade of a drug, or the offer to sell, purchase, or trade a drug, for emergency medical reasons, including a transfer of a prescription drug by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

Floor Amendment No. 3

Amend **SB 943** (House committee report) as follows:

(1) In SECTION 2 of the bill, in amended Section 431.4031, Health and Safety Code (page 7, line 4), strike "431.4045" and substitute "431.4045(2)".

(2) In SECTION 4 of the bill, in added Subdivision (1), Section 431.4045, Health and Safety Code (page 10, line 22), between "431.404" and the underlined semicolon, insert the following:

or determines that an inspection is unnecessary after thoroughly evaluating the information in the application, the compliance history of the applicant and the applicant's principals, and the risk of counterfeiting in the applicant's product

(3) In SECTION 5 of the bill, in amended Section 431.405, Health and Safety Code (page 11, line 1), strike "To" and substitute the following:

(a) The department may not issue a wholesale distributor license to an applicant without considering the minimum federal information and related qualification requirements published in federal regulations at 21 C.F.R. Part 205, including:

(1) factors in reviewing the qualifications of persons who engage in wholesale distribution, 21 C.F.R. Section 205.6;

(2) appropriate education and experience for personnel employed in wholesale distribution, 21 C.F.R. Section 205.7; and

(3) the storage and handling of prescription drugs and the establishment and maintenance of prescription drug distribution records, 21 C.F.R. Section 205.50.

(b) In addition to meeting the minimum federal requirements as provided by Subsection (a), to ~~[T]~~

(4) In SECTION 5 of the bill, in amended Subdivision (6), Section 431.405, Health and Safety Code (page 11, line 20), between "in a circumstance" and "in which", insert " , as the department determines reasonable, ".

Floor Amendment No. 4

Amend **SB 943** (House committee report) as follows:

(1) Strike SECTION 8 of the bill adding Sections 431.4101 and 431.4102, Health and Safety Code (page 12, line 22, through page 13, line 5).

(2) In the recital to SECTION 9 of the bill (page 13, lines 7 and 8), strike "adding Subsections (a-1), (a-2), and (e)" and substitute "adding Subsections (a-1) and (a-2)".

(3) In SECTION 9 of the bill (page 14, line 20, through page 15, line 5), strike added Subsection (e), Section 431.411, Health and Safety Code.

(4) Renumber SECTIONS of the bill appropriately.

Floor Amendment No. 5

Amend **SB 943** (House committee report) by striking SECTION 14 of the bill adding Sections 431.416 and 431.417, Health and Safety Code (page 18, line 21, through page 21, line 16), and substituting the following appropriately numbered SECTIONS:

SECTION _____. Section 431.021, Health and Safety Code, is amended to read as follows:

Sec. 431.021. PROHIBITED ACTS. The following acts and the causing of the following acts within this state are unlawful and prohibited:

(a) the introduction or delivery for introduction into commerce of any food, drug, device, or cosmetic that is adulterated or misbranded;

(b) the adulteration or misbranding of any food, drug, device, or cosmetic in commerce;

(c) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(d) the distribution in commerce of a consumer commodity, if such commodity is contained in a package, or if there is affixed to that commodity a label that does not conform to the provisions of this chapter and of rules adopted under the authority of

this chapter; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

- (1) are engaged in the packaging or labeling of such commodities; or
- (2) prescribe or specify by any means the manner in which such commodities are packaged or labeled;

- (e) the introduction or delivery for introduction into commerce of any article in violation of Section 431.084, 431.114, or 431.115;

- (f) the dissemination of any false advertisement;

- (g) the refusal to permit entry or inspection, or to permit the taking of a sample or to permit access to or copying of any record as authorized by Sections 431.042-431.044; or the failure to establish or maintain any record or make any report required under Section 512(j), (l), or (m) of the federal Act, or the refusal to permit access to or verification or copying of any such required record;

- (h) the manufacture within this state of any food, drug, device, or cosmetic that is adulterated or misbranded;

- (i) the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic; or the giving of a guaranty or undertaking referred to in Section 431.059, which guaranty or undertaking is false;

- (j) the use, removal, or disposal of a detained or embargoed article in violation of Section 431.048;

- (k) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale after shipment in commerce and results in such article being adulterated or misbranded;

- (l)(1) forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under this chapter or the regulations promulgated under the provisions of the federal Act;

- (2) making, selling, disposing of, or keeping in possession, control, or custody, or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling thereof so as to render such drug a counterfeit drug;

- (3) the doing of any act that causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing, of a counterfeit drug;

- (m) the using by any person to the person's own advantage, or revealing, other than to the commissioner, an authorized agent, a health authority or to the courts when relevant in any judicial proceeding under this chapter, of any information acquired under the authority of this chapter concerning any method or process that as a trade secret is entitled to protection;

(n) the using, on the labeling of any drug or device or in any advertising relating to such drug or device, of any representation or suggestion that approval of an application with respect to such drug or device is in effect under Section 431.114 or Section 505, 515, or 520(g) of the federal Act, as the case may be, or that such drug or device complies with the provisions of such sections;

(o) the using, in labeling, advertising or other sales promotion of any reference to any report or analysis furnished in compliance with Sections 431.042-431.044 or Section 704 of the federal Act;

(p) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor of the drug to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter that is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal Act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter;

(q)(1) placing or causing to be placed on any drug or device or container of any drug or device, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing;

(2) selling, dispensing, disposing of or causing to be sold, dispensed, or disposed of, or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container of any drug or device, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by Subdivision (1) of this subsection; or

(3) making, selling, disposing of, causing to be made, sold, or disposed of, keeping in possession, control, or custody, or concealing with intent to defraud any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing on any drug or container or labeling of any drug or container so as to render such drug a counterfeit drug;

(r) dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission in each case of the person ordering or prescribing;

(s) the failure to register in accordance with Section 510 of the federal Act, the failure to provide any information required by Section 510(j) or (k) of the federal Act, or the failure to provide a notice required by Section 510(j)(2) of the federal Act;

(t)(1) the failure or refusal to:

(A) comply with any requirement prescribed under Section 518 or 520(g) of the federal Act; or

(B) furnish any notification or other material or information required by or under Section 519 or 520(g) of the federal Act;

(2) with respect to any device, the submission of any report that is required by or under this chapter that is false or misleading in any material respect;

(u) the movement of a device in violation of an order under Section 304(g) of the federal Act or the removal or alteration of any mark or label required by the order to identify the device as detained;

(v) the failure to provide the notice required by Section 412(b) or 412(c), the failure to make the reports required by Section 412(d)(1)(B), or the failure to meet the requirements prescribed under Section 412(d)(2) of the federal Act;

(w) except as provided under Subchapter M of this chapter and Section 562.1085, Occupations Code, the acceptance by a person of an unused prescription or drug, in whole or in part, for the purpose of resale, after the prescription or drug has been originally dispensed, or sold;

(x) engaging in the wholesale distribution of drugs or operating as a distributor or manufacturer of devices in this state without obtaining a license issued by the department under Subchapter I, L, or N, as applicable;

(y) engaging in the manufacture of food in this state or operating as a warehouse operator in this state without having a license as required by Section 431.222 or operating as a food wholesaler in this state without having a license under Section 431.222 or being registered under Section 431.2211, as appropriate;

(z) unless approved by the United States Food and Drug Administration pursuant to the federal Act, the sale, delivery, holding, or offering for sale of a self-testing kit designed to indicate whether a person has a human immunodeficiency virus infection, acquired immune deficiency syndrome, or a related disorder or condition;

(aa) making a false statement or false representation in an application for a license or in a statement, report, or other instrument to be filed with or requested by the department under this chapter;

(bb) failing to comply with a requirement or request to provide information or failing to submit an application, statement, report, or other instrument required by the department;

(cc) performing, causing the performance of, or aiding and abetting the performance of an act described by Subdivision (x);

(dd) purchasing or otherwise receiving a prescription drug from a pharmacy in violation of Section 431.411(a);

(ee) selling, distributing, or transferring a prescription drug to a person who is not authorized under state or federal law to receive the prescription drug in violation of Section 431.411(b);

(ff) failing to deliver prescription drugs to specified premises as required by Section 431.411(c);

(gg) failing to maintain or provide pedigrees as required by Section 431.412 or 431.413;

(hh) failing to obtain, pass, or authenticate a pedigree as required by Section 431.412 or 431.413; [✗]

(ii) the introduction or delivery for introduction into commerce of a drug or prescription device at a flea market;

(jj) the receipt of a prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, and the delivery or proffered delivery of such a drug for payment or otherwise; or

(kk) the alteration, mutilation, destruction, obliteration, or removal of all or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

SECTION _____. Subchapter B, Chapter 431, Health and Safety Code, is amended by adding Section 431.0211 to read as follows:

Sec. 431.0211. EXCEPTION. Any provision of Section 431.021 that relates to a prescription drug does not apply to a prescription drug manufacturer, or an agent of a prescription drug manufacturer, who is obtaining or attempting to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

The amendments were read.

Senator Janek moved to concur in the House amendments to **SB 943**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 255 WITH HOUSE AMENDMENTS

Senator Carona called **SB 255** 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 **SB 255** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in added Subsection (a), Section 201.805, Transportation Code (page 2, line 10), strike "and".

(2) In SECTION 1 of the bill, in added Subsection (a), Section 201.805, Transportation Code, between "expenditures" and the period (page 2, line 12), insert the following:

;

(12) the dollar amount of any pass-through toll agreements;

(13) the percentage of highway construction projects completed on time;

and

(14) the percentage of highway construction projects that cost:

(A) more than the contract amount; and

(B) less than the contract amount

(3) In SECTION 1 of the bill, immediately following added Subsection (b), Section 201.805, Transportation Code (page 2, between lines 15 and 16), insert the following:

(c) The department shall annually publish in appropriate media and on the department's Internet website in a format that allows the information to be read into a commercially available electronic database the following information for each fiscal year:

(1) the amount of money in the Texas mobility fund itemized by the source of the money; and

(2) the amount of money received by the department:

(A) itemized by the source of the money; and

(B) compared to the amount of money appropriated by the legislature to the department in the General Appropriations Act.

Floor Amendment No. 2

Amend **SB 255** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in added Subsection (a), Section 201.805, Transportation Code (page 2, line 10), strike "and".

(2) In SECTION 1 of the bill, in added Subsection (a), Section 201.805, Transportation Code, between "expenditures" and the period (page 2, line 12), insert the following:

; and

(12) a description of real property acquired by the department through the exercise of eminent domain, including the acreage of the property and the location of the property

Floor Amendment No. 3

Amend **SB 255** (House committee printing) in SECTION 1 of the bill, immediately following added Subsection (b), Section 201.805, Transportation Code (page 2, between lines 15 and 16), by inserting the following:

(c) The department shall annually publish in appropriate media and on the department's Internet website in a format that allows the information to be read into a commercially available electronic database a list of each contract the department has with:

(1) a person required to register as a lobbyist under Chapter 305, Government Code;

(2) a public relations firm; or

(3) a government consultant.

The amendments were read.

Senator Carona moved to concur in the House amendments to **SB 255**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 254 WITH HOUSE AMENDMENT

Senator Ellis called **SB 254** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 254** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED

AN ACT

relating to the sale of live animals in certain counties on a public highway or road, the right-of-way of a public highway or road, or a parking lot.

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

SECTION 1. Section 285.001, Transportation Code, is amended to read as follows:

Sec. 285.001. REGULATION OF ROADSIDE VENDOR AND SOLICITOR. To promote the public safety, the commissioners court of a county with a population of more than 1.3 ~~[2.2]~~ million by order may regulate the following in the unincorporated area of the county if they occur on a public highway or road, ~~[in the unincorporated area of the county or]~~ in the right-of-way of a public ~~[the]~~ highway or road, or in a parking lot:

(1) the sale of items by a vendor of food or merchandise, including live animals;

(2) the erection, maintenance, or placement of a structure by a vendor of food or merchandise, including live animals; and

(3) the solicitation of money.

SECTION 2. This Act takes effect September 1, 2007.

The amendment was read.

Senator Ellis moved to concur in the House amendment to **SB 254**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 361 WITH HOUSE AMENDMENT

Senator Janek called **SB 361** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 361** (House committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Section 101.004(e), Election Code, strike Subdivision (1) (page 1, lines 10 through 14) and substitute the following:

(1) the applicant submits a federal postcard application to the early voting clerk on or before the 20th ~~[30th]~~ day before election day; and

(2) In SECTION 1 of the bill, in amended Section 101.004(i), Election Code (page 2, line 11 through page 3, line 2), strike the text and substitute the following: application made under Subsection (e):

(1) an application that does not contain a cancellation mark is considered to be timely if it is received by the early voting clerk on or before the 15th ~~[22nd]~~ day before election day; and

(2) if the 20th ~~[30th]~~ day before the date of an election is a Saturday, Sunday, or legal state or national holiday, an application is considered to be timely if it is submitted to the early voting clerk on or before the next regular business day.

The amendment was read.

Senator Janek moved to concur in the House amendment to **SB 361**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 387 WITH HOUSE AMENDMENT

Senator Carona called **SB 387** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 387** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED**AN ACT**

relating to loose material transported by vehicle.

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

SECTION 1. Section 725.001, Transportation Code, is amended by amending Subdivision (2) and adding Subdivision (4-a) to read as follows:

(2) "Loose material" means material that can be blown or spilled from a vehicle because of movement or exposure to air, wind currents, or other weather. The term includes dirt, sand, gravel, refuse, and wood chips but excludes an agricultural product in its natural state.

(4-a) "Refuse" means trash, rubbish, garbage, or any other discarded material.

SECTION 2. Section 725.002, Transportation Code, is amended to read as follows:

Sec. 725.002. APPLICABILITY. This chapter applies to any motor vehicle, trailer, or semitrailer operated on a public highway except[~~:-~~

~~(+) a vehicle or construction or mining equipment that is:~~

~~(1) (+) moving between construction barricades on a public works project;~~

or

~~(2) (+) crossing a public highway[~~:-~~ or~~

~~(2) a vehicle that is operated at a speed less than 30 miles per hour].~~

SECTION 3. Subsection (a), Section 725.003, Transportation Code, is amended to read as follows:

(a) A person or the person's agent or employee may not transport loose material[~~:- aggregates, or refuse~~] in violation of this chapter.

SECTION 4. Subsections (c) and (e), Section 725.021, Transportation Code, are amended to read as follows:

(c) Except as provided by Subsection (e), the load shall be covered and the covering firmly secured at the front and back, unless the load:

(1) is completely enclosed by the load-carrying compartment; or

(2) does not blow from or spill over the top of the load-carrying compartment.

(e) If the vehicle is a commercial motor vehicle transporting loose material [~~aggregates, as defined by Section 133.003, Natural Resources Code, or refuse~~], the load shall be covered and the covering firmly secured at the front and back or shall be completely enclosed by the load-carrying compartment. For purposes of this section, "commercial motor vehicle" means a motor vehicle, trailer, or semitrailer used primarily in the business of transporting property.

SECTION 5. This Act takes effect September 1, 2007.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 387**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 723 WITH HOUSE AMENDMENT

Senator Lucio called **SB 723** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 723** by adding the following appropriately numbered SECTIONS to the bill and renumbering the subsequent SECTIONS as appropriate:

SECTION _____. Article 5.04, Code of Criminal Procedure, is amended by adding Subsection (a-1) to read as follows:

(a-1) A peace officer who investigates a family violence allegation or who responds to a disturbance call that may involve family violence shall determine whether the address of the persons involved in the allegation or call matches the address of a current licensed foster home or verified agency foster home listed in the Texas Crime Information Center.

SECTION _____. Article 5.05, Code of Criminal Procedure, is amended by amending Subsection (b) and adding Subsection (a-1) to read as follows:

(a-1) In addition to the written report required under Subsection (a), a peace officer who investigates a family violence incident or who responds to a disturbance call that may involve family violence shall make a report to the Department of Family and Protective Services if the location of the incident or call, or the known address of a person involved in the incident or call, matches the address of a current licensed foster home or a verified agency foster home as listed in the Texas Crime Information Center. The report under this subsection may be made orally or electronically and must:

(1) include the information required by Subsection (a); and

(2) be filed with the Department of Family and Protective Services within 24 hours of the beginning of the investigation or receipt of the disturbance call.

(b) Each local law enforcement agency shall establish a departmental code for identifying and retrieving family violence reports as outlined in Subsection (a) of this section. A district or county attorney or an assistant district or county attorney exercising authority in the county where the law enforcement agency maintains records under this section is entitled to access to the records. The Department of Family and Protective Services is entitled to access the records relating to any person who is 14 years of age or older and who resides in a licensed foster home or a verified agency foster home.

SECTION _____. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Sections 42.0448 and 42.0449 to read as follows:

Sec. 42.0448. NOTIFICATION OF FAMILY VIOLENCE CALLS. The department shall notify a child-placing agency of each family violence report the department receives under Article 5.05, Code of Criminal Procedure, that:

(1) occurred at an agency foster home verified by the child-placing agency;
or

(2) involves a person who resides at an agency foster home verified by the child-placing agency.

Sec. 42.0449. REQUIRED ACTIONS AFTER NOTICE OF FAMILY VIOLENCE CALL. The executive commissioner shall adopt rules specifying the actions that the department, an independent foster home, and a child-placing agency shall take after receiving notice of a family violence report under Article 5.05, Code of Criminal Procedure, or Section 42.0448 to ensure the health, safety, and welfare of each child residing in the licensed foster home or verified agency foster home.

SECTION ____. Section 42.045, Human Resources Code, is amended by adding Subsection (d) to read as follows:

(d) An independent foster home and a child-placing agency shall notify the department of any change of address for a licensed foster home or a verified agency foster home. The independent foster home and child-placing agency shall notify the department of the address change within the earlier of two business days or 72 hours of the date the foster home changes its address.

SECTION ____. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0451 to read as follows:

Sec. 42.0451. DATABASE OF FOSTER HOMES; INFORMATION PROVIDED TO DEPARTMENT OF PUBLIC SAFETY. (a) The department shall maintain a database of licensed foster homes and verified agency foster homes including the current address for each licensed or verified home as reported to the department. The database must be updated on a regular basis.

(b) The department shall make the database available to the Department of Public Safety for the purposes of Subsection (c).

(c) The Department of Public Safety shall include the information provided under Subsection (b) in the Texas Crime Information Center database and establish a procedure by which a peace officer or employee of a law enforcement agency who provides the department with a street address is automatically provided information as to whether the address is licensed as a foster home or verified as an agency foster home under this chapter.

(d) Information provided to the Department of Public Safety under this section is confidential and not subject to disclosure under Chapter 552, Government Code.

SECTION ____. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.0561 to read as follows:

Sec. 42.0561. INFORMATION RELATING TO FAMILY VIOLENCE REPORTS. Before the department may issue a license or registration for a foster home or a child-placing agency may issue a verification certificate for an agency foster home, the department or child-placing agency must obtain information relating to each family violence report at the applicant's residence to which a law enforcement agency responded during the 12 months preceding the date of the application. The applicant shall provide the information on a form prescribed by the department.

SECTION _____. The Department of Family and Protective Services shall establish the database and a method for exchanging information required by Section 42.0451, Human Resources Code, as added by this Act, not later than September 1, 2008.

SECTION _____. Section 42.0561, Human Resources Code, as added by this Act, applies to an application for a license, registration, or certificate made on or after the effective date of this Act. An application made before the effective date of this Act is governed by the law in effect on the date the application was made, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Lucio moved to concur in the House amendment to **SB 723**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 1533 WITH HOUSE AMENDMENT

Senator Fraser called **SB 1533** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1533** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the transfer of certain state property from the Texas Department of Criminal Justice to Burnet County.

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

SECTION 1. (a) Not later than November 1, 2007, the Texas Department of Criminal Justice shall transfer to Burnet County the real property described by Subsection (d) of this section.

(b) Burnet County shall use the property transferred under this Act only for a purpose that benefits the public interest of the state. If Burnet County no longer uses the property for a purpose that benefits the public interest of the state, ownership of the property automatically reverts to the Texas Department of Criminal Justice.

(c) The Texas Department of Criminal Justice shall transfer the property by an appropriate instrument of transfer. The instrument of transfer must:

(1) include a provision that:

(A) requires Burnet County to use the property for a purpose that benefits the public interest of the state; and

(B) indicates that ownership of the property automatically reverts to the Texas Department of Criminal Justice if Burnet County no longer uses the property for a purpose that benefits the public interest of the state; and

(2) describe the property to be transferred by metes and bounds.

(d) The real property to which Subsection (a) of this section refers is described as follows:

Field notes of a 75.00 acre tract of land out of the 300.00 acre Texas Department of Criminal Justice Tract recorded in Cabinet 2, Slide 49-C of the Burnet County Plat Records also being out of the 300.00 acres conveyed to Texas Department of Criminal Justice in Volume 608, Page 19 of the Official Public Records of Burnet County, Texas. The basis of bearing for this survey is the recorded plat of said Texas Department of Criminal Justice Tract.

Beginning at a 1/2" steel stake found in the North right-of-way line of County Road 100 (Scenic Oaks Drive as shown on the plat of Oak Vista Subdivision recorded in Cabinet 1, Slides 183 C & D and 184 A & B of the Burnet County Plat Records, Burnet County, Texas) and the South line of that certain Tract No. 68 of said Oak Vista Subdivision for the Southwest corner of said 178.686 acre tract, the Southwest corner of said Texas Department of Criminal Justice Tract and the Southwest corner hereof;

Thence leaving the North right-of-way line of said County Road and the South line of said Tract No. 68 with the West line of said 300.00 acre tract, the West line of said Texas Department of Criminal Justice Tract and the West line hereof North $13^{\circ}01'53''$ West, at a distance of 3378.75 feet to a Cedar Fence Post Found in the South right-of-way line of Oak Vista Drive and the North line of Tract No. 59 of said Oak Vista Subdivision for the Northwest corner of said Texas Department of Criminal Justice Tract and the Northwest corner hereof;

Thence with the South right-of-way line of said Oak Vista Drive, the North line of said 300.00 acre tract, the North line of said Texas Department of Criminal Justice Tract, and the North line hereof with (2) calls as follows: North $76^{\circ}51'56''$ East, a distance of 698.12 feet (698.67) feet to a 1/2" steel stake found for an angle point hereof;

Thence North $76^{\circ}32'08''$ East, a distance of 268.15 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877 for the Northeast corner of this 75.00 acre tract.

Thence along the East line of this 75.00 acre tract South $13^{\circ}01'53''$ East, a distance of 3380.60 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877 in the North right-of-way line of said County Road 100 for the Southeast corner hereof, from which a 1/2" steel stake found bears North $76^{\circ}52'35''$ East, a distance of 482.76 feet;

Thence with the North right-of-way line of said Scenic Oaks Drive and the South line of said Texas Department of Criminal Justice Tract and the South line hereof with (2) calls as follows: South $76^{\circ}52'35''$ West, a distance of 686.48 feet to a 1/2" steel stake found for an angle point hereof;

Thence South $76^{\circ}54'09''$ West, a distance of 280.33 feet to the Place of Beginning.

THE ABOVE 75.00 ACRE TRACT BEING ACCOMPANIED BY THE
FOLLOWING

70' WIDE ACCESS EASEMENT

Field notes of a 70.00 foot wide Access and ~~Utility~~ Easement being 5.92 acres out of the 300.00 acre Texas Department of Criminal Justice Tract recorded in Cabinet 2, Slide 49-C of the Burnet County Plat Records also being out of the 300.00 acres conveyed to Texas Department of Criminal Justice in Volume 608, Page 19 of the Official Public Records of Burnet County, Texas. The basis of bearing for this survey is the recorded plat of said Texas Department of Criminal Justice Tract.

Beginning at a 1/2" steel stake found lying on the East line of said 300.00 acre Texas Department of Criminal Justice Tract and at the Southwest corner of a 6.00 acre tract conveyed to Fluorine on Call, LTD. recorded in Volume 1034, Page 85 of the Official Public Records of Burnet County, Texas having a tie of N 12°59'10" W, 944.99 feet to a 1/2" steel stake found at the Northeast corner of said 300.00 acre tract.

Thence along the East line of said 300.00 acre Texas Department of Criminal Justice Tract and the west line of a 29.227 acre remnant of 170.290 acres conveyed to the City of Burnet in Volume 565, Page 126 of the Official Public Records of Burnet County, Texas also being the West end of Ellen Halbert Drive an unrecorded City of Burnet street (L1) ~~S 13°00'00" E~~ S 12°59'10" E, 72.69 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877 lying on the East line of said 300.00 acre Texas Department of Criminal Justice Tract and west line of said 29.237 acres.

Thence leaving the East line of said 300.00 acre Texas Department of Criminal Justice Tract and along the Southerly line of this 70.00 foot wide Access Easement with 1/2" steel stakes set with plastic cap stamped R.P.L.S. 1877 with the next eight (8) calls as follows: (L2) N87°21'03"W, 470.72 feet to a curve (C2) to the right having a radius of 235.00 feet, a delta angle of 74°11'12", and a chord bearing and distance of S N 50°15'28" E W, 283.46 feet.

Thence along said curve and arc distance of 304.28 feet to a point of tangency.

Thence (L4) N 13°09'52" W, 235.10 feet to a curve (C4) to the left having a radius of 165.00 feet, a delta angle of 35°20'14", and a chord bearing and distance of N 30°49'58" W, 100.16 feet.

Thence along said curve and arc distance of 101.76 feet to a point of tangency.

Thence (L6) N 48°30'05" W, 257.66 feet to a curve (C6) to the left having a radius of 165.00 feet, a delta angle of 48°48'13", and a chord bearing and distance of N 79°02'05" W, 136.33 feet. Thence along said curve an arc distance of 140.54 feet to a point of tangency.

Thence (L9) S 76°33'50" W, 226.79 feet; (L11) S 76°28'46" W, 1947.12 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877 lying on the East line of the above described 75.00 acre tract.

Thence along the East line of said 75.00 acre tract, (L13) N 13°01'53" W, 70.00 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877 lying on the East line of said 75.00 acre tract and having a tie of N 13°01'53" W, 461.55' to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877 being the Northeast corner of said 75.00 acre tract.

Thence leaving the East line of said 75.00 acre tract and along the Northerly line of this 70.00 foot wide Access Easement (L12) N 76°28'46" E passing a cedar fence post found at an L corner of said 300.00 acres at 1328.57 feet in all 1946.58 feet to a 60 D nail in a cedar fence post found being an angle point on the north line of said 300.00 acre tract.

Thence along said north line (L8) N 76°33'50" E, 226.84 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877 and a curve (C5) to the right, having a radius of 235.00 feet, a delta angle of 49°47'52", and a chord bearing and distance of S 78°32'15" E, 197.88 feet.

Thence along said curve an arc distance of 204.25 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877.

Thence (L5) S 48°30'05" E, 261.08 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877 and a curve (C3) to the right having a radius of 235.00 feet, a delta angle of 35°20'13", and a chord bearing and distance of S 30°49'58" E, 142.65 feet.

Thence along said curve an arc distance of 144.94 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877.

Thence (L7) S 13°09'52" E, 235.10 feet to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877 and a curve (C1) to the left having a radius of 165.00 feet, a delta angle of 74°11'13", and a chord bearing and distance of S 50°15'28" E, 199.03 feet.

Thence along said curve an arc distance of 213.64 to a 1/2" steel stake set with plastic cap stamped R.P.L.S. 1877.

Thence (L3) S 87°21'03" E, 451.12 feet for the Point of Beginning.

(e) The Texas Department of Criminal Justice shall grant to Burnet County certain utility easements to the real property described in Subsection (d) of this section. Utility easements shall be mutually beneficial and agreed upon by the Texas Department of Criminal Justice and Burnet County.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Fraser moved to concur in the House amendment to **SB 1533**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 1153 WITH HOUSE AMENDMENT

Senator Carona called **SB 1153** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1153** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to the use of title insurance to insure certain interests in personal property.

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

SECTION 1. Title 11, Insurance Code, is amended by adding Subtitle F to read as follows:

SUBTITLE F. TITLE INSURANCE FOR CERTAIN
PERSONAL PROPERTY INTERESTS
CHAPTER 2751. TITLE INSURANCE FOR PERSONAL
PROPERTY INTERESTS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2751.001. GENERAL DEFINITIONS. (a) The definitions under Sections 2501.003(2)-(5), (7), (10), and (12)-(14) apply to the regulation of title insurance under this chapter.

(b) In this subtitle, a term not defined under Subsection (a) that is used in Chapter 9, Business & Commerce Code, has the meaning assigned by that code.

Sec. 2751.002. DEFINITIONS OF PERSONAL PROPERTY AND PERSONAL PROPERTY TITLE INSURANCE. In this subtitle:

(1) "Personal property" has the meaning assigned by Section 1.04, Tax Code.

(2) "Personal property title insurance" means coverage that insures:

(A) whether affirming or negating, one or more of the elements of attachment, perfection, or priority of a security interest in personal property or fixtures;

(B) the results, as to correctness, completeness, or other criteria, of a search of:

(i) the filing office of the financing statement record of a debtor; or

(ii) any other database, whether publicly or privately maintained, such as court dockets, tax records, motor vehicle department records, or the records of the Federal Aviation Administration as to aircraft, the United States Coast Guard as to vessels, or the United States Department of Transportation;

(C) the status of ownership of, rights in, powers to transfer rights in, or title with respect to personal property or fixtures;

(D) the effectiveness of the filing of a financing statement with a filing office, or any other record with any publicly maintained database or registry;

(E) the lien status of personal property or fixtures, or compliance with Title 1, Business & Commerce Code, the Uniform Commercial Code, international conventions such as the United Nations Commission on International Trade Law (UNCITRAL), or similar laws or regulations; or

(F) any of the matters covered by Paragraphs (A)-(E) with respect to the laws of any other domestic or foreign jurisdiction.

Sec. 2751.003. APPLICABILITY OF OTHER LAWS. (a) Except as provided by Subsection (b), this code, other than this chapter, does not apply to the business of personal property title insurance.

(b) The following laws apply to the business of personal property title insurance:

(1) Section 2501.005, other than Subsections (a)(2)(A)-(C) of that section;

(2) Section 2501.007;

(3) Section 2502.001;

(4) Sections 2502.051, 2502.053, and 2502.055;

(5) Chapter 2551;

(6) Chapter 2553;

(7) Chapter 2601;

(8) Chapter 2651;

(9) Chapter 2652;

(10) Section 2701.002;

(11) Chapter 2703, except to the extent of any conflict with Subchapter B of this chapter;

(12) Section 2704.001, other than Subdivisions (1) and (2) of that section;

(13) Section 2704.002; and

(14) Section 2704.004.

Sec. 2751.004. GENERAL RULES. The commissioner, in the manner prescribed by Subchapter A, Chapter 36, shall adopt rules as necessary to implement and enforce this chapter.

[Sections 2751.005-2751.050 reserved for expansion]

SUBCHAPTER B. RATES AND FORMS

Sec. 2751.051. FIXING AND PROMULGATING PREMIUM RATES AND FORMS. (a) The commissioner shall, in the manner prescribed by this subchapter:

(1) fix and promulgate the premium rates to be charged by a title insurance company or by a title insurance agent for personal property title insurance policies under this chapter; and

(2) prescribe the forms to be used in connection with those policies.

(b) A premium may not be charged for a personal property title insurance policy or for another prescribed or approved form at a rate different than the rate fixed and promulgated by the commissioner.

(c) The commissioner may not limit the number of forms for personal property title insurance if the forms meet the requirements of this title.

Sec. 2751.052. FACTORS CONSIDERED IN FIXING PREMIUM RATES. (a) In fixing premium rates, the commissioner shall consider all relevant income and expenses of title insurance companies and title insurance agents attributable to engaging in the business of personal property title insurance in this state.

(b) The premium rates fixed by the commissioner must be reasonable, adequate, not unfairly discriminatory, nonconfiscatory, and not excessive.

Sec. 2751.053. HEARING REQUIRED. (a) Before a premium rate may be fixed and forms adopted for personal property title insurance under this chapter, the department must provide reasonable notice and a hearing must be afforded to title insurance companies, title insurance agents, and the public.

(b) A hearing under this section is subject to Subchapter B, Chapter 40, and is handled as a contested case under Chapter 2001, Government Code, in the manner prescribed by that subchapter.

Sec. 2751.054. COMMISSIONER ORDER. (a) Not later than the 90th day after the date of a hearing under Section 2751.053, the commissioner shall issue an order prescribing the rates and forms to be used in connection with personal property title insurance policies under this chapter.

(b) The commissioner's order promulgating rates must be based on the evidence adduced at the hearing.

Sec. 2751.055. REVISIONS TO RATES AND FORMS; HEARING. (a) A title insurance company may apply to the department in the manner prescribed by the commissioner for approval of a new or revised personal property title insurance form

or a change in a rate associated with such a form. The commissioner may approve or disapprove an application after a hearing conducted in the manner prescribed by Section 2751.053.

(b) A hearing under this section must be conducted not later than the 60th day after the date on which the department receives the application.

(c) The commissioner shall approve or disapprove the application not later than the 90th day after the date of the hearing under Subsection (a).

[Sections 2751.056-2751.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF INSURERS AND AGENTS

Sec. 2751.101. ISSUANCE OF POLICIES. A title insurance company may issue a personal property title insurance policy in this state if the policy covers personal property or fixtures, or a secured party or other insured, or a debtor, located in this state.

Sec. 2751.102. USE OF FORMS. (a) A title insurance company or title insurance agent shall use the forms prescribed by the commissioner in issuing a personal property title insurance policy.

(b) Unless authorized by rule adopted by the commissioner, an insurer may not enter into a contract or other agreement concerning a personal property title insurance policy if the contract or other agreement is not expressed in the policy. A contract or agreement prohibited by this subsection is void.

Sec. 2751.103. AGENTS. A title insurance agent or direct operation may accept orders for insurance products authorized under this chapter. The agent or direct operation shall act according to the authority granted to the agent or direct operation by the title insurance company issuing the product.

Sec. 2751.104. AGENT COMPENSATION. (a) The title insurance company that issues a personal property title insurance policy shall pay the title insurance agent that places the order for the policy a total commission equal to 30 percent of the premium charged for the personal property title insurance or personal property title insurance product authorized under this chapter.

(b) Notwithstanding Subsection (a), a title insurance company may not pay a commission to a title insurance agent for an application for coverage that is placed with the title insurance company directly.

(c) A commission paid under Subsection (a) does not constitute a violation of Section 2502.051.

SECTION 2. Section 2501.002(a), Insurance Code, is amended to read as follows:

(a) The purpose of this title is to completely regulate the business of title insurance on real property and, as described by Subtitle F, on personal property, including the direct issuance of policies and the reinsurance of any assumed risks, to:

- (1) protect consumers and purchasers of title insurance policies; and
- (2) provide adequate and reasonable rates of return for title insurance companies and title insurance agents.

SECTION 3. Section 2501.003(12), Insurance Code, is amended to read as follows:

- (12) "Title insurance" means:

(A) insurance that insures, guarantees, or indemnifies an owner of real property, or another interested in the real property, against loss or damage resulting from:

(i) a lien or encumbrance on or defect in the title to the real property; or

(ii) the invalidity or impairment of a lien on the real property; ~~or~~

(B) personal property title insurance, as defined by Chapter 2751; or

(C) any business that is substantially equivalent to the insurance described by Paragraphs (A) and (B) [Paragraph (A)] and is conducted in a manner designed to evade the provisions of this title.

SECTION 4. Section 2551.001(e), Insurance Code, is amended to read as follows:

(e) This title does not regulate the practice of law by an attorney. The actions of an attorney in examining title, in examining records regarding an interest insured under Chapter 2751, or in closing a real property or personal property transaction, regardless of whether a title insurance policy is issued, does not constitute the business of title insurance, unless the attorney elects to be licensed as an escrow officer.

SECTION 5. Section 2551.051(a), Insurance Code, is amended to read as follows:

(a) A private corporation may be created and licensed under this title for the following purposes:

(1) to compile and own or lease, or to acquire and own or lease, records or abstracts of title to real property or interests in real property in this state or other jurisdictions, to insure titles to that real property or interests in that real property, and to indemnify the owners of that real property, or the holders of interests in or liens on that real property, against loss or damage resulting from an encumbrance on or defect in the title to the real property or interests in the real property; ~~and~~

(2) in transactions in which title insurance is to be or is being issued, to supervise or approve the signing of legal instruments affecting the interest to be insured ~~[real property titles]~~, disbursement of money, prorations, delivery of legal instruments, closing of transactions, or issuance of commitments for title insurance specifying the requirements for title insurance and the defects in title necessary to be cured or corrected; and

(3) to issue personal property title insurance under Chapter 2751.

SECTION 6. Section 2551.302, Insurance Code, is amended to read as follows:

Sec. 2551.302. REQUIREMENTS FOR REINSURING POLICIES. A title insurance company may reinsure any of its policies and contracts issued on real property located in this state or on policies and contracts issued in this state under Chapter 2751, if:

(1) the reinsuring title insurance company is authorized to engage in business in this state under this title; and

(2) the department first approves the form of the reinsurance contract.

SECTION 7. Section 2551.304, Insurance Code, is amended to read as follows:

Sec. 2551.304. ACCEPTANCE OF REINSURANCE. A title insurance company may accept a reinsurance risk on real property located in this state or on interests described by Section 2751.002(2) only from an authorized title insurance company.

SECTION 8. The State Office of Administrative Hearings shall conduct the initial hearing required by Section 2751.053, Insurance Code, as added by this Act, not later than November 1, 2007.

SECTION 9. This Act applies only to a title insurance policy or contract delivered, issued for delivery, or renewed on or after January 1, 2008. A policy or contract delivered, issued for delivery, or renewed before January 1, 2008, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 10. This Act takes effect September 1, 2007.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1153**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 1828 WITH HOUSE AMENDMENTS

Senator Whitmire called **SB 1828** from the President's table for consideration of the House amendments to the bill.

The Presiding Officer, Senator Brimer in Chair, laid the bill and the House amendments before the Senate.

Amendment No. 2 on Third Reading

Amend **SB 1828** on third reading on page 2 as follows:

1. On line 14 between the word "permit" and the period insert:
, except as provided by rules adopted by the commission under Section 5.31

2. After line 14 insert a new subsection (g) to read as follows:

(g) In this section "transaction scan device" includes an electronic age verification system authorized by commission rule operated in conjunction with a point of sale terminal that scans the purchaser's drivers license or identification certificate upon enrollment, associates the purchaser's personal identifying information, as defined by Section 48.002(1)(C), Business and Commerce Code, with the purchaser's license or identification certificate information and is capable of allowing a seller to verify a purchaser's age solely by accessing the data and information.

Amendment No. 3 on Third Reading

Amend **SB 1828** on third reading after line 16 by inserting a new subsection (b-1) to read as follows:

(b-1) Information retained may be printed to hard copy with a time and date confirmation from the transaction scan device or transferred to an electronic encrypted data storage or electronic record. After printing or transferring data, the transaction

scan device may clear the scanned information from the device or any memory in the device. The commission by rule may set further requirements for the retention of information under this subsection.

The amendments were read.

Senator Whitmire moved to concur in the House amendments to **SB 1828**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

SENATE BILL 1263 WITH HOUSE AMENDMENT

Senator Carona, on behalf of Senator Brimer, called **SB 1263** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1263** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to regulation and licensing of certain insurance agents.

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

ARTICLE 1. LICENSING OF CERTAIN INSURANCE AGENTS

SECTION 1.01. Chapter 4051, Insurance Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. PERSONAL LINES PROPERTY AND CASUALTY AGENT

Sec. 4051.401. PERSONAL LINES PROPERTY AND CASUALTY LICENSE; LICENSE REQUIRED. A person is required to hold a personal lines property and casualty license if the person acts as:

(1) an agent who writes property and casualty insurance sold to individuals and families primarily for personal or household use for an insurer authorized to engage in the business of property and casualty insurance in this state; or

(2) a subagent of a person who holds a license as an agent under this subchapter who solicits and binds insurance risks for that agent.

Sec. 4051.402. AUTHORITY TO WRITE ADDITIONAL LINES. (a) A person who holds a personal lines property and casualty license may write the kind of insurance contracts described by:

(1) this subchapter;

(2) Subchapters C and E; and

(3) Chapter 4055.

(b) In addition to any of the insurance contracts described by Subsection (a), a person who holds a personal lines property and casualty license may write accident and health insurance contracts for individuals and families for personal, family, or household purposes for a property and casualty insurer authorized to sell those insurance products in this state.

Sec. 4051.403. PERSONAL LINES INCLUDED IN GENERAL PROPERTY AND CASUALTY LICENSE. Notwithstanding Section 4051.401, a person who holds a general property and casualty license under Subchapter B may write the kinds of insurance described by this subchapter.

Sec. 4051.404. FEES. Section 4001.006 applies to all fees collected under this subchapter.

SECTION 1.02. Chapter 4054, Insurance Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. LIFE AGENT

Sec. 4054.301. LICENSE REQUIRED. (a) Except as provided by Subsection (b), a person is required to hold a life agent license if the person does not hold a general life, accident, and health license under Subchapter B and the person acts as:

(1) an agent who writes insurance coverage on human lives, including endowment benefits and annuities, benefits in the event of death or dismemberment by accident, and benefits for disability income;

(2) an industrial life insurance agent for an insurer that writes only weekly premium life insurance on a debit basis under Chapter 1151;

(3) an agent who writes fixed or variable annuity contracts or variable life contracts;

(4) an agent who writes for a stipulated premium company only life insurance in excess of \$15,000 on any one life; or

(5) an agent who writes any other kind of insurance as required by the commissioner for the protection of the insurance consumers of this state.

(b) A person who holds a limited license under Subchapter C and who engages in the business of insurance only within the scope of that license is not required to hold a life agent license. A person who holds a life agent license may write the insurance described by that subchapter.

(c) A person who holds a funeral prearrangement life insurance license under Subchapter D and who engages in the business of insurance only within the scope of that license is not required to hold a life agent license. A person who holds a life agent license may write the insurance described by that subchapter.

(d) A person who holds a license to write life insurance not exceeding \$15,000 under Subchapter E and who engages in the business of insurance only within the scope of that license is not required to hold a life agent license. A person who holds a life agent license may write the insurance described by that subchapter.

(e) This subchapter does not apply to a person who holds a specialty license under Chapter 4055 and who engages in the business of insurance only within the scope of the specialty license.

Sec. 4054.302. AUTHORITY TO WRITE SPECIFIED COVERAGES. A person who holds a license under this subchapter may write only insurance described by Sections 4054.301(a)-(d).

Sec. 4054.303. APPLICABILITY OF CERTAIN REQUIREMENTS. Except as otherwise provided by this code, the provisions of this title that apply to the holder of a general life, accident, and health license apply to the holder of a license issued under this subchapter.

Sec. 4054.304. FEES. Section 4001.006 applies to all fees collected under this subchapter.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Section 523.152(a), Insurance Code, is amended to read as follows:

(a) An originating agent shall share commissions with an issuing agent as required by the market assistance program plan of operation if the originating agent holds a license as:

(1) a general property and casualty agent or a personal lines property and casualty agent; or

(2) a salaried representative for one or more insurers whose plan of operation does not contemplate the use of general property and casualty agents or personal lines property and casualty agents.

SECTION 2.02. Section 549.053(b), Insurance Code, is amended to read as follows:

(b) Subsection (a) does not:

(1) apply if the borrower provides the lender with specific written authority permitting or directing the particular use or disclosure of information before the use or disclosure occurs; or

(2) prevent a lender who is a licensed general property and casualty agent or a personal lines property and casualty agent from selling insurance to a borrower.

SECTION 2.03. Section 549.055, Insurance Code, is amended to read as follows:

Sec. 549.055. INSURANCE BINDER AS EVIDENCE OF INSURANCE. (a) A lender that requires a borrower to secure insurance coverage before the lender will provide a residential mortgage or commercial real estate loan must accept an insurance binder as evidence of the required insurance and may not require the borrower to provide an original insurance policy instead of a binder if:

(1) the binder is issued by a licensed general property and casualty agent or a personal lines property and casualty agent who is appointed to represent the insurer whose name appears on the binder and who is authorized to issue binders;

(2) the binder is accompanied by evidence of payment of the required premium; and

(3) the binder will be replaced by an original insurance policy for the required coverage on or before the 30th day after the date the binder is issued.

(b) A ~~[general]~~ property and casualty agent who issues an insurance binder under Subsection (a) must, on request, provide the lender with appropriate evidence for purposes of Subsection (a)(1).

SECTION 2.04. Section 549.056(e), Insurance Code, is amended to read as follows:

(e) Except as provided by this subsection, this subchapter does not prevent a lender from requiring, at or before the time of delivery to the lender of an insurance policy by a general property and casualty agent or a personal lines property and casualty agent or by the insurer, ~~[of an insurance policy to the lender]~~ a written statement from the borrower designating the agent or insurer as the borrower's agent

for the delivery of the policy. A lender may not require a statement described by this subsection when an agent or insurer is providing a renewal of an existing expiring insurance policy provided by the agent or insurer.

SECTION 2.05. Section 559.001(2), Insurance Code, is amended to read as follows:

(2) "Agent" means a person licensed or required to be licensed as a general property and casualty insurance agent or a personal lines property and casualty agent under Chapter 4051.

SECTION 2.06. The heading to Section 651.008, Insurance Code, is amended to read as follows:

Sec. 651.008. AUTHORITY OF CERTAIN ~~[GENERAL]~~ PROPERTY AND CASUALTY AGENTS TO CHARGE INTEREST TO CERTAIN PERSONS.

SECTION 2.07. Section 651.008(a), Insurance Code, is amended to read as follows:

(a) Notwithstanding any other law, a general property and casualty agent or a personal lines property and casualty agent who holds a license under Chapter 4051 may enter into a written agreement with a purchaser of insurance from the agent that provides for the payment of interest to the agent on any amount due to the agent for the insurance purchased. The interest is computed at a rate not to exceed the greater of:

- (1) a rate allowed by Chapter 303, Finance Code; or
- (2) the rate of one percent a month.

SECTION 2.08. Section 885.351, Insurance Code, is amended to read as follows:

Sec. 885.351. AGENTS. (a) A fraternal benefit society may appoint an agent licensed by the department under Chapter 4054 ~~[Article 21.07-1]~~ to sell benefits listed under Section 885.301(a) to society members.

(b) Except as provided by Section 885.352, a person may not solicit or procure benefit contracts for a fraternal benefit society unless the person is licensed as a general life, accident, and health agent or a life agent under Chapter 4054 ~~[Article 21.07-1]~~.

(c) The licensing and regulation of agents for fraternal benefit societies is subject to Title 13 ~~[Subchapter A, Chapter 21,]~~ and other laws regulating those agents.

SECTION 2.09. Section 981.203(a), Insurance Code, is amended to read as follows:

(a) The department may issue a surplus lines license to an applicant who the department determines complies with Subsection (b) and is:

- (1) an individual who:
 - (A) has passed an examination under Chapter 4002 ~~[Article 21.01-1]~~ and department rules; and
 - (B) holds a current license as:
 - (i) a general property and casualty agent authorized under Chapter 4051 ~~[Article 21.14]~~; or
 - (ii) a managing general agent; or
- (2) a corporation, limited liability company, or partnership that:

(A) has at least one officer or director or at least one active partner who has passed the required surplus lines license examination;

(B) holds a current license as:

(i) a general property and casualty agent authorized under Chapter 4051 ~~[Article 21.14]~~; or

(ii) a managing general agent; and

(C) conducts insurance activities under this chapter only through an individual licensed under this section.

SECTION 2.10. Section 981.220, Insurance Code, is amended to read as follows:

Sec. 981.220. MANAGING GENERAL AGENTS; LIMITED AUTHORITY OF CERTAIN AGENTS. ~~[(a) A managing general agent is not required to hold a local recording agent license to be eligible to receive a surplus lines license.]~~

~~[(b)]~~ A surplus lines license granted to a managing general agent who is not also licensed under Chapter 4051 ~~[Article 21.14]~~ is limited to the acceptance of business originating through a licensed general property and casualty agent. The license does not authorize the agent to engage in business directly with the insurance applicant.

SECTION 2.11. Section 1152.151, Insurance Code, is amended to read as follows:

Sec. 1152.151. AGENT'S LICENSE REQUIRED. (a) A person may not sell or offer for sale in this state a variable contract, or act to negotiate, make, or consummate a variable contract for another, unless the department has licensed the person under Chapter 4054 ~~[Article 21.07 +]~~ as a general life, accident, and health agent or a life agent.

(b) The licensing and regulation of a person acting as a variable contract agent is subject to the same provisions applicable to the licensing and regulation of other agents under Title 13 ~~[Subchapter A, Chapter 21]~~.

SECTION 2.12. Section 1505.005(b), Insurance Code, is amended to read as follows:

(b) A person licensed as a general life, accident, and health agent under Chapter 4054, ~~or~~ as a general property and casualty agent under Chapter 4051 authorized to write health and accident insurance under Section 4051.053, or as a personal lines property and casualty agent authorized to write health and accident insurance under Section 4051.402, [or 4054] may act in the licensed capacity in connection with an insurance policy or a certificate of insurance issued by an unincorporated association, trust, or other organization formed under Subsection (a). The agent is not required to notify the department that the person has been appointed to act for that purpose.

SECTION 2.13. Section 2151.053, Insurance Code, is amended to read as follows:

Sec. 2151.053. MEMBERSHIP OF GOVERNING COMMITTEE. The governing committee is composed of 15 members selected as follows:

(1) eight members who represent the interests of insurers, elected by the association members according to a method the members determine;

(2) five public members, nominated by the office of public insurance counsel and selected by the commissioner; and

(3) two members who are general or personal lines property and casualty agents, as required by the plan of operation.

SECTION 2.14. Section 2210.102(a), Insurance Code, is amended to read as follows:

(a) The board of directors is composed of the following nine members:

(1) five representatives of different insurers who are members of the association, elected by the members as provided by the plan of operation;

(2) two public representatives who are nominated by the office of public insurance counsel and who, as of the date of the appointment:

(A) reside in a catastrophe area; and

(B) are policyholders of the association; and

(3) two ~~[general]~~ property and casualty agents, each of whom must:

(A) ~~[who]~~ have demonstrated experience in the association; ~~[and]~~

(B) maintain the agent's ~~[whose]~~ principal office ~~[offices]~~, as of the date of the appointment, ~~[are located]~~ in a catastrophe area; and

(C) hold a license under Chapter 4054 as a general property and casualty agent or a personal lines property and casualty agent.

SECTION 2.15. Section 2210.202(b), Insurance Code, is amended to read as follows:

(b) A general property and casualty agent or a personal lines property and casualty agent must submit an application for the insurance coverage on behalf of the applicant on forms prescribed by the association. The application must contain a statement as to whether the applicant has submitted or will submit the premium in full from personal funds or, if not, to whom a balance is or will be due.

SECTION 2.16. Section 2210.204(d), Insurance Code, is amended to read as follows:

(d) If an insured requests cancellation of the insurance coverage, the association shall refund the unearned premium payable to the insured and the holder of an unpaid balance. The ~~[general]~~ property and casualty agent who submitted the application shall refund the agent's commission on any unearned premium in the same manner.

SECTION 2.17. Section 2211.154(b), Insurance Code, is amended to read as follows:

(b) A general property and casualty agent or personal lines property and casualty agent may make an application on behalf of the applicant. The applicant or agent must submit the application on a form prescribed by the association.

SECTION 2.18. Section 4001.205(a), Insurance Code, is amended to read as follows:

(a) A general life, accident, and health agent, life insurance agent, ~~[or a]~~ general property and casualty agent, or personal lines property and casualty agent appointed by an insurer authorized to engage in the business of insurance in this state shall notify the department on a form prescribed by the department if the agent appoints a subagent. The notice must be accompanied by a nonrefundable fee in an amount set by the department.

SECTION 2.19. Section 4002.003(a), Insurance Code, is amended to read as follows:

(a) The department may not require a person to take an examination under this chapter if the person is:

(1) an applicant for the renewal of an unexpired license issued by the department;

(2) an applicant whose license issued by the department expired less than one year before the date of the application, if the previous license was not denied, revoked, or suspended by the commissioner;

(3) a partnership, corporation, or depository institution;

(4) an applicant for a life, accident, and health license who is designated as a chartered life underwriter (CLU);

(5) an applicant for a life and health insurance counselor license who is designated as a chartered life underwriter (CLU), chartered financial consultant (ChFC), or certified financial planner (CFP);

(6) an applicant for a property and casualty license who is designated as a chartered property casualty underwriter (CPCU);

(7) an applicant for a specialty license issued under Chapter 4055;

(8) a nonresident individual who is exempt from the examination requirement under Chapter 4056; or

(9) an applicant for a general life, accident, and health license or a life agent license who was authorized to solicit or procure insurance on behalf of a fraternal benefit society on September 1, 1999, if the applicant:

(A) solicited or procured insurance on behalf of the fraternal benefit society for at least 24 months preceding September 1, 1999; and

(B) does not, on or after September 1, 1999, solicit or procure:

(i) insurance for any other insurer or a different fraternal benefit society;

(ii) an insurance contract from anyone other than a person who is eligible for membership in the fraternal benefit society; or

(iii) an interest-sensitive life insurance contract that exceeds \$35,000 of coverage on an individual life, unless the applicant is designated as a "Fraternal Insurance Counselor" at the time the contract is solicited or procured.

SECTION 2.20. Section 4004.053(a), Insurance Code, is amended to read as follows:

(a) An individual who holds a general life, accident, and health license, a life agent license, a life and health insurance counselor license, ~~or~~ a general property and casualty license, or a personal lines property and casualty license must complete 15 hours of continuing education annually. If the individual holds more than one license for which continuing education is otherwise required, the individual is not required to complete more than 15 continuing education hours annually.

SECTION 2.21. Section 4005.002(a), Insurance Code, is amended to read as follows:

(a) In connection with a client's application for insurance coverage or with ~~the~~ issuance of an insurance policy to a client, or on a client's request, a general property and casualty agent or personal lines property and casualty agent may obtain:

(1) the motor vehicle record of a person insured under or to be insured under an insurance policy; or

(2) a photograph of property insured under or to be insured under an insurance policy.

SECTION 2.22. Section 4005.003, Insurance Code, is amended to read as follows:

Sec. 4005.003. FEES. (a) A general property and casualty agent or personal lines property and casualty agent may charge a client a fee to reimburse the agent for costs the agent incurred in obtaining a motor vehicle record or photograph of property described under Section 4005.002. The fee may not exceed the actual costs to the agent.

(b) For services provided to a client, a ~~[general]~~ property and casualty agent described by Subsection (a) may charge a reasonable fee, including a fee for:

- (1) special delivery or postal charges;
- (2) printing or reproduction costs;
- (3) electronic mail costs;
- (4) telephone transmission costs; and
- (5) similar costs that the agent incurs on behalf of the client.

(c) A ~~[general]~~ property and casualty agent described by Subsection (a) may charge a client a fee under this section only if, before the agent incurs an expense for the client, the agent:

- (1) notifies the client of the agent's fee; and
- (2) obtains the client's written consent for each fee to be charged.

SECTION 2.23. Section 4051.001, Insurance Code, is amended to read as follows:

Sec. 4051.001. APPLICABILITY OF CHAPTER. (a) This subchapter and Subchapters B-E, ~~[and]~~ G, and I apply to each agent of an insurer authorized to engage in the business of property and casualty insurance in this state.

(b) This subchapter and Subchapters B-E, ~~[and]~~ G, and I apply to each person who performs the acts of an agent, as described by Section 4001.051, whether through an oral, written, electronic, or other form of communication, by soliciting, negotiating, procuring, or collecting a premium on an insurance contract offered by any kind of insurer authorized to engage in the business of property and casualty insurance in this state, including:

- (1) a fidelity or surety company;
- (2) a mutual insurance company, including a farm mutual or a county mutual;
- (3) a reciprocal or interinsurance exchange; and
- (4) a Lloyd's plan.

SECTION 2.24. Section 4051.051, Insurance Code, is amended to read as follows:

Sec. 4051.051. LICENSE REQUIRED. (a) A person is required to hold a general property and casualty license if the person acts as:

- (1) an agent who writes property and casualty insurance for an insurer authorized to engage in the business of property and casualty insurance in this state;
- (2) a subagent of a person who holds a license as an agent under this chapter who solicits and binds insurance risks for that agent; or

(3) an agent who writes any other kind of insurance as required by the commissioner for the protection of the insurance consumers of this state.

(b) Notwithstanding Subsection (a), a person is not required to hold a general property and casualty license to engage in an activity described by Subsection (a) if the person:

(1) holds a license under this chapter as a personal lines property and casualty agent; and

(2) limits activities described by Subsection (a) to those activities authorized under the scope of the person's license.

SECTION 2.25. Section 4053.002, Insurance Code, is amended to read as follows:

Sec. 4053.002. EXCEPTION. An agent licensed under Subchapter E, ~~[of]~~ Chapter 981, Subchapters B-E or I, ~~[of]~~ Chapter 4051, or Chapter 4056 is not a managing general agent unless the agent accepts 50 percent or more of the agent's total annual business or does \$500,000 or more of total annual business as measured by premium volume, whichever amount is less, from insurance policies produced and sold by other agents.

SECTION 2.26. Section 4053.101, Insurance Code, is amended to read as follows:

Sec. 4053.101. GENERAL POWERS AND DUTIES. A managing general agent acting for an insurer may:

- (1) receive and pass on daily reports and monthly accounts;
- (2) receive and be responsible for agency balances;
- (3) handle the adjustment of losses; or
- (4) appoint or direct general property and casualty agents and personal lines property and casualty agents in this state.

SECTION 2.27. Section 4054.051, Insurance Code, is amended to read as follows:

Sec. 4054.051. LICENSE REQUIRED. Except as provided by Subchapter G, a ~~[A]~~ person is required to hold a general life, accident, and health license if the person acts as:

- (1) an agent who represents a health maintenance organization;
- (2) an industrial life insurance agent for an insurer that writes only weekly premium life insurance on a debit basis under Chapter 1151;
- (3) an agent who writes life, accident, and health insurance for a life insurance company;
- (4) an agent who writes only accident and health insurance;
- (5) an agent who writes fixed or variable annuity contracts or variable life contracts;
- (6) an agent who writes for a stipulated premium company:
 - (A) only life insurance in excess of \$15,000 on any one life;
 - (B) only accident and health insurance; or
 - (C) both kinds of insurance described by Paragraphs (A) and (B);
- (7) an agent who writes life, accident, and health insurance for any type of authorized life insurance company that is domiciled in this state, including a legal reserve life insurance company, and who represents the company:

(A) in a foreign country or territory; and

(B) on a United States military installation or with United States military personnel;

(8) an agent who writes life, accident, and health insurance for a fraternal benefit society except as provided by Section 885.352; or

(9) an agent who writes any other kind of insurance as required by the commissioner for the protection of the insurance consumers of this state.

SECTION 2.28. Section 4054.052(b), Insurance Code, is amended to read as follows:

(b) A person may not act as a combination life insurance agent for a combination company unless the person holds a general life, accident, and health license or a life agent license.

SECTION 2.29. Section 4055.013, Insurance Code, is amended to read as follows:

Sec. 4055.013. ASSIGNMENT AND TRANSFER OF COMPENSATION BY CERTAIN AGENTS. A person who is licensed as a general life, accident, and health agent, life insurance agent, [or as a] general property and casualty agent, or personal lines property and casualty agent or who holds a substantially equivalent license under this code, as determined by the commissioner, and who enters into a contract with an insurer to act as the insurer's agent in soliciting or writing policies or certificates of insurance that are subject to this chapter may assign and transfer to the agent's employer any commission, fee, or other compensation to be paid to the agent under the agent's contract with the insurer only if the sale of the insurance product occurs within the scope of the agent's employment.

SECTION 2.30. Section 4101.001(a), Insurance Code, is amended to read as follows:

(a) In this chapter, "adjuster" means an individual who:

(1) investigates or adjusts losses on behalf of an insurer as an independent contractor or as an employee of:

(A) an adjustment bureau;

(B) an association;

(C) a general property and casualty agent or personal lines property and casualty agent;

(D) an independent contractor;

(E) an insurer; or

(F) a managing general agent; or

(2) supervises the handling of claims.

SECTION 2.31. Section 4102.051(b), Insurance Code, is amended to read as follows:

(b) A license is not required for:

(1) an attorney licensed to practice law in this state who has complied with Section 4102.053(a)(6); or

(2) a person licensed as a general property and casualty agent or personal lines property and casualty agent under Chapter 4051 while acting for an insured concerning a loss under a policy issued by that agent.

ARTICLE 3. TRANSITION; EFFECTIVE DATE

SECTION 3.01. Not later than December 1, 2007, the commissioner of insurance shall adopt rules as necessary to implement:

- (1) Subchapter I, Chapter 4051, Insurance Code, as added by this Act; and
- (2) Subchapter G, Chapter 4054, Insurance Code, as added by this Act.

SECTION 3.02. Effective January 1, 2008, a person who holds a license as a general property and casualty agent issued by the Texas Department of Insurance that is in good standing is:

(1) entitled to receive from the department on request a license to act as a personal lines property and casualty agent under the new license type, without reexamination; and

- (2) subject to the provisions of the Insurance Code as amended by this Act.

SECTION 3.03. Effective January 1, 2008, a person who holds a license as a general life, accident, and health agent issued by the Texas Department of Insurance that is in good standing is:

(1) entitled to receive from the department on request a license to act as a life agent under the new license type, without reexamination; and

- (2) subject to the provisions of the Insurance Code as amended by this Act.

SECTION 3.04. Chapter 4004, Insurance Code, as amended by this Act, applies to continuing education requirements for insurance agents for a renewal of a license that occurs on or after January 1, 2008.

SECTION 3.05. To the extent of any conflict, this Act prevails over the Act of the 80th Legislature, Regular Session, 2007, relating to nonsubstantive additions to and corrections in enacted codes (the general code update bill), and over the Act of the 80th Legislature, Regular Session, 2007, relating to nonsubstantive additions to and corrections in the Insurance Code (update of the Insurance Code).

SECTION 3.06. This Act takes effect September 1, 2007.

The amendment was read.

Senator Carona, on behalf of Senator Brimer, moved to concur in the House amendment to **SB 1263**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Williams.

CONFERENCE COMMITTEE ON HOUSE BILL 1044

Senator Ellis called from the President's table, for consideration at this time, the request of the House for a conference committee to adjust the differences between the two Houses on **HB 1044** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1044** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ellis, Chair; Lucio, Duncan, Harris, and Carona.

CONFERENCE COMMITTEE ON HOUSE BILL 447

Senator Jackson 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 **HB 447** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 447** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Brimer, Eltife, Whitmire, and Hegar.

SENATE BILL 1123 WITH HOUSE AMENDMENT

Senator Ellis called **SB 1123** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 1123** as follows:

(1) In Section 2 of the bill, in added Section 3848.003(a), Special District Local Laws Code (page 3, lines 16-17), strike "the Metropolitan Transit Authority of Harris County,".

(2) In Section 2 of the bill, in added Subchapter A, Chapter 3848, Special District Local Laws Code (page 5, between lines 14 and 15), insert the following:

Sec. 3848.008. EFFECT ON METROPOLITAN TRANSIT AUTHORITY OF HARRIS COUNTY. (a) This chapter does not grant any additional power to the Metropolitan Transit Authority of Harris County to individually or jointly own or develop a project in the district.

(b) The Metropolitan Transit Authority of Harris County may not own, individually or jointly, a hotel, office building, or retail facility in the district.

(3) In Section 2 of the bill, in added Section 3848.107, Special District Local Laws Code (page 10, between lines 8 and 9), insert the following:

(c) The district may not own or operate a toll road or turnpike.

The amendment was read.

Senator Ellis 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1123** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Ellis, Chair; West, Wentworth, Nichols, and Carona.

CONFERENCE COMMITTEE ON HOUSE BILL 479

Senator Hinojosa 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 **HB 479** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 479** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Hinojosa, Chair; Zaffirini, Watson, Seliger, and Eltife.

CONFERENCE COMMITTEE ON HOUSE BILL 1090

Senator Jackson 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 **HB 1090** and moved that the request be granted.

The motion prevailed without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **HB 1090** before appointment.

There were no motions offered.

Accordingly, the Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Jackson, Chair; Averitt, Harris, Brimer, and Lucio.

COMMITTEE SUBSTITUTE HOUSE BILL 2960 ON SECOND READING

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 2960** at this time on its second reading:

CSHB 2960, Relating to operation of the Texas Windstorm Insurance Association and the Texas FAIR Plan Association, including funding of coverage for certain catastrophic events through the issuance of public securities.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2960** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in added Subsection (b), Section 2210.002, Insurance Code (page 1, lines 23-24), between "are reviewed." and "This subsection", insert the following:

The association shall pay the costs incurred by the Sunset Advisory Commission in performing the review of the association under this subsection. The Sunset Advisory Commission shall determine the costs of the review performed under this subsection, and the association shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission regarding those costs.

(2) In SECTION 1A of the bill, in amended Section 2210.001, Insurance Code (page 1, lines 27-30), strike "An adequate market for windstorm and[,] hail[, and fire] insurance in the seacoast territory is necessary to the economic welfare of this state, and without that insurance," and substitute "The primary purpose of the Texas Windstorm Insurance Association is the provision of an [An] adequate market for windstorm and[,] hail[, and fire] insurance in the seacoast territory of this state. The legislature finds that the provision of adequate windstorm and hail insurance is necessary to the economic welfare of this state, and without that insurance,".

(3) In SECTION 9 of the bill, in added Subsection (b), Section 2210.058, Insurance Code (page 3, lines 66-67), strike "require each member of the association" and substitute "require the association, each member of the association,".

(4) In SECTION 9 of the bill, at the end of added Subsection (b), Section 2210.058, Insurance Code (page 4, line 7), after "fund,", insert the following: A premium surcharge under this subsection is a separate charge in addition to the premiums collected and is not subject to premium tax or commissions.

(5) In SECTION 9 of the bill, in added Subsection (d), Section 2210.058, Insurance Code (page 4, lines 28-29), strike "issued by the association in accordance with Subchapter M" and substitute "authorized to be issued in accordance with Subchapter M".

(6) In SECTION 9 of the bill, in added Subsection (f), Section 2210.058, Insurance Code (page 4, line 48), strike "issued by the association in accordance with Subchapter M" and substitute "authorized to be issued in accordance with Subchapter M".

(7) In SECTION 9 of the bill, strike added Subsection (g), Section 2210.058, Insurance Code (page 4, lines 51-53), and substitute the following:

(g) Notwithstanding any other provision of this section, the association may pay losses in excess of premium and other revenue of the association with reinsurance proceeds from reinsurance purchased by the association as authorized under Section 2210.453.

(8) In SECTION 9 of the bill, in added Subsection (h), Section 2210.058, Insurance Code (page 4, lines 55-56), strike "(c), (e), and (g)" and substitute "(c) and (e)".

(9) In SECTION 12 of the bill, strike added Subsection (c), Section 2210.102, Insurance Code (page 5, lines 34-44), and substitute the following:

(c) Three members must be[, elected by the members as provided by the plan of operation;

[(2) two] public representatives:

(1) at least one of whom [who are nominated by the office of public insurance counsel and who], as of the date of the appointment, resides[:

[(A) reside] in or owns property in a first tier coastal county [a catastrophe area;] and is a policyholder

[(B) are policyholders] of the association; and

(2) at least one of whom, as of the date of the appointment, does not reside in or own property in the seacoast territory.

(10) In SECTION 12 of the bill, in added Subsection (d), Section 2210.102, Insurance Code (page 5, lines 47-51), strike "One of the agents, as of the date of the appointment, must maintain the agent's principal office in a first tier coastal county. The second agent, as of the date of the appointment, may not maintain the agent's principal office in the seacoast territory." and substitute "Each of the agents, as of the date of the appointment, must maintain the agent's principal office in a first tier coastal county."

(11) In SECTION 12 of the bill, in amended Section 2210.102, Insurance Code (page 5, between lines 57 and 58), insert the following:

(f) The commissioner shall appoint one person to serve as a nonvoting member of the board to advise the board regarding issues relating to the inspection process. The commissioner may give preference in an appointment under this subsection to a person who is a qualified inspector under Section 2210.254. The nonvoting member appointed under this section must:

(1) be an engineer licensed by, and in good standing with, the Texas Board of Professional Engineers;

(2) reside in a first tier coastal county; and

(3) be knowledgeable of, and have professional expertise in, wind-related design and construction practices in coastal areas that are subject to high winds and hurricanes.

(12) In SECTION 13 of the bill, in added Subsection (c), Section 2210.103, Insurance Code (page 5, line 62), between "(c)" and "The commissioner", insert "A member of the board of directors may be removed by the commissioner without cause."

(13) In SECTION 22 of the bill, strike amended Subsection (b), Section 2210.251, Insurance Code (page 8, lines 1-9), and substitute the following:

(b) After January 1, 2004, for geographic areas specified by the commissioner, the commissioner by rule shall adopt the 2003 International Residential Code for one- and two-family dwellings published by the International Code Council. For those geographic areas, the commissioner by rule may adopt a subsequent edition of that code and may adopt any supplements published by the International Code Council and amendments to that code.

(14) Strike SECTION 23 of the bill (page 9, lines 7-22).

(15) In the recital to SECTION 24 of the bill, (page 9, lines 23-24), strike "Sections 2210.254(a) and (b)" and substitute "Sections 2210.254(a), (c), and (d)".

(16) In SECTION 24 of the bill, strike amended Subsection (b), Section 2210.254, Insurance Code (page 9, lines 43-45).

(17) In SECTION 24 of the bill, in amended Section 2210.254, Insurance Code (page 9, between lines 45 and 46), insert the following:

(c) Before performing building inspections, a qualified inspector must be approved and appointed or employed by the association [department].

(d) The association [department] may charge a reasonable fee for the filing of applications by and determining the qualifications of persons for appointment as qualified inspectors.

(18) Between SECTION 25 and SECTION 26 of the bill (page 9, between lines 59 and 60), insert the following new appropriately numbered SECTION:

SECTION __. Subchapter F, Chapter 2210, Insurance Code, is amended by adding Section 2210.2565 to read as follows:

Sec. 2210.2565. PROCEDURES REGARDING APPOINTMENT OF INSPECTORS. The association shall develop procedures for the appointment and oversight of qualified inspectors appointed under Sections 2210.254 and 2210.255, including procedures relating to the suspension and revocation of an appointment made by the association.

(19) In SECTION 26 of the bill, in added Subdivision (1), Subsection (a), Section 2210.259, Insurance Code (page 10, line 16), strike "school district or public, or not-for-profit, postsecondary" and substitute "school district, or public or not-for-profit postsecondary".

(20) In SECTION 30 of the bill, in added Subsection (i), Section 2210.355, Insurance Code (page 11, line 31), strike "Catastrophe models, including hurricane models," and substitute "Computer simulation models, including models used to estimate hurricane losses,".

(21) In SECTION 31 of the bill, in amended Subsection (a), Section 2210.452, Insurance Code, strike page 11, lines 39-45, and substitute "fund[":

[(1)] the obligations of the trust fund under Section 2210.058 [2210.058(a); and

[(2) the mitigation and preparedness plan established under Section 2210.454 to reduce the potential for payments by association members that give rise to tax credits in the event of loss]."

(22) In SECTION 32 of the bill, in amended Subsection (b), Section 2210.453, Insurance Code, strike page 11, lines 64-65, and substitute "with the trust fund, public securities, and assessments authorized by this chapter. The association may purchase reinsurance in lieu of, or in addition to, using".

(23) Between SECTION 32 and SECTION 33 of the bill (page 12, between lines 1 and 2), insert the following new SECTION:

SECTION __. Section 2210.454(b), Insurance Code, is amended to read as follows:

(b) Each state fiscal year, the department may fund the mitigation and preparedness plan using available funds [the investment income of the trust fund in an amount not less than \$1 million and not more than 10 percent of the investment income of the prior fiscal year. From that amount and as part of that plan, the department may use in each fiscal year \$1 million for the windstorm inspection program established under Section 2210.251].

(24) In SECTION 33 of the bill, in added Subsection (a), Section 2210.609, Insurance Code (page 13, line 57), strike "by the association from", and substitute "by the association".

(25) In SECTION 33 of the bill, in added Section 2210.618, Insurance Code (page 16, line 14), between "association," and "association employees," insert "members of the association board of directors,".

(26) In SECTION 37 of the bill, strike page 17, lines 7-9, and substitute:

- (2) Section 2210.059, Insurance Code;
- (3) Section 2210.256, Insurance Code;
- (4) Section 2210.356, Insurance Code; and
- (5) Subchapters G and I, Chapter 2210, Insurance Code.

(27) In Subsection (a) of SECTION 38 of the bill (page 17, lines 13-14), strike "is abolished on the 30th day after the effective date of this Act." and substitute "is abolished effective December 31, 2007."

(28) In Subsection (b) of SECTION 38 of the bill (page 17, lines 18-19), strike "not later than the 31st day after the effective date of this Act." and substitute "not later than December 31, 2007."

(29) In Subsection (c) of SECTION 38 of the bill (page 17, lines 23-24), strike "on the 30th day after the effective date of this Act." and substitute "on December 31, 2007."

(30) Strike SECTION 39 of the bill (page 17, lines 28-30) and substitute the following:

SECTION 39. (a) The commissioner of insurance shall adopt rules as required by Sections 2210.452, 2210.612, and 2210.613, Insurance Code, as amended by this Act, not later than the 180th day after the effective date of this Act.

(b) The Texas Windstorm Insurance Association, through the board of directors of that association, shall propose to the commissioner of insurance amendments to the association's plan of operation as required by Chapter 2210, Insurance Code, as amended by this Act, not later than the 180th day after the effective date of this Act.

(31) In SECTION 41 of the bill, strike page 17, lines 38-44, and substitute the following:

Except as otherwise specifically provided by that section, a structure that has been inspected and is the subject of a certificate of compliance issued by the Texas Department of Insurance under Section 2210.251(f), Insurance Code, as that section existed immediately before the effective date of this Act, is not required to obtain an inspection certificate from the Texas Windstorm Insurance Association to remain eligible for insurance coverage through that association unless the structure is altered, remodeled, enlarged, or repaired after the effective date of Section 2210.251, as amended by this Act.

(32) Strike SECTION 43 of the bill (page 17, lines 55-59) and substitute the following:

SECTION 43. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

(b) The changes in law made by this Act to Sections 2210.251, 2210.252, 2210.254, and 2210.255, Insurance Code, as amended by this Act, and Section 2210.2565, Insurance Code, as added by this Act, take effect September 1, 2008.

(33) Renumber SECTIONS of the bill appropriately.

The amendment to **CSHB 2960** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 2960**, Senate committee printing, as follows:

(1) In SECTION 1 of the bill, in added Subsection (b), Section 2210.002, Insurance Code, (page 1, lines 23-24), by striking "abolished in 2013 are reviewed. This subsection expires September 1, 2013," and substituting "abolished in 2011 are reviewed. This subsection expires September 1, 2011."

(2) Between SECTION 1A and SECTION 2 of the bill (page 1, between lines 34 and 35), insert the following:

SECTION 1B. Subchapter A, Chapter 2210, Insurance Code, is amended by adding Section 2210.0025 to read as follows:

Sec. 2210.0025. BIENNIAL REPORT TO LEGISLATURE. On or before December 31 of each even-numbered year, the board of directors shall submit to the commissioner, the appropriate committees of each house of the legislature, and to the Sunset Advisory Commission a written report relating to the operations of the association during the preceding biennium. The report must include:

(1) any proposed changes in the laws relating to regulation of the association and a statement of the reasons for the changes; and

(2) any information regarding association operations or procedures that is requested by the department to be addressed in the report.

(3) In SECTION 9 of the bill, in added Subsection (c), Section 2210.058, Insurance Code, (page 4, line 13), strike "2.5 percent" and substitute "1.25 percent".

(4) In SECTION 9 of the bill, in added Subsection (e), Section 2210.058, Insurance Code, (page 4, line 33), strike "four percent" and substitute "5.25 percent".

(5) In SECTION 9 of the bill, between added Subsections (j) and (k), Section 2210.058, Insurance Code, (page 5, between lines 2 and 3), insert the following:

(j-1) Public securities described by Subsection (f) may be issued in principal amounts not to exceed \$5 billion.

The amendment to **CSHB 2960** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 2960**, Senate committee printing, in SECTION 19 of the bill, in amended Subsection (a), Section 2210.202, Insurance Code (page 7, line 14), by inserting the following after "and rates.":

"Notwithstanding any other provision of this subsection, a declination or other comparable evidence is not required with an application for renewal of an association policy unless the association has evidence that comparable voluntary market coverage is available in the area of the property to be insured for the same class of risk."

The amendment to **CSHB 2960** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSHB 2960**, Senate committee printing, as follows:

(1) In SECTION 31 of the bill, in amended Subsection (c), Section 2210.452, Insurance Code (page 11, lines 51-52), strike "For purposes of this subsection, "operating expenses" includes the cost of any reinsurance."

(2) In SECTION 32 of the bill, in amended Subsection (a), Section 2210.453, Insurance Code (page 11, lines 58-59), strike "as part of the association's annual operating expenses".

The amendment to **CSHB 2960** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

On motion of Senator Fraser and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 2960 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2960 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 2960** 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.

BILLS AND RESOLUTIONS SIGNED

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

SB 61, SB 63, SB 129, SB 136, SB 138, SB 139, SB 140, SB 153, SB 166, SB 201, SB 214, SB 246, SB 247, SB 251, SB 274, SB 285, SB 289, SB 303, SB 310, SB 311, SB 322, SB 328, SB 351, SB 352, SB 397, SB 535, SB 561, SB 564, SB 592, SB 616, SB 618, SB 620, SB 781, SB 833, SB 877, SB 908, SB 924, SB 940, SB 949, SB 969, SB 1222, SB 1260, SB 1318, SB 1372, SB 1519, SB 1536, SB 1618, SB 1627, SB 1630, SB 1884, SB 1956, SB 1961, SB 1963, SB 1964,

SB 2009, SCR 75, SB 22, SB 24, SB 64, SB 82, SB 157, SB 175, SB 182, SB 235, SB 295, SB 329, SB 480, SB 502, SB 512, SB 541, SB 555, SB 563, SB 608, SB 640, SB 654, SB 682, SB 687, SB 705, SB 711, SB 748, SB 749, SB 757, SB 811, SB 819, SB 821, SB 835, SB 850, SB 853, SB 867, SB 870, SB 885, SB 893, SB 932, SB 955, SB 1037, SB 1039, SB 1047, SB 1056, SB 1063, SB 1086, SB 1165, SB 1182, SB 1196, SB 1215, SB 1244, SB 1257, SB 1269, SB 1325, SB 1349, SB 1396, SB 1412, SB 1413, SB 1416, SB 1417, SB 1439, SB 1540, SB 1541, SB 1626, SB 1661, SB 1709, SB 1732, SB 1761, SB 1765, SB 1766, SB 1786, SB 1953, SB 1965, SB 1966, SB 1967, SB 1999, SCR 30, SCR 38, SCR 70, SCR 71, SCR 72, HB 73, HB 125, HB 246, HB 312, HB 342, HB 386, HB 416, HB 417, HB 425, HB 495, HB 496, HB 564, HB 576, HB 680, HB 1023, HB 1045, HB 1067, HB 1100, HB 1138, HB 1178, HB 1210, HB 1230, HB 1365, HB 1382, HB 1401, HB 1412, HB 1497, HB 1741, HB 1787, HB 1820, HB 1844, HB 1871, HB 2056, HB 2075, HB 2188, HB 2212, HB 2338, HB 2393, HB 2468, HB 2514, HB 2546, HB 2559, HB 2611, HB 2636, HB 2683, HB 2735, HB 2799, HB 2967, HB 3074, HB 3084, HB 3138, HB 3191, HB 3226, HB 3601, HCR 23, HCR 136, HCR 137, HCR 152, HCR 159, HCR 256, HB 8, HB 167, HB 195, HB 585, HB 654, HB 693, HB 776, HB 1010, HB 1070, HB 1157, HB 1530, HB 1579, HB 1652, HB 1717, HB 1910, HB 1928, HB 2163, HB 2168, HB 2251, HB 2439, HB 2625, HB 2931, HB 3158, HB 3281, HB 3322, HCR 259, HJR 69.

HOUSE BILL 1638 ON SECOND READING

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1638** at this time on its second reading:

HB 1638, Relating to enforcement of commercial motor vehicle safety standards in certain municipalities.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 1638** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 644.103, Transportation Code, is amended by adding Subsections (c-1) and (c-2) to read as follows:

(c-1) A vehicle operator may not be issued a citation or be held criminally or administratively liable more than once for the same violation committed on the same calendar day. A person who detains a vehicle under this section shall provide the vehicle operator a written statement, on a form adopted by the department, that indicates:

(1) the date of the detention;

(2) whether the detained vehicle was inspected; and

(3) each violation that was found during the detention, or if no violation was found, a statement to that effect.

(c-2) A person who stops a vehicle under this section may not detain or require the vehicle to be inspected if the vehicle operator displays to the person a statement provided under Subsection (c-1) that indicates that the vehicle was detained and inspected within the 15-day period preceding the date of the stop.

The amendment to **HB 1638** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1.

On motion of Senator Jackson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

HB 1638 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading.

HOUSE BILL 1638 ON THIRD READING

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1638** 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 1434 WITH HOUSE AMENDMENT

Senator Estes called **SB 1434** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Brimer in Chair, laid the bill and the House amendment before the Senate.

Floor Amendment No. 1

Amend **SB 1434** (House committee printing) in added Subsection (b), Section 85.009, Election Code (page 1, line 21), by striking "20th" and substituting "30th".

The amendment was read.

Senator Estes moved to concur in the House amendment to **SB 1434**.

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

SENATE BILL 1983 WITH HOUSE AMENDMENT

Senator Estes called **SB 1983** from the President's table for consideration of the House amendment to the bill.

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

Amendment

Amend **SB 1983** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED
AN ACT

relating to the creation of the Upper Trinity Groundwater Conservation District; providing authority to issue bonds.

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

SECTION 1. Subtitle H, Title 6, Special District Local Laws Code, is amended by adding Chapter 8830 to read as follows:

CHAPTER 8830. UPPER TRINITY GROUNDWATER
CONSERVATION DISTRICT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8830.001. DEFINITIONS. In this chapter:

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

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

(3) "District" means the Upper Trinity Groundwater Conservation District.

Sec. 8830.002. NATURE OF DISTRICT; FINDINGS. (a) The district is a groundwater conservation district in Hood, Montague, Parker, and Wise Counties created under and essential to accomplish the purposes of Section 59, Article XVI, Texas Constitution.

(b) The district is created to serve a public use and benefit.

(c) All of the land and other property included within the boundaries of the district will be benefited by the works and projects that are to be accomplished by the district under powers conferred by this chapter and by Chapter 36, Water Code.

(d) Any fees imposed by the district under this chapter are necessary to pay for the costs of accomplishing the purposes of the district, including the conservation and management of groundwater resources, as provided by this chapter and Section 59, Article XVI, Texas Constitution.

Sec. 8830.003. CONFIRMATION ELECTION REQUIRED. If the creation of the district is not confirmed at a confirmation election held under Section 8830.023 before September 1, 2009:

(1) the district is dissolved on September 1, 2009, except that:

(A) any debts incurred shall be paid;

(B) any assets that remain after the payment of debts shall be transferred in equal amounts to Hood, Montague, Parker, and Wise Counties; and

(C) the organization of the district shall be maintained until all debts are paid and remaining assets are transferred; and

(2) this chapter expires September 1, 2012.

Sec. 8830.004. INITIAL DISTRICT TERRITORY. The initial boundaries of the district are coextensive with the boundaries of Hood, Montague, Parker, and Wise Counties.

Sec. 8830.005. APPLICABILITY OF OTHER GROUNDWATER CONSERVATION DISTRICT LAW. Except as otherwise provided by this chapter, Chapter 36, Water Code, applies to the district.

Sec. 8830.006. CONSTRUCTION OF CHAPTER. This chapter shall be liberally construed to achieve the legislative intent and purposes of Chapter 36, Water Code. A power granted by Chapter 36, Water Code, or this chapter shall be broadly interpreted to achieve that intent and those purposes.

[Sections 8830.007-8830.020 reserved for expansion]

SUBCHAPTER A-1. TEMPORARY PROVISIONS

Sec. 8830.021. APPOINTMENT OF TEMPORARY DIRECTORS. (a) The district is initially governed by a board of eight temporary directors appointed as provided by Section 8830.051(a).

(b) Temporary directors shall be appointed not later than the 90th day after the effective date of the Act enacting this chapter. If after the 90th day fewer than eight temporary directors have been appointed, each unfilled position shall be considered a vacancy and filled in accordance with Subsection (c).

(c) If a vacancy occurs on the temporary board, the remaining temporary directors shall appoint a person to fill the vacancy in a manner that meets the representational requirements of this section.

(d) To be eligible to serve as a temporary director, a person must be a registered voter in the appointing county.

(e) Each temporary director must qualify to serve as a director in the manner provided by Section 36.055, Water Code.

(f) Temporary directors serve until the earlier of:

(1) the time the temporary directors become the initial permanent directors under Section 8830.024; or

(2) the date this chapter expires under Section 8830.003.

Sec. 8830.022. ORGANIZATIONAL MEETING OF TEMPORARY DIRECTORS. As soon as practicable after all the temporary directors have qualified under Section 36.055, Water Code, a majority of the temporary directors shall convene the organizational meeting of the district at a location in the district agreeable to a majority of the directors. If an agreement on location cannot be reached, the organizational meeting shall be at the Poolville Junior High School in Parker County.

Sec. 8830.023. CONFIRMATION ELECTION. (a) The temporary directors shall hold an election to confirm the creation of the district.

(b) Section 41.001(a), Election Code, does not apply to a confirmation election held as provided by this section.

(c) Except as provided by this section, a confirmation election must be conducted as provided by Sections 36.017(b), (c), and (e)-(g), Water Code, and by the Election Code.

(d) The ballot for the election must be printed to provide for voting for or against the proposition: "The creation of a nontaxing, locally controlled groundwater conservation district to be known as the Upper Trinity Groundwater Conservation District, in lieu and instead of anticipated action by the Texas Commission on Environmental Quality to otherwise establish a conservation and reclamation district within the same or a larger area."

(e) If a majority of the votes cast at the election are not in favor of the creation of the district, the temporary directors may order a subsequent confirmation election to be held in accordance with this section.

Sec. 8830.024. INITIAL PERMANENT DIRECTORS; INITIAL TERMS. If creation of the district is confirmed at an election held under Section 8830.023:

(1) the temporary directors become the initial permanent directors; and

(2) the two directors appointed from each county shall draw lots to determine which director serves a term expiring June 1 of the first odd-numbered year after the confirmation election and which director serves a term expiring June 1 of the next odd-numbered year.

Sec. 8830.025. EXPIRATION OF SUBCHAPTER. This subchapter expires September 1, 2012.

[Sections 8830.026-8830.050 reserved for expansion]

SUBCHAPTER B. BOARD OF DIRECTORS

Sec. 8830.051. GOVERNING BODY; TERMS. (a) The district is governed by a board of eight directors appointed as follows:

(1) two directors appointed by the Hood County Commissioners Court;

(2) two directors appointed by the Montague County Commissioners Court;

(3) two directors appointed by the Parker County Commissioners Court;

and

(4) two directors appointed by the Wise County Commissioners Court.

(b) Directors serve staggered four-year terms, with the term of one director from each of the four counties expiring on June 1 of each odd-numbered year.

(c) A director may serve multiple consecutive terms.

Sec. 8830.052. DIRECTOR ELIGIBILITY; QUALIFICATION. (a) To be eligible to serve as a director, a person must be a registered voter in the appointing county.

(b) Each director must qualify to serve in the manner provided by Section 36.055, Water Code.

Sec. 8830.053. VACANCIES. If a vacancy occurs on the board, the remaining directors shall appoint a person to fill the vacancy in a manner that meets the representational requirements of Section 8830.051.

Sec. 8830.054. COMPENSATION; REIMBURSEMENT. (a) Notwithstanding Sections 36.060(a) and (d), Water Code, a director may not receive compensation for performing the duties of director.

(b) A director is entitled to reimbursement of actual expenses reasonably and necessarily incurred while engaging in activities on behalf of the district.

[Sections 8830.055-8830.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 8830.101. GROUNDWATER CONSERVATION DISTRICT POWERS AND DUTIES. Except as provided by this chapter, the district has the powers and duties provided by the general law of this state, including Chapter 36, Water Code, and Section 59, Article XVI, Texas Constitution, applicable to groundwater conservation districts.

Sec. 8830.102. CONTRACTS. The district may enter into a contract with any person, public or private, for any purpose authorized by law.

Sec. 8830.103. APPLICABILITY OF DISTRICT REGULATIONS. Groundwater regulation under this chapter applies to all persons except as exempted under Section 36.117, Water Code, or this chapter.

Sec. 8830.104. WELL SPACING RULES; EXEMPTIONS. (a) Except as provided by Subsection (b), the district shall exempt from the well spacing requirements adopted by the district any well that is completed on or before the effective date of those requirements.

(b) The district may provide by rule that a well may lose its exemption under this section if the well is modified in a manner that substantially increases the capacity of the well after the effective date of the well spacing requirements adopted by the district.

(c) Except as provided by this section and notwithstanding Section 8830.103, the district may require any well or class of wells exempt from permitting under Chapter 36, Water Code, to comply with the well spacing requirements adopted by the district. The district shall apply well spacing requirements uniformly to any well or class of wells based on the size or capacity of the well and without regard to the type of use of the groundwater produced by the well.

Sec. 8830.105. REGISTRATION AND REPORTING REQUIREMENTS FOR CERTAIN EXEMPT WELLS. The district may adopt rules that require the owner or operator of a well or class of wells exempt from permitting under Section 36.117, Water Code, to register the well with the district and, except for a well exempt from permitting under Subsection (b)(1) of that section, to report groundwater withdrawals from the well using reasonable and appropriate reporting methods and frequency.

Sec. 8830.106. ENFORCEMENT. (a) The district may enforce this chapter in the manner provided by Chapter 36, Water Code. In lieu of a remedy available to the district under Section 36.102, Water Code, or in addition to those remedies, the district may impose a fee in addition to a fee assessed under Section 8830.152 on a person producing groundwater in violation of a rule of the district, including the failure or refusal to comply with any order or rule of the district to reduce or cease groundwater usage. The purpose of a fee authorized under this subsection is to serve as a disincentive to producing groundwater except as authorized by the district.

(b) A fee imposed under Subsection (a) may not exceed an amount equal to 10 times the amount of a fee assessed under Section 8830.152.

Sec. 8830.107. NO EMINENT DOMAIN POWER. The district may not exercise the power of eminent domain.

[Sections 8830.108-8830.150 reserved for expansion]

SUBCHAPTER D. GENERAL FINANCIAL PROVISIONS

Sec. 8830.151. TAXES PROHIBITED. The district may not impose a tax. Sections 36.020(a) and 36.201-36.204, Water Code, do not apply to the district.

Sec. 8830.152. DISTRICT REVENUES. (a) The district by rule, resolution, or order may establish, amend, pledge, encumber, expend the proceeds from, and assess to any person production fees based on the amount of groundwater authorized by permit to be withdrawn from a well or on the amount of water actually withdrawn, to enable the district to fulfill its purposes and regulatory functions as provided by this chapter. The district may use revenues generated by fees it assesses for any lawful purpose.

(b) Notwithstanding any provision of general law to the contrary, a fee authorized by Subsection (a) may not exceed:

(1) \$1 per acre-foot annually for groundwater used for agricultural purposes;
or

(2) 30 cents per thousand gallons annually for groundwater used for nonagricultural purposes.

(c) Notwithstanding Section 36.1071(f), Water Code, the district by rule, resolution, or order before the adoption of its management plan may:

(1) establish, assess, and enforce the collection of production fees under this section; and

(2) establish and enforce metering and reporting requirements, except for a well exempt from permitting under Section 36.117(b)(1), Water Code.

(d) The district by rule may establish a temporary or permanent discounted fee rate for persons who prepay production fees to the district under this section on or before the dates established by district rule.

SECTION 2. (a) The 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 under Section 59, Article XVI, Texas Constitution, and Chapter 313, Government Code.

(b) The governor has submitted the notice and Act to the Texas Commission on Environmental Quality.

(c) The Texas Commission on Environmental Quality has filed its recommendations relating to this Act with the governor, lieutenant governor, and speaker of the house of representatives within the required time.

(d) 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 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Estes 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 without objection.

The Presiding Officer asked if there were any motions to instruct the conference committee on **SB 1983** before appointment.

There were no motions offered.

The Presiding Officer announced the appointment of the following conferees on the part of the Senate: Senators Estes, Chair; Averitt, Fraser, Seliger, and Duncan.

SENATE BILL 450 WITH HOUSE AMENDMENT

Senator Uresti called **SB 450** from the President's table for consideration of the House amendment to the bill.

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

Floor Amendment No. 1

Amend **SB 450**, in Section 2 of the bill, in added Section 266.0041, Family Code (House committee printing page 6, between lines 25 and 26), by inserting the following:

(m) A foster parent or any other person may not receive a financial incentive or any other benefit for recommending or consenting to the enrollment and participation of a foster child in a drug research program.

The amendment was read.

Senator Uresti moved to concur in the House amendment to **SB 450**.

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

SENATE RULES SUSPENDED

(Posting Rules)

On motion of Senator Wentworth and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Jurisprudence might meet and consider **HB 1331** today.

**NOTICE GIVEN FOR
LOCAL AND UNCONTESTED CALENDAR**

Senator Wentworth announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

SENATE RULE 11.13 SUSPENDED

(Consideration of Bills in Committees)

On motion of Senator Wentworth and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet during the Local and Uncontested Calendar Session tomorrow.

**CONFERENCE COMMITTEE REPORT ON
SENATE BILL 103**

Senator Hinojosa submitted the following Conference Committee Report:

Austin, Texas
May 21, 2007

Honorable David Dewhurst
President of the Senate

Honorable Tom Craddick
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 **SB 103** have 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.

HINOJOSA
HEGAR
SELIGER
WHITMIRE
WILLIAMS

On the part of the Senate

MADDEN
HOCHBERG
JONES
MCREYNOLDS
PHILLIPS

On the part of the House

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Youth Commission and the prosecution of certain offenses and delinquent conduct in the Texas Youth Commission and certain other criminal justice agencies; providing penalties.

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

SECTION 1. Article 2.12, Code of Criminal Procedure, is amended to read as follows:

Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace officers:

(1) sheriffs, their deputies, and those reserve deputies who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(2) constables, deputy constables, and those reserve deputy constables who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(3) marshals or police officers of an incorporated city, town, or village, and those reserve municipal police officers who hold a permanent peace officer license issued under Chapter 1701, Occupations Code;

(4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;

(5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;

(6) law enforcement agents of the Texas Alcoholic Beverage Commission;

(7) each member of an arson investigating unit commissioned by a city, a county, or the state;

(8) officers commissioned under Section 37.081, Education Code, or Subchapter E, Chapter 51, Education Code;

(9) officers commissioned by the General Services Commission;

(10) law enforcement officers commissioned by the Parks and Wildlife Commission;

(11) airport police officers commissioned by a city with a population of more than 1.18 million that operates an airport that serves commercial air carriers;

(12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state, other than a city described by Subdivision (11), that operates an airport that serves commercial air carriers;

(13) municipal park and recreational patrolmen and security officers;

(14) security officers and investigators commissioned as peace officers by the comptroller;

(15) officers commissioned by a water control and improvement district under Section 49.216, Water Code;

(16) officers commissioned by a board of trustees under Chapter 54, Transportation Code;

(17) investigators commissioned by the Texas Medical ~~[State]~~ Board ~~[of Medical Examiners]~~;

(18) officers commissioned by the board of managers of the Dallas County Hospital District, the Tarrant County Hospital District, or the Bexar County Hospital District under Section 281.057, Health and Safety Code;

(19) county park rangers commissioned under Subchapter E, Chapter 351, Local Government Code;

(20) investigators employed by the Texas Racing Commission;

(21) officers commissioned under Chapter 554, Occupations Code;

(22) officers commissioned by the governing body of a metropolitan rapid transit authority under Section 451.108, Transportation Code, or by a regional transportation authority under Section 452.110, Transportation Code;

(23) investigators commissioned by the attorney general under Section 402.009, Government Code;

(24) security officers and investigators commissioned as peace officers under Chapter 466, Government Code;

(25) an officer employed by the ~~[Texas]~~ Department of State Health Services under Section 431.2471, Health and Safety Code;

(26) officers appointed by an appellate court under Subchapter F, Chapter 53, Government Code;

(27) officers commissioned by the state fire marshal under Chapter 417, Government Code;

(28) an investigator commissioned by the commissioner of insurance under Section 701.104 ~~[Article 1.10D]~~, Insurance Code;

(29) apprehension specialists and inspectors general commissioned by the Texas Youth Commission as officers under Sections 61.0451 and [Section] 61.0931, Human Resources Code;

(30) officers appointed by the executive director of the Texas Department of Criminal Justice under Section 493.019, Government Code;

(31) investigators commissioned by the Commission on Law Enforcement Officer Standards and Education under Section 1701.160, Occupations Code;

(32) commission investigators commissioned by the Texas ~~[Commission on]~~ Private Security Board under Section 1702.061(f), Occupations Code;

(33) the fire marshal and any officers, inspectors, or investigators commissioned by an emergency services district under Chapter 775, Health and Safety Code; and

(34) officers commissioned by the State Board of Dental Examiners under Section 254.013, Occupations Code, subject to the limitations imposed by that section.

SECTION 2. Article 61.06(c), Code of Criminal Procedure, is amended to read as follows:

(c) In determining whether information is required to be removed from an intelligence database under Subsection (b), the three-year period does not include any period during which the individual who is the subject of the information is:

(1) confined in the institutional division or the state jail division of the Texas Department of Criminal Justice;

(2) committed to a secure correctional facility operated by or under contract with the Texas Youth Commission, as defined by Section 51.02, Family Code; or

(3) committed to a facility operated by a juvenile board in lieu of being committed to a secure correctional facility operated by or under contract with the Texas Youth Commission.

SECTION 3. Article 104.003(a), Code of Criminal Procedure, is amended to read as follows:

(a) In a prosecution of a criminal offense or delinquent conduct [~~felony~~] committed on property owned or operated by or under contract with [~~while the actor was a prisoner in the custody of~~] the Texas Department of Criminal Justice or the Texas Youth Commission, or committed by or against a person in the custody of the department or commission while the person is performing a duty away from department or commission property [~~Corrections or a prosecution of an offense committed in the department by any person under Chapter 21, Acts of 55th Legislature, Regular Session, 1957 (Article 6184m, Vernon's Texas Civil Statutes), or Chapter 481, Health and Safety Code, or Sections 485.031 through 485.035, Health and Safety Code~~], the state shall reimburse the county for expenses incurred by the county, in an amount that the court determines to be reasonable, for payment of:

(1) salaries and expenses of foreign language interpreters and interpreters for deaf persons whose services are necessary to the prosecution;

(2) consultation fees of experts whose assistance is directly related to the prosecution;

(3) travel expenses for witnesses;

(4) expenses for the food, lodging, and compensation of jurors;

(5) compensation of witnesses;

(6) the cost of preparation of a statement of facts and a transcript of the trial for purposes of appeal;

(7) if the death of a person is an element of the offense, expenses of an inquest relating to the death;

(8) food, lodging, and travel expenses incurred by the prosecutor's staff during travel essential to the prosecution of the offense;

(9) court reporter's fees; and

(10) the cost of special security officers.

SECTION 4. Section 37.203(a), Education Code, is amended to read as follows:

(a) The center is advised by a board of directors composed of:

(1) the attorney general, or the attorney general's designee;

(2) the commissioner, or the commissioner's designee;

(3) the executive director of the Texas Juvenile Probation Commission, or the executive director's designee;

(4) the executive commissioner [~~director~~] of the Texas Youth Commission, or the executive commissioner's [~~director's~~] designee;

(5) the commissioner of the Texas Department of Mental Health and Mental Retardation, or the commissioner's designee; and

(6) the following members appointed by the governor with the advice and consent of the senate:

- (A) a juvenile court judge;
- (B) a member of a school district's board of trustees;
- (C) an administrator of a public primary school;
- (D) an administrator of a public secondary school;
- (E) a member of the state parent-teacher association;
- (F) a teacher from a public primary or secondary school;
- (G) a public school superintendent who is a member of the Texas

Association of School Administrators;

(H) a school district police officer or a peace officer whose primary duty consists of working in a public school; and

- (I) two members of the public.

SECTION 5. Section 51.12, Family Code, is amended by adding Subsections (b-1), (c-1), and (m) and amending Subsections (c) and (i) to read as follows:

(b-1) A pre-adjudication secure detention facility may be operated only by:

(1) a governmental unit in this state as defined by Section 101.001, Civil Practice and Remedies Code; or

(2) a private entity under a contract with a governmental unit in this state.

(c) In each county, each judge of the juvenile court and a majority of the members of the juvenile board shall personally inspect all public or private [the] juvenile pre-adjudication secure detention facilities [and any public or private juvenile secure correctional facilities used for post adjudication confinement] that are located in the county [and operated under authority of the juvenile board] at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities and to the Texas Juvenile Probation Commission that the facilities [they] are suitable or unsuitable for the detention of children. In determining whether a facility is suitable or unsuitable for the detention of children, the juvenile court judges and juvenile board members shall consider:

(1) current monitoring and inspection reports and any noncompliance citation reports issued by the Texas Juvenile Probation Commission, including the report provided under Subsection (c-1), and the status of any required corrective actions;

(2) current governmental inspector certification regarding the facility's compliance with local fire codes;

(3) current building inspector certification regarding the facility's compliance with local building codes;

(4) for the 12-month period preceding the inspection, the total number of allegations of abuse, neglect, or exploitation reported by the facility and a summary of the findings of any investigations of abuse, neglect, or exploitation conducted by the facility, a local law enforcement agency, and the Texas Juvenile Probation Commission;

(5) the availability of health and mental health services provided to facility residents;

(6) the availability of educational services provided to facility residents; and

(7) the overall physical appearance of the facility, including the facility's security, maintenance, cleanliness, and environment.

(c-1) The Texas Juvenile Probation Commission shall annually inspect each public or private juvenile pre-adjudication secure detention facility. The Texas Juvenile Probation Commission shall provide a report to each juvenile court judge presiding in the same county as an inspected facility indicating whether the facility is suitable or unsuitable for the detention of children in accordance with:

(1) the requirements of Subsections (a), (f), and (g); and

(2) minimum professional standards for the detention of children in pre-adjudication ~~[or post-adjudication]~~ secure confinement promulgated by the Texas Juvenile Probation Commission or, at the election of the juvenile board of the county in which the facility is located, the current standards promulgated by the American Correctional Association.

(i) Except for ~~[a facility operated or certified by the Texas Youth Commission or]~~ a facility as provided by Subsection (l), a governmental unit or private entity that operates or contracts for the operation of a juvenile pre-adjudication secure detention facility under Subsection (b-1) ~~[or a juvenile post-adjudication secure correctional facility]~~ in this state shall:

(1) register the facility annually with the Texas Juvenile Probation Commission; and

(2) adhere to all applicable minimum standards for the facility.

(m) The Texas Juvenile Probation Commission may deny, suspend, or revoke the registration of any facility required to register under Subsection (i) if the facility fails to:

(1) adhere to all applicable minimum standards for the facility; or

(2) timely correct any notice of noncompliance with minimum standards.

SECTION 6. Chapter 51, Family Code, is amended by adding Section 51.125 to read as follows:

Sec. 51.125. POST-ADJUDICATION CORRECTIONAL FACILITIES. (a) A post-adjudication secure correctional facility for juvenile offenders may be operated only by:

(1) a governmental unit in this state as defined by Section 101.001, Civil Practice and Remedies Code; or

(2) a private entity under a contract with a governmental unit in this state.

(b) In each county, each judge of the juvenile court and a majority of the members of the juvenile board shall personally inspect all public or private juvenile post-adjudication secure correctional facilities that are not operated by the Texas Youth Commission and that are located in the county at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities and to the Texas Juvenile Probation Commission that the facility or facilities are suitable or unsuitable for the confinement of children. In determining whether a facility is suitable or unsuitable for the confinement of children, the juvenile court judges and juvenile board members shall consider:

(1) current monitoring and inspection reports and any noncompliance citation reports issued by the Texas Juvenile Probation Commission, including the report provided under Subsection (c), and the status of any required corrective actions; and

(2) the other factors described under Sections 51.12(c)(2)-(7).

(c) The Texas Juvenile Probation Commission shall annually inspect each public or private juvenile post-adjudication secure correctional facility that is not operated by the Texas Youth Commission. The Texas Juvenile Probation Commission shall provide a report to each juvenile court judge presiding in the same county as an inspected facility indicating whether the facility is suitable or unsuitable for the confinement of children in accordance with minimum professional standards for the confinement of children in post-adjudication secure confinement promulgated by the Texas Juvenile Probation Commission or, at the election of the juvenile board of the county in which the facility is located, the current standards promulgated by the American Correctional Association.

(d) A governmental unit or private entity that operates or contracts for the operation of a juvenile post-adjudication secure correctional facility in this state under Subsection (a), except for a facility operated by or under contract with the Texas Youth Commission, shall:

(1) register the facility annually with the Texas Juvenile Probation Commission; and

(2) adhere to all applicable minimum standards for the facility.

(e) The Texas Juvenile Probation Commission may deny, suspend, or revoke the registration of any facility required to register under Subsection (d) if the facility fails to:

(1) adhere to all applicable minimum standards for the facility; or

(2) timely correct any notice of noncompliance with minimum standards.

SECTION 7. Sections 54.04(d) and (u), Family Code, are amended to read as follows:

(d) If the court or jury makes the finding specified in Subsection (c) allowing the court to make a disposition in the case:

(1) the court or jury may, in addition to any order required or authorized under Section 54.041 or 54.042, place the child on probation on such reasonable and lawful terms as the court may determine:

(A) in the child's own home or in the custody of a relative or other fit person; or

(B) subject to the finding under Subsection (c) on the placement of the child outside the child's home, in:

(i) a suitable foster home; or

(ii) a suitable public or private institution or agency, except the Texas Youth Commission;

(2) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony ~~[or, if the requirements of Subsection (s) or (t)]~~

~~are met, of the grade of misdemeanor,~~] and if the petition was not approved by the grand jury under Section 53.045, the court may commit the child to the Texas Youth Commission without a determinate sentence;

(3) if the court or jury found at the conclusion of the adjudication hearing that the child engaged in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) and if the petition was approved by the grand jury under Section 53.045, the court or jury may sentence the child to commitment in the Texas Youth Commission with a possible transfer to the ~~[institutional division or the pardons and paroles division of the]~~ Texas Department of Criminal Justice for a term of:

(A) not more than 40 years if the conduct constitutes:

(i) a capital felony;

(ii) a felony of the first degree; or

(iii) an aggravated controlled substance felony;

(B) not more than 20 years if the conduct constitutes a felony of the second degree; or

(C) not more than 10 years if the conduct constitutes a felony of the third degree;

(4) the court may assign the child an appropriate sanction level and sanctions as provided by the assignment guidelines in Section 59.003; or

(5) if applicable, the court or jury may make a disposition under Subsection (m).

(u) For the purposes of disposition under Subsection (d)(2), delinquent conduct that violates a penal law of this state of the grade of felony ~~[or misdemeanor]~~ does not include conduct that violates a lawful order of a county, municipal, justice, or juvenile court under circumstances that would constitute contempt of that court.

SECTION 8. Chapter 54, Family Code, is amended by adding Section 54.0401 to read as follows:

Sec. 54.0401. COMMUNITY-BASED PROGRAMS. (a) This section applies only to a county that has a population of at least 335,000.

(b) A juvenile court of a county to which this section applies may require a child who is found to have engaged in delinquent conduct that violates a penal law of the grade of misdemeanor and for whom the requirements of Subsection (c) are met to participate in a community-based program administered by the county's juvenile board.

(c) A juvenile court of a county to which this section applies may make a disposition under Subsection (b) for delinquent conduct that violates a penal law of the grade of misdemeanor:

(1) if:

(A) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of misdemeanor on at least two previous occasions;

(B) of the previous adjudications, the conduct that was the basis for one of the adjudications occurred after the date of another previous adjudication; and

(C) the conduct that is the basis of the current adjudication occurred after the date of at least two previous adjudications; or

(2) if:

(A) the child has been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony on at least one previous occasion; and

(B) the conduct that is the basis of the current adjudication occurred after the date of that previous adjudication.

(d) The Texas Juvenile Probation Commission shall establish guidelines for the implementation of community-based programs described by this section. The juvenile board of each county to which this section applies shall implement a community-based program that complies with those guidelines.

(e) The Texas Juvenile Probation Commission shall provide grants to selected juvenile boards to assist with the implementation of a system of community-based programs under this section.

(f) Not later than January 1, 2009, the Texas Juvenile Probation Commission shall prepare and deliver to the governor, the lieutenant governor, and each member of the legislature a report describing the implementation and effectiveness of the community-based programs described by this section. The report must include information relating to the cost of requiring a child to participate in a community-based program. This subsection expires February 1, 2009.

SECTION 9. Section 54.05(f), Family Code, is amended to read as follows:

(f) Except as provided by Subsection (j), a disposition based on a finding that the child engaged in delinquent conduct that violates a penal law of this state or the United States of the grade of felony ~~[or, if the requirements of Subsection (k) are met, of the grade of misdemeanor,]~~ may be modified so as to commit the child to the Texas Youth Commission if the court after a hearing to modify disposition finds by a preponderance of the evidence that the child violated a reasonable and lawful order of the court. A disposition based on a finding that the child engaged in habitual felony conduct as described by Section 51.031 or in delinquent conduct that included a violation of a penal law listed in Section 53.045(a) may be modified to commit the child to the Texas Youth Commission with a possible transfer to the ~~[institutional division or the pardons and paroles division of the]~~ Texas Department of Criminal Justice for a definite term prescribed by Section 54.04(d)(3) if the original petition was approved by the grand jury under Section 53.045 and if after a hearing to modify the disposition the court finds that the child violated a reasonable and lawful order of the court.

SECTION 10. Chapter 54, Family Code, is amended by adding Section 54.052 to read as follows:

Sec. 54.052. CREDIT FOR TIME SPENT IN DETENTION FACILITY FOR CHILD WITH DETERMINATE SENTENCE. (a) This section applies only to a child who is committed to the Texas Youth Commission under a determinate sentence under Section 54.04(d)(3) or (m) or Section 54.05(f).

(b) The judge of the court in which a child is adjudicated shall give the child credit on the child's sentence for the time spent by the child, in connection with the conduct for which the child was adjudicated, in a secure detention facility before the child's transfer to a Texas Youth Commission facility.

(c) If a child appeals the child's adjudication and is retained in a secure detention facility pending the appeal, the judge of the court in which the child was adjudicated shall give the child credit on the child's sentence for the time spent by the child in a secure detention facility pending disposition of the child's appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the child under this subsection.

(d) The Texas Youth Commission shall grant any credit under this section in computing the child's eligibility for parole and discharge.

SECTION 11. Section 58.106(a), Family Code, is amended to read as follows:

(a) Except as otherwise provided by this section, information contained in the juvenile justice information system is confidential information for the use of the department and may not be disseminated by the department except:

(1) with the permission of the juvenile offender, to military personnel of this state or the United States;

(2) to a person or entity to which the department may grant access to adult criminal history records as provided by Section 411.083, Government Code;

(3) to a juvenile justice agency; ~~and~~

(4) to ~~[the Criminal Justice Policy Council,]~~ the Texas Youth Commission~~[-]~~ and the Texas Juvenile Probation Commission for analytical purposes; and

(5) to the office of independent ombudsman of the Texas Youth Commission.

SECTION 12. Section 261.201, Family Code, is amended by adding Subsections (i) and (j) to read as follows:

(i) Notwithstanding Subsection (a), the Texas Youth Commission shall release a report of alleged or suspected abuse or neglect made under this chapter if:

(1) the report relates to a report of abuse or neglect involving a child committed to the commission during the period that the child is committed to the commission; and

(2) the commission is not prohibited by Chapter 552, Government Code, or other law from disclosing the report.

(j) The Texas Youth Commission shall edit any report disclosed under Subsection (i) to protect the identity of:

(1) a child who is the subject of the report of alleged or suspected abuse or neglect;

(2) the person who made the report; and

(3) any other person whose life or safety may be endangered by the disclosure.

SECTION 13. Section 41.102, Government Code, is amended by adding Subsection (c) to read as follows:

(c) The attorney general may offer to assist a prosecuting attorney in the prosecution of criminal offenses concerning the Texas Youth Commission.

SECTION 14. Chapter 41, Government Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. SPECIAL PROSECUTION UNIT

Sec. 41.301. DEFINITIONS. In this subchapter:

(1) "Board of directors" means the board of directors of the unit.

(2) "Commission" means the Texas Youth Commission.

(3) "Department" means the Texas Department of Criminal Justice.

(4) "Executive board" means the executive board governing the board of directors of the unit.

(5) "Prosecuting attorney" means a district attorney, a criminal district attorney, or a county attorney representing the state in criminal matters before the district or inferior courts of the county.

(6) "Unit" means the special prosecution unit.

Sec. 41.302. GENERAL FUNCTION OF SPECIAL PROSECUTION UNIT. The special prosecution unit is an independent unit that cooperates with and supports prosecuting attorneys in prosecuting offenses and delinquent conduct described by Article 104.003(a), Code of Criminal Procedure.

Sec. 41.303. BOARD OF DIRECTORS. (a) The unit is governed by a board of directors composed of each prosecuting attorney who represents the state in criminal matters before a court in a county in which one or more facilities owned or operated by or under contract with the department or the commission are located.

(b) A prosecuting attorney described by Subsection (a) shall serve on the board of directors in addition to the other duties of the prosecuting attorney assigned by law.

Sec. 41.304. EXECUTIVE BOARD. (a) The board of directors is governed by an executive board composed of 11 members elected by the membership of the board of directors on a majority vote from among that membership, as follows:

(1) one member of the executive board who represents the state in criminal matters before a court in a county in which one or more facilities owned or operated by or under contract with the commission are located shall be elected on a majority vote of the members of the board of directors to serve a term expiring in an even-numbered year;

(2) an additional four members of the executive board shall be elected on a majority vote of the members of the board of directors to serve terms expiring in even-numbered years;

(3) one member of the executive board who represents the state in criminal matters before a court in a county in which one or more facilities owned or operated by or under contract with the commission are located shall be elected on a majority vote of the members of the board of directors to serve a term expiring in an odd-numbered year; and

(4) an additional five members of the executive board shall be elected on a majority vote of the members of the board of directors to serve terms expiring in odd-numbered years.

(b) If a vacancy on the executive board occurs, the board of directors shall elect a person to serve the remainder of the vacating member's term in the manner provided by Subsection (a). To be eligible for election under this subsection, a person must meet any qualifications required of the vacating member for service on the executive board.

Sec. 41.305. OFFICERS. (a) The members of the board of directors, on a majority vote, shall elect from among the membership of the executive board a presiding officer and an assistant presiding officer. The presiding officer serves as the

presiding officer of the board of directors and the executive board, and the assistant presiding officer serves as the assistant presiding officer of the board of directors and the executive board.

(b) The presiding officer and the assistant presiding officer serve terms of one year.

(c) The assistant presiding officer serves as presiding officer of the board of directors and the executive board in the presiding officer's absence or if a vacancy occurs in that office until a new presiding officer is elected as provided by Subsection (d).

(d) If a vacancy occurs in the office of presiding officer or assistant presiding officer, the board of directors shall elect a person to serve the remainder of the vacating officer's term in the manner provided by Subsection (a).

Sec. 41.306. MEMBERSHIP ON BOARD OF DIRECTORS OR EXECUTIVE BOARD NOT A CIVIL OFFICE OF EMOLUMENT. A position on the board of directors or the executive board may not be construed to be a civil office of emolument for any purpose, including those purposes described in Section 40, Article XVI, Texas Constitution.

Sec. 41.307. REIMBURSEMENT FOR EXPENSES. A member of the board of directors or executive board is not entitled to compensation for service on the board of directors or executive board, if applicable, but is entitled to be reimbursed for necessary expenses incurred in carrying out the duties and responsibilities of a member of the board of directors and the executive board, if applicable, as provided by the General Appropriations Act.

Sec. 41.308. CHIEF OF SPECIAL PROSECUTION UNIT; ADDITIONAL EMPLOYEES. The board of directors, on a majority vote, shall employ a person to serve as chief of the unit and additional persons to accomplish the unit's purposes. The board of directors may determine the compensation of the unit's employees.

Sec. 41.309. ELECTION OF COUNSELLOR. (a) The executive board, on a majority vote, shall elect a counsellor.

(b) To be eligible to serve as a counsellor, a person must:

(1) be certified in criminal law by the Texas Board of Legal Specialization;

(2) have at least five years of experience as a lawyer assisting prosecuting attorneys in prosecuting offenses or delinquent conduct committed on state property used for the custody of persons charged with or convicted of offenses or used for the custody of children charged with or adjudicated as having engaged in delinquent conduct or conduct indicating a need for supervision; or

(3) have served for at least five years as a prosecuting attorney or as a judge of a district court, a court of appeals, or the court of criminal appeals.

Sec. 41.310. DUTIES OF COUNSELLOR. (a) The counsellor elected in accordance with Section 41.309:

(1) shall coordinate prosecution issues in and monitor each case involving an offense or delinquent conduct described by Article 104.003(a), Code of Criminal Procedure, that concerns the commission;

(2) shall work with criminal justice analysts employed by the Legislative Budget Board and other persons who monitor cases involving offenses or delinquent conduct described by Article 104.003(a), Code of Criminal Procedure; and

(3) may conduct an investigation of any alleged illegal or improper conduct by commission officers, employees, or contractors that the counsellor reasonably believes:

(A) jeopardizes the health, safety, and welfare of children in the custody of the commission; and

(B) could constitute an offense described by Article 104.003(a), Code of Criminal Procedure.

(b) In addition to the duties prescribed by Subsection (a), the counsellor shall on a quarterly basis provide the board of directors and the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities with a report concerning offenses or delinquent conduct prosecuted by the unit on receiving a request for assistance under Section 61.098, Human Resources Code, or a request for assistance otherwise from a prosecuting attorney. A report under this subsection is public information under Chapter 552, Government Code, and the board of directors shall request that the commission publish the report on the commission's Internet website. A report must be both aggregated and disaggregated by individual facility and include information relating to:

(1) the number of requests for assistance received under Section 61.098, Human Resources Code, and requests for assistance otherwise received from prosecuting attorneys;

(2) the number of cases investigated and the number of cases prosecuted;

(3) the types and outcomes of cases prosecuted, such as whether the case concerned narcotics or an alleged incident of sexual abuse; and

(4) the relationship of a victim to a perpetrator, if applicable.

(c) The counsellor, in consultation with the board of directors, shall notify the foreman of the appropriate grand jury, in the manner provided by Article 20.09, Code of Criminal Procedure, if:

(1) the counsellor receives credible evidence of illegal or improper conduct by commission officers, employees, or contractors that the counsellor reasonably believes jeopardizes the health, safety, and welfare of children in the custody of the commission;

(2) the counsellor reasonably believes the conduct:

(A) could constitute an offense described by Article 104.003(a), Code of Criminal Procedure; and

(B) involves the alleged physical or sexual abuse of a child in the custody of a commission facility or an investigation related to the alleged abuse; and

(3) the counsellor has reason to believe that information concerning the conduct has not previously been presented to the appropriate grand jury.

SECTION 15. Chapter 325, Government Code, is amended by adding Sections 325.0121 and 325.0122 to read as follows:

Sec. 325.0121. STUDY ON TRANSITION TOWARD REGIONALIZED JUVENILE CORRECTIONS. (a) As part of its review of juvenile corrections for the 81st Legislature, the commission shall study the merits of moving the Texas Youth

Commission toward a regionalized structure of smaller facilities and more diversified treatment and placement options, taking into consideration the likely effects of this regionalized structure on:

- (1) recidivism;
- (2) juvenile and family access to services; and
- (3) costs to this state and the counties of this state.

(b) In conducting the study, the commission shall determine whether the existing Texas Youth Commission facilities meet their intended purposes.

(c) The commission shall take into consideration the findings and conclusions of the study in its report to the 81st Legislature and shall include any recommendations it considers appropriate resulting from its consideration of the study.

(d) The commission, in conducting the study, may seek the assistance of nationally recognized experts in the field of juvenile justice.

(e) This section expires September 1, 2009.

Sec. 325.0122. STUDY ON GOVERNANCE OF TEXAS YOUTH COMMISSION. (a) The commission shall study the merits of an executive commissioner governing the Texas Youth Commission as compared to a citizen board.

(b) The commission shall make recommendations concerning the governance of the Texas Youth Commission in its report to the legislature under Section 325.012 as part of its review of the Texas Youth Commission, which, as provided by Section 61.020, Human Resources Code, is abolished September 1, 2009, unless continued in existence as provided by this chapter.

(c) This section expires September 1, 2009.

SECTION 16. Section 411.1141(a), Government Code, is amended to read as follows:

(a) The Texas Youth Commission is entitled to obtain from the department criminal history record information maintained by the department that relates to a person described by Section 61.0357(b), Human Resources Code ~~[who is:~~

~~[(1) an applicant for a position with the Texas Youth Commission;~~

~~[(2) a volunteer or an intern, or an applicant volunteer or intern, with the Texas Youth Commission;~~

~~[(3) a business entity or person who contracts with the Texas Youth Commission to provide direct delivery services to youth;~~

~~[(4) an employee of, or an applicant for employment with, a business entity or person who contracts with the Texas Youth Commission to provide direct delivery of services to youth; or~~

~~[(5) a volunteer or an intern, or an applicant volunteer or intern, with a business entity or person who contracts with the Texas Youth Commission to provide direct delivery of services to youth].~~

SECTION 17. Chapter 493, Government Code, is amended by adding Section 493.026 to read as follows:

Sec. 493.026. INSPECTOR GENERAL REPORT ON CRIMINAL OFFENSES. (a) In this section, "special prosecution unit" means the special prosecution unit established under Subchapter E, Chapter 41.

(b) The inspector general of the department shall on a quarterly basis prepare and deliver to the board of directors of the special prosecution unit a report concerning any alleged criminal offense concerning the department and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding calendar quarter.

SECTION 18. Section 497.052(b), Government Code, is amended to read as follows:

(b) The following individuals shall serve as ex officio members of the authority:

(1) a member of the house of representatives designated by the speaker of the house;

(2) a member of the senate designated by the lieutenant governor;

(3) the executive director of the Texas Department of Criminal Justice or the designee of the executive director;

(4) the executive director of the Texas Workforce Commission or the designee of the executive director; and

(5) the executive commissioner ~~[director]~~ of the Texas Youth Commission or the designee of the executive commissioner ~~[director]~~.

SECTION 19. Section 508.156(a), Government Code, is amended to read as follows:

(a) Before the release of a person who is transferred under Section 61.081(f) or 61.084(g) ~~[61.084(f) or (g)]~~, Human Resources Code, to the division for release on parole, a parole panel shall review the person's records and may interview the person or any other person the panel considers necessary to determine the conditions of parole. The panel may impose any reasonable condition of parole on the person that the panel may impose on an adult inmate under this chapter.

SECTION 20. Subchapter A, Chapter 531, Government Code, is amended by adding Section 531.016 to read as follows:

Sec. 531.016. EQUAL ACCESS TO FACILITIES, SERVICES, AND TREATMENT. (a) The commission, the Texas Youth Commission, and the Texas Juvenile Probation Commission shall periodically review, document, and compare the accessibility and funding of facilities, services, and treatment provided to females under 18 years of age to the accessibility and funding of facilities, services, and treatment provided to males in the same age group.

(b) The commission shall coordinate the review, documentation, and comparison required by Subsection (a).

(c) The areas of review required by Subsection (a) must include:

(1) the nature, extent, and effectiveness of services offered for females under 18 years of age within the areas of teen pregnancy, physical and sexual abuse, and alcohol and drug abuse, services for runaway and homeless females, and services for females involved in gangs or other delinquent activity; and

(2) the equity of services offered to persons under 18 years of age with respect to gender within the areas of physical and sexual abuse, alcohol and drug abuse, and services offered to runaway and homeless youth.

(d) Each health and human services agency or other state agency that provides facilities, services, treatment, or funding subject to the review required by Subsection (a) shall identify existing differences within the agency in the allocation and

expenditures of money and services for males under 18 years of age in comparison to females in the same age group. Each agency shall submit a report to the commission describing any differences identified.

(e) Each agency described by Subsection (d) shall:

(1) develop a plan to address any lack of services for females under 18 years of age reported by the agency; and

(2) submit a report to the commission on the progress made under the plan.

(f) The commission shall assemble the agency reports submitted under Subsections (d) and (e) and prepare an executive summary to be delivered to the members of the legislature not later than July 1 of each even-numbered year.

(g) This section expires September 1, 2011.

SECTION 21. Section 811.001(9), Government Code, is amended to read as follows:

(9) "Law enforcement officer" means a member of the retirement system who:

(A) has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, ~~[or]~~ the Parks and Wildlife Department, or the office of inspector general at the Texas Youth Commission; and

(B) is recognized as a commissioned law enforcement officer by the Commission on Law Enforcement Officer Standards and Education.

SECTION 22. Section 814.104(b), Government Code, is amended to read as follows:

(b) A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Texas Alcoholic Beverage Commission, ~~[or]~~ the Parks and Wildlife Department, or the office of inspector general at the Texas Youth Commission, or as a custodial officer, is eligible to retire and receive a service retirement annuity.

SECTION 23. Section 815.505, Government Code, is amended to read as follows:

Sec. 815.505. CERTIFICATION OF NAMES OF LAW ENFORCEMENT AND CUSTODIAL OFFICERS. Not later than the 12th day of the month following the month in which a person begins or ceases employment as a law enforcement officer or custodial officer, the Public Safety Commission, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Commission, the office of inspector general at the Texas Youth Commission, the Board of Pardons and Paroles, or the Texas Board of Criminal Justice, as applicable, shall certify to the retirement system, in the manner prescribed by the system, the name of the employee and such other information as the system determines is necessary for the crediting of service and financing of benefits under this subtitle.

SECTION 24. Section 551.008(a), Health and Safety Code, is amended to read as follows:

(a) The department may transfer the South Campus of the Vernon State Hospital to the Texas Youth Commission contingent upon the agreement of the governing board of the department and the executive commissioner [~~governing board~~] of the Texas Youth Commission.

SECTION 25. Section 42.041(b), Human Resources Code, is amended to read as follows:

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency foster home or agency foster group home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;

(4) a school or class for religious instruction that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Department of State Health Services [~~Texas Department of Health~~];

(6) a facility licensed, operated, certified, or registered by another state agency;

(7) an educational facility accredited by the Texas Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above, an after-school program operated directly by an accredited educational facility, or an after-school program operated by another entity under contract with the educational facility, if the Texas Education Agency or Southern Association of Colleges and Schools has approved the curriculum content of the after-school program operated under the contract;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Texas Education Agency, that offers educational programs through grade six, and that does not provide custodial care during the hours before or after the customary school day;

(10) a family home, whether registered or listed;

(11) an educational facility that is integral to and inseparable from its sponsoring religious organization or an educational facility both of which do not provide custodial care for more than two hours maximum per day, and that offers educational programs for children age five and above in one or more of the following: kindergarten through at least grade three, elementary, or secondary grades;

(12) an emergency shelter facility providing shelter to minor mothers who are the sole support of their natural children under Section 32.201, Family Code, unless the facility would otherwise require a license as a child-care facility under this section;

(13) a juvenile detention facility certified under Section 51.12, Family Code, a juvenile correctional facility certified under Section 51.125, Family Code, ~~or Section 141.042(d),~~ a juvenile facility providing services solely for the Texas Youth Commission, or any other correctional facility for children operated or regulated by another state agency or by a political subdivision of the state;

(14) an elementary-age (ages 5-13) recreation program operated by a municipality provided the governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, that such standards are provided to the parents of each program participant, and that the ordinances shall include, at a minimum, staffing ratios, minimum staff qualifications, minimum facility, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; and further provided that parents be informed that the program is not licensed by the state and the program may not be advertised as a child-care facility; or

(15) an annual youth camp held in a municipality with a population of more than 1.5 million that operates for not more than three months and that has been operated for at least 10 years by a nonprofit organization that provides care for the homeless.

SECTION 26. Section 42.052(h), Human Resources Code, is amended to read as follows:

(h) The certification requirements of this section do not apply to a juvenile detention facility certified under Section 51.12, Family Code, or a juvenile correctional facility certified under Section 51.125, Family Code ~~or Section 141.042(d).~~

SECTION 27. Section 61.001, Human Resources Code, is amended by amending Subdivisions (2) and (4) and adding Subdivision (7) to read as follows:

(2) "Advisory board" ~~["Board"]~~ means the advisory ~~[governing]~~ board of the commission.

(4) "Executive commissioner ~~[director]"~~ means the executive commissioner ~~[director]~~ of the commission.

(7) "Office of inspector general" means the office of inspector general established under Section 61.0451.

SECTION 28. Sections 61.012 and 61.0121, Human Resources Code, are amended to read as follows:

Sec. 61.012. EXECUTIVE COMMISSIONER ~~[MEMBERS OF THE GOVERNING BOARD]~~. (a) The ~~[governing board of the]~~ Texas Youth Commission is governed by an executive commissioner ~~[consists of seven members]~~ appointed by the governor with the consent of the senate. The appointment of the executive commissioner ~~[Appointments to the board]~~ shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee ~~[appointees]~~.

(b) ~~[Members of the board must be citizens who are recognized within their communities for their interest in youth.]~~

~~[(e)]~~ The executive commissioner holds ~~[board members hold]~~ office for a term of not more than two years expiring February 1 of odd-numbered ~~[staggered terms of six years, with the terms of two or three members expiring every two]~~ years.

(c) The executive commissioner ~~[(d) A member]~~ is eligible for reappointment with the consent of the senate.

(d) The executive commissioner is a full-time state officer who is entitled to a salary and reimbursement for actual expenses incurred while on commission business.

(e) This section expires September 1, 2009.

Sec. 61.0121. QUALIFICATIONS FOR EXECUTIVE COMMISSIONER, ADVISORY BOARD MEMBERS, AND EMPLOYEES. (a) A person is not eligible for appointment as executive commissioner or as a member of ~~[(e)]~~ the advisory board if the person or the person's spouse:

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

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

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

(b) An officer, employee, or paid consultant of a Texas trade association in the field of criminal or juvenile justice may not be the executive commissioner, a member of the advisory board, or an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(c) A person who is the spouse of an officer, manager, or paid consultant of a Texas trade association in the field of criminal justice or juvenile justice may not be the executive commissioner, a member of the advisory board, or ~~[and may not be]~~ an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(e) A person may not be appointed as executive commissioner, serve as a member of the advisory board, or act as the general counsel to the executive commissioner, the advisory board, or the commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(f) This section expires September 1, 2009.

SECTION 29. Subchapter B, Chapter 61, Human Resources Code, is amended by adding Section 61.0123 to read as follows:

Sec. 61.0123. REMOVAL OF EXECUTIVE COMMISSIONER FROM OFFICE. (a) It is a ground for removal from office as executive commissioner if the executive commissioner:

(1) does not have at the time of appointment the qualifications required by Section 61.0121(a) for appointment;

(2) does not maintain while serving as executive commissioner the qualifications required by Section 61.0121(a) for appointment; or

(3) violates a prohibition established by Section 61.0121(b) or (c).

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

(c) If the advisory board has knowledge that a potential ground for removal exists under this section, the chairman of the advisory board shall notify the executive commissioner, the governor, and the attorney general of the potential ground for removal.

(d) This section expires September 1, 2009.

SECTION 30. Section 61.013, Human Resources Code, is amended to read as follows:

Sec. 61.013. ADVISORY BOARD [~~PRESIDING OFFICER; MEETINGS~~]. (a) An advisory board for the commission is established to:

(1) advise the executive commissioner on matters concerning the commission; and

(2) assist the executive commissioner in the performance of the executive commissioner's duties. [~~The governor shall designate a member of the board as the chairman of the board to serve in that capacity at the pleasure of the governor.~~]

(b) The advisory board is composed of nine members. Three members shall be appointed by the governor, three members shall be appointed by the lieutenant governor, and three members shall be appointed by the speaker of the house of representatives. The governor, lieutenant governor, and speaker of the house of representatives shall coordinate to ensure that the membership of the advisory board meets the requirements of Subsection (d). The governor shall designate a member of the advisory board as the chairman of the advisory board to serve in that capacity at the pleasure of the governor. [~~The board shall meet at least four times each year.~~]

(c) The appointment of a member of the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee [~~A meeting shall be held on the call of the chairman or on the request of four members at the time and place designated by the chairman.~~].

(d) Members of the advisory board must be citizens who are recognized within their communities for their interest in youth. The board shall be composed of at least one physician, an experienced member of a victims advocacy organization, a mental health professional, and a current or former prosecutor or judge. A majority of the members of the advisory board must be qualified, by experience or education, in the development and administration of programs for the rehabilitation and reestablishment in society of children in the custody of agencies similar in mission and scope to the commission. At least two of the members of the advisory board must have primary experience in a field other than the field of criminal or juvenile justice.

(e) The advisory board shall meet at least four times each year. A meeting shall be held at the call of the chairman or on the request of five members at a time and place designated by the chairman.

(f) Advisory board members are entitled to receive a per diem in the amount provided in the General Appropriations Act for not more than 90 days in any fiscal year, plus reimbursement for actual expenses incurred while on advisory board business.

(g) A member of the advisory board serves at the pleasure of the person who appointed the member.

(h) This section expires September 1, 2009.

SECTION 31. Sections 61.019 and 61.0191, Human Resources Code, are amended to read as follows:

Sec. 61.019. DELEGATION OF POWERS AND DUTIES. (a) Any power, duty, or function of the commission that is not assigned by statute to the chief inspector general of the office of inspector general [or of the board] may be exercised and performed by the executive commissioner.

(b) The executive commissioner may delegate to [director or] any [member or] employee designated or assigned by the [board or by the] executive commissioner a power, duty, or function of the executive commissioner or the commission that is not already assigned by statute to the chief inspector general of the office of inspector general [director].

(c) This section expires September 1, 2009.

Sec. 61.0191. AUDIT; AUTHORITY OF STATE AUDITOR. (a) The [financial transactions of the] commission is [are] subject to audit by the state auditor in accordance with Chapter 321, Government Code.

(b) The state auditor, on request of the office of inspector general, may provide information or other assistance to the office of inspector general that the state auditor determines is appropriate. The office of inspector general may coordinate with the state auditor to review or schedule a plan for an investigation under Section 61.0451 or share other information.

(c) The state auditor may access all information maintained by the office of inspector general, such as vouchers, electronic data, and internal records, including information that is otherwise confidential under law. Information obtained by the state auditor under this subsection is confidential and is not subject to disclosure under Chapter 552, Government Code.

(d) Any provision of this chapter relating to the operations of the office of inspector general does not:

(1) supersede the authority of the state auditor to conduct an audit under Chapter 321, Government Code; or

(2) prohibit the state auditor from:

(A) conducting an audit, investigation, or other review; or

(B) having full and complete access to all records and other information concerning the commission, including any witness statement or electronic data, that the state auditor considers necessary for the audit, investigation, or review.

SECTION 32. Section 61.022, Human Resources Code, is amended to read as follows:

Sec. 61.022. ACCESSIBILITY TO PROGRAMS AND FACILITIES. The commission shall comply with federal and state laws related to program and facility accessibility. The executive commissioner ~~[director]~~ shall also prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the commission's programs and services.

SECTION 33. Subchapter B, Chapter 61, Human Resources Code, is amended by adding Sections 61.023 and 61.024 to read as follows:

Sec. 61.023. ACCREDITATION BY AMERICAN CORRECTIONAL ASSOCIATION. Not later than September 1, 2007, the commission shall adopt a plan for and begin the process of receiving accreditation by the American Correctional Association for each correctional facility operated by or under contract with the commission.

Sec. 61.024. GOVERNANCE OF COMMISSION. (a) Notwithstanding any other provision of this chapter, effective September 1, 2009, the commission is governed by a board that consists of seven members appointed by the governor with the advice and consent of the senate. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(b) Members of the board must be citizens who are recognized within their communities for their interest in youth. The board shall be composed of at least one physician, an experienced member of a victims advocacy organization, a mental health professional, and a current or former prosecutor or judge. A majority of the members of the board must be qualified, by experience or education, in the development and administration of programs for the rehabilitation and reestablishment in society of children in the custody of agencies similar in mission and scope to the commission. At least two of the members of the board must have primary experience in a field other than the field of criminal or juvenile justice.

(c) The board shall meet at least four times each year. A meeting shall be held at the call of the chairman or on the request of five members at a time and place designated by the chairman. Board members are entitled to receive a per diem in the amount provided in the General Appropriations Act for not more than 90 days in any fiscal year, plus reimbursement for actual expenses incurred while on board business.

(d) Effective September 1, 2009, the commission shall employ an executive director, selected by the board, to serve at the will of the board. The executive director shall devote full time to the work of the commission. The executive director is entitled to actual expenses while on commission business.

(e) Effective September 1, 2009:

(1) a reference in law to the executive commissioner is a reference to the board in matters concerning the governance of the commission, policymaking functions of the commission, or rulemaking functions of the commission; and

(2) a reference in law to the executive commissioner is a reference to the executive director in matters concerning the administrative functions of the commission.

SECTION 34. Section 61.0315, Human Resources Code, is amended to read as follows:

Sec. 61.0315. ~~[REVIEW OF]~~ TREATMENT PROGRAMS. (a) The commission shall annually review the effectiveness of the commission's programs for the rehabilitation and reestablishment in society of children committed to the commission, including programs for sex offenders, capital offenders, children who are chemically dependent, ~~and~~ emotionally disturbed children, and females.

(b) On or before December 31 of each year, the commission shall make a report on the effectiveness of the programs to the Legislative Budget Board.

(c) The commission shall offer or make available programs described by Subsection (a) in an adequate manner so that a child in the custody of the commission receives appropriate rehabilitation services recommended for the child by the court committing the child to the commission.

(d) If the commission is unable to offer or make available programs described by Subsection (a) in the manner provided by Subsection (c), the commission shall, not later than January 10 of each odd-numbered year, provide the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities with a report explaining:

(1) which programs are not offered or are unavailable; and

(2) the reason the programs are not offered or are unavailable.

(e) The commission shall periodically review, document, and compare the accessibility and funding of treatment programs provided to female children committed to the commission to the accessibility and funding of treatment provided to male children committed to the commission.

SECTION 35. Subchapter C, Chapter 61, Human Resources Code, is amended by adding Sections 61.0331, 61.0332, and 61.0345 to read as follows:

Sec. 61.0331. INTERNAL AUDIT; REPORT. (a) The commission shall regularly conduct internal audits of the commission, including audits of:

(1) correctional facilities operated by and under contract with the commission; and

(2) medical services provided to children in the custody of the commission.

(b) The commission shall on a quarterly basis report the results of the audits to:

(1) the committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities; and

(2) the state auditor.

Sec. 61.0332. COMPLIANCE REPORTS. (a) The commission shall provide the joint select committee on the operation and management of the Texas Youth Commission with reports concerning the progress of the commission in complying with the requirements of S.B. No. 103, Acts of the 80th Legislature, Regular Session, 2007. The commission shall prepare and deliver the first report to the joint select committee on December 1, 2007, the second report to the joint select committee on June 1, 2008, and the final report to the joint select committee on December 1, 2008.

(b) This section expires January 1, 2009.

Sec. 61.0345. MISSION STATEMENT. The commission shall develop and adopt a statement regarding the role and mission of the commission.

SECTION 36. Section 61.034, Human Resources Code, is amended to read as follows:

Sec. 61.034. POLICIES AND RULES. (a) The executive commissioner ~~[The commission]~~ is responsible for the adoption of all policies and shall make rules appropriate to the proper accomplishment of the commission's ~~[its]~~ functions.

(b) The executive commissioner ~~[commission]~~ shall adopt rules for the government of the schools, facilities, and programs under the commission's ~~[its]~~ authority and shall see that the schools, facilities, and programs are conducted according to law and to the executive commissioner's ~~[commission's]~~ rules. The purpose of the rules and of all education, work, training, discipline, recreation, and other activities in the schools, facilities, and programs is to restore and increase the self-respect and self-reliance of the youth under the authority of the commission and to qualify them for good citizenship and honorable employment.

SECTION 37. Section 61.035, Human Resources Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as otherwise provided by this chapter, an employee of the commission is employed on an at-will basis ~~[The commission may remove any employee for cause, and a decision by the commission is final].~~

(c) The commission shall establish procedures and practices governing:

(1) employment-related grievances submitted by commission employees;
and

(2) disciplinary actions within the commission, including a procedure allowing a commission employee to elect to participate in an independent dismissal mediation if the employee is recommended for dismissal.

SECTION 38. Sections 61.0351, 61.0352, and 61.0354, Human Resources Code, are amended to read as follows:

Sec. 61.0351. PROFESSIONAL INFORMATION FOR ADVISORY BOARD MEMBERS AND EMPLOYEES. The executive commissioner ~~[director or the executive director's designee]~~ shall provide to members of the advisory board and to commission employees, as often as is necessary, information regarding their qualification for office or employment under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 61.0352. DIVISION OF RESPONSIBILITY. The executive commissioner ~~[board]~~ shall develop and implement policies that clearly separate the policymaking responsibilities of the executive commissioner ~~[board]~~ and the management responsibilities of the ~~[executive director and the]~~ staff of the commission.

Sec. 61.0354. JOB PERFORMANCE EVALUATIONS. The executive commissioner ~~[director or the executive director's designee]~~ shall develop a system of annual performance evaluations that are based on documented employee performance. All merit pay for commission employees must be based on the system established under this section.

SECTION 39. Section 61.0355(a), Human Resources Code, is amended to read as follows:

(a) The executive commissioner ~~[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 shall include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel that are in compliance with requirements of Chapter 21, Labor Code;

(2) a comprehensive analysis of the commission's work force that meets federal or state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations;

(3) procedures by which a determination can be made about the extent of underuse in the commission's work force of all persons of whom federal or state laws, rules, and regulations and instructions promulgated directly from those laws, rules, and regulations encourage a more equitable balance; and

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

SECTION 40. Subchapter C, Chapter 61, Human Resources Code, is amended by adding Sections 61.0356, 61.0357, and 61.0386 to read as follows:

Sec. 61.0356. JUVENILE CORRECTIONAL OFFICERS; STAFFING. (a) In this section, "juvenile correctional officer" means an employee whose primary duty includes the custodial supervision of children in the custody of the commission.

(b) The commission shall provide each juvenile correctional officer employed by the commission with at least 300 hours of training, which must include on-the-job training, before the officer independently commences the officer's duties at the facility. The training must provide the officer with information and instruction related to the officer's duties, including information and instruction concerning:

(1) the juvenile justice system of this state, including the juvenile correctional facility system;

(2) security procedures;

(3) the supervision of children committed to the commission;

(4) signs of suicide risks and suicide precautions;

(5) signs and symptoms of the abuse, assault, neglect, and exploitation of a child, including sexual abuse and sexual assault, and the manner in which to report the abuse, assault, neglect, or exploitation of a child;

(6) the neurological, physical, and psychological development of adolescents;

(7) commission rules and regulations, including rules, regulations, and tactics concerning the use of force;

(8) appropriate restraint techniques;

(9) the Prison Rape Elimination Act of 2003 (42 U.S.C. Section 15601, et seq.);

(10) the rights and responsibilities of children in the custody of the commission;

(11) interpersonal relationship skills;

(12) the social and cultural lifestyles of children in the custody of the commission;

(13) first aid and cardiopulmonary resuscitation;

(14) counseling techniques;

(15) conflict resolution and dispute mediation, including de-escalation techniques;

(16) behavior management;

(17) mental health issues; and

(18) employee rights, employment discrimination, and sexual harassment.

(c) The commission may employ part-time juvenile correctional officers. A part-time juvenile correctional officer is subject to the training requirements of this section.

(d) In each correctional facility operated by the commission that has a dormitory, including an open-bay dormitory, the commission must maintain a ratio of not less than one juvenile correctional officer performing direct supervisory duties for every 12 persons committed to the facility.

(e) The commission shall consider the age of a juvenile correctional officer or other commission employee who performs direct supervisory duties when determining the placement of the officer or employee in a commission facility so that, to the extent practicable, an officer or employee is not supervising a child who is not more than three years younger than the officer or employee or is otherwise a similar age to the officer or employee.

(f) The commission shall rotate the assignment of each juvenile correctional officer at an interval determined by the commission so that a juvenile correctional officer is not assigned to the same station for an extended period of time.

(g) The commission shall ensure that at least one juvenile correctional officer is assigned to supervise in or near a classroom or other location in which children receive education services or training at the time the children are receiving the education services or training.

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

Sec. 61.0357. REQUIRED BACKGROUND AND CRIMINAL HISTORY CHECKS. (a) In this section:

(1) "Department" means the Department of Public Safety.

(2) "National criminal history record information" means criminal history record information obtained from the department under Subchapter F, Chapter 411, Government Code, and from the Federal Bureau of Investigation under Section 411.087, Government Code.

(b) The executive commissioner shall review the national criminal history record information, state criminal history record information maintained by the department, and previous and current employment references of each person who:

(1) is an employee, contractor, volunteer, ombudsman, or advocate working for the commission or working in a commission facility or a facility under contract with the commission;

(2) provides direct delivery of services to children in the custody of the commission; or

(3) has access to records in commission facilities or offices.

(c) To enable the executive commissioner to conduct the review, the commission shall adopt rules requiring a person described by Subsection (b) to electronically provide the department with a complete set of the person's fingerprints in a form and of a quality acceptable to the department and the Federal Bureau of Investigation.

(d) For each person described by Subsection (b), the executive commissioner shall review on an annual basis the person's national criminal history record information.

(e) The commission shall ensure that the system used to check state criminal history record information maintained by the department is capable of providing real time arrest information.

(f) The commission by rule may require a person described by Subsection (b) to pay a fee related to the first national criminal history record information review conducted under this section. The amount of the fee may not exceed the administrative costs incurred by the commission in conducting the initial review, including the costs of obtaining the person's fingerprints.

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

Sec. 61.0386. ADVOCACY AND SUPPORT GROUPS. (a) The commission shall allow advocacy and support groups whose primary functions are to benefit children, inmates, girls and women, the mentally ill, and victims of sexual assault to provide on-site information, support, and other services for children confined in commission facilities.

(b) The commission shall adopt security and privacy procedures for advocacy and support groups that provide on-site information, support, and other services under this section. The security and privacy procedures may not be designed to deny an advocacy or support group access to children confined in commission facilities.

(c) The commission shall adopt standards consistent with standards adopted by the Texas Department of Criminal Justice regarding the confidential correspondence of children confined in commission facilities with external entities, including advocacy and support groups.

SECTION 41. Section 61.0423, Human Resources Code, is amended to read as follows:

Sec. 61.0423. PUBLIC HEARINGS. (a) The executive commissioner [board] shall develop and implement policies that provide the public with a reasonable opportunity to appear before the executive commissioner or the executive commissioner's designee [board] and to speak on any issue under the jurisdiction of the commission.

(b) The executive commissioner shall ensure that the location of public hearings held in accordance with this section is rotated between municipalities in which a commission facility is located or that are in proximity to a commission facility.

SECTION 42. Subchapter C, Chapter 61, Human Resources Code, is amended by adding Sections 61.0451, 61.0452, 61.0461, 61.061, 61.062, and 61.0651 to read as follows:

Sec. 61.0451. OFFICE OF INSPECTOR GENERAL. (a) The office of inspector general is established at the commission for the purpose of investigating:

(1) crimes committed by commission employees, including parole officers employed by or under a contract with the commission; and

(2) crimes committed at a facility operated by the commission or at a residential facility operated by another entity under a contract with the commission.

(b) The office of inspector general shall prepare and deliver a report concerning the results of any investigation conducted under this section to:

(1) the executive commissioner;

(2) the advisory board;

(3) the governor;

(4) the lieutenant governor;
(5) the speaker of the house of representatives;
(6) the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities;
(7) the special prosecution unit;
(8) the state auditor; and
(9) any other appropriate state agency responsible for licensing or certifying commission employees or facilities.

(c) The report prepared under Subsection (b) must include a summary of the actions performed by the office of inspector general in conducting the investigation, a statement of whether the investigation resulted in a finding that a criminal offense occurred, and a description of the finding. The report is public information under Chapter 552, Government Code, only to the extent authorized under that chapter and other law.

(d) The office of inspector general may employ and commission inspectors general as peace officers for the purpose of carrying out the duties described by this section. An inspector general shall have all of the powers and duties given to peace officers under Article 2.13, Code of Criminal Procedure.

(e) Peace officers employed and commissioned under Subsection (d) must:

(1) be certified by the Commission on Law Enforcement Officer Standards and Education under Chapter 1701, Occupations Code; and

(2) complete advanced courses relating to the duties of peace officers employed and commissioned under Subsection (d) as part of any continuing education requirements for the peace officers.

(f) The executive commissioner shall select a commissioned peace officer as chief inspector general. The chief inspector general is subject to the requirements of this section and may only be discharged for cause.

(g) The chief inspector general shall on a quarterly basis prepare and deliver a report concerning the operations of the office of inspector general to:

(1) the executive commissioner;
(2) the advisory board;
(3) the governor;
(4) the lieutenant governor;
(5) the speaker of the house of representatives;
(6) the standing committees of the senate and house of representatives with primary jurisdiction over correctional facilities;
(7) the state auditor; and
(8) the comptroller.

(h) A report prepared under Subsection (g) is public information under Chapter 552, Government Code, to the extent authorized under that chapter and other law, and the commission shall publish the report on the commission's Internet website. A report must be both aggregated and disaggregated by individual facility and include information relating to:

(1) the types of investigations conducted by the office of inspector general, such as whether an investigation concerned narcotics or an alleged incident of sexual abuse;

(2) the relationship of a victim to a perpetrator, if applicable; and

(3) the number of investigations conducted concerning suicides, deaths, and hospitalizations of children in the custody of the commission.

(i) The office of inspector general shall immediately report to the executive commissioner, the advisory board, the governor's general counsel, and the state auditor any particularly serious or flagrant problem concerning the administration of a commission program or operation or any interference by the executive commissioner or an employee of the commission with an investigation conducted by the office.

Sec. 61.0452. TOLL-FREE NUMBER. (a) The commission shall establish a permanent, toll-free number for the purpose of receiving any information concerning the abuse, neglect, or exploitation of children in the custody of the commission.

(b) The office of inspector general shall ensure that:

(1) the toll-free number is prominently displayed in each commission facility; and

(2) children in the custody of the commission and commission employees have confidential access to telephones for the purpose of calling the toll-free number.

Sec. 61.0461. EMPLOYMENT OR DESIGNATION OF CHAPLAIN AT CERTAIN COMMISSION FACILITIES. The commission shall ensure that a chaplain is employed or formally designated for each commission correctional facility that is an institution.

Sec. 61.061. PLACEMENT IN COMMISSION FACILITIES. (a) The commission may not assign a child younger than 15 years of age to the same correctional facility dormitory as a person who is at least 17 years of age unless the commission determines that the placement is necessary to ensure the safety of children in the custody of the commission. This subsection does not apply to a dormitory that is used exclusively for short-term assessment and orientation purposes.

(b) The commission by rule shall adopt scheduling, housing, and placement procedures for the purpose of protecting vulnerable children in the custody of the commission. The procedures must address the age, physical condition, and treatment needs of a child as well as any other relevant factor.

(c) The commission shall consider the proximity of the residence of a child's family in determining the appropriate commission facility in which to place a child.

Sec. 61.062. ESTABLISHMENT OF MINIMUM LENGTH OF STAY. (a) The commission shall establish a minimum length of stay for each child committed to the commission without a determinate sentence.

(b) In establishing a minimum length of stay for a child, the commission shall consider:

(1) the nature of and seriousness of the conduct engaged in by the child; and

(2) the danger the child poses to the community.

Sec. 61.0651. INFORMATION PROVIDED BY COMMITTING COURT. In addition to the information provided under Section 61.065, a court that commits a child to the commission shall provide the commission with a copy of the following documents:

(1) the petition and the adjudication and disposition orders for the child, including the child's thumbprint;

(2) if the commitment is a result of revocation of probation, a copy of the conditions of probation and the revocation order;

(3) the social history report for the child;

(4) any psychological or psychiatric reports concerning the child;

(5) the contact information sheet for the child's parents or guardian;

(6) any law enforcement incident reports concerning the offense for which the child is committed;

(7) any sex offender registration information concerning the child;

(8) any juvenile probation department progress reports concerning the child;

(9) any assessment documents concerning the child;

(10) the computerized referral and case history for the child, including case disposition;

(11) the child's birth certificate;

(12) the child's social security number or social security card, if available;

(13) the name, address, and telephone number of the court administrator in the committing county;

(14) Title IV-E eligibility screening information for the child, if available;

(15) the address in the committing county for forwarding funds collected to which the committing county is entitled;

(16) any of the child's school or immunization records that the committing county possesses;

(17) any victim information concerning the case for which the child is committed; and

(18) any of the child's pertinent medical records that the committing court possesses.

SECTION 43. Section 61.044, Human Resources Code, is amended to read as follows:

Sec. 61.044. BIENNIAL BUDGET. ~~[DUTIES OF EXECUTIVE DIRECTOR. (a) The executive director shall perform the duties assigned by the commission.~~

~~[(b)] The executive commissioner [director] shall prepare [and submit to the commission for its approval]~~ a biennial budget of all funds necessary to be appropriated by the legislature to the commission to carry out the purposes of this chapter. The budget shall be submitted and filed by the executive commissioner [commission] in the form and manner and within the time prescribed by law.

SECTION 44. Subchapter C, Chapter 61, Human Resources Code, is amended by adding Section 61.055 to read as follows:

Sec. 61.055. ZERO-TOLERANCE POLICY. (a) The commission shall adopt a zero-tolerance policy concerning the detection, prevention, and punishment of the sexual abuse, including consensual sexual contact, of children in the custody of the commission.

(b) The commission shall establish standards for reporting and collecting data on the sexual abuse of children in the custody of the commission.

(c) The commission shall establish a procedure for children in the custody of the commission and commission employees to report incidents of sexual abuse involving a child in the custody of the commission. The procedure must designate a person

employed at the commission facility in which the abuse is alleged to have occurred as well as a person who is employed at the commission's headquarters to whom a person may report an incident of sexual abuse.

(d) The commission shall prominently display the following notice in the office of the chief administrator of each commission facility, the employees' break room of each commission facility, the cafeteria of each commission facility, and at least six additional locations in each commission facility:

THE TEXAS LEGISLATURE HAS ADOPTED A ZERO-TOLERANCE POLICY REGARDING THE SEXUAL ABUSE, INCLUDING CONSENSUAL SEXUAL CONTACT, OF A CHILD IN THE CUSTODY OF THE COMMISSION. ANY SUCH VIOLATION MUST BE REPORTED TO _____.

SECTION 45. Sections 61.071 and 61.072, Human Resources Code, are amended to read as follows:

Sec. 61.071. INITIAL EXAMINATION. (a) The commission shall examine and make a study of each child committed to it as soon as possible after commitment. The study shall be made according to rules established by the commission and shall include:

(1) long-term planning for the child; and
(2) consideration of the child's medical, substance abuse, and treatment history, including the child's psychiatric history and substance abuse history [~~determination of whether the child will need long-term residential care~~].

(b) For a child for whom a minimum length of stay is established under Section 61.062 of one year or longer, the initial examination must include a comprehensive psychiatric evaluation.

(c) The commission shall administer comprehensive psychological assessments to a child as part of the child's initial examination, including assessments designed to identify whether a child is in need of a psychiatric evaluation. If the results of a child's psychological assessments indicate that the child is in need of a psychiatric evaluation, the commission shall as soon as practicable conduct a psychiatric evaluation of the child.

Sec. 61.072. REEXAMINATION. The commission shall periodically reexamine each child under its control, except those on release under supervision or in foster homes, for the purpose of determining whether a rehabilitation plan made by the commission concerning the child should be modified or continued. The examination must include a study of all current circumstances of a child's personal and family situation and an evaluation of the progress made by the child since the child's last examination. The examination of a child may be made as frequently as the commission considers necessary [~~desirable~~], but shall be made at intervals not exceeding six months [~~one year~~].

SECTION 46. Subchapter E, Chapter 61, Human Resources Code, is amended by adding Section 61.0711 to read as follows:

Sec. 61.0711. HEALTH CARE DELIVERY SYSTEM. (a) In providing medical care, behavioral health care, or rehabilitation services, the commission shall integrate the provision of those services in an integrated comprehensive delivery system.

(b) The delivery system may be used to deliver any medical, behavioral health, or rehabilitation services provided to a child in the custody of the commission, including:

- (1) health care;
- (2) dental care;
- (3) behavioral health care;
- (4) substance abuse treatment;
- (5) nutrition;
- (6) programming;
- (7) case management; and
- (8) general rehabilitation services, including educational, spiritual, daily

living, recreational, and security services.

SECTION 47. Section 61.0731, Human Resources Code, is amended by adding Subsection (c) to read as follows:

(c) The commission may disclose to a peace officer or law enforcement agency images of children recorded by an electronic recording device and incident reporting and investigation documents containing the names of children if the information is relevant to the investigation of a criminal offense alleged to have occurred in a facility operated by or under contract with the commission.

SECTION 48. Subchapter E, Chapter 61, Human Resources Code, is amended by adding Sections 61.0763 and 61.0764 to read as follows:

Sec. 61.0763. RIGHTS OF PARENTS. (a) The commission, in consultation with advocacy and support groups such as those described in Section 61.0386(a), shall develop a parent's bill of rights for distribution to the parent or guardian of a child who is under 18 years of age and committed to the commission. The parent's bill of rights must include:

(1) a description of the commission's grievance policies and procedures, including contact information for the office of inspector general and the office of the independent ombudsman established under Chapter 64;

(2) a list of possible incidents that require parental notification;

(3) policies concerning visits and telephone conversations with a child committed to the commission;

(4) a description of commission caseworker responsibilities;

(5) a statement that the commission caseworker assigned to a child may assist the child's parent or guardian in obtaining information and services from the commission and other resources concerning:

(A) counseling, including substance abuse and mental health counseling;

(B) assistance programs, including financial and travel assistance programs for visiting a child committed to the commission;

(C) workforce preparedness programs;

(D) parenting programs; and

(E) commission seminars; and

(6) information concerning the indeterminate sentencing structure at the commission, an explanation of reasons that a child's commitment at the commission could be extended, and an explanation of the review process under Sections 61.0815 and 61.0816 for a child committed to the commission without a determinate sentence.

(b) Not later than 48 hours after the time a child is admitted to a commission facility, the commission shall mail to the child's parent or guardian at the last known address of the parent or guardian:

(1) the parent's bill of rights; and

(2) the contact information of the commission caseworker assigned to the child.

(c) The commission shall on a quarterly basis provide to the parent, guardian, or designated advocate of a child who is in the custody of the commission a report concerning the progress of the child at the commission, including:

(1) the academic and behavioral progress of the child; and

(2) the results of any reexamination of the child conducted under Section 61.072.

(d) The commission shall ensure that written information provided to a parent or guardian regarding the rights of a child in the custody of the commission or the rights of a child's parent or guardian, including the parent's bill of rights, is clear and easy to understand.

Sec. 61.0764. COMMISSION CASEWORKERS. (a) The commission shall assign a caseworker to a child committed to the commission. A commission caseworker shall:

(1) explore family issues and needs with the parent or guardian of a child committed to the commission;

(2) as needed, provide the parent or guardian of a child committed to the commission with information concerning programs and services provided by the commission or another resource; and

(3) perform other duties required by the commission.

(b) A commission caseworker shall:

(1) at least once a month, attempt to contact the child's parent or guardian by phone, in person while the parent or guardian is visiting the facility, or, if necessary, by mail;

(2) if unsuccessful in contacting the child's parent or guardian under Subdivision (1), attempt at least one additional time each month to contact the child's parent or guardian; and

(3) document successful as well as unsuccessful attempts to contact the child's parent or guardian.

(c) To the extent practicable, a caseworker or another facility administrator shall attempt to communicate with a parent or guardian who does not speak English in the language of choice of the parent or guardian.

SECTION 49. Section 61.079(a), Human Resources Code, is amended to read as follows:

(a) After a child sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 16 years of age but before the child becomes 19 ~~[24]~~ years of age, the commission may refer the child to the juvenile court that entered the order of commitment for approval of the child's transfer to the ~~[institutional division of the]~~ Texas Department of Criminal Justice for confinement if:

(1) the child has not completed the sentence; and

(2) the child's conduct, regardless of whether the child was released under supervision under Section 61.081, indicates that the welfare of the community requires the transfer.

SECTION 50. Subchapter E, Chapter 61, Human Resources Code, is amended by adding Section 61.0791 to read as follows:

Sec. 61.0791. EVALUATION OF CERTAIN CHILDREN SERVING DETERMINATE SENTENCES. (a) When a child who is sentenced to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, becomes 18 years of age, the commission shall evaluate whether the child is in need of additional services that can be completed in the six-month period after the child's 18th birthday to prepare the child for release from the custody of the commission or transfer to the Texas Department of Criminal Justice.

(b) This section does not apply to a child who is released from the custody of the commission or who is transferred to the Texas Department of Criminal Justice before the child's 18th birthday.

SECTION 51. Subchapter F, Chapter 61, Human Resources Code, is amended by adding Sections 61.0814, 61.0815, and 61.0816 to read as follows:

Sec. 61.0814. REENTRY AND REINTEGRATION PLAN. (a) The commission shall develop a reentry and reintegration plan for each child committed to the custody of the commission. The plan for a child must be designed to ensure that the child receives an extensive continuity of care in services from the time the child is committed to the commission to the time of the child's final discharge from the commission. The plan for a child must include, as applicable:

(1) housing assistance;

(2) a step-down program, such as placement in a halfway house;

(3) family counseling;

(4) academic and vocational mentoring;

(5) trauma counseling for a child who is a victim of abuse while in the custody of the commission; and

(6) other specialized treatment services appropriate for the child.

(b) If a program or service in the child's reentry and reintegration plan is not available at the time the child is to be released, the commission shall find a suitable alternative program or service so that the child's release is not postponed.

Sec. 61.0815. COMPLETION OF MINIMUM LENGTH OF STAY. (a) After a child who is committed to the commission without a determinate sentence completes the minimum length of stay established by the commission for the child under Section 61.062, the commission shall, in the manner provided by this section:

(1) discharge the child from the custody of the commission;

(2) release the child under supervision under Section 61.081; or

(3) extend the length of the child's stay in the custody of the commission.

(b) The commission by rule shall establish a panel whose function is to review and determine whether a child who has completed the child's minimum length of stay should be discharged from the custody of the commission as provided by Subsection (a)(1), be released under supervision under Section 61.081 as provided by Subsection (a)(2), or remain in the custody of the commission for an additional period of time as provided by Subsection (a)(3).

(c) The executive commissioner shall determine the size of the panel and the length of the members' terms of service on the panel. The panel must consist of an odd number of members and the terms of the panel's members must last for at least two years. The executive commissioner shall adopt policies that ensure the transparency, consistency, and objectivity of the panel's composition, procedures, and decisions. The executive commissioner shall appoint persons to serve as members of the panel. A person appointed to the panel must be a commission employee who works at the commission's central office. A member of the panel may not be involved in any supervisory decisions concerning children in the custody of the commission.

(d) The panel may extend the length of the child's stay as provided by Subsection (a)(3) only if the panel determines by majority vote and on the basis of clear and convincing evidence that the child is in need of additional rehabilitation from the commission and that the commission will provide the most suitable environment for that rehabilitation. In extending the length of a child's stay, the panel must specify the additional period of time that the child is to remain in the custody of the commission and must conduct an additional review and determination as provided by this section on the child's completion of the additional term of stay. If the panel determines that the child's length of stay should not be extended, the commission must discharge the child from the custody of the commission as provided by Subsection (a)(1) or release the child under supervision under Section 61.081 as provided by Subsection (a)(2).

(e) The commission shall maintain statistics of the number of extensions granted by the panel. The statistics must include aggregated information concerning:

(1) the race, age, sex, specialized treatment needs, and county of origin for each child for whom an extension order is requested;

(2) the facility in which the child is confined; and

(3) if applicable, any allegations concerning the abuse, mistreatment, or neglect of the child, aggregated by the type of misconduct to which the child was subjected.

(f) To the extent authorized under law, the statistics maintained under Subsection (e) are public information under Chapter 552, Government Code, and the commission shall post the statistics on the commission's Internet website. The commission shall prepare and deliver to the standing committees of the senate and house of representatives with primary jurisdiction over matters concerning correctional facilities a report concerning the statistics maintained under Subsection (e).

(g) The commission shall provide a report to the parent, guardian, or designated advocate of a child whose length of stay is extended under this section explaining the panel's reason for the extension.

Sec. 61.0816. REQUEST FOR RECONSIDERATION OF EXTENSION ORDER. (a) The commission by rule shall establish a process to request the reconsideration of an extension order issued by the panel established under Section 61.0815.

(b) The process to request reconsideration must provide that:

(1) a child, a parent, guardian, or designated advocate of a child, an employee of the commission, or a person who provides volunteer services at a commission facility may submit a request for reconsideration of an extension order;

(2) the person submitting the request for reconsideration of an extension order must state in the request the reason for the request;

(3) after receiving a request for reconsideration of an extension order, the panel shall reconsider an extension order that:

(A) extends the child's stay in the custody of the commission by six months or more; or

(B) combined with previous extension orders will result in an extension of the child's stay in the custody of the commission by six months or more;

(4) the panel's reconsideration of an extension order includes consideration of the information submitted in the request; and

(5) the panel shall send a written reply to the child, the parent, guardian, or designated advocate of the child, and the person who made the request for reconsideration of an extension order that includes an explanation of the panel's decision after reconsidering the extension order, including an indication that the panel has considered the information submitted in the request.

(c) The commission shall create a form for a request for reconsideration of an extension order that is clear and easy to understand. The commission shall ensure that a child may request assistance in completing a request for reconsideration of an extension order.

(d) The commission shall maintain statistics of the number of requests for reconsideration of an extension order that are submitted and the action taken on reconsideration of the extension order. The statistics must include aggregated information concerning:

(1) the race, age, sex, specialized treatment needs, and county of origin for each child for whom a request for reconsideration of an extension order is submitted;

(2) whether a request for reconsideration of an extension order results in:

(A) a discharge or release under supervision; or

(B) the original extension order being upheld;

(3) the facility in which the child is confined; and

(4) if applicable, any allegations concerning the abuse, mistreatment, or neglect of the child, aggregated by the type of misconduct to which the child was subjected.

(e) To the extent authorized under law, the statistics maintained under Subsection (d) are public information under Chapter 552, Government Code, and the commission shall post the statistics on the commission's Internet website. The commission shall prepare and deliver to the standing committees of the senate and

house of representatives with primary jurisdiction over matters concerning correctional facilities a report concerning the statistics maintained under Subsection (d).

SECTION 52. Sections 61.084(e) and (g), Human Resources Code, are amended to read as follows:

(e) Except as provided by Subsection ~~[(f) or]~~ (g), the commission shall discharge from its custody a person not already discharged on the person's 19th ~~[21st]~~ birthday.

(g) The commission shall transfer a person who has been sentenced under a determinate sentence to commitment under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code, or who has been returned to the commission under Section 54.11(i)(1), Family Code, to the custody of the ~~[pardons and paroles division of the]~~ Texas Department of Criminal Justice on the person's 19th ~~[21st]~~ birthday, if the person has not already been discharged or transferred, to serve the remainder of the person's sentence on parole as provided by Section 508.156, Government Code.

SECTION 53. Section 61.0841, Human Resources Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Not later than the 90th day before the date the commission transfers a person to the custody of ~~[the pardons and paroles division of]~~ the Texas Department of Criminal Justice for release on parole under Section 61.081(f) or 61.084(g) ~~[61.084(f) or (g)]~~, the commission shall submit to the department all pertinent information relating to the person, including:

- (1) the juvenile court judgment;
- (2) the circumstances of the person's offense;
- (3) the person's previous social history and juvenile court records;
- (4) the person's physical and mental health record;
- (5) a record of the person's conduct, employment history, and attitude while committed to the commission;

(6) a record of the sentence time served by the person at the commission and in a juvenile detention facility in connection with the conduct for which the person was adjudicated; and

(7) any written comments or information provided by the commission, local officials, family members of the person, ~~[or]~~ victims of the offense, or the general public.

(c) The Texas Department of Criminal Justice shall grant credit for sentence time served by a person at the commission and in a juvenile detention facility, as recorded by the commission under Subsection (a)(6), in computing the person's eligibility for parole and discharge from the department.

SECTION 54. Section 61.093(a), Human Resources Code, is amended to read as follows:

(a) If a child who has been committed to the commission and placed by it in any institution or facility has escaped or has been released under supervision and broken the conditions of release:

- (1) a sheriff, deputy sheriff, constable, or police officer may, without a warrant, arrest the child; or

(2) a ~~[parole officer or other]~~ commission employee designated by the executive commissioner ~~[director]~~ may, without a warrant or other order, take the child into the custody of the commission.

SECTION 55. Subchapter G, Chapter 61, Human Resources Code, is amended by adding Sections 61.098 and 61.099 to read as follows:

Sec. 61.098. CERTAIN CRIMES CONCERNING THE COMMISSION. (a) In this section, "special prosecution unit" means the special prosecution unit established under Subchapter E, Chapter 41, Government Code.

(b) As appropriate, the district attorney, criminal district attorney, or county attorney representing the state in criminal matters before the district or inferior courts of the county who would otherwise represent the state in the prosecution of an offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, may request that the special prosecution unit prosecute the offense or delinquent conduct.

(c) The office of inspector general shall on a quarterly basis prepare and deliver to the board of directors of the special prosecution unit a report concerning:

(1) any alleged criminal offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding calendar quarter; and

(2) the disposition of any case involving a criminal offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, that occurred during the preceding calendar quarter.

(d) Notwithstanding Subsection (c), the office of inspector general shall immediately provide the special prosecution unit with a report concerning an alleged criminal offense or delinquent conduct concerning the commission and described by Article 104.003(a), Code of Criminal Procedure, if the chief inspector general reasonably believes the offense or conduct is particularly serious and egregious.

(e) The chief inspector general of the office of inspector general, at the direction of the board of directors of the special prosecution unit, shall notify the foreman of the appropriate grand jury, in the manner provided by Article 20.09, Code of Criminal Procedure, if:

(1) the chief inspector general receives credible evidence of illegal or improper conduct by commission officers, employees, or contractors that the inspector general reasonably believes jeopardizes the health, safety, and welfare of children in the custody of the commission;

(2) the chief inspector general reasonably believes the conduct:

(A) could constitute an offense under Article 104.003(a), Code of Criminal Procedure; and

(B) involves the alleged physical or sexual abuse of a child in the custody of a commission facility or an investigation related to the alleged abuse; and

(3) the chief inspector general has reason to believe that information concerning the conduct has not previously been presented to the appropriate grand jury.

Sec. 61.099. DUTY TO FILE COMPLAINT WITH LAW ENFORCEMENT AGENCY. If the executive commissioner has reasonable cause to believe that a child in the custody of the commission is the victim of a crime committed at a commission facility, the executive commissioner shall immediately file a complaint with the appropriate law enforcement agency.

SECTION 56. Subtitle A, Title 3, Human Resources Code, is amended by adding Chapter 64 to read as follows:

CHAPTER 64. OFFICE OF INDEPENDENT OMBUDSMAN OF THE TEXAS
YOUTH COMMISSION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. DEFINITIONS. In this chapter:

- (1) "Commission" means the Texas Youth Commission.
- (2) "Independent ombudsman" means the individual who has been appointed under this chapter to the office of independent ombudsman.
- (3) "Office" means the office of independent ombudsman created under this chapter.

Sec. 64.002. ESTABLISHMENT; PURPOSE. The office of independent ombudsman is a state agency established for the purpose of investigating, evaluating, and securing the rights of the children committed to the commission, including a child released under supervision before final discharge.

Sec. 64.003. INDEPENDENCE. (a) The independent ombudsman in the performance of its duties and powers under this chapter acts independently of the commission.

(b) Funding for the independent ombudsman is appropriated separately from funding for the commission.

[Sections 64.004-64.050 reserved for expansion]

SUBCHAPTER B. APPOINTMENT AND MANAGEMENT OF OFFICE

Sec. 64.051. APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a) The governor shall appoint the independent ombudsman with the advice and consent of the senate for a term of two years, expiring February 1 of odd-numbered years.

(b) A person appointed as independent ombudsman is eligible for reappointment but may not serve more than three terms in that capacity.

(c) Notwithstanding Subsection (a), as soon as practicable after the effective date of this section, the executive commissioner shall appoint the independent ombudsman for a term of office expiring February 1, 2009. As provided by Subsection (a), the governor shall appoint the independent ombudsman with the advice and consent of the senate for each of the independent ombudsman's subsequent terms of office. This subsection expires March 1, 2009.

Sec. 64.052. ASSISTANTS. The independent ombudsman may hire assistants to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman.

Sec. 64.053. CONFLICT OF INTEREST. (a) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse:

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

(2) owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the commission; or

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

(b) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(c) A person may not serve as independent ombudsman or as an assistant to the independent ombudsman if the person or the person's spouse is an officer, employee, manager, or paid consultant of a Texas trade association in the field of criminal or juvenile justice.

(d) For the purposes of this section, a Texas trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

Sec. 64.054. SUNSET PROVISION. The office is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The office shall be reviewed during the periods in which state agencies abolished in 2009 and every 12th year after 2009 are reviewed.

Sec. 64.055. REPORT. (a) The independent ombudsman shall submit on a quarterly basis to the governor, the lieutenant governor, the state auditor, and each member of the legislature a report that is both aggregated and disaggregated by individual facility and describes:

(1) the work of the independent ombudsman;

(2) the results of any review or investigation undertaken by the independent ombudsman, including reviews or investigation of services contracted by the commission; and

(3) any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman.

(b) The independent ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the office of the inspector general of the commission any particularly serious or flagrant:

(1) case of abuse or injury of a child committed to the commission;

(2) problem concerning the administration of a commission program or operation;

(3) problem concerning the delivery of services in a facility operated by or under contract with the commission; or

(4) interference by the commission with an investigation conducted by the office.

Sec. 64.056. COMMUNICATION AND CONFIDENTIALITY. (a) The commission shall allow any child committed to the commission to communicate with the independent ombudsman or an assistant to the ombudsman. The communication:

(1) may be in person, by mail, or by any other means; and

(2) is confidential and privileged.

(b) The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1) share with the office of inspector general of the commission a communication with a child that may involve the abuse or neglect of the child; and

(2) disclose its nonprivileged records if required by a court order on a showing of good cause.

(c) The independent ombudsman may make reports relating to an investigation public after the investigation is complete but only if the names of all children, parents, and employees are redacted from the report and remain confidential.

(d) The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except that the information and records, other than confidential information and records concerning a pending law enforcement investigation or criminal action, may be disclosed to the appropriate person if the office determines that disclosure is:

(1) in the general public interest;

(2) necessary to enable the office to perform the responsibilities provided under this section; or

(3) necessary to identify, prevent, or treat the abuse or neglect of a child.

Sec. 64.057. PROMOTION OF AWARENESS OF OFFICE. The independent ombudsman shall promote awareness among the public and the children committed to the commission of:

(1) how the office may be contacted;

(2) the purpose of the office; and

(3) the services the office provides.

Sec. 64.058. RULEMAKING AUTHORITY. The office by rule shall establish policies and procedures for the operations of the office of independent ombudsman.

Sec. 64.059. AUTHORITY OF STATE AUDITOR. The office is subject to audit by the state auditor in accordance with Chapter 321, Government Code.

[Sections 64.060-64.100 reserved for expansion]

SUBCHAPTER C. DUTIES AND POWERS

Sec. 64.101. DUTIES AND POWERS. (a) The independent ombudsman shall:

(1) review the procedures established by the commission and evaluate the delivery of services to children to ensure that the rights of children are fully observed;

(2) review complaints filed with the independent ombudsman concerning the actions of the commission and investigate each complaint in which it appears that a child may be in need of assistance from the independent ombudsman;

(3) conduct investigations of complaints, other than complaints alleging criminal behavior, if the office determines that:

(A) a child committed to the commission or the child's family may be in need of assistance from the office; or

(B) a systemic issue in the commission's provision of services is raised by a complaint;

(4) review or inspect periodically the facilities and procedures of any institution or residence in which a child has been placed by the commission, whether public or private, to ensure that the rights of children are fully observed;

(5) provide assistance to a child or family who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the child;

(6) review court orders as necessary to fulfill its duties;

(7) recommend changes in any procedure relating to the treatment of children committed to the commission;

(8) make appropriate referrals under any of the duties and powers listed in this subsection; and

(9) supervise assistants who are serving as advocates in their representation of children committed to the commission in internal administrative and disciplinary hearings.

(b) The independent ombudsman may apprise persons who are interested in a child's welfare of the rights of the child.

(c) To assess if a child's rights have been violated, the independent ombudsman may, in any matter that does not involve alleged criminal behavior, contact or consult with an administrator, employee, child, parent, expert, or any other individual in the course of its investigation or to secure information.

(d) Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate alleged criminal behavior.

Sec. 64.102. TREATMENT OF COMMISSION EMPLOYEES WHO COOPERATE WITH INDEPENDENT OMBUDSMAN. The commission may not discharge or in any manner discriminate or retaliate against an employee who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Sec. 64.103. TRAINING. The independent ombudsman shall attend annual sessions, including the training curriculum for juvenile correctional officers required under Section 61.0356, and may participate in other appropriate professional training.

[Sections 64.104-64.150 reserved for expansion]

SUBCHAPTER D. ACCESS TO INFORMATION

Sec. 64.151. ACCESS TO INFORMATION OF GOVERNMENTAL ENTITIES. (a) The commission shall allow the independent ombudsman access to its records relating to the children committed to the commission.

(b) The Department of Public Safety shall allow the independent ombudsman access to the juvenile justice information system established under Subchapter B, Chapter 58, Family Code.

(c) A local law enforcement agency shall allow the independent ombudsman access to its records relating to any child in the care or custody of the commission.

Sec. 64.152. ACCESS TO INFORMATION OF PRIVATE ENTITIES. The independent ombudsman shall have access to the records of a private entity that relate to a child committed to the commission.

SECTION 57. Section 141.022(a), Human Resources Code, is amended to read as follows:

- (a) The advisory council on juvenile services consists of:
- (1) two juvenile court judges, appointed by the commission;
 - (2) three juvenile probation officers, appointed by the commission;
 - (3) two citizens who are knowledgeable of juvenile services, appointed by the commission;
 - (4) the executive commissioner [~~director~~] of the Texas Youth Commission or the commissioner's [~~director's~~] designee;
 - (5) the commissioner of education or the commissioner's designee; and
 - (6) the commissioner of human services or the commissioner's designee.

SECTION 58. Section 141.047(b), Human Resources Code, is amended to read as follows:

(b) The director, the executive commissioner [~~director~~] of the Texas Youth Commission, and the commissioners of education, mental health and mental retardation, and human services shall meet in Austin at least quarterly to:

- (1) discuss mutual problems;
- (2) resolve conflicts in providing services to juveniles; and
- (3) make recommendations to the governor and legislature.

SECTION 59. Section 141.0471(c), Human Resources Code, is amended to read as follows:

(c) The governing board of the Texas Juvenile Probation Commission and the executive commissioner of the Texas Youth Commission [~~each agency~~] shall adopt the coordinated strategic plan on or before December 1st of each odd-numbered year, or before the adoption of the agency's individual strategic plan, whichever is earlier.

SECTION 60. Section 110.302(c), Occupations Code, is amended to read as follows:

(c) The Texas Board of Criminal Justice [~~or the governing board of the Texas Youth Commission~~] may vote to exempt employees of the Texas Department of Criminal Justice [~~or the Texas Youth Commission, as appropriate,~~] from a specific licensing requirement imposed under this section if the board determines that the requirement causes financial or operational hardship on the agency. The Texas Youth Commission may not exempt any employee of the commission from a licensing requirement imposed by this section for any reason.

SECTION 61. Sections 39.04(a) and (b), Penal Code, are amended to read as follows:

(a) An official of a correctional facility, an employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional facility, or a peace officer commits an offense if the person intentionally:

- (1) denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or
- (2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Youth Commission, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor. An offense under Subsection (a)(2) is a state jail felony, except that an offense under Subsection (a)(2) is a felony of the second degree if the individual is in the custody of the Texas Youth Commission.

SECTION 62. Section 39.04(e), Penal Code, is amended by adding Subdivisions (4) and (5) to read as follows:

(4) "Sexual conduct" and "performance" have the meanings assigned by Section 43.25.

(5) "Sexual performance" means any performance or part thereof that includes sexual conduct by an individual.

SECTION 63. The following laws are repealed:

(1) Sections 54.04(s) and (t), Family Code;

(2) Section 54.05(k), Family Code; and

(3) Sections 61.001(3), 61.0122, 61.014, 61.015, 61.0151, 61.017, 61.084(f), and 141.042(d), Human Resources Code.

SECTION 64. A person committed to the Texas Youth Commission on the basis of conduct constituting the commission of an offense of the grade of misdemeanor under Section 54.04(d)(2), Family Code, as it existed before the effective date of this Act, must be discharged from the custody of the Texas Youth Commission not later than the person's 19th birthday.

SECTION 65. (a) Not later than November 1, 2007, the Texas Juvenile Probation Commission shall issue guidelines for the creation of community-based programs required by Section 54.0401, Family Code, as added by this Act.

(b) Not later than January 1, 2008, the juvenile board of a county to which Section 54.0401, Family Code, as added by this Act, applies shall implement a community-based program that complies with the guidelines established by the Texas Juvenile Probation Commission.

SECTION 66. The change in law made by Section 54.052, Family Code, as added by this Act, and Section 61.0841(c), Human Resources Code, as added by this Act, applies only to conduct for which a child is adjudicated on or after the effective date of this Act. A child who is adjudicated before the effective date of this Act is governed by the law in effect when the child was adjudicated, and the former law is continued in effect for that purpose.

SECTION 67. The change in law made by this Act to Section 39.04, Penal Code, applies only to an offense committed on or after September 1, 2007. An offense committed before September 1, 2007, is governed 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 September 1, 2007, if any element of the offense occurred before that date.

SECTION 68. The Texas Youth Commission shall develop and adopt a mission statement, as required by Section 61.0345, Human Resources Code, as added by this Act, on or before October 1, 2007.

SECTION 69. (a) Section 61.0356(b), Human Resources Code, as added by this Act, applies only to a juvenile correctional officer hired by the Texas Youth Commission on or after the effective date of this Act. As soon as practicable but not later than six months after the effective date of this Act, the Texas Youth Commission

shall complete providing the training to juvenile correctional officers hired before the effective date of this Act that is necessary to conform to the requirements of Section 61.0356(b), Human Resources Code, as added by this Act.

(b) As soon as practicable after the effective date of this Act, the Texas Youth Commission shall ensure that:

(1) each correctional facility operated by the commission that has a dormitory, including an open-bay dormitory, has a ratio of not less than one juvenile correctional officer performing direct supervisory duties for every 12 children committed to the facility, as required by Section 61.0356(d), Human Resources Code, as added by this Act; and

(2) children younger than 15 years of age are assigned to separate correctional facility dorms from persons who are at least 17 years of age as required by Section 61.061, Human Resources Code, as added by this Act.

SECTION 70. As soon as practicable after the effective date of this Act, the governor shall appoint the executive commissioner of the Texas Youth Commission, as required by Section 61.012, Human Resources Code, as amended by this Act, with a term of office expiring February 1, 2009.

SECTION 71. As soon as practicable after the effective date of this Act:

(1) the governor shall appoint three members of the advisory board of the Texas Youth Commission, as required by Section 61.013, Human Resources Code, as amended by this Act;

(2) the speaker of the house of representatives shall appoint three members of the advisory board of the Texas Youth Commission, as required by Section 61.013, Human Resources Code, as amended by this Act; and

(3) the lieutenant governor shall appoint three members of the advisory board of the Texas Youth Commission, as required by Section 61.013, Human Resources Code, as amended by this Act.

SECTION 72. A rule adopted by the Texas Youth Commission before the effective date of this Act is a rule of the executive commissioner of the Texas Youth Commission until superseded, modified, or repealed by the executive commissioner.

SECTION 73. The Health and Human Services Commission, the Texas Youth Commission, and the Texas Juvenile Probation Commission shall jointly establish a timetable for the submission of agency reports required by Section 531.016, Government Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 74. Before October 1, 2007, the Texas Youth Commission shall certify to the Employees Retirement System of Texas, in the manner prescribed by the retirement system, the name of each person employed by the office of inspector general at the Texas Youth Commission as a law enforcement officer, as defined by Section 811.001, Government Code, as amended by this Act, and any other information the system determines is necessary for the crediting of service and financing of benefits under Subtitle B, Title 8, Government Code.

SECTION 75. As soon as practicable after the effective date of this Act, the Texas Youth Commission shall, in the manner prescribed by Section 61.0357, Human Resources Code, as added by this Act, begin obtaining national criminal history record information for each person who is described by Section 61.0357(b), Human Resources Code, as added by this Act.

SECTION 76. (a) Not later than September 30, 2007, the board of directors of the special prosecution unit established by Subchapter E, Chapter 41, Government Code, as added by this Act, shall elect the initial members of the executive board of the board of directors as required by Section 41.304, Government Code, as added by this Act. In electing those members, the board of directors shall specify:

(1) which members serve terms expiring in even-numbered years and which serve terms expiring in odd-numbered years; and

(2) the beginning and end dates of the terms served by the members of the executive board.

(b) Not later than September 30, 2007, the board of directors of the special prosecution unit established by Subchapter E, Chapter 41, Government Code, as added by this Act, shall elect the presiding officer and the assistant presiding officer of the board of directors and the executive board of the board of directors as required by Section 41.305, Government Code, as added by this Act. In electing those officers, the board of directors shall specify the beginning and end dates of the terms served by the officers.

(c) As soon as possible after the effective date of this Act, the executive board of the board of directors of the special prosecution unit established by Subchapter E, Chapter 41, Government Code, as added by this Act, shall elect the counsellor as required by Section 41.309, Government Code, as added by this Act.

SECTION 77. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The Conference Committee Report on **SB 103** was filed with the Secretary of the Senate.

MOTION TO RECESS

On motion of Senator Whitmire and by unanimous consent, the Senate at 6:54 p.m. agreed to recess, upon conclusion of the Local and Uncontested Calendar Session, until 10:30 a.m. tomorrow.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SCR 82 by Janek and Duncan, In memory of Allie Pearl Haney of Roscoe.

SCR 83 by Watson, In memory of Loretta Johnson Williams of Austin.

Congratulatory Resolutions

SR 1041 by Van de Putte, Recognizing Charles R. "Chuck" Courtney on the occasion of his retirement from the Texas Retailers Association.

SR 1092 by Uresti, Recognizing Francisco Rodriguez "Pancho" Hernandez on the occasion of his 70th birthday.

SR 1096 by Hinojosa, Commending The University of Texas–Pan American Reserve Officer Training Corps Battalion for earning the 2006 General Douglas MacArthur Award.

SR 1099 by Duncan, Congratulating Jack McCarty for his selection as President of the Texas Osteopathic Medical Association.

SR 1102 by Estes, Congratulating the boys soccer team of Rider High School in Wichita Falls for winning the Class 4A state championship.

SR 1103 by Estes, Congratulating Logan Lofgren of Wichita Falls on the occasion of his graduation from the Texas School for the Deaf.

SR 1104 by Lucio, Commending the academic team of Coakley Middle School in Harlingen for winning the 2006-2007 district competition.

SR 1105 by Shapiro, Recognizing Patsy Standerfer for her accomplishments.

SR 1106 by Watson, Recognizing Sims Elementary School in Austin on the occasion of its 50th anniversary.

SR 1107 by Jackson, Commending the members of the Texas A&M University at Galveston offshore sailing team for their service to others.

SR 1108 by Jackson, Recognizing the grand opening of the Historic Dickinson Railroad Center.

SR 1109 by Lucio, Recognizing Raymundo J. Peña of Brownsville on the occasion of the 50th anniversary of his ordination.

RECESS

On motion of Senator Whitmire, the Senate at 6:56 p.m. recessed, in memory of the life of Captain Todd Tyler Christmas, until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

May 21, 2007

INTERGOVERNMENTAL RELATIONS — CSHB 2402

EDUCATION — **HB 317, CSHB 426, HB 1043 (Amended), HB 1137 (Amended), CSHB 1609, CSSB 2049, CSHB 2074, HB 2198 (Amended), CSHB 2238, HB 2383 (Amended), CSHB 2560, CSHB 2563, CSHB 2814, HB 2978 (Amended), CSHB 3382, HB 3449 (Amended)**

NATURAL RESOURCES — **CSHB 3554**

EDUCATION — **CSHB 3678, CSHB 3826, HB 3851 (Amended)**

GOVERNMENT ORGANIZATION — **CSHB 2460**

CRIMINAL JUSTICE — **HB 442 (Amended), CSHB 3309, CSHB 3613**

FINANCE — **CSHB 109**

BUSINESS AND COMMERCE — **CSHJR 72, CSHB 3694**

NATURAL RESOURCES — **HB 4 (Amended), CSHB 1391, CSHB 2482, CSHB 4053, CSHB 3378, CSHB 4032, CSHB 3837, CSHB 4013, CSHB 2541, HB 3990, CSHB 3838, HB 3929**

CRIMINAL JUSTICE — **CSHB 2566, CSHB 3692, CSHB 1801**

NATURAL RESOURCES — **HB 3769 (Amended), CSHB 3960, CSHB 1565**

EDUCATION — **CSSB 479**

FINANCE — **CSHB 3430**

INTERGOVERNMENTAL RELATIONS — **CSHB 4073, CSHB 1397**

STATE AFFAIRS — **CSSB 674, HB 2190**

FINANCE — **CSHB 12**

INTERGOVERNMENTAL RELATIONS — **HB 539, HB 4060, CSSB 1934, HB 2523**

NATURAL RESOURCES — **CSHB 4071**

FINANCE — **CSHB 1470, CSHB 3699**

BUSINESS AND COMMERCE — **HB 1214, HB 4065**

INTERNATIONAL RELATIONS AND TRADE — **HB 1287**

GOVERNMENT ORGANIZATION — **HB 2543**

FINANCE — **HB 735**

NATURAL RESOURCES — **HB 4081**

HEALTH AND HUMAN SERVICES — **HB 9, HB 2524, HB 3618, HB 4035**

NATURAL RESOURCES — **HB 2678**

BUSINESS AND COMMERCE — **CSHB 2605**

FINANCE — **CSHB 15**

NATURAL RESOURCES — **HB 971, HB 1032, HB 3776, HB 3780**

TRANSPORTATION AND HOMELAND SECURITY — **HB 2652**

CRIMINAL JUSTICE — **HCR 96, HB 946, HB 2300** (Amended), **HB 3584**

SIGNED BY GOVERNOR

May 21, 2007

**SB 189, SB 457, SB 458, SB 493, SB 496, SB 497, SB 611, SB 722, SB 959,
SB 1084, SB 1287, SB 1509, SB 1542, SB 1634, SB 1660, SB 1932**

**In Memory
of
Todd Tyler Christmas
Senate Resolution 1098**

WHEREAS, The family and friends of United States Army Captain Todd Tyler Christmas suffered an immeasurable loss with the death of this valiant soldier on November 29, 2004, at the age of 26; and

WHEREAS, Assigned to the 1st Battalion, 44th Air Defense Artillery Regiment, 4th Infantry Division, Captain Christmas was killed in the crash of a Blackhawk helicopter in Central Texas; and

WHEREAS, A native of New Mexico, Todd Christmas grew up on his family's ranch and as a young man enjoyed hunting, horseback riding, and competing in 4-H; he graduated from the New Mexico Military Institute in 1998, where he ascended to the rank of Cadet Lieutenant Colonel, earning the Commandant's Saber Award and the Joe Govan Memorial Award; after receiving his associate degree, he joined the Texas Army National Guard and studied agricultural economics at Texas A&M University; and

WHEREAS, Captain Christmas graduated from the Air Defense Officer Basic Course in 2002 and went on to attend the United States Army Airborne School, later serving a tour of duty in Operation Iraqi Freedom; he distinguished himself often during his years of service, earning the Bronze Star Medal, Army Commendation Medal, and the Army Achievement medal with Oak Leaf Cluster; and

WHEREAS, Exemplifying the highest ideals of the United States armed forces, Todd Christmas inspired others with his fortitude, tenacity, and courage; although his passing leaves a void in the lives of those who were fortunate to know him, they will forever carry memories of this heroic young man in their hearts; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby pay tribute to the life of Captain Todd Tyler Christman and extend deepest sympathy to the members of his family: his wife, Erica Laine Christmas; his parents, Brad and Becky Christmas; his brothers, Matt and Will Christmas; and his other relatives and many friends; and, be it further

RESOLVED, That an official copy of this Resolution be prepared for his family and that when the Texas Senate adjourns this day, it do so in memory of Captain Todd Tyler Christmas.

AVERITT

