

BILL ANALYSIS

Senate Research Center

Senate Committee Substitute H.B. 4
By: Craddick (Armbrister)
Tax Reform & Public School Finance
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Committee Report (Substituted)

DIGEST

The Governor established the Citizen's Committee on Property Tax Relief in order to gather public input on the impact of school property taxes around the state. A proposal was submitted by the Governor to the 75th Legislature which provided for a 20 cent reduction in property taxes and created a new business activity tax. The Select Committee on Revenue and Public Education Funding was created to evaluate this plan and, as a result, began an extensive examination of the Texas tax and education systems.

The Select Committee found that there were a number of inconsistencies in the current tax structure that, when eliminated, could provide a substantial source of revenue to the state and provide even larger tax cuts than the original proposal. In addition, the committee agreed that the public education system must have a reliable and growing source of revenue in order to meet Texas' future needs.

H.B. 4 provides significant reductions in property taxes while ensuring a stable source of revenue for public education funding. This is accomplished by expanding the franchise tax to all forms of business except sole proprietorships and eliminating loopholes and exemptions in the sales tax and other various taxes; keeping commercial and residential tax rates at the local level and providing mechanisms to prevent tax increases.

These changes allow the state to increase its share of the cost of public education and significantly reduce the effect of the "Robin Hood" provision in current law. In addition, H.B. 4 provides state funds for new school facilities.

PURPOSE

As proposed, H.B. 4 outlines provisions for funding public elementary and secondary schools and providing property tax relief and equity, and relating to the imposition, administration, enforcement, collection of, and allocation of the revenue from, various state and local taxes; establishes penalties; and makes an appropriation.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Comptroller of Public Accounts in SECTIONS 2.14, 3.08, 3.09, and 8.01 (Sections 313.018, 171.103, 171.1032, and 157.205, Tax Code); to the Texas Lottery Commission in SECTION 5.01 (Section 466.015, Government Code); to the Comptroller of Public Accounts, the state auditor, and the State Board of Education in SECTION 1.03 (Section 42.152(q), Education Code); and to the Governor's Office in SECTION 11.01 (Section 2059.003(c), Government Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. SCHOOL FINANCE

SECTION 1.01. Amends Section 41.002(a), Education Code, to prohibit a school district from having a wealth per student that exceeds \$330,000, rather than \$280,000. Provides that beginning with the 1999-2000 school year, the wealth per student that a district may have for the school years in a state fiscal biennium is increased or decreased by a certain percentage. Makes conforming changes.

SECTION 1.02. Amends Section 41.093, Education Code, to provide that the cost of each credit amount is the greater of an amount of the district's certain maintenance and operations tax revenue or the amount of statewide district average of maintenance and operations.

SECTION 1.03. Amends Section 42.152, Education Code, by amending Subsection (c), and adding Subsections (q) and (r), to authorize, rather than require, funds allocated under this section, other than an indirect cost allotment, which may not exceed 15 percent, to be used only in providing compensatory education and accelerated instruction programs, and to improve and enhance programs and services funded under the regular education program. Sets forth the authorized use of a district's compensatory education allotment. Deletes existing text regarding the use and accounting of funds allocated under this section. Requires the State Board of Education, with the assistance of the state auditor and comptroller, to develop and implement by rule a reporting and auditing system for district and campus expenditures of compensatory education funds. Sets forth the terms by which the commission is required to withhold a certain amount from a district's foundation school fund payment, and is required to release to a district a certain amount of funds withheld under this subsection. Sets forth the application of Subsection (q). Requires the reporting and auditing system to be developed not later than August 1, 1998. Provides that this subsection expires September 1, 1999.

SECTION 1.04. Amends Section 42.253, Education Code, by adding Subsection (e-1), to prohibit, notwithstanding Subsection (e), the amount to which a district is entitled under this section for the 1997-1998 and 1998-1999 schools years from exceeding the amount to which the district would be entitled at a certain tax rate. Provides that this subsection expires September 1, 1999.

SECTION 1.05. Amends Section 42.302, Education Code, as follows:

Sec. 42.302. ALLOTMENT. (a) Provide that "GL" (the dollar amount guaranteed level of state and local funds per weighted per cent of tax effort) in a certain calculation of "GYA" (guaranteed yield amount of state funds to be allocated to the district) regarding school support is \$29.60, rather than \$20.55, or a greater amount for any year provided by appropriation, or a greater amount adopted by the foundation school fund budget committee under Section 42.256(d).

(b) Provides that in computing the district enrichment and facilities tax rate of a school district, the total amount of taxes collected by the district does not include taxes collected to pay bonds that are being paid with state and local funds under Chapter 46, rather than the local share of the cost of an instructional facility for which the district receives state assistance under Subchapter H.

SECTION 1.06. Amends Title 2, Education Code, by adding Chapter 46, as follows:

CHAPTER 46. SCHOOL FACILITIES ALLOTMENT

Sec. 46.001. SCHOOL FACILITIES ALLOTMENT. Provides that for each year, a school district is guaranteed a specified amount per student in state and local funds for each cent of tax effort, up to the maximum rate under Subsection (b), to pay the principal of and interest on eligible bonds. Provides that the amount of state support is determined by the formula:

$$FYA = (FYL \times ADA \times BTR \times 100) - (BTR \times (DPV/100))$$

Defines "FYA," "FYL," "ADA," "BTR," and "DPV." Prohibits, for the purposes of this section, the bond tax rate under Subsection (a) from exceeding the lesser of the rate necessary for the current year, using state funds under Subsection (a), to make payments of principal and interest on the bonds for which the tax is pledged, or the lesser of \$0.20 per \$100 of valuation. Provides that bonds are eligible to be paid with state and local funds under this section under certain conditions. Requires a district to use state funds received under this section only to pay the principal of and interest on the bonds for which the district received the funds. Requires the board of trustees and voters of a school district to determine district needs concerning construction, acquisition, renovation, or improvement of school facilities.

Sec. 46.002. REFUNDING BONDS. Authorizes a school district to use state funds received under this chapter to pay the principal of and interest on refunding certain bonds.

Sec. 46.003. PAYMENT OF SCHOOL FACILITIES ALLOTMENTS. Requires the commissioner of education (commissioner), for each school year, to determine the amount of money to which each school district is entitled under Section 46.001. Sets forth requirements for the commissioner applicable if the appropriated amount for purposes of Section 46.001 for a year is less than the total amount determined under Subsection (a). Requires warrants for payments under this chapter to be approved and transmitted to school district treasurers or depositories in the same manner as warrants for payments under Chapter 42. Requires payments under this chapter to be made semiannually on dates selected by the school district and approved by the commissioner to enable the district to meet the scheduled bond payments. Provides that Section 42.258 applies to payments under this chapter.

Sec. 46.004. SALE OF SCHOOL FACILITY FINANCED WITH SCHOOL FACILITIES ALLOTMENT. Requires the school district, if a school facility financed by bonds paid with state and local funds under Section 46.001 is sold before the bonds are fully paid, to send to the comptroller an amount equal to the district's net proceeds from the sale multiplied by a percentage determined by dividing the amount of state funds under this subchapter used to pay the principal of and interest on the bonds by the total amount of principal and interest paid on the bonds with funds other than the proceeds of the sale. Defines "net proceeds."

SECTION 1.07. Amends Section 21.401, Education Code, to require an educator, for the 1997-1998 and 1998-1999 school years, rather than the 1995-1996 school year, employed under a 10-month contract to provide a minimum of 185, rather than 183, days of service. Provides that this subsection expires September 1, 1999, rather than September 1, 1997. Deletes Subsection (a-2) regarding the 1996-1997 school year. Requires an educator employed under a 10-month contract to provide a minimum of days of service as determined by the following formula:

$$\text{New formula: } \text{MDS} = 185 + (0.33 \times (\text{GL1} - \text{GL2})) (\text{GL2}/185)$$

Redefines "GL1," and "GL2." Provides that Subsection (b) applies beginning with the 1999-2000, rather than 1997-1998 school year. Provides that this subsection expires January 1, 2000, rather than January 1, 1998.

SECTION 1.08. Amends Chapter 21I, Education Code, by adding Section 21.4011, as follows:

Sec. 21.4011. MINIMUM SALARY SCHEDULE FOR CLASSROOM TEACHERS AND FULL-TIME LIBRARIANS FOR 1997-1998 AND 1998-1999 SCHOOL YEARS. (a) Provides that this section applies only to the 1997-1998 and 1998-1999 school years.

(b) Requires a school district, except as provided by Subsection (d), to pay each classroom teacher or full-time librarian not less than the minimum monthly salary, based on the employee's level of experience according to a certain table. Sets forth the table.

(c) Provides that placement of a classroom teacher or full-time librarian on the minimum salary schedule provided by this section is determined in accordance with Section 21.403.

(d) Provides that, notwithstanding Subsection (b), a teacher or librarian who received a career ladder supplement on August 31, 1993, is entitled to at least the same gross monthly salary the teacher or librarian received for the 1994-1995 school year as long as the teacher or librarian is employed by the same district.

(e) Requires "gross monthly salary" to include the amount a teacher or librarian received that represented a career ladder supplement under Section 16.057, as that section existed January 1, 1993.

(f) Provides that this section expires September 1, 1999.

SECTION 1.09. Amends Section 21.402, Education Code, to require a school district, except as provided by Subsection (c) or (d), to pay each classroom teacher or full-time librarian not less than the minimum monthly salary, based on the employee's level of experience, determined by the following formula:

New formula: $MS = SF \times GL$

Defines "GL." Deletes certain definitions. Deletes Subsection (b) regarding the determination of the amount appropriated and certain exclusions. Sets forth a table regarding salary factors per step. Provides that this section applies beginning with the 1999-2000 school year. Provides that this subsection expires January 1, 2000. Makes conforming changes.

SECTION 1.10. Amends Section 45.061, Education Code, to require the commissioner, if the commissioner orders payments from the permanent school fund on behalf of a school district, to direct the comptroller to withhold the amount paid, plus interest, from the first state money payable to the school district, other than money to which the school district is entitled under Chapter 46. Sets forth requirements for the commissioner that are applicable if the commissioner orders payment from the permanent school fund in connection with bonds that were, before default, being paid with state and local funds under Chapter 46 and the commissioner finds that default is caused by the failure to appropriate sufficient funds to make a payment to the district under Section 46.003. Makes conforming changes.

SECTION 1.11. Amends Section 41.009(b), Education Code, to require the commissioner to determine the wealth per student of a school district as if any tax abatement agreement executed under Chapter 312, Tax Code, by a school district had not been executed.

SECTION 1.12. Amends Section 403.302(d), Government Code, to redefine "taxable value."

SECTION 1.13. Repealer: Chapter 42H, Education Code (School Facilities Assistance Program).

SECTION 1.14. Provides that this article applies beginning with the 1997-1998 school year.

SECTION 1.15. Makes application of this Act prospective.

SECTION 1.16. Prohibits a school district, for the 1997 tax year, from adopting a tax rate for purposes of maintenance and operations before September 1, 1997; or levying or collecting a tax for purposes of maintenance and operations at a rate adopted before September 1, 1997. Provides that this Act does not affect the validity of a tax imposed by a school district for the 1996 tax year or an earlier tax year.

ARTICLE 2. PROPERTY TAX

SECTION 2.01. Amends Section 11.26, Tax Code, by amending Subsection (b) and adding Subsections (g)-(i), to set forth the amount of tax increase. Provides that this subsection applies to an individual 65 years of age or older who qualified the individual's residence homestead for the limitation provided by Section 1-b(d), Article VIII, Texas Constitution, before January 1, 1998 or to a surviving spouse who qualified for the limitation provided by Section 1-b(d), Article VIII, Texas Constitution, for a surviving spouse before that date. Provides that the maximum amount of tax a school district is authorized to impose on the residence homestead of the individual or the surviving spouse is the lesser of the total amount of taxes the district imposed on the residence in the first year or the amount computed by multiplying the district's 1997 tax rate, for maintenance and operations, multiplying the district's 1997 tax rate for debt service. Sets forth requirements and calculations in which a school district may not impose ad valorem taxes on a subsequently qualified homestead in an amount that exceeds the amount of taxes the school district would have imposed on the subsequently qualified homestead in the first year in which the individual receives that exemption for the subsequently qualified homestead had the limitation on tax increases imposed by this section not been in effect, multiplied by a fraction the numerator of which is the total amount of school district taxes imposed on the former homestead in the last year in which the individual received that exemption for the former homestead and the denominator of which is the total amount of school

district taxes that would have been imposed on the former homestead in the last year in which the individual received that exemption for the former homestead had the limitation on tax increases imposed by this section not been in effect. Sets forth requirements by which a person is entitled to receive information to determine the person's eligibility for a limitation from the chief appraiser. Makes conforming changes.

SECTION 2.02. Amends Section 26.08, Tax Code, as follows:

Sec. 26.08. New heading: ELECTION TO RATIFY SCHOOL TAXES. (a) Requires the registered voters of a school district, if the governing body of the district adopts a rate that exceeds the district's rollback tax rate, rather than a rate that exceeds the sum of the district's effective maintenance rate, to determine at an election held for that purpose whether to approve the adopted tax rate, rather than whether to limit the tax rate the governing body may adopt for the current year to the school district rollback tax rate. Makes conforming changes.

(a-1) Provides that Subsection (a) does not apply to the 1997 tax year. Prohibits a school district, for the 1997 tax year, from adopting a rate for maintenance and operations purposes that exceeds a certain sum.

(a-2) Provides that for the purposes of Subsection (a-1), state and local funding for purposes of maintenance and operations includes local tax receipts, subject to the provisions of Chapter 41, Education Code, and state aid under Chapter 42, Education Code, and does not include certain adjustments and funding.

(a-3) Provides that a formula by which a school district may compute the tax rate authorized by Subsection (a-1) adopted jointly by the commissioner and the comptroller before September 1, 1997, is valid and shall be used by school districts. Requires the tax rate computed under Subsection (a-1) to be included in the items of information required to be included in a notice of public hearing required under Section 26.06. Provides that this subsection and Subsections (a-1) and (a-2) expire January 1, 1999.

(b) Sets forth the required language of the proposition. Requires the ballot proposition to include the adopted tax rate and the difference between that rate and the rollback tax rate in the appropriate places.

(c) Sets forth provisions applicable if the proposition fails and deletes the existing rollback tax rate formula.

(d) Provides that if a majority of the votes cast in the election favor the proposition, the tax rate for the current year is the rate adopted by the governing body.

(e)-(h) Makes conforming changes.

(i) Sets forth the rollback tax rate of a school district for the purposes of this section.

SECTION 2.03. Amends Section 311.002(4), Tax Code, to redefine "taxing unit."

SECTION 2.04. Amends Sections 311.003(e) and (f), Tax Code, to delete the provision authorizing the notice of intention to establish a zone to be given later than a certain date if the governing body of each school district that levies real property taxes in the proposed zone agrees to waive the requirement. Makes conforming changes.

SECTION 2.05. Amends Section 311.006(c), Tax Code, to make a conforming change.

SECTION 2.06. Amends Section 311.009(b), Tax Code, to make conforming changes.

SECTION 2.07. Amends Section 311.011, Tax Code, by amending Subsection (c), adding a new Subsection (f), and redesignating existing Subsection (f) as Subsection (g), to prohibit a project plan or reinvestment zone financing plan approved under this section on or after September 1, 1997 from

including a tax increment or any other funds derived from a school district as a source of revenue to finance or pay project costs. Prohibits a project plan or reinvestment zone financing plan approved before September 1, 1997 from being amended on or after September 1, 1997, for certain purposes. Makes conforming changes.

SECTION 2.08. Amends Section 311.013(g), Tax Code, to set forth the terms by which a school district is prohibited from entering into an agreement on or after a certain date, and by which an agreement entered into by school district before a certain date may not be amended on or after a certain date.

SECTION 2.09. Amends Section 312.002, Tax Code, to define "taxing unit." Prohibits a school district from entering into a tax abatement agreement on or after September 1, 1997.

SECTION 2.10. Amends Section 312.208, Tax Code, by adding Subsection (c), to prohibit a tax abatement agreement entered into by a school district before September 1, 1997 from being modified on or after September 1, 1997 to achieve certain purposes.

SECTION 2.11. Prohibits a school district, notwithstanding any other statute, from participating in a new tax abatement or tax increment financing agreement or expanding an existing tax abatement or tax increment financing agreement after the effective date of this Act.

SECTION 2.12. Amends Section 312.005(a), Tax Code, to require the comptroller of public accounts, rather than the Texas Department of Commerce, to maintain a central registry of reinvestment zones and of ad valorem tax abatement agreements. Deletes existing text regarding other information required by the comptroller to administer.

SECTION 2.13. Repealer: Chapter 111F, Tax Code (Tax Refund for Economic Development). Makes application of this Act prospective regarding an application for a refund.

SECTION 2.14. Amends Title 3B, Tax Code, by adding Chapter 313, as follows;

CHAPTER 313. THE INVEST TEXAS ACT

Sec. 313.001. SHORT TITLE: Invest Texas Act.

Sec. 313.002. DEFINITIONS. Defines "affiliate," "control," "deferred maintenance," "existing value," "expand," "modernize," "project," "property owner," and "school district."

Sec. 313.003. EXEMPTIONS. Sets forth the terms by which an owner of taxable real property located in a school district is authorized to enter into a contract with the governing body of a school district to exempt from ad valorem taxation for a period not to exceed 10 years. Provides that existing value is not eligible for a tax exemption.

Sec. 313.004. AUTHORITY TO ENTER INTO A CONTRACT. Sets forth the terms by which an owner of taxable real property located in a school district is authorized to enter into a contract with the governing body of a school district.

Sec. 313.005. AUTHORIZATION OF COMPTROLLER. Requires a property owner to apply to the comptroller for authorization to enter into a contract on a form prescribed by the comptroller. Requires the application to include certain information. Provides that the Invest Texas Account is created as a dedicated account in the general revenue fund. Requires the application fee to be deposited in the account and authorizes its use only in the administration of this chapter. Requires the comptroller to fulfill other responsibilities. Prohibits the comptroller from acting on application made by a property owner for more than one location in the state at the same time.

Sec. 313.006. CONFIDENTIALITY OF PROPRIETARY INFORMATION. Sets forth provisions regarding the confidentiality of proprietary information.

Sec. 313.007. MANDATORY CONTRACT PROVISIONS. Sets forth mandatory contract provisions. Defines "family wage job."

Sec. 313.008. OPTIONAL CONTRACT PROVISIONS. Sets forth optional contract provisions.

Sec. 313.009. DETERMINATION BY SCHOOL DISTRICT OF PROPERTY OWNER'S COMPLIANCE WITH CONTRACT. Sets forth the terms by which the governing body of the school district, before April 1 of each year, is required to determine whether each property owner is in compliance with each term of the contract, and if not, whether the noncompliance is excused.

Sec. 313.010. ACTION BY SCHOOL DISTRICT ON NONCOMPLIANCE. Sets forth the required action of the governing body of the school district if a property owner fails to comply with a contract.

Sec. 313.011. DETERMINATION BY COMPTROLLER OF PROPERTY OWNER'S COMPLIANCE WITH CONTRACT. Sets forth the terms by which the comptroller is required to determine whether a property owner is in compliance with each term of a contract as part of the annual study required by Section 403.302, Government Code.

Sec. 313.012. NOTICE OF CONTRACT. Sets forth the terms by which a school district that enters into a contract is required to either publish or post notice including certain information.

Sec. 313.013. LIMITATIONS ON CONTRACT. Sets forth limitations on a contract executed under this chapter.

Sec. 313.014. MODIFICATION OR TERMINATION OF CONTRACT. Sets forth the terms by which a contract is authorized to be modified or terminated.

Sec. 313.015. COORDINATION WITH CHAPTER 312. Sets forth the terms by which the school district and the property owner are authorized to agree to terminate an agreement and enter into a new contract, with respect to any tax abatement agreement under Chapter 312 which was entered into by a school district before a certain date.

Sec. 313.016. EVALUATION AND ANNUAL REPORT. Requires the comptroller to prepare a comprehensive report on or before November 1 of each even-numbered year on certain issues.

Sec. 313.017. PROMOTION AND MARKETING OF INVEST TEXAS PROGRAM. Requires the comptroller and the Texas Department of Commerce to jointly promote and market the program.

Sec. 313.018. RULES AND FORMS. Requires the comptroller to adopt rules and forms for the administration of this chapter, including guidelines for the state economic impact analysis.

Sec. 313.019. EXPIRATION DATE. Provides that this chapter expires September 1, 2001, if not continued in effect.

ARTICLE 3. FRANCHISE TAX

SECTION 3.01. Amends Sections 171.001(a) and (b), Tax Code, as follows:

(a) Provides that a franchise tax is imposed on certain taxable entities, rather than corporations, chartered, organized, or doing business in this state, including all limited partners. Deletes Subdivision (2).

(b) Redefines "banking corporation," "beginning date," "charter," "Internal Revenue Code," "officer," and "director." Defines "business trust," "compensation," "does business in this state," "income or equity partner," "owner," "passive income," "passive income asset," "passive income capital," "passive income ratio," and "taxable entity." Makes conforming changes.

SECTION 3.02. Amends Sections 171.0011(a)-(c), Tax Code, to make conforming changes.

SECTION 3.03. Amends Sections 171.002(b) and (d), Tax Code, to make conforming changes.

SECTION 3.04. Amends Chapter 171A, Tax Code, by adding Section 171.003, as follows:

Sec. 171.003. TERMINATION, MERGER, AND DIVISION OF PARTNERSHIP. Sets forth requirements for the termination, merger, and division of an existing partnership.

SECTION 3.05. Amends Chapter 171B, Tax Code, by adding Section 171.054, as follows:

Sec. 171.054. EXEMPTION--NONCORPORATE TAXABLE ENTITY ELIGIBLE FOR CERTAIN EXEMPTIONS. Sets forth requirements for a noncorporate entity's eligibility for certain exemptions available to corporations under this chapter.

SECTION 3.06. Amends Section 171.101, Tax Code, by adding Subsections (d) and (e), to set forth the calculation of the net taxable capital of a taxable entity other than a corporation, limited liability company, and a savings and loan association.

SECTION 3.07. Amends Sections 171.1015(a), (b), and (e), Tax Code, to make conforming changes.

SECTION 3.08. Amends Section 171.103, Tax Code, to provide that the gross receipts from a taxable entity includes each use of a patent, copyright, trademark, franchise, or license, not including a sale of a computer program or a license of computer software; each sale of real property, including mineral interests; and a taxable entity's share of gross receipts of a partnership apportioned in a certain manner. Provides that if a taxable entity sells an investment or capital asset, the gross receipts include only the gain from the sale. Requires the comptroller to adopt rules to apportion to this state receipts from this state's portion of a transaction within and without this state, in apportioning taxable capital of a telephone company.

SECTION 3.09. Amends Section 171.1032, Tax Code, to delete existing Subsection (b). Makes conforming changes.

SECTION 3.10. Amends Section 171.105, Tax Code, to make conforming changes.

SECTION 3.11. Amends Section 171.1051, Tax Code, to delete Subsection (c). Makes conforming changes.

SECTION 3.12. Amends Section 171.106, Tax Code, to make conforming changes.

SECTION 3.13. Amends Section 171.1061, Tax Code, to make conforming changes.

SECTION 3.14. Amends Section 171.109, Tax Code, to make conforming changes.

SECTION 3.15. Amends Section 171.110, Tax Code, as follows:

Sec. 171.110. DETERMINATION OF NET TAXABLE EARNED SURPLUS. (a) Provides that the net taxable earned surplus of a taxable entity, except as provided by Section 171.1101, is computed by determining the taxable entity's reportable federal taxable income and subtracting any taxable income or deductions under certain provisions of the Internal Revenue Code, to the extent included in computing federal taxable income from an S corporation or certain partnerships, with certain exceptions; adding, for each other taxable

entity owned in whole or part by the taxable entity, in proportion to the amount of that ownership, any amount of passive income subtracted from reportable taxable income under Section 171.1102 by the other taxable entity; subtracting certain dividends; adding, for a taxable entity with 35 or fewer owners, directly or indirectly, 100 percent of compensation, to the extent excluded in determining reportable federal taxable income, of certain persons; and subtracting, for a taxable entity with 35 or fewer owners, directly or indirectly, subtracting an amount up to \$100,000 in compensation paid to each owner who owns 0.1 percent or more of the taxable entity, in addition to making other apportionments, additions, and subtractions. Makes conforming and nonsubstantive changes.

(b) Provides that, for purposes of Subsection (a)(1), amounts may not be subtracted from or added to reportable federal taxable income more than once and husband and wife are treated as one owner for certain ownership interests. Deletes existing text regarding compensation of officers or directors of a corporation.

(c) Deletes existing text for Subsection (c) which provided that Subsection (b) does not apply to a subsidiary corporation unless it applies to the subsidiary's parent corporation.

(d) Requires reportable federal taxable income to be determined before the adjustment for distributions to owners and includes all income taxable to the entity or the owners for federal income tax purposes.

(e) Prohibits a business loss incurred before January 1, 1997, from being used to reduce the net taxable earned surplus of a taxable entity not subject to this chapter before January 1, 1998.

(f) Makes conforming changes.

(g) Requires, for purposes of this section, an approved Employee Stock Ownership Plan controlling a minority interest and voted through a single trustee to be considered one owner, rather than one shareholder.

(h) Defines "officer."

SECTION 3.16. Amends Chapter 171C, Tax Code, by adding Section 171.1101, as follows:

Sec. 171.1101. DETERMINATION OF NET TAXABLE EARNED SURPLUS OF PARTNERSHIPS. (a) Provides that the net taxable earned surplus of a partnership is computed by determining the partnership's reportable federal taxable income and subtracting any taxable income or deduction included under certain provisions of the Internal Revenue Code, to the extent included in computing reportable federal taxable income from a partnership that is subject to the earned surplus component of the tax imposed under this chapter, with certain exception; adding, for a partnership with 35 or fewer partners, directly or indirectly, 100 percent of compensation, to the extent excluded in determining reportable federal taxable income, made to certain officers, directors, and partners; and for a partnership with 35 or fewer partners, subtracting an amount up to \$100,000 in compensation paid to certain officers, directors, and partners; adding, for a partnership with more than 35 partners, to the extent excluded in determining reportable federal taxable income, a certain amount; subtracting, for a partnership with more than 35 partners, an amount up to \$100,000 in compensation paid to certain officers, directors, and partners; and by apportioning the partnership's taxable earned surplus to this state as provided by Section 171.106(b) or (c) to determine the partnership's apportioned taxable earned surplus; adding the partnership's taxable earned surplus allocated to this state as provided by Section 171.1061; and subtracting from that amount any allowable deductions and any business loss that is carried forward to the tax reporting period and deductible under Subsection (d).

(b) Provides that for purposes of Subsection (a)(1), amounts may not be subtracted from or added to reportable federal taxable income more than once and in determining whether a partnership has 35 or fewer partners, husband and wife are treated as one partner.

(c) Provides that a partnership's reportable federal taxable income is the amount of the income reportable to the Internal Revenue Service as taxable to the partners, except for guaranteed payments, if taxed as a partnership for federal income tax purposes.

(d) Provides that, for purposes of this section a business loss is any negative amount after apportionment and allocation. Requires the business loss to be carried forward to the year succeeding the loss year as a deduction to net taxable earned surplus, then successively to the succeeding four taxable years after the loss year or until the loss is exhausted, but not for more than five taxable years after the loss year. Prohibits, notwithstanding the preceding sentence, a business loss incurred before January 1, 1997, from being used to reduce net taxable earned surplus.

(e) Defines "compensation."

SECTION 3.17. Amends Chapter 171C, Tax Code, by adding Section 171.1102, as follows:

Sec. 171.1102. ADDITIONAL ADJUSTMENT OF NET TAXABLE EARNED SURPLUS FOR PASSIVE INCOME OF CERTAIN TAXABLE ENTITIES. Provides that in addition to the applicable adjustments to a taxable entity's reportable federal taxable income provided by Section 171.110(a)(1) or 171.1101(a)(1), the net taxable earned surplus of a taxable entity to which this section applies is computed by subtracting any amount of passive income included in reportable federal taxable income. Provides that this section applies to a taxable entity other than a corporation, including a banking corporation; a limited liability company; a state or federal savings and loan association; or a lending institution. Defines "lending institution."

SECTION 3.18. Amends Sections 171.112(b)-(f) and (h), Tax Code, to make conforming changes.

SECTION 3.19. Amends Section 171.1121, Tax Code, to make conforming changes.

SECTION 3.20. Amends Section 171.151, Tax Code, to make a conforming change.

SECTION 3.21. Amends Section 171.152(c), Tax Code, to make a conforming change.

SECTION 3.22. Amends Sections 171.153(a) and (c), Tax Code, to make conforming changes.

SECTION 3.23. Amends Section 171.1532, Tax Code, to provide that the tax covering the privilege periods included on the initial report, as required by Section 171.153, is based on the business done by the taxable entity during the period beginning on the taxable entity's beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report. Makes conforming changes.

SECTION 3.24. Amends Section 171.154, Tax Code, to make a conforming change.

SECTION 3.25. Amends Section 171.201, Tax Code, to make conforming changes.

SECTION 3.26. Amends Sections 171.202(a)-(c), (e), and (f), Tax Code, to make conforming changes.

SECTION 3.27. Amends Section 171.2022, Tax Code, to make a conforming change.

SECTION 3.28. Amends Section 171.204, Tax Code, to delete a reference to an officer of a taxable entity. Makes conforming changes.

SECTION 3.29. Amends Section 171.205, Tax Code, to make conforming changes.

SECTION 3.30. Amends Section 171.206, Tax Code, to make conforming changes.

SECTION 3.31. Amends Section 171.208, Tax Code, to make conforming changes.

SECTION 3.32. Amends Section 171.209, Tax Code, as follows:

Sec. 171.209. New heading: RIGHT OF OWNER TO EXAMINE OR RECEIVE REPORTS. Makes conforming changes.

SECTION 3.33. Amends Section 171.211, Tax Code, as follows:

Sec. 171.211. New heading: EXAMINATION OF RECORDS. Makes conforming changes.

SECTION 3.34. Amends the heading to Chapter 171F, Tax Code, as follows:

SUBCHAPTER F. New heading: FORFEITURE OF CORPORATE
AND BUSINESS PRIVILEGES

SECTION 3.35. Amends Chapter 171F, Tax Code, by adding Sections 171.260-171.275, as follows:

Sec. 171.260. FORFEITURE OF RIGHT TO TRANSACT BUSINESS: LIMITED PARTNERSHIPS. Requires the comptroller to forfeit the right of a domestic or foreign limited partnership subject to the tax imposed by this chapter to transact business in this state if the limited partnership does not file a report required by this chapter, in accordance with this chapter and within a certain time period; does not pay, within a certain time period, a tax imposed by this chapter or a penalty imposed by this chapter relating to that tax; or does not permit the comptroller to investigate or examine the records of the limited partnership to determine the limited partnership's liability under this chapter.

Sec. 171.261. EFFECTS OF FORFEITURE: LIMITED PARTNERSHIPS. Provides that, if the limited partnership's right to transact business is forfeited under this subchapter the limited partnership is denied the right to sue in a court of this state and each partner, whether a limited or general partner, of the limited partnership is liable for a department of the limited partnership as provided by Section 171.264.

Sec. 171.262. SUIT ON CAUSE OF ACTION ARISING BEFORE FORFEITURE: LIMITED PARTNERSHIPS. Prohibits a court, in a suit against a limited partnership on a cause of action arising before the forfeiture of the limited partnership's right to transact business, from granting affirmative relief to the limited partnership unless its right to transact business is revived under this chapter.

Sec. 171.263. EXCEPTION TO FORFEITURE: LIMITED PARTNERSHIPS. Provides that the forfeiture of a limited partnership's right to transact business does not apply to the privilege to defend in a suit to forfeit the limited partnership's certificate of limited partnership or registration of foreign limited partnership.

Sec. 171.264. LIABILITY OF PARTNERS: LIMITED PARTNERSHIPS. (a) Provides that, if the right to transact business of a limited partnership is forfeited for the failure to file a report or pay a tax or penalty, each partner of the limited partnership is liable for each debt of the limited partnership that is created or incurred in this state after the date on which the report, tax, or penalty is due and before the right to transact business is revived. Provides that the liability includes liability for any tax or penalty imposed by this chapter on the limited partnership that becomes due and payable after the date of the forfeiture.

(b) Provides that all partners are liable jointly and severally for the liability imposed under this subchapter.

(c) Provides that, if a limited partnership's certificate of limited partnership or registration of foreign limited partnership and its right to transact business are forfeited and revived under this chapter, the liability under this section of a partner of the limited partnership is

not affected by the revival of the certificate or registration and the right to transact business.

Sec. 171.265. NOTICE OF FORFEITURE: LIMITED PARTNERSHIPS. (a) Requires the comptroller, in order to forfeit the right to transact business of a limited partnership, to notify the limited partnership that the forfeiture will occur without a judicial proceeding unless the limited partnership files, within a certain time, the report to which that section refers or pays, within a certain time, the delinquent tax and penalty to which that section refers.

(b) Requires the notice to be written or printed and be verified by the seal of the comptroller's office.

(c) Requires the comptroller to mail the notice to the limited partnership at least 45 days before the forfeiture of the right to transact business. Requires the comptroller to address the notice to the limited partnership and mail it to the registered office of the limited partnership, the last known address of the limited partnership, or to any place of business of the limited partnership.

(d) Requires the comptroller to keep at the comptroller's office a record of the date on which the notice is mailed. Provides that, for the purposes of this chapter, the notice and record of the mailing date constitute legal and sufficient notice of the forfeiture.

Sec. 171.266. JUDICIAL PROCEEDING NOT REQUIRED FOR FORFEITURE: LIMITED PARTNERSHIPS. Provides that the forfeiture of the right to transact business of a limited partnership is effected by the comptroller without judicial proceeding.

Sec. 171.267. REVIVAL OF RIGHT TO TRANSACT BUSINESS: LIMITED PARTNERSHIPS. Requires the comptroller to revive the right to transact business of a limited partnership if the limited partnership, before the forfeiture of its certificate of limited partnership or registration of foreign limited partnership, pays any tax, penalty, or interest due under this chapter.

Sec. 171.268. REVOCATION OF REGISTRATION: LIMITED LIABILITY PARTNERSHIPS. Makes a conforming change.

Sec. 171.269. EFFECTS OF REVOCATION: LIMITED LIABILITY PARTNERSHIPS. Makes a conforming change.

Sec. 171.270. SUIT ON CAUSE OF ACTION ARISING BEFORE REVOCATION: LIMITED LIABILITY PARTNERSHIP. Makes a conforming change.

Sec. 171.271. EXCEPTION TO REVOCATION: LIMITED LIABILITY PARTNERSHIP. Provides that the revocation of a limited liability partnership's registration does not apply to the privilege to defend in a suit to revoke the limited liability partnership's registration.

Sec. 171.272. LIABILITY OF PARTNERS: LIMITED LIABILITY PARTNERSHIP. Makes a conforming change.

Sec. 171.273. NOTICE OF REVOCATION: LIMITED LIABILITY PARTNERSHIPS. Makes a conforming change.

Sec. 171.274. JUDICIAL PROCEEDING NOT REQUIRED FOR REVOCATION: LIMITED LIABILITY PARTNERSHIPS. Makes a conforming change.

Sec. 171.275. REVIVAL OF REGISTRATION: LIMITED LIABILITY PARTNERSHIPS. Makes a conforming change.

SECTION 3.36. Amends Chapter 171G, Tax Code, by adding Sections 171.318-171.326, as follows:

Sec. 171.318. **GROUND FOR FORFEITURE OF CERTIFICATE OF LIMITED PARTNERSHIPS OR REGISTRATION OF FOREIGN LIMITED PARTNERSHIPS.** Provides that it is a ground for the forfeiture of a limited partnership's certificate or registration if the right to transact business of the limited partnership is forfeited under this chapter and the limited partnership does not pay, within a certain time period, the amount necessary for the limited partnership to revive under this chapter its right to transact business; or the limited partnership does not permit the comptroller to investigate or examine the records of the limited partnership to determine the limited partnership's liability under this chapter.

Sec. 171.319. **CERTIFICATION BY COMPTROLLER: LIMITED PARTNERSHIPS.** Requires the comptroller, after the 120th day after the date that the right to transact business of a limited partnership is forfeited under this chapter, to certify the name of the limited partnership to the secretary of state.

Sec. 171.320. **FORFEITURE BY SECRETARY OF STATE: LIMITED PARTNERSHIPS.** Requires the secretary of state to forfeit the certificate or registration of a limited partnership if the secretary of state receives the comptroller's certification under Section 171.319; the limited partnership does not revive its forfeited right to transact business before the 120th day after the date that the right to transact business was forfeited; and the limited partnership does not have assets from which a judgment for any tax, penalty, or court costs imposed by this chapter may be satisfied.

Sec. 171.321. **JUDICIAL PROCEEDING NOT REQUIRED FOR FORFEITURE BY SECRETARY OF STATE: LIMITED PARTNERSHIPS.** Makes a conforming change.

Sec. 171.322. **RECORD OF FORFEITURE BY SECRETARY OF STATE: LIMITED PARTNERSHIPS.** Requires the secretary of state to effect a forfeiture of a limited partnership's certificate or registration under this chapter by inscribing on the limited partnership's record in the secretary of state's office the words "Certificate Forfeited" or "Registration Forfeited," the date on which this inscription is made, and a citation to this chapter as authority for the forfeiture.

Sec. 171.323. **REVIVAL OF CERTIFICATE OF LIMITED PARTNERSHIPS OR REGISTRATION OF FOREIGN LIMITED PARTNERSHIPS AFTER FORFEITURE BY SECRETARY OF STATE.** Provides that a limited partnership whose certificate or registration is forfeited under this chapter by the secretary of state is entitled to have its certificate or registration revived and to have its right to transact business revived if the limited partnership files each report that is required by this chapter and that is delinquent; the limited partnership pays the tax, penalty, and interest that is imposed by this chapter and that is due at the time the request under Section 171.324 to set aside forfeiture is made; and the forfeiture of the limited partnership's certificate or registration is set aside in a proceeding under Section 171.324.

Sec. 171.324. **PROCEEDING TO SET ASIDE FORFEITURE BY SECRETARY OF STATE: LIMITED PARTNERSHIPS.** Authorizes a partner of a limited partnership at the time of forfeiture of a certificate or registration or of the right to transact business of the limited partnership to request in the name of the limited partnership that the secretary of state set aside the forfeiture of the certificate or registration. Requires the secretary of state, if a request is made, to determine if each delinquent report has been filed and any delinquent tax, penalty, or interest has been paid. Requires the secretary of state, if each report has been filed and the tax, penalty, or interest has been paid, to set aside the forfeiture of the limited partnership's certificate or registration.

Sec. 171.325. **RIGHT TO TRANSACT BUSINESS AFTER FORFEITURE BY SECRETARY OF STATE IS SET ASIDE: LIMITED PARTNERSHIPS.** Requires the comptroller, if the secretary of state sets aside under this chapter the forfeiture of a limited partnership's certificate or registration, to revive the right to transact business of the limited partnership.

Sec. 171.326. USE OF LIMITED PARTNERSHIP NAME AFTER REVIVAL OF CERTIFICATE OR REGISTRATION. Requires a limited partnership, if a limited partnership's certificate or registration is forfeited by the secretary of state and if the limited partnership requests the secretary of state to set aside the forfeiture, to determine from the secretary of state whether the limited partnership's name is available for use. Requires the limited partnership, if the name is not available, to file an amendment to its certificate or application or adopt a new name for use in this state as a precondition to reinstatement.

- SECTION 3.37. Amends Section 171.351, Tax Code, to make conforming changes.
- SECTION 3.38. Amends Section 171.353, Tax Code, to make conforming changes.
- SECTION 3.39. Amends Section 171.354, Tax Code, to make conforming changes.
- SECTION 3.40. Amends Sections 171.362(a), (d), and (e), Tax Code, to make conforming changes.
- SECTION 3.41. Amends Sections 171.363(a) and (b), Tax Code, to make conforming changes.
- SECTION 3.42. Amends Section 171.401, Tax Code, to make conforming changes.
- SECTION 3.43. Amends Section 171.501(a), Tax Code, to make conforming changes.
- SECTION 3.44. Amends Section 171.652, Tax Code, to make conforming changes.
- SECTION 3.45. Amends Section 171.653, Tax Code, to make conforming changes.
- SECTION 3.46. Amends Section 171.654, Tax Code, to make conforming changes.
- SECTION 3.47. Amends Section 171.656, Tax Code, to make conforming changes.
- SECTION 3.48. Amends Section 171.657, Tax Code, to make conforming changes.
- SECTION 3.49. Amends Section 171.682, Tax Code, to make conforming changes.
- SECTION 3.50. Amends Section 171.683, Tax Code, to make conforming changes.
- SECTION 3.51. Amends Section 171.684, Tax Code, to make conforming changes.
- SECTION 3.52. Amends Section 171.686, Tax Code, to make conforming changes.
- SECTION 3.53. Amends Section 171.687, Tax Code, to make conforming changes.
- SECTION 3.54. Amends Chapter 171, Tax Code, by adding Subchapter N, as follows:

SUBCHAPTER N. TAX CREDIT FOR CONTRIBUTIONS TO QUALIFIED
EDUCATIONAL ORGANIZATIONS

Sec. 171.751. DEFINITIONS. Defines "qualified educational organization" and "economically disadvantaged children."

Sec. 171.752. CREDIT. Provides that a taxable entity is entitled to a credit in the amount allowed by this subchapter against the tax imposed by this chapter for contributions made to qualified educational organizations.

Sec. 171.753. AMOUNT OF CREDIT. Provides that the amount of the credit is 25 percent of such contributions made during the privilege period.

Sec. 171.754. LIMITATIONS. Sets forth limitations regarding the amount of credit

allowable under this subchapter.

Sec. 171.755. APPLICATION FOR CREDIT. Requires a corporation to apply for the credit on or with the tax report for the period for which the credit is claimed. Requires the comptroller to promulgate a form for the application for the credit. Requires a taxable entity to use this form in applying for the credit.

Sec. 171.756. REGISTER OF QUALIFIED EDUCATIONAL ORGANIZATIONS. Requires the comptroller to promulgate a form to be completed by educational organizations to determine whether such organizations satisfy certain requirements, and to maintain a registry of qualified educational organizations. Authorizes the comptroller to require certain information.

SECTION 3.55. Amends Section 3.03(a), Article 6132a-1, V.T.C.S. (Texas Revised Limited Partnership Act), to set forth an additional exception.

SECTION 3.56. Amends Section 9.01(a), Article 6132a-1, V.T.C.S., to set forth an exception and make a conforming change.

SECTION 3.57. Amends Chapter 13, Article 6132a-1, V.T.C.S., by adding Section 13.10, as follows:

Sec. 13.10. FORFEITURE OF RIGHT TO TRANSACT BUSINESS OR CANCELLATION OF CERTIFICATE OR REGISTRATION. Provides that a limited partnership that does not comply with Title 2F, Tax Code, forfeits the right to transact business and is subject to cancellation of its certificate or registration. Authorizes the comptroller, subject to Titles 2F and G, Tax Code, to specify procedures for effecting the forfeiture or cancellation of registration and providing for relief from the forfeiture and cancellation.

SECTION 3.58. Amends Section 15(2), Article 6132b, V.T.C.S. (Texas Uniform Partnership Act), to make conforming changes.

SECTION 3.59. Amends Section 45-A, Article 6132b, V.T.C.S., by adding Subsection (7), to require the secretary of state to revoke registration on notice from the comptroller that a registered limited liability partnership has not complied with Subtitle F, Title 2, Tax Code.

SECTION 3.60. Amends Section 3.08(a)(1), Article 6132b-3.08, V.T.C.S. (Texas Revised Partnership Act) to make a conforming change.

SECTION 3.61. Amends Section 3.08(b), Article 6132b-3.08, V.T.C.S., by adding Subdivision (16), to make conforming changes.

SECTION 3.62. Repealer: Section 171.056, Tax Code (Exemption--Corporation With Business Interest in Solar Energy Devices), Section 171.104, Tax Code (Gross Receipts From Business Done In Texas: Deduction for Food and Medicine Receipts), Section 171.107, Tax Code (Deduction of Cost of Solar Energy Device From Taxable Capital Apportioned to this State), Section 171.111, Tax Code (Temporary Credit on Net Taxable Earned Surplus), and Section 171.113, Tax Code (Alternate Method of Determining Taxable Capital and Gross Receipts for Certain Corporations).

SECTION 3.63. (a) Provides that subject to other provisions of this section, this article takes effect for initial or annual reports originally due January 1, 1998, or later, and for final reports originally due on the effective date of this Act or later.

(b) Sets forth provisions regarding an entity becoming subject to the franchise tax under this article.

(c) Requires an existing partnership, for purposes of this article, to be considered as continuing if it is not terminated.

(d) Requires a partnership to be considered as terminated only under certain conditions.

(e) Requires, in the case of a merger or consolidation of two or more partnerships, the resulting partnership, for the purposes of this article, to be considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(f) Requires the resulting partnerships (other than any resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership), for the purposes of this article, to be considered a continuation of the prior partnership.

ARTICLE 4. SALES TAX

SECTION 4.01. Section 151.0028, Tax Code, by adding Subsection (c), to define "amusement services."

SECTION 4.02. Amends Section 151.008, Tax Code, to redefine "seller" and "retailer." Provides that a person has a physical presence in this state for the purposes of this chapter if any of certain conditions are met. Provides that for the purposes of this chapter, a person is considered as owning property located in this state that is owned by any corporation in which the person directly or constructively owns a certain amount. Sets forth provisions regarding the determination of ownership interests in a corporation. Sets forth provisions regarding indirect ownership of any real or tangible property located in this state. Defines "representative" and "person." Deletes text regarding regular or systematic solicitation of sales of taxable items in this state through certain means.

SECTION 4.03. Amends Section 151.009, Tax Code, to redefine "tangible personal property" to include a telephone prepaid calling card.

SECTION 4.04. Amends Section 151.0103, Tax Code to redefine "telecommunications services" to exclude certain services. Provides that the sale or use of a telephone prepaid calling card is not considered to be a sale or use of tangible personal property.

SECTION 4.05. Amends Chapter 151A, Tax Code, by adding Section 151.01032, as follows:

Sec. 151.01032. "TELEPHONE PREPAID CALLING CARD". Defines "telephone prepaid calling card."

SECTION 4.06. Amends Chapter 151B, Tax Code, by adding Sections 151.0231 and 151.0232, as follows:

Sec. 151.0231. PRODUCTION OF CUSTOMERS LIST. Sets forth provisions applicable if the comptroller has reason to believe that a seller or retailer does not have a physical presence in this state as provided by Section 151.008.

Sec. 151.0232. REPORTING CONTRACTUAL ARRANGEMENTS. Sets forth certain requirements for any vendor that has made arrangements for the service, maintenance, or installation of its products in this state or for the performance of warranty work on goods sold to customers located in this state.

SECTION 4.07. Amends Section 151.107(a), Tax Code, to set forth, for the purposes of this subchapter and in relation to the use tax, the conditions under which a retailer is considered to be engaged in business in this state.

SECTION 4.08. OLD SECTION 4.02

SECTION 4.09. Amends Section 151.317(c)(2), Tax Code, to set forth activities not included in the term "commercial use."

SECTION 4.10. Amends Chapter 151L, Tax Code, by adding Sections 151.7091, 151.7092, and 151.7093, as follows:

Sec. 151.7091. PENALTY FOR FAILING TO SUBMIT REPORT ON REQUEST. Provides that a seller or retailer commits a Class C misdemeanor if the seller or retailer fails to provide the report required by Section 151.0231 within 30 days after receiving the comptroller's request for that information. Provides that a separate offense is committed each day that this section is violated.

Sec. 151.7092. PENALTY FOR FAILING TO NOTIFY COMPTROLLER. Provides that a seller or retailer commits a Class C misdemeanor if the seller or retailer fails to make certain notifications to the comptroller in accordance with certain requirements. Makes conforming changes.

Sec. 151.7093. ENFORCEMENT. Sets forth provisions regarding enforcement of Section 151.0231.

SECTION 4.11. Amends Chapter 151M, Tax Code, by adding Section 151.8015, as follows:

Sec. 151.8015. DISPOSITION OF CERTAIN REVENUE. Requires the comptroller to make certain computations regarding sales tax revenue not later than the last day of the first month of each calendar quarter. Requires the comptroller to credit 50 percent of the amount computed under Subsection (a) into a special account of the general revenue fund. Provides that money credited to the account may be used only by the Texas Education Agency to provide grants for community based adult literacy services.

SECTION 4.12. Provides that there is appropriated to the Texas Education Agency the amounts deposited to the credit of the special account described by Section 151.8015(b), Tax Code as added by this article, for use in providing grants for community based adult literacy services.

SECTION 4.13. Repealer: Chapter 111F, Tax Code (Tax Refund for Economic Development).

SECTION 4.14. (a) Provides that there are exempted from the taxes imposed by Chapter 151, Tax Code, the receipts from the sale, use, storage, rental, or other consumption in this state of items or services that became subject to the taxes because of the terms of this article and that are the subject of a written contract or bid entered into on or before March 1, 1997.

(b) Provides that the exemption provided by this section expires January 1, 2000.

SECTION 4.15. Provides that except as provided by this article, this article takes effect October 1, 1997.

ARTICLE 5. LOTTERY REVENUE

SECTION 5.01. Amends Section 466.015, Government Code, by amending Subsection (c) and adding Subsection (d), to authorize the Texas Lottery Commission (TLC) to adopt rules governing the establishment and operation of the lottery, including rules governing the number of winning tickets and the amount of the prize paid on each winning ticket, except that the total amount of prizes awarded under this chapter may not exceed the amount described in Subsection (d). Provides that the total amount of lottery prizes that TLC may award for all lottery games in any fiscal year may not exceed an amount equal to the gross revenue from the sale of tickets in that fiscal year multiplied by the percentage amount of lottery prizes awarded for all lottery games in fiscal year 1997 as determined by the comptroller minus an amount equal to five percent of gross lottery revenue for the fiscal year in which the prizes are being awarded.

SECTION 5.02. Amends Section 466.355(b), Government Code, to set forth provisions regarding the use and distribution of money in the state lottery account.

SECTION 5.03. Effective date for this article: September 1, 1997.

SECTION 5.04. (a) Provides that except as provided by Subsection (b) of this section, the change in law made to Section 466.015, Government Code, by this article, applies to a game distributed to a lottery sales agent on or after the effective date of this article. Provides that a game distributed to a lottery sales agent before that date is governed by the law in effect when the game was distributed to a lottery sales agent, and that law is continued in effect for that purpose.

(b) Prohibits, in fiscal year 1998, the total amount of lottery prizes that TLC may award under Section 466.015(d), Government Code, as added by this article, from exceeding an amount equal to the gross revenue from the sale of lottery tickets multiplied by the percentage amount of lottery prizes awarded for all lottery games in fiscal year 1997 as determined by the comptroller minus an amount equal to four and one-half percent of gross lottery revenue for the 1998 fiscal year.

SECTION 5.05. Provides that the change in law made to Section 466.355, Government Code, by this article applies only to a transfer from the state lottery account made on or after the effective date of this article.

ARTICLE 6. ALCOHOLIC BEVERAGE TAXES

SECTION 6.01. Amends Sections 201.03, 201.04, and 201.09, Alcoholic Beverage Code, to provide that a tax is imposed on the first sale of distilled spirits at the rate of \$2.64, rather than \$2.40, per gallon. Provides that the minimum tax imposed on packages of distilled spirits containing two ounces or less is 5.5, rather than 5, cents per package. Provides that should packages containing less than one-half pint but more than two ounces ever be legalized in this state, the minimum tax imposed on each of these packages is \$0.134, rather than \$0.122. Provides that a tax is imposed on the first sale of vinous liquor that does not contain over 14 percent of alcohol by volume at the rate of 22.44, rather than 20.4, cents per gallon. Provides that a tax is imposed on vinous liquor that contains more than 14 percent of alcohol by volume at the rate of 44.88, rather than 40.8, cents per gallon. Provides that a tax is imposed on artificially carbonated and natural sparkling vinous liquor at the rate of 56.76, rather than 51.6, cents per gallon. Provides that this section does not apply to the holder of an airline beverage permit or passenger training permit.

SECTION 6.02. Amends Section 201.42, Alcoholic Beverage Code, to provide that a tax is imposed on the first sale of ale and malt liquor at the rate of \$0.2178, rather than \$0.198, per gallon.

SECTION 6.03. Amends Section 203.01, Alcoholic Beverage Code, to provide that a tax is imposed on the first sale of beer manufactured in this state or imported into this state at the rate of \$6.60, rather than six dollars, per barrel.

SECTION 6.04. (a) Effective date for this article: September 1, 1997.

(b) Provides that in addition to the holders of any alcoholic beverage license or permit, the provisions of this article also apply to the holder of a food and beverage certificate issued by the Texas Alcoholic Beverage Commission.

ARTICLE 7. CIGARETTE AND TOBACCO PRODUCTS TAX

SECTION 7.01. Amends Section 154.021(b), Tax Code, to provide that the tax rates are \$30.50, rather than \$20.50, per thousand on cigarettes weighing three pounds or less per thousand.

SECTION 7.02. Amends Section 155.0211(b), Tax Code, to provide that the tax rate for tobacco products other than cigars is 52.820, rather than 35.213, percent of the manufacturer's list price, exclusive of any trade discount, special discount, or deal.

SECTION 7.03. Effective date for this article: September 1, 1997.

ARTICLE 8. INTERSTATE MOTOR CARRIER SALES AND USE TAX

SECTION 8.01. Amends Title 2E, Tax Code by adding Chapter 157, as follows:

CHAPTER 157. INTERSTATE MOTOR CARRIER SALES AND USE TAX

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 157.001. DEFINITIONS. Defines "person," "motor carrier," "interstate motor vehicle," "truck-tractor," "commercial motor vehicle," "trailer," "semitrailer," "trip-lease equipment" "purchase," "preceding year," and "lease."

SUBCHAPTER B. IMPOSITION OF TAX

Sec. 157.101. TAXES IMPOSED. Provides that sales and use taxes are imposed on certain interstate motor vehicles, trailers, and semitrailers.

Sec. 157.102. TAX RATE. (a) Provides that except as provided in Subsections (c), (d), and (e) of this section, the payment of the tax is the responsibility of the motor carrier operating the motor vehicle and requires the tax rate on an interstate motor vehicle to be calculated as follows:

(1) The carrier's total miles operated in Texas by interstate truck-tractors and interstate commercial motor vehicles during the preceding year is divided by the total miles operated by the same interstate truck-tractors and interstate commercial motor vehicles operated in Texas during the preceding year;

(2) Provides that the percentage calculated in Subdivision (1) of this subsection is multiplied by 6-1/4 percent of the purchase price of each interstate motor vehicle purchased in Texas or first brought into the State of Texas during the reporting period. Sets forth provisions applicable if a lease price is used in this formula.

(3)(A) Provides that, from the amount computed in Subdivision (2) of this subsection may be deducted the amount of sales and use tax paid on the interstate motor vehicle multiplied by the formula in Subdivision (1) of this subsection. Sets forth provisions applicable if an operator is paying sales or use tax on lease payments.

(b) Requires a motor carrier, if it has not operated in Texas during the preceding year, to estimate the miles it will drive during this year and use the estimate in the calculations set forth in Subsection (a) of this section. Requires the carrier to make certain adjustments.

(c) (1) Provides that the payment of the tax is the responsibility of the motor carriers operating the motor vehicle. Requires the tax rate on an interstate trailer or semitrailer being purchased or first brought into Texas during a reporting period to be calculated as follows:

(A) Provides that the number of truck-tractors operated in Texas by the motor carrier during the reporting period is divided by the total number of truck-tractors operated by a motor carrier in the reporting period;

(B) Provides that the percentage calculated in Paragraph (A) of this subdivision is multiplied by 6-1/4 percent of the purchase price of all trailers and semitrailers purchased during the reporting period;

(C) Provides that the amount calculated in Paragraph (B) of this subdivision is multiplied by the formula in Subsection (a)(1) of this section;

(D) Requires, from the amount calculated in Paragraph (C) of this subdivision to be deducted the amount of sales and use taxes paid on all trailers and semitrailers purchased in the reporting period multiplied by the percentages calculated in Paragraph

(A) of this subdivision and in Subsection (a)(1) of this section;

(2) Provides that, however, if the motor carrier can prove that the actual numbers of trailers or semitrailers being purchased in Texas or first brought into Texas during a reporting period is less than the number under the formula in Subsection (c)(1) of this section, the motor carrier may pay tax on the lesser number using the formula in Subsection (a) of this section. Sets forth provisions applicable if a motor carrier chooses to use the actual number of trailers or semitrailers purchased in Texas or first brought into Texas during a reporting period and uses the formula for other reporting periods.

(d) Provides that if a motor carrier contracts to hire an interstate motor vehicle with a driver to transport persons or property over the carrier's routes and under the authority of the carrier's permits, the tax rate is \$25 per truck-trailer per contract and \$25 per trailer or semitrailer per contract and is the responsibility of the motor carrier operating the motor vehicle. Provides that, however, if a sales and use tax of at least 6-1/4 percent of the purchase price of the motor vehicle has been paid or if tax under Subsection (a), (b), or (c) of this section has been paid, no tax is due on the vehicle under this subsection. Prohibits this subsection from being utilized by a motor carrier contracting with a person being controlled or having controlling interest in the motor carrier. Provides that controlling interest is defined as 50 percent of ownership.

(e) Provides that if a motor carrier contracts to use trip-leased equipment, the tax rate is \$5 per motor vehicle per contract and is the responsibility of the motor carrier operating the motor vehicle. Provides that, however, if a sales and use tax of at least 6-1/4 percent of the purchase price of the motor vehicle has been paid or if tax under Subsection (a) of this section has been paid, no tax is due on the vehicle under this subsection. Prohibits this subsection from being utilized by a motor carrier contracting with a person being controlled or having controlling interest in the motor carrier. Provides that a controlling interest is defined as 50 percent of ownership.

SUBCHAPTER C. ENFORCEMENT AND COLLECTION

Sec. 157.201. PERMITS. Requires motor carriers required to pay tax under this chapter to be permitted by the comptroller. Authorizes the permit to be used by the motor carrier to register motor vehicles, trailers, and semitrailers with the county tax assessor-collector without paying the motor vehicle sales and use tax under Chapter 152 of this code, if the motor vehicle is being registered as an apportioned motor vehicle or if the motor vehicle is a bus used in the interstate transportation of chartered parties. Authorizes lessors to title an interstate motor vehicle, trailer, and semitrailer leased for periods in excess of 180 days under this permit authority of the motor carrier operating the vehicle without payment of taxes imposed by Chapter 152 of this code, if the motor vehicle is being registered as an apportioned motor vehicle or if the motor vehicle is a bus used in the interstate transportation of chartered parties.

Sec. 157.202. REPORTS. Requires the motor carriers subject to the provisions of this chapter to report and pay the tax to the comptroller quarterly on or before the last day of the month succeeding each calendar quarter. Authorizes the comptroller, notwithstanding the provisions of Subsection (a) of this section, to prescribe the date and period for filing reports and payments in order to facilitate the collection of the tax including a longer reporting period for motor carriers owing a minimal amount of tax.

Sec. 157.203. RECORDS. Provides that motor carriers are required to keep records and supporting documents including mileage records regarding the payment of motor carrier sales and use tax in such form as the comptroller may reasonably require. Requires the motor carriers to keep the records for at least three years.

Sec. 157.204. PENALTY AND INTEREST. Provides that any person who fails to timely pay the tax required by this chapter forfeits five percent of the amount due as a penalty, and

after the first 30 days, forfeits an additional five percent. Provides that the penalty may never be less than \$1. Requires delinquent taxes to draw interest at the rate provided by Section 111.060, beginning 60 days from the date due.

Sec. 157.205. ENFORCEMENT BY COMPTROLLER; RULES AND REGULATIONS. Requires the comptroller to enforce the provisions of this chapter, and authorizes the comptroller to prescribe, adopt, and enforce rules relating to the administration and enforcement of this chapter. Authorizes the comptroller to promulgate such forms as are necessary for the administration and enforcement of this chapter.

SECTION 8.02. Provides that it is the intent of the legislature that Chapter 157, Tax Code, be reenacted to continue that chapter in effect without interruption as it exists on August 31, 1997, notwithstanding the repeal of that chapter by Section 31(b), Chapter 705, Acts of the 74th Legislature, Regular Session, 1995.

SECTION 8.03. Effective date for this article: September 1, 1997.

ARTICLE 9. INTERIOR DESIGN PROFESSIONAL FEE

SECTION 9.01. Amends Article 249e, V.T.C.S., by adding Section 6A, as follows:

Sec. 6A. INCREASE IN FEES. Provides that certain fees imposed by Section 6 of this article are increased by \$200. Requires, of the fee increase collected, \$50 to be deposited to the credit of the foundation school fund and \$150 to be deposited to the credit of the general revenue fund. Provides that this subsection applies to the disposition of each fee increase regardless of any other provision of law for a different disposition of funds.

SECTION 9.02. Effective date for this article: September 1, 1997. Makes application of this article prospective.

ARTICLE 10. COIN-OPERATED MACHINES

SECTION 10.01. Amends Article 8801, V.T.C.S., by amending Subdivisions (3) and (6) and adding Subdivision (8), to redefine "coin-operated machine" to include "service coin operated machines" and "cash dispensing machine." Defines "cash-dispensing machine."

SECTION 10.02. Amends Article 8802(1), V.T.C.S., to provide that in lieu of the \$60 occupation tax, an annual tax of \$30 is imposed on each coin-operated locker and an annual occupation tax of \$100 is imposed on "cash-dispensing machines."

SECTION 10.03. Amends Article 8803, V.T.C.S., to set forth machines which are exempt from tax under this chapter. Deletes existing Article 8803, V.T.C.S.

SECTION 10.04. Effective date for this article: October 1, 1997.

ARTICLE 11. COST CONTROL COMMITTEE

SECTION 11.01. Amends Title 10B, Government Code, by adding chapter 2059, as follows:

CHAPTER 2059. GOVERNOR'S COMMITTEE ON COST CONTROL

Sec. 2059.001. DEFINITION. Defines "state agency."

Sec. 2059.002. COMMITTEE COMPOSITION. Sets forth the composition of the Governor's Private Sector Committee on Cost Control in State Government (committee), and provides that the committee is established under Section 31a, Article III, Texas Constitution. Provides that a member of the committee serves at the will of the governor. Prohibits a person registered as a lobbyist, because of the person's activities for compensation on behalf of a professional related to the operation of the committee, from serving as a committee

member.

Sec. 2059.003 OFFICERS; COMPENSATION; MEETINGS. Requires the governor to designate a presiding officer from among the members of the committee. Sets forth provisions regarding the election of officers, compensation, and meetings.

Sec. 2059.004. DUTIES. Requires the committee to study how to control costs in state agencies and consider cost-control methods used in the private sector. Sets forth additional requirements and provisions regarding the committee.

Sec. 2059.005. AGENCY COOPERATION. Requires the administrative head of a state agency to provide to the committee certain information.

Sec. 2059.006. GIFTS AND GRANTS; STAFF; RESOURCES. Sets forth provisions regarding gifts and grants, and staff support.

Sec. 2059.007. APPLICABILITY OF ADVISORY COMMITTEE LAW. Provides that Article 6252-33, V.T.C.S., does not apply to the committee except for the provisions of Section 4 of that law.

Sec. 2059.008. FINAL REPORT; LEGISLATIVE ACTION. Sets forth provisions regarding legislative action in relation to the committee's submission of its final report to the governor and to the presiding officer of each house of the legislature.

Sec. 2059.009. ABOLITION OF COMMITTEE. Provides that the committee is abolished after the submission of its final report. Provides that this chapter expires January 1, 2000.

SECTION 11.02. Effective date of this article: September 1, 1997.

ARTICLE 12. TAX INCIDENCE AND TAX EXPENDITURE REPORTS; SUNSET OF TAX EXEMPTIONS

SECTION 12.01. TAX INCIDENCE REPORT. Amends Chapter 403B, Government Code, by adding Section 403.0141, as follows:

Sec. 403.141. REPORT ON INCIDENCE OF TAX. Sets forth provisions and requirements regarding the comptroller's report to the legislature and the governor on the overall incidence of school district property taxes and certain other state taxes.

SECTION 12.02. Amends Section 403.014, Government Code, to set forth provisions and requirements regarding the report by the comptroller to the legislature regarding the effect of certain tax provisions.

SECTION 12.03. Effective date of this article: September 1, 1997.

ARTICLE 13. CEMENT PRODUCTION TAX

SECTION 13.01. Amends Section 181.002, Tax Code, to set forth the rate of tax imposed by this chapter for each 100 pounds or fraction of 100 pounds of taxable cement.

SECTION 13.02. Effective date of this article: September 1, 1997.
Makes application of this article prospective.

ARTICLE 14. LANDSCAPE ARCHITECT PROFESSIONAL FEE

SECTION 14.01. Amends Article 249c, V.T.C.S., by adding Section 4A, as follows:

Sec. 4A. INCREASE IN FEES. Provides that certain fees are increased by \$200. Sets forth provisions regarding the use of said fees.

SECTION 14.02. Effective date of this article: September 1, 1997.
Makes application of this article prospective.

ARTICLE 15. EFFECTIVE DATE; CONTINGENCY; EMERGENCY

SECTION 15.01. (a) Provides that this Act takes effect September 1, 1997, but only if the constitutional amendment proposed by H.J.R. 4, 75th Legislature, Regular Session, 1997, is approved by the voters. Provides that if that amendment is not approved by the voters, this Act has no effect.

(b) Makes application of this Act prospective.

(c) Provides that notwithstanding Subsection (a) of this section, Sections 2.03-2.11 of this Act take effect September 1, 1997, and are not contingent upon the approval by the voters of the constitutional amendment proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997.

(d)-(f) Makes application of SECTIONS 2.03-2.11 of this Act prospective.

(g) Provides that notwithstanding Subsection (a) of this section, Sections 1.11 and 1.12 of this Act, and Sections 2.12, 2.13, and 2.14 of this Act, take effect September 1, 1997, and are not contingent upon the approval by the voters of the constitutional amendment proposed by H.J.R. No. 4, 75th Legislature, Regular Session, 1997.

SECTION 15.02. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amendment 1. (Bivins)

Regarding property tax: Creates the Invest Texas Act, allowing school districts to abate property for a new project in excess of \$1 billion, and instructs the comptroller, rather than the Texas Department of Commerce, to maintain control of the registry of reinvestment zones.

Amendment 2. (Bivins)

Regarding property tax: Prohibits school districts from entering into tax abatement agreements.

Amendment 10. (Barrientos)

Regarding school finance: Places restrictions on a school district's compensatory education allotment expenditures.

Amendment 14. (Armbrister)

Regarding coin-operated machines: Removes coin-operated vacuum cleaners from the tax on coin-operated machines.

Amendment 15. (Fraser)

Regarding franchise tax: Deletes certain self-insurance trusts from the definition of partnership.

Amendment 17. (Bivins)

Regarding school finance: Provides that for the 1997-98 and 1998-99 school years, a district

entitlement may not exceed the amount to which the district would be entitled at a tax rate equal to that necessary to generate the same state and local amounts under the Foundation School Program, to which the district would have been entitled in the 1996-97 school year.

Amendment 19. (Nixon)

Regarding franchise tax: Deletes definition of small business entity and removes and eliminates the alternate method of determining taxable capital and gross receipts for certain corporations and small business entities.

Amendment 21. (Nixon)

Regarding franchise tax: Deletes language treating a husband and wife as one owner for purposes of determining reportable federal taxable income.

Amendment 22. (Armbrister)

Regarding sales tax: Deletes sales tax fix for Tyler Pipe and Chevron cases.

Amendment 25. (Carona)

Regarding school finance: Prohibits school districts from having a wealth per student exceeding \$330,000, and provides that beginning with 1999-2000 school year, maximum wealth per student for district is indexed against the average statewide wealth per student in the preceding biennium.

Amendment 27. (Carona)

Regarding sales tax: Adds "telephone prepaid calling cards" to the sales tax base.

Amendment 29. (Shapiro)

Regarding sales tax: Amends the definition of "commercial use" of gas and electricity to exclude from the definition use by a person engaged in providing defense or national security-related electronics.

Amendment 31. (Shapiro)

Regarding franchise tax: Allows a taxable entity with more than 35 owners to calculate its net taxable earned surplus by adding back 100% of the 35 highest amounts of compensation, and allowing up to a \$100,000 deduction for each officer, director, and owner who owns 0.1% or more of the taxable entity. All remaining officers, directors, and owners who own 0.1% or more would have 50% of their compensation added back. Similar treatment is allowed for partnerships with more than 35 partners.

Amendment 32. (Shapiro)

Regarding sales tax and franchise tax: Repeals the state sales tax and franchise tax refunds to persons who establish new businesses, or expand or modernize current businesses, in reinvestment zones without receiving a property tax abatement from a school district.

Amendment 33. (Shapiro)

Regarding committee on cost control: Creates a Committee on Cost Control, with members appointed by the governor, to study cost control for state agencies. Requires a final report to be submitted June 1, 1998, with recommendations to be included in legislation. Abolishes committee upon submission of the final report.

Amendment 34. (Ellis)

Regarding tax incidence and tax expenditure report: Requires the comptroller to report to the legislature and the governor on the incidence of school district property taxes and any state tax generating more than 2.5 percent of state revenue. Requires the Legislative Budget Board (LBB), at the request of a committee chair, to prepare a tax incidence impact analysis on the effects of a bill or resolution that would change the tax system by \$20 million.

Requires the comptroller to report on the effect of special assessment provisions relating to school district property taxes and any other tax generating more than 5 percent of the state tax revenue. Requires LBB, at the request of a committee chair, to prepare a letter analysis on the effects of the special assessment provisions of a bill or resolution on state tax revenues.

Amendment 42. (Luna)

Regarding franchise tax: Provides up to a \$25,000 tax credit for non-profit corporations that use at least 80 percent of their total funds for direct assistance to economically disadvantaged children in Texas public schools.

Amendment 44. (Ellis)

Regarding sales tax: Provides for sales taxation of business conducted through mail-order catalogs that is consistent with federal constitutional restrictions set forth in the *Quill* case. Dedicates 50 percent of the tax to grants for community based adult literacy services.

Amendment 47. (Duncan)

Regarding franchise tax and cement tax: Deletes language requiring the comptroller to adopt rules for apportioning taxable capital and taxable earned surplus for transportation companies.

Increases the cement production tax from 2.75 cents per 100 pounds to 5 cents per 100 pounds.

Amendment 49. (Armbrister)

Regarding franchise tax: Exempts sale of a computer program and licenses for computer software from the calculation of earned surplus.

Amendment 50. (Armbrister)

Regarding franchise tax: Excludes certain insurance funds from the definition of compensation.

Amendment 53. (Nixon)

Regarding lottery: Makes technical changes to certain lottery definitions.

Amendment 58. (Armbrister)

Regarding occupation tax: Increases the professional fees for landscape architects by \$200.

Amendment 60. (Nixon)

Regarding lottery: Authorizes the Lottery Commission to adopt rules governing a competitive bidding process complying with the General Services Commission to award a contract not exceeding four years.