

# SENATE JOURNAL

EIGHTIETH LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**SIXTY-FIRST DAY**

(Monday, May 14, 2007)

The Senate met at 11:17 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

The Reverend Don Long, former Senate Doorkeeper, offered the invocation as follows:

Bless, O Lord, we beseech Thee, the labors of these humble servants who have been elected by their constituents to serve in the Texas State Senate as a means for the good of all the people of Texas. May they remember the words from the prophet Ezekiel: "Thus saith the Lord God; Let it suffice you, O rulers: remove violence and spoil, and execute judgment and justice, and stop dispossessing my people, saith the Lord God." (Ezekiel 45:9) In these closing days of this session, let them also remember these words of truth: "Behold, how good and how pleasant it is for brethren to dwell together in unity!" (Psalms 133:1) May Your right hand be as a shield and buckler to Lieutenant Governor Dewhurst against the assaults of all who would impair the vitality of our great State of Texas. Let it be said of him, as was said of Israel's great and beloved King David, "And David shepherded them with integrity of heart; with skillful hands he led them." (Psalms 78:72) Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of Friday, May 11, 2007, be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

**CO-AUTHOR OF SENATE BILL 106**

On motion of Senator Ellis, Senator Zaffirini will be shown as Co-author of **SB 106**.

**CO-AUTHOR OF SENATE BILL 181**

On motion of Senator Wentworth, Senator Hegar will be shown as Co-author of **SB 181**.

**CO-AUTHOR OF SENATE JOINT RESOLUTION 57**

On motion of Senator Williams, Senator Zaffirini will be shown as Co-author of **SJR 57**.

**CO-AUTHOR OF SENATE CONCURRENT RESOLUTION 62**

On motion of Senator Ellis, Senator Lucio will be shown as Co-author of **SCR 62**.

**CO-AUTHOR OF SENATE RESOLUTION 777**

On motion of Senator West, Senator Van de Putte will be shown as Co-author of **SR 777**.

**CO-SPONSOR OF HOUSE BILL 14**

On motion of Senator Nelson, Senator Lucio will be shown as Co-sponsor of **HB 14**.

**CO-SPONSOR OF HOUSE BILL 75**

On motion of Senator Wentworth, Senator Watson will be shown as Co-sponsor of **HB 75**.

**CO-SPONSOR OF HOUSE BILL 167**

On motion of Senator Hinojosa, Senator Zaffirini will be shown as Co-sponsor of **HB 167**.

**CO-SPONSOR OF HOUSE BILL 416**

On motion of Senator Watson, Senator Van de Putte will be shown as Co-sponsor of **HB 416**.

**CO-SPONSOR OF HOUSE BILL 913**

On motion of Senator Estes, Senator Nelson will be shown as Co-sponsor of **HB 913**.

**CO-SPONSOR OF HOUSE BILL 1022**

On motion of Senator Williams, Senator Averitt will be shown as Co-sponsor of **HB 1022**.

**CO-SPONSOR OF HOUSE BILL 2042**

On motion of Senator Nelson, Senator Uresti will be shown as Co-sponsor of **HB 2042**.

**CO-SPONSOR OF HOUSE BILL 2045**

On motion of Senator Deuell, Senator Zaffirini will be shown as Co-sponsor of **HB 2045**.

**CO-SPONSOR OF HOUSE BILL 2218**

On motion of Senator Janek, Senator Ellis will be shown as Co-sponsor of **HB 2218**.

**CO-SPONSOR OF HOUSE BILL 3446**

On motion of Senator Eltife, Senator Zaffirini will be shown as Co-sponsor of **HB 3446**.

**CO-SPONSORS OF HOUSE BILL 3678**

On motion of Senator Williams, Senators Brimer, Harris, and Wentworth will be shown as Co-sponsors of **HB 3678**.

**CO-SPONSOR OF HOUSE JOINT RESOLUTION 54**

On motion of Senator Williams, Senator Averitt will be shown as Co-sponsor of **HJR 54**.

**CO-SPONSOR OF HOUSE JOINT RESOLUTION 90**

On motion of Senator Nelson, Senator Lucio will be shown as Co-sponsor of **HJR 90**.

**MESSAGES FROM THE GOVERNOR**

The following Messages from the Governor were read and were referred to the Committee on Nominations:

Austin, Texas  
May 11, 2007

TO THE SENATE OF THE EIGHTIETH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

To be a member of the State Board of Trustees of the Texas Emergency Services Personnel Retirement Fund for a term to expire September 1, 2011:

Francisco Torres  
Raymondville, Texas

(Mr. Torres is being reappointed)

To be members of the Texas Military Preparedness Commission for terms to expire as indicated:

To Expire February 1, 2011:

Howard C. Ham, Jr.  
San Antonio, Texas

(pursuant to HB 3163 & 3302, 79th Legislature, Regular Session)

To Expire February 1, 2013:

William J. Ehrie  
Abilene, Texas

(Reappointment)

Ronald D. Henson  
Texarkana, Texas

(Reappointment)

Charles E. Powell  
San Angelo, Texas

(replacing Johnny Fender of San Angelo whose term expired)

To be members of the Sulphur River Basin Authority Board of Directors for terms to expire as indicated:

To Expire February 1, 2011:

Richard Douglas Smith  
Clarksville, Texas

(replacing James Goodman who resigned)

To Expire February 1, 2013:

Brad Drake  
Paris, Texas

(replacing Mickey McKenzie who resigned)

Mike Russell  
Powderly, Texas

(Mr. Russell is being reappointed)

To be Presiding Officer of the Central Texas Regional Mobility Authority for a term to expire February 1, 2009:

Robert E. Tesch  
Cedar Park, Texas

(Mr. Tesch is being reappointed)

Respectfully submitted,

/s/Rick Perry  
Governor

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 14, 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:

**HB 14**, Relating to reorganizing certain state institutions that provide financing for cancer research, including creating the Cancer Prevention and Research Institute of Texas, and information about certain cancer treatments; granting authority to issue bonds.

**HB 52**, Relating to the personal needs allowance for certain Medicaid recipients who are residents of long-term care facilities.

**HB 152**, Relating to exempting certain current or former military personnel from the hunter education program.

**HB 209**, Relating to eligibility for an award through the Early High School Graduation Scholarship program.

**HB 289**, Relating to the expansion of faith- and community-based health and human services and social services initiatives.

**HB 315**, Relating to the career ladder for certain prison industry workers.

**HB 345**, Relating to the collateralization of certain public funds; providing administrative penalties.

**HB 358**, Relating to the determination of the amount of the exemption from ad valorem taxation to which a disabled veteran is entitled and to the entitlement of a disabled veteran or surviving spouse to pay ad valorem taxes on the person's residence homestead in installments.

**HB 405**, Relating to the authority of an emergency room physician to hold a person believed to have a mental illness.

**HB 408**, Relating to the regulation of barking dogs by certain counties as a nuisance.

**HB 430**, Relating to the monitoring of certain high-risk sex offenders and to information concerning certain sex offenders.

**HB 454**, Relating to a study of methods to increase public school student participation in the national school breakfast program and school district participation in a special assistance provision of the national free or reduced-price breakfast or lunch program.

**HB 470**, Relating to the creation, operation, management, and programs of homestead preservation districts.

**HB 525**, Relating to birth records of adopted children.

**HB 539**, Relating to the regulation of fireworks and fireworks displays.

**HB 541**, Relating to procedures for certain persons charged with certain new offenses or an administrative violation of a condition of release from the Texas Department of Criminal Justice on parole or mandatory supervision.

**HB 544**, Relating to reduced tuition and fees for certain junior college district students who reside outside of the district.

**HB 573**, Relating to providing street lights in a subdivision in the unincorporated area of certain counties.

- HB 586**, Relating to eligibility for dismissal of certain speeding charges on completion of a driving safety course.
- HB 615**, Relating to county reports on the use of the optional fee for the county road and bridge fund.
- HB 649**, Relating to the fraudulent use of a child's identifying information.
- HB 670**, Relating to the enforcement of unpaid child support.
- HB 744**, Relating to notice of discharge of a lien on a motor vehicle.
- HB 773**, Relating to consideration of the financial resources of each parent of a child in determining the amount of required periodic child support payments.
- HB 777**, Relating to fees charged in connection with certain teen courts, the sentencing of juveniles in juvenile court, and the functions of the Texas Youth Commission.
- HB 778**, Relating to child support orders for more than one child and the automatic modification of the total amount required as the duty to support each child terminates.
- HB 831**, Relating to the eligibility of certain counties to adopt a civil service system.
- HB 866**, Relating to local control of firefighter and police officer employment matters in certain municipalities.
- HB 1113**, Relating to prohibitions on and reporting research on children within the juvenile probation system.
- HB 1121**, Relating to judicial findings, a criminal offense, and preventative actions regarding human trafficking or other similar abuse.
- HB 1166**, Relating to the authority of certain counties to develop a parks and recreation system under the law governing sports and community venue projects.
- HB 1168**, Relating to licensing and regulation of certain facilities providing personal care to elderly or disabled persons; providing penalties.
- HB 1205**, Relating to the prohibition of certain employment discrimination regarding an employee who is a volunteer emergency responder.
- HB 1264**, Relating to the admissibility of evidence of other similar offenses in the prosecution of certain sexual offenses.
- HB 1267**, Relating to the compensation of counsel appointed to defend an indigent defendant in a criminal proceeding.
- HB 1275**, Relating to the appeal by an individual entitled to a veteran's preference of certain adverse employment decisions.
- HB 1370**, Relating to the Interagency Coordinating Council for HIV and Hepatitis.
- HB 1385**, Relating to the regulation of and licensing exemptions for certain child-care facilities.
- HB 1431**, Relating to the establishment of the Sustainable Water Supply Research Center at The University of Texas at Arlington.

**HB 1432**, Relating to the assignment of a public school student to an inexperienced and uncertified teacher.

**HB 1435**, Relating to notification provided by certain health care providers to students and parents or guardians of students who participate in extracurricular sports activities sponsored or sanctioned by the University Interscholastic League.

**HB 1481**, Relating to standing for certain individuals to file a suit affecting the parent-child relationship.

**HB 1606**, Relating to the exemption from ad valorem taxation for property owned by a religious organization for purposes of expanding a religious facility or constructing a new religious facility.

**HB 1637**, Relating to the operation and administration of the Texas First-Time Homebuyer Program by the Texas Department of Housing and Community Affairs and to certain down payment assistance under that program.

**HB 1662**, Relating to the authority of the attorney general to bring suit on behalf of individuals injured by unlawful practices in restraint of trade.

**HB 1671**, Relating to limiting the authority of a property owner to erect a gate on certain third-class and neighborhood roads.

**HB 1673**, Relating to the fuel ethanol and biodiesel incentive program of the Department of Agriculture.

**HB 1675**, Relating to the applicability of provisions of the Education Code to certain alternative education programs.

**HB 1687**, Relating to the information that must be included on the face of an appeal bond.

**HB 1747**, Relating to the termination of parental rights with regard to certain abandoned children.

**HB 1749**, Relating to the authority of political subdivisions to negotiate contracts for electricity.

**HB 1757**, Relating to the obstruction of emergency vehicles at railroad crossings.

**HB 1795**, Relating to certain security technology at unmanned teller machines.

**HB 1815**, Relating to the prosecution of certain offenses that involve carrying weapons on a person's property or in a person's vehicle.

**HB 1919**, Relating to health benefit plan coverage for treatment for certain brain injuries and serious mental illnesses.

**HB 1960**, Relating to access to records or files concerning a child who is subject to the juvenile justice system.

**HB 1997**, Relating to the creation of the offense of unlawful transport of an undocumented person.

**HB 2001**, Relating to a program to control or eradicate nuisance aquatic vegetation.

**HB 2034**, Relating to the regulation of sex offender treatment providers.

- HB 2043**, Relating to the inspection and certification of certain juvenile detention and correctional facilities.
- HB 2063**, Relating to the allocation of certain housing funds by the Texas Department of Housing and Community Affairs and to the information used to determine the allocation of those funds.
- HB 2074**, Relating to the creation of the East Williamson County Multi-Institution Teaching Center.
- HB 2078**, Relating to health care coverage for a child in a suit affecting the parent-child relationship.
- HB 2099**, Relating to the right of certain municipalities to maintain local control over wages, hours, and other terms and conditions of employment.
- HB 2100**, Relating to medical facilities for inmates released on medically recommended intensive supervision.
- HB 2167**, Relating to notice regarding and the application for a residence homestead exemption from ad valorem taxation; imposing a civil penalty.
- HB 2184**, Relating to the right of certain municipalities to maintain local control over wages, hours, and other terms and conditions of employment.
- HB 2207**, Relating to the conveyance of certain residential real property encumbered by a lien.
- HB 2256**, Relating to the requirements for uniform fair hearing rules for Medicaid services, including services that require prior authorization.
- HB 2283**, Relating to the suspension or removal of a deputy sheriff.
- HB 2399**, Relating to teacher retention demonstration projects under the awards for student achievement program in public schools.
- HB 2496**, Relating to qualification for the exemption from ad valorem taxation for property of certain charitable or religious organizations.
- HB 2498**, Relating to hazardous duty pay for correctional officers employed by the Texas Department of Criminal Justice.
- HB 2501**, Relating to certain suits affecting the parent-child relationship referred to an associate judge.
- HB 2532**, Relating to the expulsion and placement in alternative settings of public school students who engage in conduct constituting certain felonies.
- HB 2540**, Relating to implementing a pilot project to simplify, streamline, and reduce costs associated with the Medicaid cost reporting and auditing process for certain providers.
- HB 2560**, Relating to the availability of certain school district financial information on districts' Internet websites.
- HB 2561**, Relating to the authority of a water and sewer utility to acquire property by eminent domain.



**HB 2564**, Relating to the authority of a governmental body to require the payment of a charge before complying with certain requests for the production of public information or for copies of public information.

**HB 2608**, Relating to funding for applied research for a clean coal project or certain other projects for the generation of electricity from coal.

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

**HB 2644**, Relating to the requirements for a massage therapist license.

**HB 2646**, Relating to the award of stipends to nationally certified classroom teachers under the educator excellence awards program.

**HB 2653**, Relating to the election and disqualification of emergency services commissioners in certain populous counties.

**HB 2660**, Relating to the use of money from the Texas economic development bank fund for rural rail development.

**HB 2662**, Relating to a review by the commissioner of education of the accountability ratings of certain school districts and open-enrollment charter schools under certain circumstances.

**HB 2667**, Relating to certain insurance-related matters involving rural volunteer firefighters, volunteer police force members, or emergency services districts.

**HB 2701**, Relating to the regulation of horse and dog racing.

**HB 2723**, Relating to the sampling of malt beverages on the premises of certain manufacturers and retailers.

**HB 2739**, Relating to the sale of lottery tickets at a location at which a person holds an alcoholic beverage permit.

**HB 2740**, Relating to the time for preparing an annual budget in certain counties.

**HB 2785**, Relating to school district property tax rate reductions.

**HB 2827**, Relating to rules regarding anaphylaxis treatment provided by emergency medical services personnel.

**HB 2862**, Relating to requiring a distinctive symbol or marking on the driver's license issued to a person convicted a second or subsequent time of certain intoxication offenses.

**HB 2868**, Relating to assessment of certain insurers to fund the volunteer fire department assistance fund.

**HB 2884**, Relating to juvenile delinquency; providing penalties.

**HB 2909**, Relating to the authority of the governing body of a taxing unit to elect not to impose or collect taxes on real property erroneously omitted from the appraisal roll or tax roll in a previous year.

**HB 2936**, Relating to exempting certain community development corporations from the Texas Residential Construction Commission Act.

- HB 3008**, Relating to the establishment of a pilot program to match certain teens in foster care with adult mentors.
- HB 3035**, Relating to the authority of physicians and chiropractors to form certain entities.
- HB 3105**, Relating to a program allowing for countywide voting locations in certain elections.
- HB 3171**, Relating to the development by the Texas Education Agency of a list of resources concerning Internet safety for use by school districts.
- HB 3184**, Relating to educating parents about the benefits of immunizing certain children against influenza.
- HB 3190**, Relating to minimum standards for school bus operators.
- HB 3248**, Relating to the transfer or exclusion of territory in emergency services districts.
- HB 3261**, Relating to the use of electronic signatures in the administration of health and human services programs.
- HB 3266**, Relating to fees for certain commercial licenses issued by the Parks and Wildlife Department.
- HB 3268**, Relating to the authority of voters of certain municipalities to extend or change the purposes of a sales and use tax for certain economic development corporations.
- HB 3282**, Relating to financial advisors and investment advisors retained by bond issuers for the issuance of bonds.
- HB 3297**, Relating to paperwork requirements and unfunded mandates imposed on school districts and to payments under interlocal contracts.
- HB 3298**, Relating to exempting municipalities and special districts from certain unfunded state mandates.
- HB 3299**, Relating to the amount, collection, and refund of certain local fines and fees.
- HB 3377**, Relating to requiring certain defendants in common nuisance suits to provide telephone access to and information regarding an information and referral hotline for victims of human trafficking.
- HB 3396**, Relating to granting certain counties general zoning authority around certain military facilities; providing a penalty.
- HB 3417**, Relating to the sales and use tax imposed by municipal crime control and prevention districts.
- HB 3431**, Relating to the use of anthropogenic carbon dioxide in the recovery of oil.
- HB 3439**, Relating to county fiscal matters.
- HB 3443**, Relating to the Texas hospital-based nursing education partnership grant program.

- HB 3487**, Relating to staff development requirements concerning the instruction of students with disabilities in public schools.
- HB 3503**, Relating to limitations on the compensation of county auditors for certain counties.
- HB 3521**, Relating to measures to increase the safety of children committed to the Texas Youth Commission.
- HB 3524**, Relating to the designation of a portion of State Highway 37 in Franklin County as the Tom Ramsay Highway.
- HB 3541**, Relating to designating July 21 as First Lady Frances Cox Henderson Remembrance Day.
- HB 3575**, Relating to the monitoring and enhancement of health and human services information technology systems.
- HB 3584**, Relating to the creation of the offense of organized retail theft.
- HB 3609**, Relating to membership and service credit in the Employees Retirement System of Texas for certain retired employees.
- HB 3647**, Relating to a study by the attorney general of the effects on state law and authority of certain international and other agreements and bodies.
- HB 3659**, Relating to the disclosure of the name of a student or minor who is involved in an improper relationship with an educator.
- HB 3666**, Relating to the designation of Interstate Highway 345 in Dallas as the Russell H. Perry Memorial Highway.
- HB 3706**, Relating to certain county or municipal districts that promote tourism or the film industry.
- HB 3709**, Relating to the authority to amend restrictions applicable to certain residential subdivisions.
- HB 3736**, Relating to establishing parole officer maximum caseloads.
- HB 3764**, Relating to use of marine dealer, distributor, and manufacturer numbers and issuance of validation cards.
- HB 3780**, Relating to initiation of enforcement by the Texas Commission on Environmental Quality for violations based on information received from a private individual.
- HB 3828**, Relating to performance incentive funding for institutions of higher education.
- HB 3837**, Relating to regulation by the Railroad Commission of Texas of uranium exploration.
- HB 3838**, Relating to regulation of injection wells used for in situ uranium recovery by the Texas Commission on Environmental Quality.
- HB 3845**, Relating to the possession, custody, or control of a cougar, bobcat, or coyote.

- HB 3854**, Relating to application of restrictions on drivers under 18 years of age to persons who held a hardship license.
- HB 3858**, Relating to a court cost to support the collection of fees, fines, or court costs in criminal cases.
- HB 3862**, Relating to the duties of a water service provider in an area served by sewer service of certain political subdivisions.
- HB 3872**, Relating to the eligibility of certain applications to receive allocations under the low income housing tax credit program.
- HB 3873**, Relating to the administration of the Texas Department of Housing and Community Affairs; providing a penalty.
- HB 3934**, Relating to the establishment of a student outcomes pilot program by Alamo Community College District.
- HB 3954**, Relating to improvement projects in certain counties.
- HB 3982**, Relating to the creation of the Harris County Municipal Utility District No. 494; providing authority to impose a tax and issue bonds; granting the power of eminent domain.
- HB 3991**, Relating to the creation of the Rolling V Ranch Water Control and Improvement District No. 1 of Wise County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.
- HB 4004**, Relating to the creation of the International Management District; providing authority to impose assessments and taxes and to issue bonds.
- HB 4010**, Relating to the creation of the Cade Ranch Water Control and Improvement District No. 1 of Galveston County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.
- HB 4014**, Relating to the creation of the Plum Creek Water Control and Improvement District No. 1 of Liberty, Montgomery, and Harris Counties; providing authority to impose a tax and issue bonds; granting the power of eminent domain.
- HB 4015**, Relating to the powers and duties of the East Montgomery County Improvement District; providing authority to impose a tax.
- HB 4019**, Relating to the powers and duties of the Cinco Southwest Municipal Utility District No. 4; providing authority to impose a tax and issue bonds.
- HB 4022**, Relating to the powers and duties of the Fort Bend County Municipal Utility District No. 58; providing authority to impose a tax and issue bonds.
- HB 4024**, Relating to the creation of the Fort Bend County Municipal Utility District No. 190; providing authority to impose a tax and issue bonds.
- HB 4028**, Relating to the creation of the Northern Trinity Groundwater Conservation District.
- HB 4032**, Relating to the creation of the Colorado County Groundwater Conservation District; providing authority to impose a tax and issue bonds.

**HB 4053**, Relating to the creation of the Galveston Grand Beach Management District; providing authority to levy an assessment, impose a tax, and issue bonds.

**HB 4057**, Relating to the powers and duties of the Denton County Levee Improvement District No. 1 of Denton and Dallas Counties, Texas; providing authority to issue bonds.

**HB 4060**, Relating to the creation of the Four Seasons Ranch Municipal Utility District No. 1 of Denton and Grayson Counties; providing authority to impose a tax and issue bonds.

**HB 4069**, Relating to the creation of the Platinum Ranch Municipal Utility District No. 1 of Grayson County; providing authority to impose taxes and issue bonds; granting the power of eminent domain.

**HB 4072**, Relating to the creation of the 3 B&J Municipal Utility District; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**HB 4093**, Relating to the creation of the Chambers-Liberty Counties Improvement District; providing authority to impose a tax and issue bonds.

**HB 4095**, Relating to the creation of the Gastonia-Scurry Special Utility District; providing authority to issue bonds; granting the power of eminent domain.

**HB 4097**, Relating to the creation of the Gunter Municipal Utility District No. 2; providing authority to impose taxes and issue bonds.

**HB 4098**, Relating to the creation of the Gunter Municipal Utility District No. 1; providing authority to impose taxes and issue bonds.

**HB 4100**, Relating to the creation of the Canyon Falls Water Control and Improvement District No. 1 of Denton County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**HB 4101**, Relating to the powers of the Talley Ranch Water Control and Improvement District No. 1 of Denton County; providing authority to impose a tax and issue bonds.

**HB 4109**, Relating to the administration, powers, including taxing powers and the authority to issue bonds, boundaries, operations, financing, and dissolution of the Town Center Improvement District of Montgomery County, Texas.

**HB 4110**, Relating to the creation of the Harris County Improvement District No. 9; providing authority to impose a tax and issue bonds.

**HB 4112**, Relating to the creation of the Bolivar Yacht Basin Water Control and Improvement District No. 1 of Galveston County; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**HB 4114**, Relating to the powers and financing of the Brazoria County Groundwater Conservation District.

**HB 4122**, Relating to the creation of the East Denton County Water Control and Improvement District No. 1; providing authority to impose a tax and issue bonds; granting the power of eminent domain.

**HB 4123**, Relating to territory included in, and the validation of acts of, the Greater Southeast Management District.

**HCR 12**, Designating the bolo tie as the official State Tie of Texas.

**HCR 16**, Urging the U.S. Congress to honor the sacrifice and service of the U.S. Merchant Marine in World War II by passing the Belated Thank You to the Merchant Mariners of World War II Act of 2005.

**HCR 35**, Urging the United States Congress to enact legislation to eliminate the 24-month Medicare waiting period for participants in Social Security Disability Insurance.

**HCR 94**, Designating June 2007 as Juneteenth/Frontier Cowboy Month.

**HCR 109**, Recognizing Robstown, Texas, as the birthplace of the poker game Texas Hold'em.

**HCR 143**, Creating the Commission on Online Learning to develop a plan to provide students and teachers with access to educational content and pedagogical practices.

**HCR 151**, Designating the cowboy boot as the official State Shoe of Texas.

**HCR 187**, Expressing the commitment of the 80th Legislature of the State of Texas to providing a supplemental annuity in the form of a 13th check for eligible ERS retirees.

**HCR 193**, Expressing support for ongoing state-led border security operations to control the Texas-Mexico border and ensure the safety of the people of Texas.

**HCR 201**, Designating San Felipe as the Colonial Capital of Texas.

**HCR 212**, Directing that the state flag be displayed at half-staff on Peace Officers' Memorial Day and calling for the observance of National Police Week in Texas.

**SB 63**, Relating to the powers of the commissioners court of certain counties that have no incorporated municipality.  
(Amended)

**SB 453**, Relating to the testing of certain inmates for HIV or AIDS.

**SB 812**, Relating to the exemption from ad valorem taxation of property owned by certain nonprofit corporations that provide chilled water and steam to certain health-related institutions of this state.

**SB 877**, Relating to a limitation on judge-ordered community supervision for certain defendants convicted of first-degree felony injury to a child.  
(Committee Substitute)

**SB 883**, Relating to the imposition of impact fees on the property of a school district.

**SB 978**, Relating to certain insurance premium surcharges.

**SB 1229**, Relating to certain shipments by package stores and wine only package stores to customers.

**SB 1318**, Relating to the regulation of adult day-care facilities and certain long-term care facilities, including the establishment of late fees and changes to administrative penalties, and relating to the office of the state long-term care ombudsman.  
(Amended)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **PHYSICIAN OF THE DAY**

Senator Wentworth was recognized and presented Dr. Jennifer Sutton of San Antonio as the Physician of the Day.

The Senate welcomed Dr. Sutton and thanked her for her participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

### **INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED**

The President announced that the introduction of bills and resolutions on first reading would be postponed until later in today's session.

There was no objection.

### **CONCLUSION OF MORNING CALL**

The President at 11:23 a.m. announced the conclusion of morning call.

### **GUESTS PRESENTED**

Senator West was recognized and introduced to the Senate tenth-grade students, their principal, teachers, and sponsors from Franklin D. Roosevelt High School in Dallas.

The Senate welcomed its guests.

### **HOUSE BILL 2219 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2219** at this time on its second reading:

**HB 2219**, Relating to service of process on financial institutions.

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 2219 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2219** 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 416 ON SECOND READING**

Senator Watson moved to suspend the regular order of business to take up for consideration **CSHB 416** at this time on its second reading:

**CSHB 416**, Relating to providing for restroom access for persons with certain medical conditions; providing a criminal penalty.

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 416 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 416** 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)

**(Senator Watson in Chair)**

**HOUSE BILL 1044 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 1044** at this time on its second reading:

**HB 1044**, Relating to the delivery of voter registration certificates.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1044** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION \_\_\_\_\_. Subchapter D, Chapter 31, Election Code, is amended by adding Section 31.0921 to read as follows:



Sec. 31.0921. CONTRACT FOR ELECTION SERVICES REQUIRED IN CERTAIN COUNTIES. (a) Subject to Sections 31.096 and 31.097, a water improvement district that is governed under Section 59, Article XVI, Texas Constitution, and is entirely located in a county with a population of at least 600,000 that is adjacent to an international border shall enter into a contract under this subchapter for the county election officer of the county in which the district is located to perform for the district all of the corresponding duties and functions that the officer performs in connection with a countywide election ordered by a county authority.

(b) The district shall pay the county for all claims for election expenses under the contract.

The amendment to **HB 1044** was read and was adopted by the following vote: Yeas 17, Nays 10.

Yeas: Averitt, Brimer, Carona, Ellis, Eltife, Hegar, Hinojosa, Janek, Seliger, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Estes, Fraser, Harris, Jackson, Lucio, Nelson, Nichols, Patrick, Shapiro, Wentworth.

Absent: Deuell, Duncan, Gallegos, Ogden.

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

**HB 1044** 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 1044 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 1044** be placed on its third reading and final passage.

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

Nays: Wentworth.

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

### **HOUSE BILL 1210 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1210** at this time on its second reading:

**HB 1210**, Relating to the extension of the deadline for filing an application for a refund of an overpayment or erroneous payment of ad valorem taxes.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **HB 1210** in Section 1 of the bill, (committee printing, page 1, between lines 26 and 27) by inserting the following:

(h) This section does not apply to an overpayment caused by a change of exemption status or correction of a tax roll. Such an overpayment is covered by Section 26.15 or 42.43, as applicable."

The amendment to **HB 1210** 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 Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**HB 1210** 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 1210 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1210** 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  
SENATE BILL 1597 ON SECOND READING**

On motion of Senator Janek and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1597** at this time on its second reading:

**CSSB 1597**, Relating to adoption of the Revised Uniform Anatomical Gift Act; providing criminal penalties.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1597 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 **CSSB 1597** 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  
SENATE BILL 106 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 106** at this time on its second reading:

**CSSB 106**, Relating to the exemption from the sales tax for clothing and footwear.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 106 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 **CSSB 106** 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 1472 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 1472** at this time on its second reading:

**HB 1472**, Relating to the annexation of land for which property taxes are imposed based on the land's value for agricultural or wildlife management purposes or timber production.

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 1472 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 1472** 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 404, SB 573, SB 1104, SB 1360, SB 1950, SB 1960, SB 1978, SB 1981, SB 1982, SB 2018, SCR 61, SCR 63, SCR 67.**

### **HOUSE BILL 2618 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 2618** at this time on its second reading:

**HB 2618**, Relating to authorizing political subdivisions to lease property owned by the political subdivision to other governmental entities without following competitive purchasing procedures.

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 2618 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 2618** 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 992**

Senator Shapiro offered the following resolution:

WHEREAS, Mary Kay Ash, founder of the Dallas-based, internationally known cosmetics firm that bears her name, became one of the most successful and respected American business leaders of the 20th century; and

WHEREAS, Born on May 12, 1918, in Hot Wells, Texas, and raised in Houston, Mrs. Ash enjoyed a successful career in direct sales before retiring in 1963; quickly becoming restless, she embarked on a book-writing project designed to help women survive in the male-dominated business world; in reviewing her early notes for the book, she realized that she had inadvertently created a marketing plan for a successful "dream company"; and

WHEREAS, With her life savings of \$5,000 and the help of her 20-year-old son Richard Rogers, she launched Mary Kay Cosmetics on Friday, September 13, 1963; within two years, the company's wholesale sales had reached almost \$1 million; in 2006, the company recorded \$2.25 billion in wholesale sales and had an independent sales force of more than 1.7 million beauty consultants in over 30 markets around the world; and

WHEREAS, Through the years, the mission of Mary Kay Cosmetics has remained unchanged; powerfully influenced by her mother's struggle to support her family and by her own experience of gender discrimination, Mary Kay Ash intended her company to provide women with unlimited opportunity for personal and financial success; and

WHEREAS, The company's guiding philosophy has been based on three principles; from the beginning, Mrs. Ash stressed following the Golden Rule and putting God first, family second, and career third; she also believed that with praise and encouragement, everyone could succeed; and

WHEREAS, In 1996 Mrs. Ash established the Mary Kay Ash Charitable Foundation for the purpose of funding research on the leading cancers affecting women; today the foundation also supports efforts to prevent violence against women and to help women who have been victims of abuse; and

WHEREAS, Mrs. Ash authored an autobiography, a motivational book, and a volume about management, all of which became best sellers; and

WHEREAS, The recipient of myriad accolades, Mary Kay Ash was named the Most Outstanding Woman in Business in the 20th Century by Lifetime Television, chosen as one of the 25 most influential business leaders of the last 25 years by PBS and the Wharton School of the University of Pennsylvania in 2004, elected to the Business Hall of Fame by *Fortune* magazine, and designated a Horatio Alger Distinguished American Citizen; Mary Kay Cosmetics has been ranked by *Fortune* magazine as one of the 100 best companies to work for in America and as one of the 10 best companies for women; and

WHEREAS, Mary Kay Ash passed away on November 22, 2001, having achieved the pinnacle of success and having established a legacy that will continue to provide opportunity and hope for women for years to come; now, therefore, be it

RESOLVED, That the Senate of the 80th Texas Legislature hereby recognize May 14, 2007, as Mary Kay Ash Day in the State of Texas.

**SR 992** was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator Shapiro was recognized and introduced to the Senate the grandchildren of Mary Kay Ash: Karen Rogers, Gena Tadewald, Mary Kay Bair, Dayna Manning, and Terri Rogers, accompanied by a delegation of representatives of Mary Kay Cosmetics.

The Senate welcomed its guests.

**(President in Chair)**

#### **GUESTS PRESENTED**

Senator Whitmire was recognized and introduced to the Senate Texas Ranger Sergeant Brian J. Burzynski, accompanied by his wife, Brandy; their son, Josiah; Lieutenant Bob Bullock; and Captain Barry Caver.

The Senate welcomed its guests.

**(Senator Eltife in Chair)**

#### **COMMITTEE SUBSTITUTE SENATE BILL 750 ON SECOND READING**

Senator Deuell moved to suspend the regular order of business to take up for consideration **CSSB 750** at this time on its second reading:

**CSSB 750**, Relating to the creation of the Office of State Inspector General.

The motion prevailed.

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

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 750** (Senate committee report) by striking all below the enacting clause and substituting the following:

SECTION 1. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2116 to read as follows:

CHAPTER 2116. TEXAS INSPECTORS GENERAL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2116.001. DEFINITIONS. In this chapter:

(1) "Agency" means a state agency to which this chapter applies, as provided by Section 2116.002.

(2) "Coordinating council" means the Coordinating Council of Inspectors General established under Section 2116.101.

(3) "Inspector general" means an individual appointed as an inspector general at an agency under this chapter.

(4) "Presiding officer" means the presiding officer of the governing body of an agency, or the commissioner of an agency if a single commissioner presides over the agency.

(5) "Review" includes an inspection, investigation, or similar activity.

Sec. 2116.002. APPLICABILITY TO CERTAIN STATE AGENCIES. This chapter applies to the following state agencies:

(1) Health and Human Services Commission;

(2) Texas Department of Criminal Justice;

(3) Texas Department of Transportation;

(4) Texas Education Agency;

(5) Texas Higher Education Coordinating Board; and

(6) Texas Youth Commission.

[Sections 2116.003-2116.050 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 2116.051. CREATION OF OFFICE OF INSPECTOR GENERAL. The office of inspector general is created at each agency as provided by this chapter to conduct investigations, inspections, and other reviews.

Sec. 2116.052. APPOINTMENT; TERM. (a) The governor with the advice and consent of the senate shall appoint an inspector general to serve within each agency.

(b) An inspector general serves a two-year term expiring February 1 of each odd-numbered year.

Sec. 2116.053. QUALIFICATIONS. (a) In appointing a person as inspector general, the governor shall consider the person's integrity, capability for strong leadership, and demonstrated knowledge, skills, abilities, and experience in

investigation, prosecution, management analysis, public administration, criminal justice administration, accounting, auditing, financial analysis, law, or other closely related fields.

(b) Additional recommended qualifications for appointing an inspector general include licenses or certifications as a lawyer, fraud examiner, public accountant, or internal auditor.

Sec. 2116.054. CONFLICT OF INTEREST. (a) An inspector general may not serve as an ex officio member on the governing body of a governmental entity.

(b) An inspector general may not have a financial interest in the transactions of the inspector general's agency.

Sec. 2116.055. ORGANIZATION. (a) An inspector general shall establish an organizational structure for the inspector general's office that is appropriate to carrying out the responsibilities and functions of the office.

(b) The office must be established within the agency only using existing agency resources dedicated to the investigation of fraud, abuse, and employee misconduct.

Sec. 2116.056. INDEPENDENCE OF OFFICE. (a) Except as provided by Sections 2116.157, 2116.161, 2116.201, and 2116.202, an inspector general operates independently of the agency in which the inspector general serves.

(b) An executive state agency may not impair or prohibit an inspector general from initiating or completing a review.

Sec. 2116.057. OPERATION OF OFFICE. An inspector general shall establish policies and procedures to guide the operation of the inspector general's office.

Sec. 2116.058. QUALITY ASSURANCE AND CONTROL. (a) An inspector general shall adopt procedures to ensure adequate quality control over the inspector general's work and practices and to ensure that the work of the inspector general's office meets commonly used and adopted professional standards.

(b) The inspector general shall implement the quality control program to guarantee that the office is structured appropriately and that the office implements policies and practices to ensure objective and accurate reviews.

Sec. 2116.059. PUBLISHING POLICIES AND PROCEDURES IN TEXAS REGISTER. An inspector general shall publish in the Texas Register the policies and procedures adopted under this subchapter.

[Sections 2116.060-2116.100 reserved for expansion]

#### SUBCHAPTER C. COORDINATING COUNCIL AND PERSONNEL

Sec. 2116.101. COORDINATING COUNCIL. (a) The Coordinating Council of Inspectors General is composed of each inspector general appointed under Section 2116.052 and the state auditor.

(b) The state auditor shall serve as presiding officer of the council.

(c) The coordinating council shall meet at least quarterly at the call of the presiding officer.

(d) The coordinating council shall:

(1) pursuant to Section 321.022, cooperate and coordinate investigations as necessary;

(2) focus on fraud prevention activities; and

(3) coordinate fraud prevention training.

(e) The coordinating council shall submit a report of the coordinating council's activities at least two times each year to:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the speaker of the house of representatives;
- (4) the state auditor; and
- (5) the appropriate legislative oversight committees.

(f) Chapter 2110 does not apply to the coordinating council. For the purposes of coordinating and cooperating on investigations, Chapter 551 does not apply to the coordinating council.

(g) The coordinating council's activities under Subsection (d) may not include making management decisions or directing the operations of a state agency.

Sec. 2116.102. PERSONNEL, OFFICE SPACE, AND EQUIPMENT. The presiding officer of the state agency to which an inspector general is appointed, using existing agency resources dedicated to the investigation of fraud, abuse, and employee misconduct, shall provide sufficient personnel and office space and equipment for the inspector general to perform the duties prescribed under this chapter.

Sec. 2116.103. EXPERTS. Subject to Sections 2116.055 and 321.020, an inspector general may contract with certified public accountants, management consultants, or other professional experts necessary to independently perform the functions of the inspector general's office. The inspector general shall use existing agency resources dedicated to the investigation of fraud, abuse, and employee misconduct for this purpose.

[Sections 2116.104-2116.150 reserved for expansion]

#### SUBCHAPTER D. GENERAL POWERS AND DUTIES OF INSPECTOR

##### GENERAL

Sec. 2116.151. REVIEW AUTHORITY. (a) An inspector general may evaluate any activity or operation of the inspector general's agency related to the investigation, detection, or prevention of fraud or employee misconduct. A review may include an investigation or other inquiry into:

- (1) a specific act or allegation of impropriety, malfeasance, or nonfeasance in the obligation, spending, receipt, or other use of state money; or
- (2) a specific financial transaction or practice that may involve the impropriety, malfeasance, or nonfeasance.

(b) An inspector general may conduct criminal, civil, and administrative reviews related to the course and scope of the duties of the inspector general.

Sec. 2116.152. INITIATION OF REVIEW. An inspector general may initiate a review:

- (1) on the inspector general's own initiative; or
- (2) based on a complaint from any source concerning a matter described by Section 2116.151 at the agency.

Sec. 2116.153. FACTUAL DETERMINATION OF REVIEW. (a) An inspector general is charged solely with making a determination of the truth of a complaint based on a finding of facts and presenting those findings as provided in Subchapter E.

- (b) An inspector general may not make remedial recommendations.



Sec. 2116.154. ACCESS TO INFORMATION. (a) In furtherance of a review conducted by the inspector general's office, an inspector general is entitled to access all books, accounts, reports, vouchers, or other information from any entity receiving money from the inspector general's agency, including confidential information and electronic data. The inspector general may not access data or other information the release of which is restricted under federal law unless the appropriate federal agency approves the release.

(b) To the extent that the performance of the powers and duties of the inspector general is not impeded, an inspector general shall make reasonable efforts to coordinate requests for access under Subsection (a) so as not to hinder the daily operations of the entity.

(c) Notwithstanding any other provision of this section, an inspector general's access to information under Subsection (a) is limited to information connected to the specific matter under investigation by the inspector general or a specific contract related to that investigation.

Sec. 2116.155. COOPERATION REQUIRED. (a) In furtherance of a review conducted by the inspector general's office, an inspector general may require the assistance of the administrative head, the governing body, an auditor or accountant, or any other employee of the inspector general's agency.

(b) To the extent that the performance of the powers and duties of the inspector general is not impeded, an inspector general shall make reasonable efforts to coordinate requests for assistance under Subsection (a) so as not to hinder the daily operations of the agency.

Sec. 2116.156. EMPLOYEE REPORTS. The presiding officer of the agency to which an inspector general is appointed and the inspector general shall require employees at the agency to report to the agency's office of inspector general information regarding fraud, waste, misuse, corruption, illegal acts, or abuse.

Sec. 2116.157. SUBPOENAS. (a) On request of an inspector general, a district attorney or the attorney general may issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence in connection with a review conducted under this chapter.

(b) A subpoena may be served personally or by certified mail.

(c) If a person fails to comply with a subpoena, the inspector general, acting through the attorney general, may file suit to enforce the subpoena in a district court in this state.

(d) On finding that good cause exists for issuing the subpoena, the court shall order the person to comply with the subpoena. The court may hold in contempt a person who fails to obey the court order.

(e) The inspector general shall pay a reasonable fee for photocopies subpoenaed under this section in an amount not to exceed the amount the inspector general may charge for copies of its records.

(f) The reimbursement of the expenses of a witness whose attendance is compelled under this section is governed by Section 2001.103.

Sec. 2116.158. INTERNAL AUDITOR. (a) In this section, "internal auditor" means a person appointed under Section 2102.006.

(b) The internal auditor for the agency shall provide the inspector general with a copy of the agency's internal audit plan to:

(1) assist in the coordination of efforts between the inspector general and the internal auditor; and

(2) limit duplication of effort regarding reviews by the inspector general and internal auditor.

(c) The internal auditor shall provide to the inspector general all final audit reports concerning audits of any:

(1) part or division of the agency;

(2) contract, procurement, or grant; and

(3) program conducted by the agency.

Sec. 2116.159. COOPERATION WITH LAW ENFORCEMENT OFFICIALS AND OTHER ENTITIES. (a) An inspector general shall provide information and evidence relating to criminal acts to the state auditor's office and appropriate law enforcement officials.

(b) An inspector general shall refer matters for further civil, criminal, and administrative action to appropriate administrative and prosecutorial agencies, including the attorney general.

(c) An inspector general may enter into a memorandum of understanding with a law enforcement or prosecutorial agency, including the office of the attorney general, to assist in conducting a review under this chapter.

Sec. 2116.160. COOPERATION AND COORDINATION WITH STATE AUDITOR. (a) The state auditor may, on request of an inspector general, provide appropriate information or other assistance to the inspector general, as determined by the state auditor.

(b) An inspector general may meet with the state auditor's office to coordinate a review conducted under this chapter, share information, or schedule work plans.

(c) The state auditor is entitled to access all information maintained by an inspector general, including vouchers and electronic data and information obtained under Section 2116.154 or subject to 2116.251.

(d) Any information obtained or provided by the state auditor under this section is confidential and not subject to disclosure under Chapter 552.

Sec. 2116.161. PREVENTION. An inspector general may provide training or other education regarding the prevention of fraud, waste, or abuse at the inspector general's agency. The training or education must be approved by the presiding officer.

Sec. 2116.162. RULEMAKING. (a) An agency may adopt rules to respond to reports and referrals from the agency's inspector general, including sanctions for violations.

(b) The rules shall include due process for referrals and findings that might result in administrative penalties.

[Sections 2116.163-2116.200 reserved for expansion]

#### SUBCHAPTER E. OVERSIGHT OF INSPECTOR GENERAL; REPORTS

Sec. 2116.201. ORGANIZATION PLACEMENT. An inspector general reports to the presiding officer of the inspector general's agency.

Sec. 2116.202. ANNUAL EVALUATION. An agency's presiding officer shall conduct an annual evaluation of the agency's inspector general. As part of this evaluation, the presiding officer may request that the attorney general evaluate the policies and practices of the inspector general to ensure that the inspector general complies with professional standards and nationally accepted policies and practices.

Sec. 2116.203. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING OFFICER. If allegations that a presiding officer has engaged in misconduct result in a review by an inspector general, the inspector general shall report to the governor during the review until the report is completed or the review is closed without a finding.

Sec. 2116.204. PERIODIC REPORTING TO STATE AUDITOR REQUIRED. An inspector general shall timely inform the state auditor of the initiation of a review and the ongoing status of each review.

Sec. 2116.205. REPORTING OFFICE FINDINGS. An inspector general shall report the findings of the inspector general's office to:

- (1) the presiding officer of the inspector general's agency;
- (2) the governor;
- (3) the lieutenant governor;
- (4) the speaker of the house of representatives;
- (5) the state auditor's office;
- (6) the appropriate legislative oversight committees; and
- (7) appropriate law enforcement and prosecutorial agencies, including the office of the attorney general, if the findings relate to a criminal investigation.

Sec. 2116.206. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. An inspector general shall immediately report to the presiding officer of the inspector general's agency, the governor's general counsel, and the state auditor a particularly serious or flagrant problem relating to the administration of a program or operation of the agency or interference with an inspector general operation.

Sec. 2116.207. ANNUAL REPORT. (a) An inspector general annually shall prepare a complete and detailed written report describing the activities of the inspector general during the fiscal year. The report must separately describe each major investigation, audit, review, fraud prevention effort, and agency assistance effort completed during the fiscal year.

(b) The annual report must meet the reporting requirements applicable to financial reporting provided in the General Appropriations Act.

(c) The inspector general shall deliver a copy of each annual report to:

- (1) the governor;
- (2) the lieutenant governor;
- (3) the speaker of the house of representatives;
- (4) the presiding officer of each house and senate committee having jurisdiction over an agency to which this chapter applies;
- (5) the presiding officer of each agency to which this chapter applies;
- (6) the state auditor; and
- (7) the comptroller.

(d) Each agency to which this chapter applies shall post the annual report on its agency Internet website.

(e) The inspector general shall issue the annual report not later than the 60th day after the last day of each fiscal year.

[Sections 2116.208-2116.250 reserved for expansion]

SUBCHAPTER F. PUBLIC RECORDS; EXCEPTIONS

Sec. 2116.251. INFORMATION CONFIDENTIAL. (a) Except as provided by this section, Sections 2116.160 and 2116.252, and Subchapter E, all information and material compiled by an inspector general during a review under this chapter is:

(1) confidential and not subject to disclosure under Chapter 552; and

(2) not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than the state auditor's office, or the inspector general's office or its agents involved in the review related to that information or material.

(b) As an inspector general determines appropriate, information relating to a review shall be disclosed to:

(1) a law enforcement agency;

(2) the attorney general; or

(3) the state auditor's office.

(c) A person that receives information under Subsection (b) may not disclose the information except to the extent that disclosure is consistent with the authorized purpose for which the person first obtained the information.

Sec. 2116.252. FINAL REVIEW REPORTS. (a) An inspector general shall prepare a final report for each review conducted under this chapter. The final report must include:

(1) a summary of the activities performed by the inspector general in conducting the review;

(2) a determination of whether wrongdoing was found; and

(3) a description of any findings of wrongdoing.

(b) An inspector general's final review reports are subject to disclosure under Chapter 552.

(c) All working papers and other documents related to compiling the final review reports remain confidential and are not subject to disclosure under Chapter 552.

(d) Unless otherwise prohibited by this chapter or other law, the inspector general shall deliver a copy of each final report that concerns the implementation or administration of a state or federally funded program to:

(1) the presiding officer of the subject agency;

(2) the governor;

(3) the lieutenant governor;

(4) the speaker of the house of representatives;

(5) the state auditor; and

(6) the appropriate legislative oversight committees.

[Sections 2116.253-2116.300 reserved for expansion]

SUBCHAPTER G. STATE AUDITOR AND INSPECTOR GENERAL  
INDEPENDENCE

Sec. 2116.301. STATE AUDITOR AUDITS, INVESTIGATIONS, AND ACCESS TO INFORMATION NOT IMPAIRED. This chapter or other law related to the operation of an inspector general does not prohibit the state auditor from conducting an audit or an investigation or other review or from having full and complete access to all records and other information, including witnesses and electronic data, that the state auditor considers necessary for the audit or the investigation or other review.

Sec. 2116.302. ACCESS TO STATE AUDITOR INFORMATION NOT IMPAIRED. Except as authorized by the state auditor, this chapter or other law related to the operation of an inspector general does not permit an inspector general or any other person to access any working papers, including any documents, notes, and other information, collected or maintained by the state auditor's office.

Sec. 2116.303. AUTHORITY OF STATE AUDITOR TO CONDUCT AUDITS NOT IMPAIRED. This chapter or other law related to the operation of an inspector general does not take precedence over the authority of the state auditor to conduct an audit under Chapter 321 or other law.

[Sections 2116.304-2116.350 reserved for expansion]

SUBCHAPTER H. FINANCIAL PROVISIONS

Sec. 2116.351. BUDGET. An inspector general shall submit a budget to the presiding officer of the inspector general's agency.

Sec. 2116.352. COSTS. (a) An inspector general shall maintain information regarding the cost of reviews.

(b) An inspector general may cooperate with appropriate administrative and prosecutorial agencies, including the office of the attorney general, in recovering costs incurred under this chapter from nongovernmental entities, including contractors or individuals involved in:

- (1) violations of state and federal rules or statutes; or
- (2) abusive or wilful misconduct.

SECTION 2. Subsections (a), (b), and (h), Section 531.102, Government Code, are amended to read as follows:

(a) In this section, "office" means ~~[The commission, through]~~ the commission's office of inspector general established under Chapter 2116~~[- is responsible for the investigation of fraud and abuse in the provision of health and human services and the enforcement of state law relating to the provision of those services. The commission may obtain any information or technology necessary to enable the office to meet its responsibilities under this subchapter or other law].~~

(b) The ~~[commission, in consultation with the]~~ inspector general for the commission~~[;]~~ shall set clear objectives, priorities, and performance standards for the office that emphasize~~[-~~

- ~~[(1) coordinating investigative efforts to aggressively recover money;~~
- ~~[(2) allocating resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and~~

~~(3)~~ maximizing opportunities for referral of cases to the office of the attorney general in accordance with Section 531.103.

(h) In addition to performing functions and duties otherwise provided by law, the office may:

(1) assess administrative penalties otherwise authorized by law on behalf of the commission or a health and human services agency;

(2) request that the attorney general obtain an injunction to prevent a person from disposing of an asset identified by the office as potentially subject to recovery by the office due to the person's fraud or abuse;

(3) provide for coordination between the office and special investigative units formed by managed care organizations under Section 531.113 or entities with which managed care organizations contract under that section;

(4) audit the use and effectiveness of state or federal funds, including contract and grant funds, administered by a person or state agency receiving the funds from a health and human services agency; and

(5) conduct investigations relating to the funds described by Subdivision (4); ~~and~~

~~[(6) recommend policies promoting economical and efficient administration of the funds described by Subdivision (4) and the prevention and detection of fraud and abuse in administration of those funds].~~

SECTION 3. Subsections (a-1), (d), and (e), Section 531.102, and 531.1021, Government Code, are repealed.

SECTION 4. (a) The repeal by this Act of certain provisions of Section 531.102, Government Code, does not affect the validity of a complaint, investigation, or other proceeding initiated under that section before the effective date of this Act. A complaint, investigation, or other proceeding initiated under that section is continued in accordance with the changes in law made by this Act.

(b) The repeal by this Act of Section 531.1021, Government Code, does not affect the validity of a subpoena issued under that section before the effective date of this Act. A subpoena issued under that section before the effective date of this Act is governed by the law that existed when the subpoena was issued, and the former law is continued in effect for that purpose.

SECTION 5. (a) The person serving as inspector general under Subsection (a-1), Section 531.102, Government Code, on the effective date of this Act or any person appointed to fill a vacancy in the office held by that person shall serve as the inspector general for the Health and Human Services Commission under Chapter 2116, Government Code, as added by this Act, until February 1, 2009, and carry out the functions of an inspector general in the same manner as an inspector general appointed under Chapter 2116.

(b) This section does not prohibit a person described by Subsection (a) of this section from being appointed under Chapter 2116, Government Code, as added by this Act, if the person has the qualifications required under that chapter.

SECTION 6. As soon as possible after the effective date of this Act, the governor shall appoint an inspector general for each agency other than the Health and Human Services Commission listed in Section 2116.002, Government Code, as added by this Act, to an initial term expiring February 1, 2009.

SECTION 7. This Act takes effect January 1, 2008.

The amendment to **CSSB 750** 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 Deuell and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSSB 750** as amended was passed to engrossment by a viva voce vote.

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

Nays: Brimer, Shapiro.

**COMMITTEE SUBSTITUTE  
SENATE BILL 750 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 **CSSB 750** be placed on its third reading and final passage.

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

Yeas: Averitt, 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, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Brimer, Shapiro.

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1143 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1143** at this time on its second reading:

**CSSB 1143**, Relating to ranking of physicians by health benefit plans.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1143 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 **CSSB 1143** 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 2967 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 2967** at this time on its second reading:

**CSHB 2967**, Relating to a performance bond required of a statutory probate court judge.

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 2967 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 2967** 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 Duncan was recognized and introduced to the Senate the men's basketball coach of Texas Tech University, Bob Knight, and his wife, Karen.

The Senate welcomed its guests.

**HOUSE BILL 741 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 741** at this time on its second reading:

**HB 741**, Relating to an exemption from tuition and fees at public institutions of higher education for children of certain volunteer peace officers who are killed or disabled in the line of duty.

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 741 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 741** 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  
SENATE BILL 753 ON SECOND READING**

Senator Shapleigh moved to suspend the regular order of business to take up for consideration **CSSB 753** at this time on its second reading:

**CSSB 753**, Relating to requirements to report certain data from credit services organizations regarding certain transactions.

The motion prevailed.

Senator Williams 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 engrossment by a viva voce vote.

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

Nays: Williams.

**COMMITTEE SUBSTITUTE  
SENATE BILL 753 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 753** be placed on its third reading and final passage.

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

Nays: Williams.

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

**SENATE BILL 544 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **SB 544** at this time on its second reading:

**SB 544**, Relating to authorized activities for the holder of a distiller's and rectifier's permit.

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 and was passed to engrossment by a viva voce vote.

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

Nays: Harris.

**SENATE BILL 544 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 **SB 544** 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)

**SENATE RESOLUTIONS ON FIRST READING**

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

**SCR 76** by Van de Putte

Requesting the United States Air Force to consider the impact of transferring work from the Port of San Antonio to military depots.

To Committee on Veteran Affairs and Military Installations.

**SCR 77** by Van de Putte

Urging the president of the United States to award the American Defense Service Medal to military personnel serving during the Cold War.

To Committee on Veteran Affairs and Military Installations.

**SCR 79** by Hinojosa

Posthumously awarding the Texas Legislative Medal of Honor to Sergeant Alfredo Gonzalez for his heroic actions in Vietnam during the Tet Offensive.

To Committee on Veteran Affairs and Military Installations.

**HOUSE BILLS AND RESOLUTIONS ON FIRST READING**

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

**HB 47** to Committee on Criminal Justice.

**HB 160** to Committee on Transportation and Homeland Security.

**HB 191** to Committee on Transportation and Homeland Security.

**HB 199** to Committee on Criminal Justice.

**HB 426** to Committee on Education.

**HB 428** to Committee on Government Organization.

**HB 438** to Committee on Finance.

**HB 494** to Committee on Education.

**HB 614** to Committee on Transportation and Homeland Security.

**HB 779** to Committee on Jurisprudence.

**HB 781** to Committee on Jurisprudence.

**HB 828** to Committee on Education.

**HB 888** to Committee on State Affairs.

**HB 928** to Committee on State Affairs.

**HB 976** to Committee on Intergovernmental Relations.

**HB 983** to Committee on Jurisprudence.

**HB 1066** to Committee on Health and Human Services.  
**HB 1222** to Committee on State Affairs.  
**HB 1309** to Committee on Natural Resources.  
**HB 1324** to Committee on Education.  
**HB 1330** to Subcommittee on Higher Education.  
**HB 1358** to Subcommittee on Higher Education.  
**HB 1415** to Committee on Business and Commerce.  
**HB 1427** to Subcommittee on Higher Education.  
**HB 1433** to Committee on Health and Human Services.  
**HB 1467** to Committee on Business and Commerce.  
**HB 1493** to Subcommittee on Higher Education.  
**HB 1609** to Committee on Education.  
**HB 1632** to Committee on Education.  
**HB 1751** to Committee on Intergovernmental Relations.  
**HB 1950** to Committee on Finance.  
**HB 2002** to Committee on Business and Commerce.  
**HB 2030** to Committee on Education.  
**HB 2093** to Committee on Transportation and Homeland Security.  
**HB 2101** to Committee on Criminal Justice.  
**HB 2103** to Subcommittee on Higher Education.  
**HB 2112** to Committee on Criminal Justice.  
**HB 2151** to Committee on Criminal Justice.  
**HB 2210** to Committee on Criminal Justice.  
**HB 2217** to Committee on Education.  
**HB 2225** to Subcommittee on Higher Education.  
**HB 2237** to Committee on Education.  
**HB 2238** to Committee on Education.  
**HB 2268** to Committee on Transportation and Homeland Security.  
**HB 2291** to Committee on Criminal Justice.  
**HB 2323** to Committee on State Affairs.  
**HB 2389** to Committee on Criminal Justice.  
**HB 2422** to Committee on Transportation and Homeland Security.  
**HB 2523** to Committee on Intergovernmental Relations.  
**HB 2656** to Committee on Criminal Justice.  
**HB 2691** to Committee on Jurisprudence.  
**HB 2702** to Subcommittee on Higher Education.  
**HB 2782** to Committee on Intergovernmental Relations.  
**HB 2783** to Committee on Business and Commerce.  
**HB 2828** to Committee on Transportation and Homeland Security.  
**HB 2833** to Committee on Criminal Justice.  
**HB 2892** to Committee on Natural Resources.  
**HB 2926** to Committee on State Affairs.  
**HB 2940** to Committee on Jurisprudence.  
**HB 2990** to Committee on Criminal Justice.  
**HB 3024** to Committee on Intergovernmental Relations.  
**HB 3064** to Committee on Health and Human Services.

**HB 3100** to Committee on Business and Commerce.  
**HB 3105** to Committee on State Affairs.  
**HB 3135** to Committee on Jurisprudence.  
**HB 3154** to Committee on Health and Human Services.  
**HB 3182** to Committee on Intergovernmental Relations.  
**HB 3222** to Committee on Business and Commerce.  
**HB 3314** to Committee on Finance.  
**HB 3315** to Committee on Finance.  
**HB 3319** to Committee on Finance.  
**HB 3418** to Committee on Education.  
**HB 3435** to Committee on Criminal Justice.  
**HB 3481** to Committee on Natural Resources.  
**HB 3485** to Committee on Education.  
**HB 3559** to Committee on Natural Resources.  
**HB 3571** to Committee on Health and Human Services.  
**HB 3769** to Committee on Natural Resources.  
**HB 3770** to Committee on Natural Resources.  
**HB 3826** to Committee on Education.  
**HB 3834** to Committee on Intergovernmental Relations.  
**HB 3842** to Committee on Business and Commerce.  
**HB 3849** to Committee on Transportation and Homeland Security.  
**HB 3851** to Subcommittee on Higher Education.  
**HB 3871** to Committee on Intergovernmental Relations.  
**HB 3799** to Committee on Intergovernmental Relations.  
**HB 3980** to Committee on Natural Resources.  
**HB 3981** to Committee on Natural Resources.  
**HB 3987** to Committee on Natural Resources.  
**HB 3988** to Committee on Intergovernmental Relations.  
**HB 3989** to Committee on Intergovernmental Relations.  
**HB 3994** to Committee on Intergovernmental Relations.  
**HB 3995** to Committee on Natural Resources.  
**HB 3997** to Committee on Jurisprudence.  
**HB 3998** to Committee on Intergovernmental Relations.  
**HB 4006** to Committee on Intergovernmental Relations.  
**HB 4009** to Committee on Natural Resources.  
**HB 4016** to Committee on Intergovernmental Relations.  
**HB 4017** to Committee on Intergovernmental Relations.  
**HB 4018** to Committee on Intergovernmental Relations.  
**HB 4029** to Committee on Natural Resources.  
**HB 4038** to Committee on Natural Resources.  
**HB 4039** to Committee on Jurisprudence.  
**HB 4041** to Committee on Natural Resources.  
**HB 4042** to Committee on Natural Resources.  
**HB 4043** to Committee on Natural Resources.  
**HB 4046** to Committee on Intergovernmental Relations.  
**HB 4047** to Committee on Health and Human Services.

**HB 4056** to Committee on Intergovernmental Relations.  
**HB 4061** to Committee on Intergovernmental Relations.  
**HB 4070** to Committee on Natural Resources.  
**HB 4071** to Committee on Natural Resources.  
**HB 4073** to Committee on Intergovernmental Relations.  
**HB 4075** to Committee on Natural Resources.  
**HB 4077** to Committee on Intergovernmental Relations.  
**HB 4079** to Committee on Intergovernmental Relations.  
**HB 4080** to Committee on Intergovernmental Relations.  
**HB 4081** to Committee on Intergovernmental Relations.  
**HB 4083** to Committee on Intergovernmental Relations.  
**HB 4084** to Committee on Intergovernmental Relations.  
**HB 4099** to Committee on Intergovernmental Relations.  
**HB 4102** to Committee on Natural Resources.  
**HB 4104** to Committee on Intergovernmental Relations.  
**HB 4111** to Committee on Natural Resources.  
**HB 4113** to Committee on Intergovernmental Relations.  
**HB 4115** to Committee on Intergovernmental Relations.  
**HB 4116** to Committee on Intergovernmental Relations.  
**HB 4118** to Committee on Intergovernmental Relations.  
**HB 4119** to Committee on Intergovernmental Relations.  
**HB 4120** to Committee on Intergovernmental Relations.  
**HB 4121** to Committee on Intergovernmental Relations.  
**HJR 90** to Committee on Finance.  
**HJR 103** to Committee on Education.  
**HCR 164** to Committee on Transportation and Homeland Security.

### **SENATE RESOLUTION 994**

Senator Van de Putte offered the following resolution:

WHEREAS, An affiliate of the American Council of the Blind, the American Council of the Blind of Texas strives to improve the quality of life for the people of our state who are visually impaired and to increase their independence, security, and equality of opportunity; and

WHEREAS, Many people in our state and nation who are visually impaired have the ability to travel throughout their communities without assistance; and

WHEREAS, Individuals who are visually impaired, however, encounter hazards that a pedestrian with average vision could easily avoid, many of which involve crossing streets and roadways; and

WHEREAS, The white cane and guide dog should be generally recognized by the public as aids to mobility for individuals who are visually impaired and should serve as signals to motorists to be cautious; and

WHEREAS, Unfortunately, individuals who are visually impaired have had their white canes and guide dogs run over by motor vehicles, have been struck by the side-view mirrors of motor vehicles, and have suffered serious personal injury and

death as the result of being hit by motor vehicles, and the American public needs to take serious note of these incidents and take measures to avoid their recurrence; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby encourage all Texans to associate the use of the white cane and guide dog with individuals who are visually impaired and to exercise greatly increased caution when driving in proximity to an individual who is possibly visually impaired; and, be it further

RESOLVED, That a copy of this Resolution be prepared and presented to the American Council of the Blind of Texas as an expression of regard for all Texans who are visually impaired.

VAN DE PUTTE  
WENTWORTH

**SR 994** was read and was adopted without objection.

### **GUESTS PRESENTED**

Senator Van de Putte was recognized and introduced to the Senate Dr. Ed Bradley, President, American Council of the Blind of Texas; Kevin Daniel, President, Austin Chapter; and Judy Jackson, State Legislative Committee Chair; accompanied by members of the council.

The Senate welcomed its guests.

### **GUESTS PRESENTED**

Senator Nichols was recognized and introduced to the Senate Brad Hutcheson, Megan Johnson, Ariana Denby, Caitlyn Albritton, Ricky Herrod, and Todd Lowery from Huntington High School in Huntington, serving today as Honorary Senate Pages, accompanied by their assistant principal, David Franssen.

The Senate welcomed its guests.

### **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 3105** today.

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

On motion of Senator Ellis and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Government Organization might meet today at his desk.

### **SENATE BILL 913 WITH HOUSE AMENDMENT**

Senator Brimer called **SB 913** 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 913** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED  
AN ACT

relating to the continuation and functions of the Texas State Library and Archives Commission.

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

SECTION 1. Sections 441.001(e), (f), (g), (h), (i), (j), (k), and (q), Government Code, are amended to read as follows:

(e) A person may not be ~~serve as~~ a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

(f) 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 ~~Am~~ officer, employee, or paid consultant of a Texas trade association in the field of library and information science, archives management, or records management; or

(2) the person's spouse is ~~may not be a member of the commission or 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.~~

[(g) A person who is the spouse of] an officer, manager, or paid consultant of a Texas trade association in the field of library and information science, archives management, or records management ~~may not be a member of the commission and may not be an employee of the commission who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule].~~

(h) In this section, " ~~For the purposes of this section, a~~ Texas trade association" means ~~is~~ a ~~nonprofit,~~ cooperative~~],~~ and voluntarily joined statewide association of business or professional competitors ~~[or professionals]~~ 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.

(i) It is a ground for removal from the commission if a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Subsection (a);

(2) does not maintain during service on the commission the qualifications required by Subsection (a);

(3) is ineligible for membership under ~~[violates a prohibition established by]~~ Subsection (e) or ~~]~~ (f) ~~[or (g)]~~;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term [~~for which the member is appointed~~]; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved [~~unless the absence is excused~~] by majority vote of the commission.

(j) The validity of an action of the commission is not affected by the fact that it was taken when [~~at a time~~] a ground for removal of a [~~member of the~~] commission member exists [~~existed~~].

(k) If the director and librarian has knowledge that a potential ground for removal exists, the director and librarian 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 director and librarian shall notify the next highest officer of the commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(q) The Texas State Library and Archives Commission is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2019 [~~2007~~].

SECTION 2. Section 441.0011, Government Code, is amended to read as follows:

Sec. 441.0011. TRAINING FOR COMMISSION MEMBERS. (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 [~~Before a member of the commission may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of a training program that meets the requirements of~~] this section.

(b) The [~~A~~] training program must provide the person with information [~~under this section shall provide information to the member~~] regarding:

(1) the [~~enabling~~] legislation that created the commission;

(2) the programs, functions, rules, and budget of the commission;

(3) the results of the most recent formal audit of [~~programs operated by~~] the commission;

(4) [~~(3)~~] the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest [~~role and functions of the commission~~]; and

(5) [~~(4)~~] the rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;

(6) [~~(5)~~] the current budget for the commission;

(7) [~~(6)~~] the results of the most recent formal audit of the commission;

(8) [~~(7)~~] the requirements of the:

(A) open meetings law, Chapter 551;

(B) open records law, Chapter 552; and

(C) administrative procedure law, Chapter 2001;

(9) [~~(8)~~] the requirements of the conflict of interest laws and other laws relating to public officials; and



~~[(9)]~~ any applicable ethics policies adopted by the 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 3. Section 441.006(a), Government Code, is amended to read as follows:

(a) The commission shall:

(1) govern the Texas State Library;

(2) adopt policies and rules to aid and encourage the development of and cooperation among all types of libraries, including public, academic, special, and other types of libraries;

(3) aid those studying problems to be dealt with by legislation;

(4) prepare and make available to the public and appropriate state agencies information of public interest describing the functions of the commission ~~[and the commission procedures by which complaints are filed with and resolved by the commission];~~

(5) deposit money paid to the commission under this chapter subject to Subchapter F, Chapter 404;

(6) give to any person contemplating the establishment of a public library advice regarding matters such as maintaining a public library, selecting books, cataloging, and managing a library;

(7) conduct library institutes and encourage library associations;

(8) take custody of, preserve, and make available for public use state records and other historical resources that document the history and culture of Texas as a province, colony, republic, or state;

(9) prepare and make available to the public a complete list of every state symbol and place designation, including state symbols and place designations made in accordance with Chapter 391; and

(10) aid and encourage, by adoption of policies and programs, the development of effective records management and preservation programs in state agencies and the local governments of the state; ~~and~~

~~[(11) establish by rule methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission].~~

SECTION 4. Subchapter A, Chapter 441, Government Code, is amended by adding Sections 441.018, 441.019, 441.020, 441.021, and 441.022 to read as follows:

Sec. 441.018. COMPLAINTS. (a) The commission shall maintain a system to promptly and efficiently act on complaints filed with the commission. The commission shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The commission shall make information available describing its procedures for complaint investigation and resolution.

(c) The commission shall periodically notify the complaint parties of the status of the complaint until final disposition.

Sec. 441.019. 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. 441.020. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of commission rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 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:

(a);  
(1) coordinate the implementation of the policy adopted under Subsection

(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.

Sec. 441.021. PUBLIC SCHOOL LIBRARY STUDY. (a) The commission and the Texas Education Agency shall conduct a joint study to identify the needs of public school libraries in this state and determine which needs each agency is best suited to address.

(b) Not later than December 31, 2008, the commission and the Texas Education Agency shall submit a joint written report containing the findings of the study and the recommendations of the commission and the education agency to the:

(1) governor;

(2) lieutenant governor;

(3) speaker of the house of representatives; and

(4) appropriate oversight committees of each house of the legislature.

(c) This section expires June 1, 2009.

Sec. 441.022. 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 5. Section 441.135, Government Code, is amended to read as follows:

Sec. 441.135. GRANTS. (a) Using state, federal, or other funds, the ~~The~~ commission shall establish a program of ~~[state]~~ grants within the limitations of funds appropriated by the legislature. The commission shall adopt by rule the guidelines for awarding grants ~~[except that any municipal library which lends more than 20,000 items per year to nonresidents cannot be denied any grant awarded after January 1, 1995, based solely upon the provision of services to nonresidents].~~

(b) The program of ~~[state]~~ grants shall include one or more of the following:

(1) system operation grants, to:

(A) provide basic system support services to member libraries;

(B) provide coordination and enable cooperation with the commission and with other libraries in a region; and

(C) meet commission and federal goals ~~[strengthen major resource system services to member public libraries and regional library system services to member libraries, including grants to reimburse other libraries for providing specialized services to major resource systems and regional library systems];~~

(2) incentive grants, to encourage public libraries to join together into larger units of service to meet commission and federal goals ~~[in order to meet criteria for major resource system membership or regional library system membership];~~

(3) establishment grants, to help libraries establish consortia or cooperatives that will enable [public] libraries to better serve their ~~[that will qualify for major resource system membership or regional library system membership in] communities [without public library service];~~

(4) equalization grants, to help public libraries in communities with relatively limited taxable resources to meet commission and federal goals and qualify for ~~[criteria for major resource system membership or regional] library system membership; [and]~~

(5) public information technology grants, to help public libraries make state, local, and federal government information that is accessible through the Internet ~~[or electronic bulletin board systems] available to the public through computers;~~

(6) competitive grants, to promote innovation by public libraries and by libraries described by Section 441.1271(a) and to encourage major resource systems or regional library systems and libraries to meet commission and federal goals; and

(7) grants to aid local libraries, to provide assistance to public libraries, and to help those libraries meet commission and federal goals ~~[computer terminals at a library].~~

SECTION 6. Section 441.138(d), Government Code, is amended to read as follows:

(d) The commission by rule shall adopt a formula for distributing system operation grants ~~[Twenty-five percent of system operation grants shall be apportioned equally] among the major resource systems and regional library systems. The formula must include funding for basic system support services ~~[that are operating under commission approved programs of services, budgets, and bylaws or contracts, and the remaining 75 percent of these grants shall be apportioned among those systems on a~~~~

~~per capita basis determined by the most recent decennial census or the most recent official population estimate of the U.S. Department of Commerce, Bureau of the Census].~~

SECTION 7. Subchapter I, Chapter 441, Government Code, is amended by adding Sections 441.1381, 441.1382, and 441.1383 to read as follows:

Sec. 441.1381. COMPETITIVE GRANTS; SYSTEM OPERATION GRANTS.

(a) The commission shall design and implement a competitive grant program described by Section 441.135(b)(6) and shall require a recipient of a competitive grant to report to the commission information relating to best practices and performance outcomes.

(b) The commission shall continue to provide system operation grants to major resource systems and regional library systems. The commission may not award system operation grants through a competitive process.

Sec. 441.1382. ADDITIONAL FUNDING. (a) The commission may authorize a major resource system or regional library system to receive money in addition to the system operation grant, including money from:

(1) gifts or grants from the federal government, local or regional governments, private sources, or other sources;

(2) contracts for services;

(3) cost-sharing arrangements; or

(4) other fees.

(b) The commission may authorize a major resource system or regional library system to use money received under Subsection (a) to initiate, expand, or enhance activities approved by the commission that meet commission and federal goals.

(c) The commission may authorize a major resource system or regional library system to retain money received under Subsection (a) remaining at the end of a fiscal year for activities approved by the commission that meet commission and federal goals.

(d) The commission by rule shall require that money received under Subsection (a) must be held in a federally insured account. Interest earned on money in the account shall be retained in the account and is subject to the same terms and reporting requirements as the corpus.

(e) The commission by rule may require periodic reporting regarding money received under Subsection (a) and include this information in the annual audit.

(f) Money generated through the use of state or federal funds remains the property of the state. If the commission ceases to contract with a major resource system or regional library system, all money received under this section or described by this subsection must be promptly returned to the commission for use in regional library development programs.

Sec. 441.1383. GRANTS TO AID LOCAL LIBRARIES. The commission shall design and implement a program of grants to aid local libraries as described by Section 441.135(b)(7) and shall require a recipient of a grant under that program to report to the commission information relating to best practices and performance outcomes.

SECTION 8. Section 441.186, Government Code, is amended by adding Subsection (h) to read as follows:

(h) If a disagreement exists between an institution of higher education, as defined by Section 61.003, Education Code, and a county over custody of a record that has been in existence for more than 50 years and if the commission determines that further negotiations between the institution and the commission are unlikely to resolve the disagreement, the record shall be transferred to the custody of the commission and treated as an archival state record.

SECTION 9. Subchapter L, Chapter 441, Government Code, is amended by adding Section 441.205 to read as follows:

Sec. 441.205. ONLINE ACCESS TO CULTURAL RESOURCES. The commission may:

(1) encourage Texas institutions, including libraries, archives, museums, historical societies, and governmental entities, to develop ways to provide Internet access to digitized cultural resources; and

(2) provide leadership in collaborative efforts among the institutions to achieve this goal.

SECTION 10. Section 336.104, Local Government Code, is amended to read as follows:

Sec. 336.104. QUALIFICATIONS OF EXECUTIVE DIRECTOR OR LIBRARY DIRECTOR. The board shall ensure that the executive director or a subordinate library director has all necessary qualifications to oversee library services in the district. ~~[The board shall require the executive director or a subordinate library director to meet the qualification requirements for a county librarian under Section 441.007, Government Code, and under any rules adopted by the Texas State Library and Archives Commission under that section.]~~

SECTION 11. The following provisions of the Government Code are repealed:

- (1) Section 441.007;
- (2) Section 441.0071;
- (3) Section 441.0072;
- (4) Section 441.0073; and
- (5) Section 441.0074.

SECTION 12. Not later than March 1, 2008, the Texas State Library and Archives Commission shall adopt rules as required by Section 441.138(d), Government Code, as amended by this Act.

SECTION 13. (a) The changes in law made by this Act in the prohibitions or qualifications applying to a member of the Texas State Library and Archives Commission do not affect the entitlement of a member serving on the Texas State Library and Archives Commission immediately before September 1, 2007, to continue to serve and function as a member of the Texas State Library and Archives Commission for the remainder of the member's term. Those changes in law apply only to a member appointed on or after September 1, 2007.

(b) Section 441.018, Government Code, as added by this Act, relating to the investigation of a complaint filed with the Texas State Library and Archives Commission, applies only to a complaint filed on or after September 1, 2007. A complaint filed with the commission before September 1, 2007, is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

SECTION 14. This Act takes effect September 1, 2007.

The amendment was read.

Senator Brimer moved to concur in the House amendment to **SB 913**.

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

**SENATE RULE 11.13 SUSPENDED  
(Consideration of Bills in Committees)**

On motion of Senator Brimer and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate will be meeting during the Local and Uncontested Calendar Session tomorrow.

**NOTICE GIVEN FOR  
LOCAL AND UNCONTESTED CALENDAR**

Senator Brimer 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.

**AT EASE**

The Presiding Officer, Senator Eltife in Chair, at 2:22 p.m. announced the Senate would stand At Ease until 2:40 p.m. today.

**IN LEGISLATIVE SESSION**

The President at 3:58 p.m. called the Senate to order as In Legislative Session.

**COMMITTEE SUBSTITUTE  
SENATE BILL 792 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 792** at this time on its second reading:

**CSSB 792**, Relating to the authority of certain counties and other entities with respect to certain transportation projects and to comprehensive development agreements with regard to such projects.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 792** by striking all below the enacting clause and substituting:

ARTICLE 1. TERM OF CERTAIN TOLL OR FEE COLLECTION  
CONTRACTS WITH PRIVATE ENTITIES

SECTION 1.01. Section 223.203, Transportation Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) A private entity responding to a request for detailed proposals issued under Subsection (f) may submit alternative proposals based on comprehensive development agreements having different terms, with the alternative terms in

multiples of 10 years, ranging from 10 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity to 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years or any lesser term provided in a comprehensive development agreement.

SECTION 1.02. Section 223.208(h), Transportation Code, is amended to read as follows:

(h) ~~A~~ ~~[Except as provided by this section, a]~~ comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years. The comprehensive development agreement must contain ~~[may be for a term not longer than 70 years if the agreement:~~

~~[(1) contains]~~ an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the comprehensive development agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement~~]; and~~

~~[(2) outlines the benefit the state will derive from having a term longer than 50 years].~~

SECTION 1.03. Section 227.023(f), Transportation Code, is amended to read as follows:

(f) A contract with a private entity that includes the collection by the private entity of a fee for the use of a facility may not be for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

SECTION 1.04. Section 370.302(i), Transportation Code, is amended to read as follows:

(i) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project may not be for a term longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private entity, not to exceed a total term of 52 years. The agreement must contain an explicit mechanism for setting the price for the purchase by the authority of the interest of the private entity in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

SECTION 1.05. The changes in law made by this article apply only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

ARTICLE 2. PAYMENTS TO UNSUCCESSFUL PROPOSERS FOR  
COMPREHENSIVE DEVELOPMENT AGREEMENTS

SECTION 2.01. Section 223.203(m), Transportation Code, is amended to read as follows:

(m) The department may [~~shall~~] pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. A [~~The~~] stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

(1) the department owns with the unsuccessful proposer jointly the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and

(2) the use by the unsuccessful proposer of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful proposer and does not confer liability on the department.

SECTION 2.02. Section 370.306(m), Transportation Code, is amended to read as follows:

(m) An authority may [~~shall~~] pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. A [~~The~~] stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the work product contained in the proposal becomes the property of the authority.

ARTICLE 3. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE  
DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS

SECTION 3.01. Subchapter E, Chapter 223, Transportation Code, is amended by adding Section 223.210 to read as follows:

Sec. 223.210. MORATORIUM ON CERTAIN TERMS IN COMPREHENSIVE DEVELOPMENT AGREEMENTS OR SALE OF TOLL PROJECTS. (a) In this section:

(1) "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project:



(A) is a part of the state highway system; or

(B) is subject to the jurisdiction of the department.

(2) "Toll project entity" means a public entity authorized by law to acquire, design, construct, finance, operate, or maintain a toll project, including:

(A) the department;

(B) a regional tollway authority;

(C) a regional mobility authority; or

(D) a county.

(b) A comprehensive development agreement entered into with a private participant by a toll project entity on or after May 1, 2007, for the acquisition, design, construction, financing, operation, or maintenance of a toll project may not contain a provision permitting the private participant to operate the toll project or collect revenue from the toll project, regardless of whether the private participant operates the toll project or collects the revenue itself or engages a subcontractor or other entity to operate the toll project or collect the revenue.

(c) Subsection (b) does not apply to a comprehensive development agreement in connection with:

(1) a project associated with the highway designated as the Trinity Parkway in the City of Dallas; or

(2) a project:

(A) that includes one or more managed lane facilities to be added to an existing controlled-access highway;

(B) the major portion of which is located in a nonattainment or near nonattainment air quality area as designated by the United States Environmental Protection Agency; and

(C) for which the department has issued a request for qualifications before May 1, 2007.

(d) Subsection (b) does not apply to a comprehensive development agreement in connection with a project associated with any portion of the Loop 9 project that is located in a nonattainment air quality area as designated by the United States Environmental Protection Agency that includes two adjacent counties that each have a population of one million or more.

(e) Subsection (b) does not apply to a comprehensive development agreement in connection with a project associated with any portion of the State Highway 99 project.

(f) Subsection (b) does not apply to a comprehensive development agreement in connection with a project associated with the portion of Interstate Highway 69 project south of Interstate Highway 37.

(g) Subsection (b) does not apply to a comprehensive development agreement in connection with the State Highway 161 project in Dallas County.

(h) Subsection (b) does not apply to a project described by this subsection. Notwithstanding the TxDOT/NTTA Regional Protocol entered into between the department and the North Texas Tollway Authority and approved on August 10, 2006, by the tollway authority and on August 24, 2006, by the department, the department shall allow a regional tollway authority under Chapter 366 to develop a project in connection with State Highway 121 if:

(1) before the commission or the department enters into a contract for the financing, construction, or operation of the project with a private participant, the authority was granted the ability to finance, construct, or operate, as applicable, the portion of the toll project located in the boundaries of the authority;

(2) the authority was granted a period of 60 days from March 26, 2007, to submit a commitment to the metropolitan planning organization which is determined to be equal to or greater than any other commitment submitted prior to March 26, 2007; and

(3) the financial value of the commitment is determined to be equal to or greater value than any other commitment submitted before March 26, 2007.

(i) Notwithstanding Subsection (c), Subsection (b) applies to any toll project or managed lane facility project located on any portion of U.S. Highway 281 that is located in a county with a population of more than one million in which more than 80 percent of the population lives in a single municipality.

(j) For purposes of Subsection (c)(2), "managed lane facility" means a facility that increases the efficiency of a controlled-access highway through various operational and design actions and that allows lane management operations to be adjusted at any time. The term includes high-occupancy vehicle lanes, single-occupant vehicle express lanes, tolled lanes, priced lanes, truck lanes, bypass lanes, dual use facilities, or any combination of those facilities.

(k) The department may not enter into a comprehensive development agreement in connection with a project described by Subsection (c)(2) unless the commissioners court of the county in which the majority of the project is located passes a resolution in support of the agreement that states that the commissioners court:

(1) acknowledges that the comprehensive development agreement may contain penalties for the construction of future competing transportation projects that are acquired or constructed during the term of the comprehensive development agreement; and

(2) knowing of those potential penalties, agrees that the department should execute the comprehensive development agreement.

(l) On or after the effective date of this section, a toll project entity may not sell or enter into a contract to sell a toll project of the entity to a private entity.

(m) A legislative study committee is created. The committee is composed of nine members, appointed as follows:

(1) three members appointed by the lieutenant governor;

(2) three members appointed by the speaker of the house of representatives;

and

(3) three members appointed by the governor.

(n) The legislative study committee shall select a presiding officer from among its members and conduct public hearings and study the public policy implications of including in a comprehensive development agreement entered into by a toll project entity with a private participant in connection with a toll project a provision that permits the private participant to operate and collect revenue from the toll project. In addition, the committee shall examine the public policy implications of selling an existing and operating toll project to a private entity.

(o) Not later than December 1, 2008, the legislative study committee shall:

(1) prepare a written report summarizing:

(A) any hearings conducted by the committee;

(B) any legislation proposed by the committee;

(C) the committee's recommendations for safeguards and protections of the public's interest when a contract for the sale of a toll project to a private entity is entered into; and

(D) any other findings or recommendations of the committee; and

(2) deliver a copy of the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

(p) On December 31, 2008, the legislative study committee created under this section is abolished.

(q) This section expires September 1, 2009.

(r) Subsection (b) does not apply to a project that is located in a county with a population of 575,000 or more and adjacent to an international border.

#### ARTICLE 4. COMPREHENSIVE DEVELOPMENT AGREEMENT SUNSET DATE

SECTION 4.01. Section 223.201, Transportation Code, is amended by amending Subsection (f) and adding Subsections (g) and (h) to read as follows:

(f) Except as provided by Subsections (g) and (h), the [The] authority to enter into comprehensive development agreements provided by this section expires on August 31, 2009 [2011].

(g) Subsection (f) does not apply to a comprehensive development agreement that does not grant a private entity a right to finance a toll project or to a comprehensive development agreement in connection with a project:

(1) that includes one or more managed lane facilities to be added to an existing controlled-access highway;

(2) the major portion of which is located in a nonattainment or near-nonattainment air quality area as designated by the United States Environmental Protection Agency; and

(3) for which the department has issued a request for qualifications before May 1, 2007.

(h) The authority to enter into a comprehensive development agreement for a project exempted from Subsection (f) or Section 223.210(b) expires August 31, 2011.

SECTION 4.02. Section 370.305, Transportation Code, is amended by amending Subsection (d) and adding Subsections (e) and (f) to read as follows:

(d) Except as provided by Subsections (e) and (f), the authority to enter into comprehensive development agreements under this [This] section expires on August 31, 2009 [2011].

(e) Subsection (d) does not apply to a comprehensive development agreement that does not grant a private entity a right to finance a toll project or a comprehensive development agreement in connection with a project:

(1) that includes one or more managed lane facilities to be added to an existing controlled-access highway;

(2) the major portion of which is located in a nonattainment or near-nonattainment air quality area as designated by the United States Environmental Protection Agency; and

(3) for which the department has issued a request for qualifications before the effective date of this subsection.

(f) The authority to enter into a comprehensive development agreement for a project exempted from Subsection (d) or Section 223.210(b) expires August 31, 2011.

**ARTICLE 5. PUBLIC ACCESS TO TRANS-TEXAS CORRIDOR INFORMATION**

SECTION 5.01. Subchapter A, Chapter 227, Transportation Code, is amended by adding Sections 227.005 and 227.006 to read as follows:

Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) The department shall:

(1) seek to achieve transparency in the department's functions related to the Trans-Texas Corridor by providing, to the greatest extent possible under the public information law (Chapter 552, Government Code) and other statutes governing the access to records, public access to information collected, assembled, or maintained by the department relating to the Trans-Texas Corridor;

(2) make public in a timely manner all documents, plans, and contracts related to the Trans-Texas Corridor; and

(3) make public in a timely manner all updates to the master development plan for the Trans-Texas Corridor, including financial plans.

(b) The department shall send electronic versions of all updates to the master development plan for the Trans-Texas Corridor to the Governor's Office of Budget and Planning, the Senate Finance Committee, the House Appropriations Committee, the Legislative Budget Board, the state auditor's office, and the comptroller in a timely manner.

Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS CORRIDOR ON DEPARTMENT'S WEBSITE. (a) The department shall post on the department's Internet website, in a timely manner, the costs incurred by the department in connection with the financing, design, construction, maintenance, or operation of the Trans-Texas Corridor.

(b) Not later than the 10th day after the date the department enters into a contract relating to the Trans-Texas Corridor, the department shall post a copy of the contract on the department's Internet website.

**ARTICLE 6. USE OF CERTAIN CONTRACT PAYMENTS AND OTHER REVENUE**

SECTION 6.01. Section 228.0055, Transportation Code, is amended to read as follows:

Sec. 228.0055. USE OF CONTRACT PAYMENTS AND OTHER REVENUE. (a) Payments, project savings, refinancing dividends, and any other revenue received by the commission or the department under a comprehensive development agreement shall ~~may~~ be used by the commission or the department to finance the construction, maintenance, or operation of ~~a~~ transportation projects ~~project~~ or air quality projects ~~project~~ in the region.

(b) The department shall allocate the distribution of funds to department districts in the region that are located in the boundaries of the metropolitan planning organization in which the project that is the subject of the comprehensive development agreement is located based on the percentage of toll revenue from users from each department district of the project. To assist the department in determining

the allocation, each entity responsible for collecting tolls for a project shall calculate on an annual basis the percentage of toll revenue from users of the project from each department district based on the number of recorded electronic toll collections.

(c) The commission or the department may not:

(1) revise the formula as provided in the department's unified transportation program, or its successor document, in a manner that results in a decrease of a department district's allocation because of a payment under Subsection (a); or

(2) take any other action that would reduce funding allocated to a department district because of payments received under a comprehensive development agreement.

(d) A metropolitan planning organization may not take any action that would reduce distribution of funds or other resources to a department district because of the use of a payment or other revenue under Subsection (a).

#### ARTICLE 7. TOLL PROJECTS IN TERRITORY OF LOCAL OR REGIONAL TOLL PROJECT ENTITY

SECTION 7.01. Subchapter A, Chapter 228, Transportation Code, is amended by adding Sections 228.011, 228.0111, and 228.012 to read as follows:

Sec. 228.011. TOLL PROJECTS IN CERTAIN COUNTIES. (a) This section applies only to a county acting under Chapter 284 and the development, construction, and operation of all or a portion of any of the following toll projects, a component of that project, or the functional equivalent of that project:

(1) Beltway 8 Tollway East, between US 59 North and US 90 East;

(2) Hardy Downtown Connector, consisting of the proposed direct connection from the Hardy Toll Road southern terminus at Loop 610 to downtown Houston;

(3) State Highway 288, between US 59 and Grand Parkway South (State Highway 99);

(4) US 290 Toll Lanes, between IH 610 West and the Grand Parkway Northwest (State Highway 99);

(5) Fairmont Parkway East, between Beltway 8 East and Grand Parkway East (State Highway 99);

(6) South Post Oak Road Extension, between IH 610 South and near the intersection of Beltway 8 and Hillcroft in the vicinity of the Fort Bend Parkway Tollway;

(7) Westpark Toll Road Phase II, between Grand Parkway (State Highway 99) and FM 1623; and

(8) Fort Bend Parkway, between State Highway 6 and the Brazos River.

(b) The county is the entity with the primary responsibility for the financing, construction, and operation of a toll project located in the county. A county may develop, construct, and operate a project described in Subsection (a) at any time, regardless of whether it receives a first option notice from the commission or the department under Subsection (e).

(b-1) Consistent with federal law, the department shall assist the county in the financing, construction, and operation of a toll project in the county by allowing the county to use state highway right-of-way owned by the department and to access the state highway system. The commission or the department may not require the county

to pay for the use of the right-of-way or access, except to reimburse the department as provided by this subsection. The county shall pay an amount to reimburse the department for the department's actual costs to acquire the right-of-way. If the department cannot determine that amount, the amount shall be determined based on the average historical right-of-way acquisition values for right-of-way located in proximity to the project on the date of original acquisition of the right-of-way. Money received by the department under this subsection shall be deposited in the state highway fund and used in the department district in which the project is located.

(c) The department and the county must enter into an agreement that includes reasonable terms to accommodate the use of the right-of-way by the county and to protect the interests of the commission and the department in the use of the right-of-way for operations of the department, including public safety and congestion mitigation on the right-of-way.

(d) Subsection (b) does not limit the authority of the commission or the department to participate in the cost of acquiring, constructing, maintaining, or operating a project of the county under Chapter 284.

(e) Before the department may enter into a contract for the financing, construction, or operation of a proposed or existing toll project any part of which is located in the county, the commission or department shall provide the county the first option to finance, construct, or operate, as applicable, the portion of the toll project located in the county:

(1) on terms agreeable to the county; and

(2) in a manner determined by the county to be consistent with the practices and procedures by which the county finances, constructs, or operates a project.

(f) A county's right to exercise the first option under Subsection (e) is effective for six months after the date of the receipt by the county of written notice from the commission or the department meeting the requirements of Subsection (e) and describing in reasonable detail the location of the toll project, a projected cost estimate, sources and uses of funds, and a construction schedule. If a county exercises the first option with respect to a toll project, the county must enter into one or more contracts for the financing, construction, or operation of the toll project within two years after the date on which all environmental requirements necessary for the development of the project are secured and all legal challenges to development are concluded. A contract may include agreements for design of the project, acquisition of right-of-way, and utility relocation. If the county does not enter into a contract during the two-year period, the commission or the department may enter into a contract for the financing, construction, or operation of the toll project with a different entity.

(g) An agreement entered into by the county and the department in connection with a project under Chapter 284 that is financed, constructed, or operated by the county and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

(h) If the county approves, the commission may remove any right-of-way to be used by a county under this section from the state highway system. If the right-of-way used by a county under this section remains part of the state highway system, the county must comply with department design and construction standards.

(i) Notwithstanding an action of a county taken under this section, the commission or department may take any action that is necessary in its reasonable judgment to comply with any federal requirement to enable this state to receive federal-aid highway funds.

(j) Notwithstanding any other law, the commission and the department are not liable for any damages that result from a county's use of state highway right-of-way or access to the state highway system under this section, regardless of the legal theory, statute, or cause of action under which liability is asserted.

Sec. 228.0111. TOLL PROJECTS OF LOCAL TOLL PROJECT ENTITIES.

(a) In this section:

(1) "Local toll project entity" means:

(A) a regional tollway authority under Chapter 366;

(B) a regional mobility authority under Chapter 370; or

(C) a county acting under Chapter 284.

(2) "Market valuation" means the valuation of a toll project that:

(A) is based on the terms and conditions established mutually by a local toll project entity and the department for the development, construction, and operation of a toll project, including the initial toll rate and the toll rate escalation methodology; and

(B) takes into account a traffic and revenue study of the toll project, an agreed project scope, market research, the estimated cost to construct, maintain, and operate the project, and other information determined appropriate by the local toll project entity and the department.

(3) "Region" has the meaning assigned by Section 228.001, except that the region of a county acting under Chapter 284 is composed of that county and the counties that are contiguous to that county.

(4) "Toll project subaccount" means a subaccount created under Section 228.012.

(b) This section does not apply to a toll project described in Section 228.011(a).

(c) A local toll project entity is the entity with primary responsibility for the financing, construction, and operation of a toll project located within its boundaries.

(d) Subsection (c) does not limit the authority of the commission or the department to participate in the cost of acquiring, constructing, maintaining, or operating a toll project of a local toll project entity.

(e) Except as provided in this subsection, if a local toll project entity or the department determines that a toll project located within the boundaries of the local toll project entity should be developed, constructed, and operated as a toll project, the local toll project entity and the department mutually shall agree on the terms and conditions for the development, construction, and operation of the toll project, including the initial toll rate and the toll rate escalation methodology. The terms and conditions for the procurement and operation of the State Highway 99 project shall be approved by the metropolitan planning organization in which the project is located.

(f) After agreeing on the terms and conditions for a toll project under Subsection (e), or after metropolitan planning organization approval of the terms and conditions for the State Highway 99 project, the local toll project entity and the department mutually shall determine which entity, including a third party under contract with the

local toll project entity or the department, will develop a market valuation of the toll project that is based on the terms and conditions established under Subsection (e). The department and the local toll project entity have 90 days after the date of the receipt of a final draft version of the market valuation designated as "complete; subject to approval by the Texas Department of Transportation and (name of local toll project entity)" to mutually approve the market valuation included in the draft version or, in the alternative, negotiate and agree on a different market valuation. If the department and the local toll project entity are unable to agree on a market valuation within the 90-day period, the market valuation in the draft version is considered to be final for purposes of this section and mutually approved on the last day of that period.

(f-1) The department and a local toll project entity may agree to waive the requirement to develop a market valuation under this section.

(g) A local toll project entity has the first option to develop, finance, construct, and operate a toll project under the terms and conditions established under Subsection (e). A local toll project entity, other than a regional mobility authority under Chapter 370, has six months after the date that the market valuation is mutually approved under Subsection (f) to decide whether to exercise the option. In an area where a toll project is operated by a regional mobility authority under Chapter 370, after the market valuation is final under Subsection (f), the metropolitan planning organization for the region in which the project is located shall determine whether the toll project should be developed using the business terms incorporated in the market valuation. If the metropolitan planning organization determines that the toll project should be developed using the business terms in the market valuation, the regional mobility authority has six months after the date the metropolitan planning organization decides whether to exercise the option to develop the project. If a local toll project entity exercises the option with respect to a toll project under this subsection, the local toll project entity, after exercising the option and within two years after the date on which all environmental requirements necessary for the development of the toll project are secured and all legal challenges to development are concluded, must:

(1) enter into a contract for the construction of the toll project; and

(2) either:

(A) commit to make a payment into a toll project subaccount in an amount equal to the value of the toll project as determined by the market valuation, to be used by the department to finance the construction of additional transportation projects in the region in which the toll project is located;

(B) commit to construct, within the period agreed to by the local toll project entity and the department, additional transportation projects in the region in which the toll project is located with estimated construction costs equal to the market valuation of the toll project; or

(C) for a regional mobility authority under Chapter 370, commit to using, for a period to be agreed upon by the department and the authority, all surplus revenue from the toll project for the purposes authorized by Section 370.174(b) in an amount equal to the valuation of the project.



(h) If a local toll project entity exercises the option with respect to a toll project under Subsection (g) and has not begun the environmental review of the project, the local toll project entity shall begin the environmental review within six months of exercising the option.

(i) If a local toll project entity does not exercise the option to develop, finance, construct, and operate a toll project under Subsection (g), or does not enter into a contract for the construction of the project and make a commitment described in Subsection (g)(2) within the two-year period prescribed in Subsection (g), the department has the option to develop, finance, construct, and operate the toll project under the terms and conditions agreed to under Subsection (e). The department has two months after the date the local toll project entity fails to exercise its option or enter into a construction contract and make a commitment described in Subsection (g)(2) to decide whether to exercise its option. If the department exercises its option with respect to a toll project under this subsection, the department, after exercising the option and within two years after the date on which all environmental requirements necessary for the development of the project are secured and all legal challenges to such development are concluded, must:

(1) enter into a contract for the construction of the toll project; and

(2) either:

(A) commit to make a payment into the toll project subaccount in an amount equal to the value of the toll project as determined by the market valuation, to be used by the department to finance the construction of additional transportation projects in the region in which the toll project is located; or

(B) commit to construct, within the period agreed to by the local toll project entity and the department, additional transportation projects in the region in which the toll project is located with estimated construction costs equal to the market valuation of the toll project.

(j) If the department does not exercise the option to develop, finance, construct, and operate a toll project under Subsection (i), or does not enter into a contract for the construction of the project and make a commitment described in Subsection (i)(2) within the two-year period prescribed in Subsection (i), the local toll project entity and the department may meet again for the purpose of agreeing on revised terms and conditions for the development, construction, and operation of the toll project, and the local toll project entity and the department shall follow the process prescribed in Subsections (f)-(i).

(k) Consistent with federal law, the commission and the department shall assist a local toll project entity in the development, financing, construction, and operation of a toll project for which the local toll project entity has exercised its option to develop, finance, construct, and operate the project under Subsection (g) by allowing the local toll project entity to use state highway right-of-way and to access the state highway system as necessary to construct and operate the toll project. Notwithstanding any other law, the toll project entity and the commission may agree to remove the project from the state highway system and transfer ownership to the local toll project entity. The commission or the department may not require a local toll project entity to pay for the use of the right-of-way or access, except to reimburse the department for actual costs incurred or to be incurred by the department that are owed to a third party,

including the federal government, as a result of that use by the local toll project entity. If a local toll project entity exercises its option to develop, construct, and operate a toll project under this section, the following shall be deducted from the amount of the toll project entity commitment under Subsection (g)(2):

(1) an amount equal to the amount reimbursed under this subsection, if any;  
and

(2) with respect to a county operating under Chapter 284, an amount equal to the costs of any road, street, or highway project undertaken by the county under Section 284.0031 before the acceptance of the market valuation, if the county requests a deduction and specifies in reasonable detail a description and cost of the project and the department agrees that any such road, street, or highway project constitutes an additional transportation project under Subsection (g)(2)(B).

(l) A local toll project entity shall enter into an agreement with the department for any project for which the entity has exercised its option to develop, finance, construct, and operate the project under Subsection (g) and for which the entity intends to use state highway right-of-way. An agreement entered into under this subsection must contain provisions necessary to ensure that the local toll project entity's construction, maintenance, and operation of the project complies with the requirements of applicable federal and state law.

(m) Notwithstanding any other law, the commission and the department are not liable for any damages that result from a local toll project entity's use of state highway right-of-way or access to the state highway system under this section, regardless of the legal theory, statute, or cause of action under which liability is asserted.

(n) An agreement entered into by a local toll project entity and the department in connection with a toll project that is financed, constructed, or operated by the local toll project entity and that is on or directly connected to a highway in the state highway system does not create a joint enterprise for liability purposes.

(o) Notwithstanding an action of a local toll project entity taken under this section, the commission or department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

(p) A local toll project entity and the department may issue bonds, including revenue bonds and refunding bonds, or other obligations, and enter into credit agreements, to pay any costs associated with a project under this section, including the payments deposited to the applicable toll project subaccount, and the costs to construct, maintain, and operate additional transportation projects that the local toll project entity or the department commits to undertake in accordance with this section, as follows:

(1) the bonds or other obligations and the proceedings authorizing the bonds or other obligations must be submitted to the attorney general for review and approval as required by Chapter 1202, Government Code;

(2) the bonds or other obligations may be payable from and secured by revenue of one or more projects of the local toll project entity or the department, including toll road system revenues, or such other legally available revenue or funding sources as the local toll project entity or department shall determine;

(3) the bonds or other obligations may mature serially or otherwise not more than 30 years from their date of issuance;

(4) the bonds or other obligations are not a debt of and do not create a claim for payment against the revenue or property of the local toll project entity or the department, other than the revenue sources pledged for which the bonds or other obligations are issued; and

(5) the local toll project entity and the department may issue obligations and enter into credit agreements under Chapter 1371, Government Code, and for purposes of that chapter, a local toll project entity and the department shall be considered a public utility and any cost authorized to be financed in accordance with this subsection is an eligible project.

(q) The provisions of this section requiring metropolitan planning organization approval of the terms and conditions for the State Highway 99 project expire August 31, 2009.

(r) This section expires August 31, 2011.

(s) This section does not apply to:

(1) any project for which the department has issued a request for qualifications or request for competing proposals and qualifications before May 1, 2007, except for the State Highway 161 project in Dallas County;

(2) the eastern extension of the President George Bush Turnpike from State Highway 78 to IH 30 in Dallas County;

(3) the Phase 3 and 4 extensions of the Dallas North Tollway in Collin and Denton Counties from State Highway 121 to the Grayson County line, and the planned future extension into Grayson County;

(4) the Lewisville Lake Bridge (and portions of FM 720 widening projects) in Denton County; or

(5) the Southwest Parkway (State Highway 121) in Tarrant County from Dirks Road/Altamesa Boulevard to IH 30.

Sec. 228.012. PROJECT SUBACCOUNTS. (a) The department shall create a separate account in the state highway fund to hold payments received by the department under a comprehensive development agreement, the surplus revenue of a toll project or system, and payments received under Sections 228.0111(g)(2) and (i)(2). The department shall create subaccounts in the account for each project, system, or region. Interest earned on money in a subaccount shall be deposited to the credit of that subaccount.

(b) The department shall hold money in a subaccount in trust for the benefit of the region in which a project or system is located and may assign the responsibility for allocating money in a subaccount to a metropolitan planning organization in which the region is located. Except as provided by Subsection (c), money shall be allocated to projects authorized by Section 228.0055 or Section 228.006, as applicable.

(c) Money in a subaccount received from a county or the department under Section 228.0111 in connection with a project for which a county acting under Chapter 284 has the first option shall be allocated to transportation projects located in the county and the counties contiguous to that county.

(d) Not later than January 1 of each odd-numbered year, the department shall submit to the Legislative Budget Board, in the format prescribed by the Legislative Budget Board, a report on cash balances in the subaccounts created under this section and expenditures made with money in those subaccounts.

(e) The commission or the department may not:

(1) revise the formula as provided in the department's unified transportation program or a successor document in a manner that results in a decrease of a department district's allocation because of the deposit of a payment into a project subaccount or a commitment to undertake an additional transportation project under Section 228.0111; or

(2) take any other action that would reduce funding allocated to a department district because of the deposit of a payment received from the department or local toll project entity into a project subaccount or a commitment to undertake an additional transportation project under Section 228.0111.

#### ARTICLE 8. COUNTY AUTHORITY IN CONNECTION WITH CERTAIN TOLL PROJECTS

SECTION 8.01. Section 284.001(3), Transportation Code, is amended to read as follows:

(3) "Project" means:

(A) a causeway, bridge, tunnel, turnpike, highway, ferry, or any combination of those facilities, including:

(i) [~~(A)~~] a necessary overpass, underpass, interchange, entrance plaza, toll house, service station, approach, fixture, and accessory and necessary equipment that has been designated as part of the project by order of a county;

(ii) [~~(B)~~] necessary administration, storage, and other buildings that have been designated as part of the project by order of a county; and

(iii) [~~(C)~~] all property rights, easements, and related interests acquired; or

(B) a turnpike project or system, as those terms are defined by Section 370.003.

SECTION 8.02. Section 284.003, Transportation Code, is amended to read as follows:

Sec. 284.003. PROJECT AUTHORIZED; CONSTRUCTION, OPERATION, AND COST. (a) A county, acting through the commissioners court of the county, or a local government corporation, without state approval, supervision, or regulation, may:

(1) construct, acquire, improve, operate, maintain, or pool a project located:

(A) exclusively in the county;

(B) in the county and outside the county; or

(C) in one or more counties adjacent to the county;

(2) issue tax bonds, revenue bonds, or combination tax and revenue bonds to pay the cost of the construction, acquisition, or improvement of a project;

(3) impose tolls or charges as otherwise authorized by this chapter;

(4) construct a bridge over a deepwater [~~deep water~~] navigation channel, if the bridge does not hinder maritime transportation; [~~or~~]

(5) construct, acquire, or operate a ferry across a deepwater navigation channel;

(6) in connection with a project, on adoption of an order exercise the powers of a regional mobility authority operating under Chapter 370; or

(7) enter into a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a proposed or existing project in the county to the extent and in the manner applicable to the department under Chapter 223 or to a regional tollway authority under Chapter 366.

(b) The county or a local government corporation may exercise a power provided by Subsection (a)(6) only in a manner consistent with the other powers provided by this chapter. To the extent of a conflict between this chapter and Chapter 370, this chapter prevails.

(c) A project or any portion of a project that is owned by the county and licensed or leased to a private entity or operated by a private entity under this chapter to provide transportation services to the general public is public property used for a public purpose and exempt from taxation by this state or a political subdivision of this state.

(d) If the county constructs, acquires, improves, operates, maintains, or pools a project under this chapter, before December 31 of each even-numbered year the county shall submit to the department a plan for the project that includes the time schedule for the project and describes the use of project funds. The plan may provide for and permit the use of project funds and other money, including state or federal funds, available to the county for roads, streets, highways, and other related facilities in the county that are not part of a project under this chapter. A plan is not subject to approval, supervision, or regulation by the commission or the department, except that:

(1) any use of state or federal highway funds must be approved by the commission;

(2) any work on a highway in the state highway system must be approved by the department; and

(3) the department shall supervise and regulate work on a highway in the state highway system.

(e) Except as provided by federal law, an action of a county taken under this chapter is not subject to approval, supervision, or regulation by a metropolitan planning organization.

(f) The county may enter into a protocol or other agreement with the commission or the department to implement this section through the cooperation of the parties to the agreement.

(g) An action of a county taken under this chapter must comply with the requirements of applicable federal law. The foregoing compliance requirement shall apply to the role of metropolitan planning organizations under federal law, including the approval of projects for conformity to the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of a county taken under this chapter, the commission or department may take any action that is necessary in its reasonable judgment to comply with any federal requirement to enable the state to receive federal-aid highway funds.

SECTION 8.03. Subchapter A, Chapter 284, Transportation Code, is amended by adding Sections 284.0031 and 284.0032 and amending Section 284.004 to read as follows:

Sec. 284.0031. OTHER ROAD, STREET, OR HIGHWAY PROJECTS. (a) The commissioners court of a county or a local government corporation, without state approval, supervision, or regulation may:

(1) authorize the use or pledge of surplus revenue to pay or finance the costs of a project for the study, design, construction, maintenance, repair, or operation of roads, streets, highways, or other related facilities that are not part of a project under this chapter; and

(2) prescribe terms for the use of the surplus revenue, including the manner in which revenue from a project becomes surplus revenue and the manner in which the roads, streets, highways, or other related facilities are to be studied, designed, constructed, maintained, repaired, or operated.

(b) To implement this section, a county may enter into an agreement with the commission, the department, a local governmental entity, or another political subdivision of this state.

(c) A county may not take an action under this section that violates or impairs a bond resolution, trust agreement, or indenture that governs the use of the revenue of a project.

(d) Except as provided by this section, a county has the same powers, including the powers to finance and to encumber surplus revenue, and may use the same procedures with respect to the study, financing, design, construction, maintenance, repair, or operation of a road, street, highway, or other related facility under this section as are available to the county with respect to a project under this chapter.

(e) Notwithstanding other provisions of this section:

(1) any work on the state highway system must be approved by the department; and

(2) the department shall supervise and regulate any work on a highway in the state highway system.

Sec. 284.0032. TRANS-TEXAS CORRIDOR PROJECTS. If a county is requested by the commission to participate in the development of a project under this chapter that has been designated as part of the Trans-Texas Corridor, the county has, in addition to all powers granted by this chapter, all powers of the department related to the development of a project that has been designated as part of the Trans-Texas Corridor.

Sec. 284.004. USE OF COUNTY PROPERTY. (a) Notwithstanding any other law, a county may use any county property for a project under this chapter, regardless of when or how the property is acquired.

(b) In addition to authority granted by other law, a county may use state highway right-of-way and may access state highway right-of-way in accordance with Sections 228.011 and 228.0111.

SECTION 8.04. Sections 284.008(c) and (d), Transportation Code, are amended to read as follows:

(c) Except as provided by Subsection (d), a project becomes a part of the state highway system and the commission shall maintain the project without tolls when:

(1) all of the bonds and interest on the bonds that are payable from or secured by revenues of the project have been paid by the issuer of the bonds or another person with the consent or approval of the issuer; or

(2) a sufficient amount for the payment of all bonds and the interest on the bonds to maturity has been set aside by the issuer of the bonds or another person with the consent or approval of the issuer in a trust fund held for the benefit of the bondholders.

(d) ~~A [Before construction on a project under this chapter begins, a]~~ county may request that the commission adopt an order stating that a ~~the~~ project will not become part of the state highway system under Subsection (c). If the commission adopts the order:

(1) Section 362.051 does not apply to the project;

(2) the project must be maintained by the county; and

(3) the project will not become part of the state highway system unless the county transfers the project under Section 284.011.

SECTION 8.05. Sections 284.065(b) and (c), Transportation Code, are amended to read as follows:

(b) An existing project may be pooled in whole or in part with a new project or another existing project.

(c) A project may ~~not~~ be pooled more than once.

#### ARTICLE 9. REGIONAL TOLLWAY AUTHORITIES

SECTION 9.01. Section 366.003, Transportation Code, is amended by adding Subdivision (9-a) to read as follows:

(9-a) "Surplus revenue" means the revenue of a turnpike project or system remaining at the end of any fiscal year after all required payments and deposits have been made in accordance with all bond resolutions, trust agreements, indentures, credit agreements, or other instruments and contractual obligations of the authority payable from the revenue of the turnpike project or system.

SECTION 9.02. Section 366.301, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) An action of an authority taken under this chapter must comply with the requirements of applicable federal law, including provisions relating to the role of metropolitan planning organizations under federal law and the approval of projects for conformity with the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of an authority taken under this chapter, the commission or the department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

SECTION 9.03. Chapter 366, Transportation Code, is amended by adding Subchapter H to read as follows:

#### SUBCHAPTER H. COMPREHENSIVE DEVELOPMENT AGREEMENTS

Sec. 366.401. COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) An authority may use a comprehensive development agreement with a private entity to design, develop, finance, construct, maintain, repair, operate, extend, or expand a turnpike project.

(b) A comprehensive development agreement is an agreement with a private entity that, at a minimum, provides for the design, construction, rehabilitation, expansion, or improvement of a turnpike project and may also provide for the financing, acquisition, maintenance, or operation of a turnpike project.

(c) An authority may negotiate provisions relating to professional and consulting services provided in connection with a comprehensive development agreement.

(d) An authority may authorize the investment of public and private money, including debt and equity participation, to finance a function described by this section.

Sec. 366.402. PROCESS FOR ENTERING INTO COMPREHENSIVE DEVELOPMENT AGREEMENTS. (a) If an authority enters into a comprehensive development agreement, the authority shall use a competitive procurement process that provides the best value for the authority. An authority may accept unsolicited proposals for a proposed turnpike project or solicit proposals in accordance with this section.

(b) An authority shall establish rules and procedures for accepting unsolicited proposals that require the private entity to include in the proposal:

(1) information regarding the proposed project location, scope, and limits;

(2) information regarding the private entity's qualifications, experience, technical competence, and capability to develop the project; and

(3) any other information the authority considers relevant or necessary.

(c) An authority shall publish a notice advertising a request for competing proposals and qualifications in the Texas Register that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which proposals must be received if:

(1) the authority decides to issue a request for qualifications for a proposed project; or

(2) the authority authorizes the further evaluation of an unsolicited proposal.

(d) A proposal submitted in response to a request published under Subsection (c) must contain, at a minimum, the information required by Subsections (b)(2) and (3).

(e) An authority may interview a private entity submitting an unsolicited proposal or responding to a request under Subsection (c). The authority shall evaluate each proposal based on the criteria described in the request for competing proposals and qualifications and may qualify or shortlist private entities to submit detailed proposals under Subsection (f). The authority must qualify or shortlist at least two private entities to submit detailed proposals for a project under Subsection (f) unless the authority does not receive more than one proposal or one response to a request under Subsection (c).

(f) An authority shall issue a request for detailed proposals from all private entities qualified or shortlisted under Subsection (e) if the authority proceeds with the further evaluation of a proposed project. A request under this subsection may require additional information the authority considers relevant or necessary, including information relating to:

(1) the private entity's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;



(3) engineering or architectural designs;

(4) the private entity's ability to meet schedules; or

(5) a financial plan, including costing methodology and cost proposals.

(g) In issuing a request for proposals under Subsection (f), an authority may solicit input from entities qualified under Subsection (e) or any other person. An authority may also solicit input regarding alternative technical concepts after issuing a request under Subsection (f).

(h) An authority shall evaluate each proposal based on the criteria described in the request for detailed proposals and select the private entity whose proposal offers the apparent best value to the authority.

(i) An authority may enter into negotiations with the private entity whose proposal offers the apparent best value.

(j) If at any point in negotiations under Subsection (i), it appears to the authority that the highest ranking proposal will not provide the authority with the overall best value, the authority may enter into negotiations with the private entity submitting the next-highest-ranking proposal.

(k) An authority may withdraw a request for competing proposals and qualifications or a request for detailed proposals at any time. The authority may then publish a new request for competing proposals and qualifications.

(l) An authority may require that an unsolicited proposal be accompanied by a nonrefundable fee sufficient to cover all or part of its cost to review the proposal.

(m) An authority may pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. A stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority, with the unsuccessful private entity, jointly owns the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and

(2) the use by the unsuccessful private entity of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful private entity and does not confer liability on the authority.

(n) An authority may prescribe the general form of a comprehensive development agreement and may include any matter the authority considers advantageous to the authority. The authority and the private entity shall finalize the specific terms of a comprehensive development agreement.

(o) Section 366.185 and Subchapter A, Chapter 223, of this code and Chapter 2254, Government Code, do not apply to a comprehensive development agreement entered into under this subchapter.

Sec. 366.403. CONFIDENTIALITY OF INFORMATION. (a) To encourage private entities to submit proposals under this subchapter, the following information is confidential, is not subject to disclosure, inspection, or copying under Chapter 552, Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for its release until a final contract for a proposed project is entered into:

(1) all or part of a proposal that is submitted by a private entity for a comprehensive development agreement, except information provided under Sections 366.402(b)(1) and (2), unless the private entity consents to the disclosure of the information;

(2) supplemental information or material submitted by a private entity in connection with a proposal for a comprehensive development agreement unless the private entity consents to the disclosure of the information or material; and

(3) information created or collected by an authority or its agent during consideration of a proposal for a comprehensive development agreement or during the authority's preparation of a proposal to the department relating to a comprehensive development agreement.

(b) After an authority completes its final ranking of proposals under Section 366.402(h), the final rankings of each proposal under each of the published criteria are not confidential.

Sec. 366.404. PERFORMANCE AND PAYMENT SECURITY.

(a) Notwithstanding the requirements of Subchapter B, Chapter 2253, Government Code, an authority shall require a private entity entering into a comprehensive development agreement under this subchapter to provide a performance and payment bond or an alternative form of security in an amount sufficient to:

(1) ensure the proper performance of the agreement; and

(2) protect:

(A) the authority; and

(B) payment bond beneficiaries who have a direct contractual relationship with the private entity or a subcontractor of the private entity to supply labor or material.

(b) A performance and payment bond or alternative form of security shall be in an amount equal to the cost of constructing or maintaining the project.

(c) If an authority determines that it is impracticable for a private entity to provide security in the amount described by Subsection (b), the authority shall set the amount of the bonds or the alternative forms of security.

(d) A payment or performance bond or alternative form of security is not required for the portion of an agreement that includes only design or planning services, the performance of preliminary studies, or the acquisition of real property.

(e) The amount of the payment security must not be less than the amount of the performance security.

(f) In addition to, or instead of, performance and payment bonds, an authority may require the following alternative forms of security:

(1) a cashier's check drawn on a financial entity specified by the authority;

(2) a United States bond or note;

(3) an irrevocable bank letter of credit; or

(4) any other form of security determined suitable by the authority.

(g) An authority by rule shall prescribe requirements for alternative forms of security provided under this section.

Sec. 366.405. OWNERSHIP OF TURNPIKE PROJECTS. (a) A turnpike project that is the subject of a comprehensive development agreement with a private entity, including the facilities acquired or constructed on the project, is public property and is owned by the authority.

(b) Notwithstanding Subsection (a), an authority may enter into an agreement that provides for the lease of rights-of-way, the granting of easements, the issuance of franchises, licenses, or permits, or any lawful uses to enable a private entity to construct, operate, and maintain a turnpike project, including supplemental facilities. At the termination of the agreement, the turnpike project, including the facilities, are to be in a state of proper maintenance as determined by the authority and shall be returned to the authority in satisfactory condition at no further cost.

Sec. 366.406. LIABILITY FOR PRIVATE OBLIGATIONS. An authority may not incur a financial obligation for a private entity that designs, develops, finances, constructs, operates, or maintains a turnpike project. The authority or a political subdivision of the state is not liable for any financial or other obligation of a turnpike project solely because a private entity constructs, finances, or operates any part of the project.

Sec. 366.407. TERMS OF PRIVATE PARTICIPATION. (a) An authority shall negotiate the terms of private participation in a turnpike project under this subchapter, including:

(1) methods to determine the applicable cost, profit, and project distribution among the private participants and the authority;

(2) reasonable methods to determine and classify toll rates and the responsibility for setting toll rates;

(3) acceptable safety and policing standards; and

(4) other applicable professional, consulting, construction, operation, and maintenance standards, expenses, and costs.

(b) A comprehensive development agreement entered into under this subchapter may include any provision the authority considers appropriate, including a provision:

(1) providing for the purchase by the authority, under terms and conditions agreed to by the parties, of the interest of a private participant in the comprehensive development agreement and related property, including any interest in a turnpike project designed, developed, financed, constructed, operated, or maintained under the comprehensive development agreement;

(2) establishing the purchase price, as determined in accordance with the methodology established by the parties in the comprehensive development agreement, for the interest of a private participant in the comprehensive development agreement and related property;

(3) providing for the payment of an obligation incurred under the comprehensive development agreement, including an obligation to pay the purchase price for the interest of a private participant in the comprehensive development

agreement, from any available source, including securing the obligation by a pledge of revenues of the authority derived from the applicable project, which pledge shall have priority as established by the authority;

(4) permitting the private participant to pledge its rights under the comprehensive development agreement;

(5) concerning the private participant's right to operate and collect revenue from the turnpike project; and

(6) restricting the right of the authority to terminate the private participant's right to operate and collect revenue from the turnpike project unless and until any applicable termination payments have been made.

(c) An authority may enter into a comprehensive development agreement under this subchapter with a private participant only if the project is identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

(d) Section 366.406 does not apply to an obligation of an authority under a comprehensive development agreement, nor is an authority otherwise constrained from issuing bonds or other financial obligations for a turnpike project payable solely from revenues of that turnpike project or from amounts received under a comprehensive development agreement.

(e) Notwithstanding any other law, and subject to compliance with the dispute resolution procedures set out in the comprehensive development agreement, an obligation of an authority under a comprehensive development agreement entered into under this subchapter to make or secure payments to a person because of the termination of the agreement, including the purchase of the interest of a private participant or other investor in a project, may be enforced by mandamus against the authority in a district court of any county of the authority, and the sovereign immunity of the authority is waived for that purpose. The district courts of any county of the authority shall have exclusive jurisdiction and venue over and to determine and adjudicate all issues necessary to adjudicate any action brought under this subsection. The remedy provided by this subsection is in addition to any legal and equitable remedies that may be available to a party to a comprehensive development agreement.

(f) If an authority enters into a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project, the private participant shall submit to the authority for approval:

(1) the methodology for:

(A) the setting of tolls; and

(B) increasing the amount of the tolls;

(2) a plan outlining methods the private participant will use to collect the tolls, including:

(A) any charge to be imposed as a penalty for late payment of a toll;  
and

(B) any charge to be imposed to recover the cost of collecting a delinquent toll; and

(3) any proposed change in an approved methodology for the setting of a toll or a plan for collecting the toll.

(g) Except as provided by this subsection, a comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 50 years from the later of the date of final acceptance of the project or the start of revenue operations by the private participant, not to exceed a total term of 52 years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

Sec. 366.408. RULES, PROCEDURES, AND GUIDELINES GOVERNING SELECTION AND NEGOTIATING PROCESS. (a) To promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants, an authority shall adopt rules, procedures, and other guidelines governing selection of private participants for comprehensive development agreements and negotiations of comprehensive development agreements. The rules must contain criteria relating to the qualifications of the participants and the award of the contracts.

(b) An authority shall have up-to-date procedures for participation in negotiations under this subchapter.

(c) An authority has exclusive judgment to determine the terms of an agreement.

Sec. 366.409. USE OF CONTRACT PAYMENTS. (a) Payments received by an authority under a comprehensive development agreement shall be used by the authority to finance the construction, maintenance, or operation of a turnpike project or a highway.

(b) The authority shall allocate the distribution of funds received under Subsection (a) to the counties of the authority based on the percentage of toll revenue from users, from each county, of the project that is the subject of the comprehensive development agreement. To assist the authority in determining the allocation, each entity responsible for collecting tolls for a project shall calculate on an annual basis the percentage of toll revenue from users of the project from each county within the authority based on the number of recorded electronic toll collections.

SECTION 9.04. Section 366.033(f), Transportation Code, is amended to read as follows:

(f) An authority may rent, lease, franchise, license, or otherwise make portions of any property of the authority, including tangible or intangible property, ~~its properties~~ available for use by others in furtherance of its powers under this chapter by increasing:

(1) the feasibility or efficient operation ~~[the revenue]~~ of a turnpike project or system; or

(2) the revenue of the authority.

SECTION 9.05. Subchapter B, Chapter 366, Transportation Code, is amended by adding Sections 366.037 and 366.038 to read as follows:

Sec. 366.037. OTHER HIGHWAY PROJECTS. (a) In addition to the powers granted under this chapter and without supervision or regulation by any state agency or local governmental entity, but subject to an agreement entered into under Subsection (c), the board of an authority may by resolution, and on making the findings set forth in this subsection, authorize the use of surplus revenue of a turnpike

project or system for the study, design, construction, maintenance, repair, and operation of a highway or similar facility that is not a turnpike project if the highway or similar facility is:

(1) situated in a county in which the authority is authorized to design, construct, and operate a turnpike project;

(2) anticipated to either:

(A) enhance the operation or revenue of an existing, or the feasibility of a proposed, turnpike project by bringing traffic to that turnpike project or enhancing the flow of traffic either on that turnpike project or to or from that turnpike project to another facility; or

(B) ameliorate the impact of an existing or proposed turnpike project by enhancing the capability of another facility to handle traffic traveling, or anticipated to travel, to or from that turnpike project; and

(3) not anticipated to result in an overall reduction of revenue of any turnpike project or system.

(b) The board in the resolution may prescribe terms for the use of the surplus revenue, including the manner in which the highway or related facility shall be studied, designed, constructed, maintained, repaired, or operated.

(c) An authority shall enter into an agreement to implement this section with the department, the commission, a local governmental entity, or another political subdivision that owns a street, road, alley, or highway that is directly affected by the authority's turnpike project or related facility.

(d) An authority may not:

(1) take an action under this section that violates, impairs, or is inconsistent with a bond resolution, trust agreement, or indenture governing the use of the revenue of a turnpike project or system; or

(2) commit in any fiscal year expenditures under this section exceeding 10 percent of its surplus revenue from the preceding fiscal year.

(e) In authorizing expenditures under this section, the board shall consider:

(1) balancing throughout the counties of the authority the application of funds generated by its turnpike projects and systems, taking into account where those amounts are already committed or programmed as a result of this section or otherwise; and

(2) connectivity to an existing or proposed turnpike project or system.

(f) Except as provided by this section, an authority has the same powers and may use the same procedures with respect to the study, financing, design, construction, maintenance, repair, and operation of a highway or similar facility under this section as are available to the authority with respect to a turnpike project or system.

(g) Notwithstanding other provisions of this section:

(1) any work on a highway in the state highway system must be approved by the department; and

(2) the department shall supervise and regulate any work on a highway in the state highway system.

Sec. 366.038. TOLL COLLECTION. An authority shall provide customer service and other toll collection and enforcement services for a toll project, regardless of whether the toll project is developed, financed, constructed, and operated under a comprehensive development agreement or another agreement with the authority.

SECTION 9.06. The heading to Section 366.185, Transportation Code, is amended to read as follows:

Sec. 366.185. ENGINEERING, DESIGN, AND CONSTRUCTION SERVICES [COMPETITIVE BIDDING].

SECTION 9.07. Section 366.185, Transportation Code, is amended by amending Subsection (a) and adding Subsections (c) through (f) to read as follows:

(a) A contract made by an authority that requires the expenditures of public funds for the construction or maintenance of a turnpike project may ~~must~~ be let by a competitive bidding procedure in which the contract is awarded to the lowest responsible bidder that complies with the authority's criteria.

(c) An authority may procure a combination of engineering, design, and construction services in a single procurement for a turnpike project, provided that any contract awarded results in the best value to the authority.

(d) The authority shall adopt rules governing the award of contracts for engineering, design, construction, and maintenance services in a single procurement.

(e) Notwithstanding any other provision of state law, an authority may let a contract for the design and construction of a turnpike project by a construction manager-at-risk procedure under which the construction manager-at-risk provides consultation to the authority during the design of the turnpike project and is responsible for construction of the turnpike project in accordance with the authority's specifications. A construction manager-at-risk shall be selected on the basis of criteria established by the authority, which may include the construction manager-at-risk's experience, past performance, safety record, proposed personnel and methodology, proposed fees, and other appropriate factors that demonstrate the construction manager-at-risk's ability to provide the best value to the authority and to deliver the required services in accordance with the authority's specifications.

(f) The authority shall adopt rules governing the award of contracts using construction manager-at-risk procedures under this section.

SECTION 9.08. Subchapter F, Chapter 366, Transportation Code, is amended by adding Sections 366.2521 and 366.2522 to read as follows:

Sec. 366.2521. GIFTS AND CONTRIBUTIONS; OFFENSE. (a) In this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

(b) A director commits an offense if the person solicits, accepts, or agrees to accept any benefit from:

(1) a person the director knows to be subject to regulation, inspection, or investigation by the authority; or

(2) a person the director knows is interested in or likely to become interested in any contract, purchase, payment, claim, transaction, or matter involving the exercise of the director's discretion.

(c) A director who receives an unsolicited benefit that the director is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

(d) This section does not apply to:

(1) a fee prescribed by law to be received by a director;

(2) a benefit to which the director is lawfully entitled; or

(3) a benefit for which the director gives legitimate consideration in a capacity other than as a director.

(e) An offense under this section is a Class A misdemeanor.

(f) If conduct that constitutes an offense under this section also constitutes an offense under Section 36.08, Penal Code, the actor may be prosecuted under this section or Section 36.08.

Sec. 366.2522. OFFERING GIFT TO A DIRECTOR; OFFENSE. (a) A person commits an offense if the person offers, confers, or agrees to confer any benefit on a director that the person knows the director is prohibited from accepting under Section 366.2521.

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

(c) If conduct that constitutes an offense under this section also constitutes an offense under Section 36.09, Penal Code, the actor may be prosecuted under this section or Section 36.09.

SECTION 9.09. Subchapter F, Chapter 366, Transportation Code, is amended by adding Section 366.2575 to read as follows:

Sec. 366.2575. BOARD VOTE ON COUNTY REQUEST. The commissioners court of a county of an authority may request the board of the authority to vote on whether to build a project that the county requests.

SECTION 9.10. Subchapter G, Chapter 366, Transportation Code, is amended by adding Section 366.305 to read as follows:

Sec. 366.305. TRANS-TEXAS CORRIDOR PROJECTS. If an authority is requested by the commission to participate in the development of a turnpike project that has been designated as part of the Trans-Texas Corridor, the authority shall have, in addition to all powers granted in this chapter, all powers of the department related to the development of Trans-Texas Corridor projects.

SECTION 9.11. The TxDOT/NTTA Regional Protocol entered into between the Texas Department of Transportation and the North Texas Tollway Authority and approved on August 10, 2006, by the tollway authority and on August 24, 2006, by the department is invalidated.

#### ARTICLE 10. REGIONAL MOBILITY AUTHORITIES

SECTION 10.01. Section 370.301(d), Transportation Code, is amended to read as follows:

(d) The commission or department may use federal money for any purpose described by this chapter. An action of an authority taken under this chapter must comply with the requirements of applicable federal law, including provisions relating to the role of metropolitan planning organizations under federal law and the approval of projects for conformity with the state implementation plan relating to air quality,



the use of toll revenue, and the use of the right-of-way of and access to federal-aid highways. Notwithstanding an action of an authority taken under this chapter, the commission or the department may take any action that in its reasonable judgment is necessary to comply with any federal requirement to enable this state to receive federal-aid highway funds.

## ARTICLE 11. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR TOLL PROJECTS

SECTION 11.01. Subtitle G, Title 6, Transportation Code, is amended by adding Chapter 371 to read as follows:

### CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR HIGHWAY TOLL PROJECTS

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. DEFINITIONS. In this chapter:

(1) "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project is:

(A) a part of the state highway system; or

(B) subject to the jurisdiction of the department.

(2) "Toll project entity" means an entity authorized by law to acquire, design, construct, operate, and maintain a toll project, including:

(A) the department, including under Chapter 227;

(B) a regional tollway authority under Chapter 366;

(C) a regional mobility authority under Chapter 370; or

(D) a county under Chapter 284.

Sec. 371.002. APPLICABILITY. This chapter does not apply to a project for which the commission selected an apparent best value proposer before May 1, 2007.

[Sections 371.003-371.050 reserved for expansion]

#### SUBCHAPTER B. OVERSIGHT

Sec. 371.051. ATTORNEY GENERAL REVIEW. A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD AND STATE AUDITOR. (a) Not later than the 10th day after the date of qualifying or shortlisting private entities to submit detailed proposals for a toll project, a toll project entity shall provide the Legislative Budget Board with the names of qualifying or shortlisted proposers and their team members.

(b) At least 30 days before entering into a comprehensive development agreement, a toll project entity shall provide the Legislative Budget Board with:

(1) a copy of the version of the proposed comprehensive development agreement to be executed;

(2) a copy of the proposal submitted by the apparent best value proposer;  
and

(3) a financial forecast prepared by the toll project entity that includes:

(A) toll revenue the entity projects will be derived from the project during the planned term of the agreement;

(B) estimated construction costs and operating expenses; and

(C) the amount of income the entity projects the private participant in the agreement will realize during the planned term of the agreement.

(c) Before entering into a comprehensive development agreement, a toll project entity shall provide the state auditor with the traffic and revenue report prepared by the toll project entity or its consultant for the project. The entity may not enter into the comprehensive development agreement before the 30th day after the date that the state auditor receives the report so that the state auditor may review and comment on the report and the methodology used to develop the report.

(d) Before the comprehensive development agreement is entered into, financial forecasts and traffic and revenue reports prepared by or for a toll project entity for the project are confidential and are not subject to disclosure, inspection, or copying under Chapter 552, Government Code.

[Sections 371.053-371.100 reserved for expansion]

#### SUBCHAPTER C. CONTRACT PROVISIONS

Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action shall develop a formula for making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. A formula must calculate an estimated amount of loss to the private participant as a result of the termination for convenience.

(b) The formula shall be based on investments, expenditures, and the internal rate of return on equity under the agreed base case financial model as projected over the original term of the agreement, plus an agreed percentage markup on that amount.

(c) A formula under Subsection (b) may not include any new estimate of future revenue from the project. Compensation to the private participant upon termination for convenience may not exceed the amount determined using the formula under Subsection (b).

Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE DEVELOPMENT AGREEMENTS. If a toll project entity elects to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a project, the entity may:

(1) if authorized to issue bonds for that purpose, issue bonds to:

(A) make any applicable termination payments to the private participant; or

(B) purchase the interest of the private participant in the comprehensive development agreement or related property; or

(2) provide for the payment of obligations of the private participant incurred pursuant to the comprehensive development agreement.

Sec. 371.103. PROHIBITION AGAINST LIMITING OR PROHIBITING CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A comprehensive development agreement may not contain a provision that limits or prohibits the construction, reconstruction, expansion, rehabilitation, operation, or maintenance of a highway or other transportation project, as that term is defined by Section 370.003, by the toll project entity or other governmental entity, or by a private entity under a contract with the toll project entity or other governmental entity.

(b) Except as provided by Subsection (c), a comprehensive development agreement may contain a provision authorizing the toll project entity to compensate the private participant in the agreement for the loss of toll revenues attributable to the construction by the entity of a limited access highway project located within an area that extends up to four miles from either side of the centerline of the project developed under the agreement, less the private participant's decreased operating and maintenance costs attributable to the highway project, if any.

(c) A comprehensive development agreement may not require the toll project entity to provide compensation for the construction of:

(1) a highway project contained in the state transportation plan or a transportation plan of a metropolitan planning organization in effect on the effective date of the agreement;

(2) work on or improvements to a highway project necessary for improved safety, or for maintenance or operational purposes;

(3) a high occupancy vehicle exclusive lane addition or other work on any highway project that is required by an environmental regulatory agency; or

(4) a transportation project that provides a mode of transportation that is not included in the project that is the subject of the comprehensive development agreement.

(d) The private participant has the burden of proving any loss of toll revenue resulting from the construction of a highway project described by Subsection (b).

(e) A comprehensive development agreement that contains a provision described by Subsection (b) must require the private participant to provide compensation to the toll project entity in the amount of any increase in toll revenues received by the private participant that is attributable to the construction of a highway project described by Subsection (b), less the private participant's increased operation and maintenance costs attributable to the highway project, if any.

[Sections 371.104-371.150 reserved for expansion]

#### SUBCHAPTER D. DISCLOSURE OF INFORMATION

Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION. (a) Before a toll project entity enters into a contract for the construction of a toll project, the entity shall publish in the manner provided by Section 371.152 information regarding:

(1) project financing, including:

(A) the total amount of debt that has been and will be assumed to acquire, design, construct, operate, and maintain the toll project;

(B) a description of how the debt will be repaid, including a projected timeline for repaying the debt; and

(C) the projected amount of interest that will be paid on the debt;

(2) whether the toll project will continue to be tolled after the debt has been repaid;

(3) a description of the method that will be used to set toll rates;

(4) a description of any terms in the contract relating to competing facilities, including any penalties associated with the construction of a competing facility;

(5) a description of any terms in the contract relating to a termination for convenience provision, including any information regarding how the value of the project will be calculated for the purposes of making termination payments;

(6) the initial toll rates, the methodology for increasing toll rates, and the projected toll rates at the end of the term of the contract; and

(7) the projected total amount of concession payments.

(b) A toll project entity may not enter into a contract for the construction of a toll project before the 30th day after the date the information is first published under Section 371.152.

Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Information under Section 371.151 must be published in a newspaper published in the county in which the toll project is to be constructed once a week for at least two weeks before the time set for entering into the contract and in two other newspapers that the toll project entity may designate.

(b) Instead of the notice required by Subsection (a), if the toll project entity estimates that the contract involves an amount less than \$300,000, the information may be published in two successive issues of a newspaper published in the county in which the project is to be constructed.

(c) If a newspaper is not published in the county in which the toll project is to be constructed, notice shall be published in a newspaper published in the county:

(1) nearest the county seat of the county in which the improvement is to be made; and

(2) in which a newspaper is published.

Sec. 371.153. HEARING. (a) A toll project entity shall hold a public hearing on the information published under Section 371.152 not later than the 10th day after the date the information is first published and not less than 10 days before the entity enters into the contract.

(b) A hearing under this section must be held in the county seat of the county in which the toll project is located.

(c) A hearing under this section must include a formal presentation and a mechanism for responding to comments and questions.

#### ARTICLE 12. EFFECTIVE DATE

SECTION 12.01. 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.

The amendment to **CSSB 792** was read.

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

#### **Floor Amendment No. 2**

Amend Floor Amendment No. 1 to **CSSB 792** as follows:

(1) In SECTION 3.01 of the amendment, strike proposed Subsection (h), Section 223.210, Transportation Code (page 6, line 13 through page 7, line 1), and substitute:

(h) Notwithstanding the TxDOT/NTTA Regional Protocol entered into between the Texas Department of Transportation and the North Texas Tollway Authority (the authority) and approved on August 10, 2006, by the authority and on August 24, 2006, by the department, Subsection (b) does not apply to a comprehensive development agreement entered into in connection with State Highway 121 if before

the commission or the department enters into a contract for the financing, construction, or operation of the project with a private participant, an authority under Chapter 366 was granted the ability to finance, construct, or operate, as applicable, the portion of the toll project located within the boundaries of the authority, and the authority was granted a period of 60 days from March 26, 2007, to submit a commitment to the metropolitan planning organization which is determined to be equal to or greater than any other commitment submitted prior to March 26, 2007. If the financial value of the commitment is determined to be equal to or greater value than any other commitment submitted prior to March 26, 2007, the commission shall allow the authority to develop the project.

(2) In SECTION 7.01 of the amendment, in proposed Subsection (a)(2)(B), Section 228.0111, Transportation Code (page 16, line 18), between "project" and the comma, insert "using agreed-upon assumptions".

(3) In SECTION 7.01 of the amendment, in proposed Subsection (a)(2)(B), Section 228.0111, Transportation Code (page 16, line 19), between "to" and "construct" insert "finance".

(4) In SECTION 7.01 of the amendment, in proposed Subsection (g), Section 228.0111, Transportation Code (page 18, line 15), strike "In an area where a toll project is operated by" and substitute "For a project proposed to be located within the boundaries of".

(5) Add the following appropriately numbered SECTION to ARTICLE 7 of the amendment and renumber subsequent SECTIONS accordingly:

SECTION 7.\_\_\_\_. Section 228.0111, Transportation Code, as added by this article, applies to a project associated with State Highway 161 in Dallas County.

(6) In SECTION 9.05 of the amendment, strike proposed Section 366.038, Transportation Code (page 44, line 31 through page 45, line 5), and substitute:

Sec. 366.038. TOLL COLLECTION. An authority shall provide, for reasonable compensation, customer service and other toll collection and enforcement services for a toll project in the boundaries of the authority, regardless of whether the toll project is developed, financed, constructed, and operated under an agreement, including a comprehensive development agreement, with the authority or another entity.

The amendment to Floor Amendment No. 1 to **CSSB 792** 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 Williams offered the following amendment to Floor Amendment No. 1:

### **Floor Amendment No. 3**

Amend Floor Amendment No. 1 to **CSSB 792** in SECTION 7.01 of the amendment, in proposed Section 228.0111, Transportation Code (page 18, between lines 7 and 8), by inserting:

(f-2) If the department and the local toll project entity are unable to mutually determine which entity will develop the market valuation of the toll project under Subsection (f), neither the department or the local toll project entity may develop, construct, or operate the project as a toll project.

The amendment to Floor Amendment No. 1 to **CSSB 792** 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 Nichols offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 4**

Amend Floor Amendment No. 1 to **CSSB 792** in SECTION 7.01 of the amendment, in proposed Section 228.0111, Transportation Code (page 17, between lines 16 and 17), by inserting:

(e-1) If the local toll project entity and the department are unable to mutually agree on the terms and conditions for the development, construction, and operation of the toll project as required by Subsection (e), neither the local toll project entity or the department may develop the project as a toll project.

The amendment to Floor Amendment No. 1 to **CSSB 792** 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.

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

**Floor Amendment No. 5**

Amend Floor Amendment No. 1 to **CSSB 792** as follows:

(1) On page 6, lines 8-9, by striking the words "Interstate Highway 37." and substituting "the San Antonio River."

(2) On page 9, line 2, by striking "575,000" and substituting "300,000"

LUCIO  
HINOJOSA

The amendment to Floor Amendment No. 1 to **CSSB 792** 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. 5.

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

**Floor Amendment No. 6**

Amend Floor Amendment No. 1 to **CSSB 792** in SECTION 11.01 of the amendment, at the end of proposed Subsection (d), Section 371.052, Transportation Code (page 50, at the end of line 31), by adding "On or after the date the comprehensive development agreement is entered into, the financial forecasts and traffic revenue reports are public information under Chapter 552, Government Code."

The amendment to Floor Amendment No. 1 to **CSSB 792** 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. 6.

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

**Floor Amendment No. 7**

Amend Floor Amendment No. 1 to **CSSB 792** by adding an appropriately numbered SECTION to the bill to read as follows, and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subsections (b) and (d), Section 222.003, Transportation Code, are amended to read as follows:

(b) The aggregate principal amount of the bonds and other public securities that are issued may not exceed \$6 [~~\$3~~] billion. The commission may only issue bonds or other public securities in an aggregate principal amount of not more than \$1.5 [~~\$1~~] billion each year.

(d) Of the aggregate principal amount of bonds and other public securities that may be issued under this section, the commission shall issue bonds or other public securities in an aggregate principal amount of \$1.2 billion [~~\$600 million~~] to fund projects that reduce accidents or correct or improve hazardous locations on the state highway system. The commission by rule shall prescribe criteria for selecting projects eligible for funding under this section. In establishing criteria for the projects, the commission shall consider accident data, traffic volume, pavement geometry, and other conditions that can create or exacerbate hazardous roadway conditions.

The amendment to Floor Amendment No. 1 to **CSSB 792** 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. 7.

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 792**, 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.

**CSSB 792** as amended was passed to engrossment by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 792 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 **CSSB 792** 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.

### STATEMENT OF LEGISLATIVE INTENT

Senator Williams submitted the following statement of legislative intent for **CSSB 792**:

Section 227.005(b), Transportation Code, requires the Texas Department of Transportation to make public in a timely manner all documents, plans, and contracts related to the Trans-Texas Corridor. Sections 371.151 and 371.152, Transportation Code, require a toll project entity to disclose and publish certain financial information relating to a toll project of that entity. It is my intent that, consistent with the provisions of Section 227.005(a), Transportation Code, the Texas Department of Transportation need not make public documents, plans, financial information, and contracts that are confidential or otherwise excepted from disclosure under the Public Information Act and other statutes governing access to records.

WILLIAMS

(Senator Watson in Chair)

### MESSAGES FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 14, 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:

**HCR 234**, In memory of the Honorable William M. Steger, U.S. District Judge for the Eastern District of Texas.

**HCR 235**, Honoring Sergeant Brian J. Burzynski of the Texas Rangers for investigating allegations of abuse at a Texas Youth Commission facility.

**HCR 250**, Honoring Nate Blakeslee of the Texas Observer and Doug Swanson of The Dallas Morning News for their reporting regarding the Texas Youth Commission.

**HCR 251**, Commending Ana Yanez Correa and Marc Levin on their contributions to the legislature's deliberations on juvenile justice and criminal justice in general.

**HCR 252**, Commending Isela Gutierrez and Will Harrell on their efforts regarding reforming the Texas Youth Commission.

**SCR 74**, In memory of Clinton Brady Thrasher of McAllen and Henderson.



**SCR 78**, Recognizing Bob Knight for his many contributions to the sport of basketball.

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

**HB 522** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 1260** (140 Yeas, 0 Nays, 2 Present, not voting)

**HB 1279** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 1396** (140 Yeas, 0 Nays, 2 Present, not voting)

**HB 1852** (144 Yeas, 0 Nays, 2 Present, not voting)

**HB 1922** (141 Yeas, 0 Nays, 2 Present, not voting)

**HB 1987** (143 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 2004** (non-record vote)

House Conferees: Giddings - Chair/Bailey/Elkins/Solomons/Zedler

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

**SB 103** (non-record vote)

House Conferees: Madden - Chair/Hochberg/Jones, Delwin/McReynolds/Phillips

**SB 426** (non-record vote)

House Conferees: Hill - Chair/Creighton/Hochberg/Puente/Quintanilla

**SB 593** (non-record vote)

House Conferees: Hartnett - Chair/Gonzales/Goolsby/Hopson/Hughes

**SB 893** (non-record vote)

House Conferees: Raymond - Chair/Guillen/Phillips/Pickett/Quintanilla

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**(Senator Brimer in Chair)**

**COMMITTEE SUBSTITUTE  
SENATE BILL 439 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 439** at this time on its second reading:

**CSSB 439**, Relating to advance directives and health care and treatment decisions.

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 439** (Senate committee printing) as follows:

(1) In SECTION 4 of the bill, in amended Subsection (c), Section 166.045, Health and Safety Code (page 1, line 57), strike "of at least the same level".

(2) In SECTION 5 of the bill (page 3, lines 23 through 26), strike added Subdivision (2), Subsection (b-1), Section 166.046, Health and Safety Code, and substitute the following:

(2) be accompanied at the meeting at the surrogate's discretion by five or more persons for support, subject to the hospital's reasonable written attendance policy as necessary to:

(A) facilitate information sharing and discussion of the patient's medical status and treatment requirements; and

(B) preserve the order and decorum of the meeting; and

(3) In SECTION 5 of the bill, in amended Subsection (e), Section 166.046, Health and Safety Code (page 3, lines 49 through 51), strike "of at least the same level as was provided at the time the meeting with the ethics or medical committee was held under Subsection (a-2)".

(4) In SECTION 7 of the bill, in amended Subsection (a), Section 166.052, Health and Safety Code (page 5, lines 59 through 62), strike "by one or more persons to support you, subject to the hospital's reasonable written attendance policy and ability of the committee to accommodate the persons attending" and substitute "by five or more persons, at your discretion, to support you, subject to the hospital's reasonable written attendance policy to facilitate information sharing and discussion of the patient's medical status and treatment requirements and preserve the order and decorum of the meeting".

(5) In SECTION 8 of the bill, following added Subsection (c), Section 166.054, Health and Safety Code (page 8, between lines 40 and 41), insert the following:

(d) The department shall adopt rules to:

(1) establish a standardized form for the reporting requirements of this section; and

(2) post on the department's Internet website the data submitted under Subsection (b) in the format provided by rule.

The amendment to **CSSB 439** 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:

Absent: Ogden.

Senator Deuell offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSSB 439** in SECTION 5 of the bill, in amended Subsection (e-1), Section 166.046, Health and Safety Code (Senate committee printing, page 4, line 3), by striking "or another facility in the same health care system".

The amendment to **CSSB 439** 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:

Absent: Ogden.

Senator Deuell offered the following amendment to the bill:

### **Floor Amendment No. 3**

Amend **CSSB 439** (Senate committee printing) as follows:

(1) In SECTION 5 of the bill, in amended Subsection (a), Section 166.046, Health and Safety Code (page 2, line 20), between "problems" and the underlined period, insert "and the risk of serious medical pain or discomfort that cannot be alleviated based on reasonable medical judgment outweighs the benefit of continued artificial nutrition and hydration".

(2) In SECTION 5 of the bill, in amended Subsection (e), Section 166.046, Health and Safety Code (page 3, line 56), between "conditions" and the underlined period, insert "and the risk of serious medical pain or discomfort that cannot be alleviated based on reasonable medical judgment outweighs the benefit of continued artificial nutrition and hydration".

(3) In SECTION 5 of the bill, in amended Subsection (e), Section 166.046, Health and Safety Code (page 3, line 64), between "conditions" and ";" after the 21st calendar", insert "and the risk of serious medical pain or discomfort that cannot be alleviated based on reasonable medical judgment outweighs the benefit of continued artificial nutrition and hydration".

(4) In SECTION 7 of the bill, in amended Subsection (a), Section 166.052, Health and Safety Code (page 6, lines 30 and 31), between "conditions" and ";" until the patient", insert "and the risk of serious medical pain or discomfort that cannot be alleviated based on reasonable medical judgment outweighs the benefit of continued artificial nutrition and hydration".

The amendment to **CSSB 439** 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 except as follows:

Absent: Ogden.

Senator Deuell offered the following amendment to the bill:

### **Floor Amendment No. 4**

Amend **CSSB 439** (Senate committee printing) as follows:

(1) Strike the recital to SECTION 1 of the bill (page 1, lines 13 through 15) and substitute the following:

Section 166.002, Health and Safety Code, is amended by amending Subdivisions (6) and (13) and adding Subdivision (16) to read as follows:

(2) In SECTION 1 of the bill, in amended Section 166.002, Health and Safety Code (page 1, between lines 18 and 19), insert the following:

(13) "Terminal condition" means an incurable condition that:

(A) is caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care;

(B) presumes a~~[-A]~~ patient who has been admitted to a program under which the person receives hospice services provided by a home and community support services agency licensed under Chapter 142 has ~~[is presumed to have]~~ a terminal condition for purposes of this chapter; and

(C) permanently requires in an intensive care unit and according to reasonable medical judgment two or more of the following therapies in order to keep the patient alive for more than six months without which the patient would die:

(i) mechanical ventilation;

(ii) dialysis; or

(iii) blood pressure maintenance drugs or devices.

(3) In SECTION 1 of the bill, strike added Subdivision (16), Section 166.002, Health and Safety Code (page 1, lines 19 through 29).

(4) In SECTION 1 of the bill, in Section 166.002, Health and Safety Code (page 1, line 30), renumber added Subdivision (17) as Subdivision (16).

(5) Strike SECTION 2 of the bill, amending Subdivision (2), Section 166.031, Health and Safety Code (page 1, lines 34 through 38)

(6) In SECTION 4 of the bill, in amended Subsection (c), Section 166.045, Health and Safety Code (page 1, lines 52 and 53), strike "or preterminal".

(7) In SECTION 5 of the bill, in amended Subsection (a), Section 166.046, Health and Safety Code (page 2, line 5 and lines 15 and 16), strike "or preterminal" each place it appears in the subsection.

(8) Renumber the SECTIONS of the bill accordingly.

The amendment to **CSSB 439** 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 except as follows:

Absent: Ogden.

Senator Patrick offered the following amendment to the bill:

### **Floor Amendment No. 5**

Amend **CSSB 439** in SECTION 5 of the bill, strike amended Subsection (b), Section 166.046, Health and Safety Code (Senate committee printing, page 2, line 40 through page 3, line 18), and substitute the following:

(b) On receipt of a request for a meeting of the ethics or medical committee as described in Subsection (a-2) ~~[The patient or the person responsible for the health care decisions of the individual who has made the decision regarding the directive or treatment decision]:~~

(1) not later than the seventh calendar day before the date of the meeting requested under Subsection (a-2), unless the time period is waived by mutual agreement, the surrogate shall:

(A) be offered ~~[may be given]~~ a written description of the ethics or medical committee review process and may be offered any other policies and procedures related to this section adopted by the health care facility;

(B) be provided information that the surrogate is entitled to receive the continued assistance of a patient liaison to assist the surrogate throughout the process described in this section;

(C) be provided information that the surrogate may seek a second opinion from other medical professionals regarding the patient's medical status and treatment requirements and communicate the resulting information to the members of the ethics or medical committee for consideration before the meeting;

(D) ~~[(2) shall be informed of the committee review process not less than 48 hours before the meeting called to discuss the patient's directive, unless the time period is waived by mutual agreement;~~

[(3) at the time of being so informed, shall] be provided[;

[(A)] a copy of the appropriate statement set forth in Section 166.052;  
and

(E) be provided ~~[(D)]~~ a copy of the registry list of health care providers, health care facilities, and referral groups that have volunteered their readiness to consider accepting transfer or to assist in locating a provider willing to accept transfer that is posted on the website maintained by the department ~~[Texas Health Care Information Council]~~ under Section 166.053; and

(2) if requested in writing by the surrogate, the surrogate is entitled to receive:

(A) not later than 72 hours after the request is made, a free copy of the portion of the patient's medical record related to the current admission to the facility or the treatment received by the patient during the preceding 30 calendar days in the facility, whichever is shorter, together with requested diagnostic results and reports reasonably requested by the surrogate; and

(B) not later than the fifth calendar day after the date of the request, a free copy of the remainder of the patient's medical record, if any, related to the current admission to the facility.

The amendment to **CSSB 439** 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. 5 except as follows:

Absent: Ogden.

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

**CSSB 439** as amended was passed to engrossment by a viva voce vote.

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

Absent: Ogden.

**COMMITTEE SUBSTITUTE  
SENATE BILL 439 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 **CSSB 439** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

**CONFERENCE COMMITTEE REPORT ON  
HOUSE BILL 8**

Senator Deuell submitted the following Conference Committee Report:

Austin, Texas  
May 14, 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 **HB 8** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

DEUELL  
BRIMER  
SHAPIRO  
HINOJOSA  
OGDEN

RIDDLE  
PENA  
MADDEN  
DESHOTEL  
GATTIS

On the part of the Senate

On the part of the House

The Conference Committee Report on **HB 8** was filed with the Secretary of the Senate.

**SENATE RULES SUSPENDED  
(Posting Rules)**

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

**HJR 103, HB 1563, HB 2238, HB 120, HB 1374, HB 2371, HB 2639, HB 2834.**

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Fraser and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Business and Commerce might meet and consider the following bills tomorrow:

**HB 1188, HB 2118, HB 2308, HB 2092, HB 3385, HB 2724.**

**SENATE RULES SUSPENDED**  
**(Posting Rules)**

On motion of Senator West and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Intergovernmental Relations might meet and consider **SB 1948** today.

**MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 5:04 p.m. agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session, until 11:00 a.m. tomorrow.

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Memorial Resolutions**

**SR 1019** by Patrick, In memory of Glen Dock Cheek of Harris County.

**SR 1020** by Watson, In memory of Mary Jane Kitchens.

**SR 1028** by Wentworth, In memory of Katalin S. "Kathy" Novak of San Antonio.

**SR 1029** by Wentworth, In memory of Keith Edward Kaiser of San Antonio.

**Congratulatory Resolutions**

**SCR 78** by Duncan, Recognizing Bob Knight for his contributions to the sport of basketball.

**SR 1018** by Deuell, Recognizing Edom Cemetery on the occasion of its 150th anniversary.

**SR 1021** by Watson, Recognizing First Baptist Church in Austin on the occasion of its 140th anniversary.

**SR 1022** by Watson, Recognizing Jan Soifer on the occasion of her 50th birthday.

**SR 1023** by Watson, Recognizing United Heritage Credit Union in Austin on the occasion of its 50th anniversary.

**SR 1024** by Watson, Recognizing Kenneth Laird on the occasion of his 60th birthday.

**SR 1025** by Watson, Recognizing Theresa Martinez of Austin on the occasion of her 60th birthday.

**SR 1026** by Watson, Recognizing Cynthia Jolly on the occasion of her retirement from the Texas Department of Public Safety.

**SR 1027** by Watson, Recognizing Alfred A. Banzer for his contributions to GTE/Verizon.

**SR 1030** by Estes, Recognizing the First National Bank of Byers on the occasion of its 100th anniversary.

**SR 1031** by Lucio, Congratulating contributors to the *Valley Morning Star* for receiving awards from the Texas Associated Press.

**SR 1032** by Lucio, Commending Darrel Z. Munoz, Jr., for achieving the rank of Eagle Scout.

**SR 1034** by Janek, Recognizing Benjamin Interiano on the occasion of his 65th birthday.

**SR 1035** by Seliger, Recognizing Southwest Airlines on the occasion of its 30th anniversary.

### **Official Designation Resolution**

**HCR 94** (Fraser), Designating June 2007 as Juneteenth/Frontier Cowboy Month.

### **RECESS**

On motion of Senator Whitmire, the Senate at 5:05 p.m. recessed until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

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## **APPENDIX**

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### **COMMITTEE REPORTS**

The following committee reports were received by the Secretary of the Senate in the order listed:

May 14, 2007

INTERGOVERNMENTAL RELATIONS — **CSHB 1720**

FINANCE — **CSSB 1640, HB 1010, SB 1848**

CRIMINAL JUSTICE — **CSHB 1303**

STATE AFFAIRS — **CSHB 3827**

EDUCATION — **CSHB 188**

JURISPRUDENCE — **CSSB 431, CSSB 1367**

NATURAL RESOURCES — **CSHB 1090, CSHB 2345**

HEALTH AND HUMAN SERVICES — **CSSB 1764, CSSJR 43, CSHB 3672**

STATE AFFAIRS — **CSHB 1602**

BUSINESS AND COMMERCE — **HB 271, CSHB 463**

ADMINISTRATION — **CSHB 3249**

HEALTH AND HUMAN SERVICES — **CSSB 1292**

CRIMINAL JUSTICE — **CSHB 530**

BUSINESS AND COMMERCE — **CSHB 1316, CSHB 1667**



**SENT TO GOVERNOR**

May 14, 2007

**SB 404, SB 573, SB 1104, SB 1360, SB 1950, SB 1960, SB 1978, SB 1981,  
SB 1982, SB 2018, SCR 61, SCR 63, SCR 67**

**SIGNED BY GOVERNOR**

May 14, 2007

**SB 158, SB 331, SB 342, SB 355, SB 580, SB 948, SB 1012, SB 1074**

