

## **BILL ANALYSIS**

Senate Research Center

H.B. 3540  
By: Pitts (Ogden)  
Finance  
5/19/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

H.B. 3540 sets forth certain statutory changes necessary to comply with assumptions made in the General Appropriations Act, respond to state fiscal concerns, and address certain fiscal matters. This bill also implements selected Legislative Budget Board Staff Performance Report recommendations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas in SECTION 2.03 (Section 1551.221, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 7.02 (Section 531.080, Government Code), SECTION 8.01 (Sections 242.806 and 242.811, Health and Safety Code), and SECTION 8.02 (Section 531.078, Government Code) of this bill.

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 13.14 (Section 111.009, Tax Code), and SECTION 16.01 (Section 2115.003, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### **ARTICLE 1. DELAYED ELIGIBILITY FOR MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM OF TEXAS**

SECTION 1.01. Amends Section 812.003(e), Government Code, to provide that membership in the Employees Retirement System of Texas begins on the 91st day after the first day a person is employed or holds office. Deletes existing text relating to persons whose employment or office holding begins before September 1, 2005.

SECTION 1.02. Repealer: Sections 812.003(d) and (h) (Membership in Employee Class), Government Code.

#### **ARTICLE 2. WAIVER OF AND SUPPLEMENTAL HEALTH COVERAGE FOR STATE EMPLOYEES**

SECTION 2.01. Amends Section 1551.104(a), Insurance Code, to provide that subject to Sections 1551.101 and 1551.102, each full-time employee is covered automatically by the basic coverage plan for employees and each annuitant is covered by the basic coverage plan for annuitants unless participation is specifically waived as provided by Section 1551.1045.

SECTION 2.02. Amends Subchapter C, Chapter 1551, Insurance Code, by adding Section 1551.1045, as follows:

Sec. 1551.1045. WAIVER. (a) Authorizes an employee or annuitant, subject to Subsections (b) and (c), to waive in writing any coverage provided under this chapter.

(b) Requires a full-time employee, to waive coverage under the basic coverage plan for employees, to demonstrate, in the manner required by the board of trustees (board), that the employee meets certain criteria.

(c) Requires an annuitant, to waive coverage under the basic coverage plan for annuitants for the purpose of eligibility for an incentive payment under Section 1551.222, to demonstrate, in the manner required by the board, that the annuitant meets certain criteria.

SECTION 2.03. Amends Subchapter E, Chapter 1551, Insurance Code, by adding Sections 1551.221 and 1551.222, as follows:

Sec. 1551.221. OPTIONAL SUPPLEMENTAL HEALTH COVERAGE FOR INDIVIDUALS ELIGIBLE UNDER TRICARE MILITARY HEALTH SYSTEM. (a) Requires the board to offer, as an optional coverage under the group benefits program, a supplemental health coverage program.

(b) Authorizes an employee or annuitant who is eligible to participate in the group benefits program and who is also eligible for benefits under the TRICARE Military Health System, under the supplemental health coverage program, to elect to receive primary coverage under the TRICARE Military Health System. Requires an employee or annuitant participating in the supplemental health coverage program to waive basic coverage through the group benefits program, but provides that the employee or annuitant receives supplemental health coverage under this section.

(c) Authorizes the cost of supplemental health coverage provided under this section to be paid in the same manner as the cost of other optional coverage is paid under Subchapter G.

(d) Requires the board of trustees (board) to contract to purchase the supplemental health coverage in accordance with Sections 1551.213-1551.216.

(e) Authorizes the board to adopt rules to implement this section.

Sec. 1551.222. INCENTIVE PAYMENTS. (a) Authorizes the board of trustees to allow an incentive payment under this section to an employee or annuitant who elects to waive coverage under the basic coverage plan for employees or annuitants as provided by Section 1551.1045(b) or (c).

(b) Provides that the incentive payment authorized by this section is in the amount authorized by the General Appropriations Act and authorizes it to be used by the employee or annuitant, in the manner prescribed by the board, only to pay for other group coverage plans provided under the group benefits program, including the supplemental health coverage offered under Section 1551.221.

(c) Requires the board, at the time of initial enrollment in the group benefits program and during subsequent open-enrollment periods, to inform employees and annuitants that they may make an election described by Subsection (a), if eligible, and receive any authorized incentive payment.

SECTION 2.04. Amends Subchapter G, Chapter 1551, Insurance Code, by adding Section 1551.324, as follows:

Sec. 1551.324. REDUCTION IN CONTRIBUTION FOR CERTAIN ACTIVE EMPLOYEES AND ANNUITANTS; INCENTIVE PAYMENTS. (a) Authorizes the state contribution for an employee's coverage or an annuitant's coverage under this chapter, notwithstanding any other provision of this subchapter, to be reduced, as provided in the General Appropriations Act, to reflect the reduced cost of coverage for an employee or annuitant who elects to waive basic coverage as provided by Section 1551.1045(b) or (c).

(b) Authorizes the state, instead of the full state contribution for an employee or annuitant who makes an election described by Subsection (a), to contribute, as

specified by the General Appropriations Act, an amount for the incentive payment authorized by Section 1551.222.

### ARTICLE 3. COMPENSATION FOR CERTAIN STATE EMPLOYEES WHO RETURN TO STATE EMPLOYMENT

SECTION 3.01. Amends Section 659.042, Government Code, as follows:

Sec. 659.042. EXCLUSIONS. Provides that a state employee who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee is not entitled to longevity pay under this subchapter

SECTION 3.02. Amends Section 659.126, Government Code, as follows:

Sec. 659.126. LOSS OF ELIGIBILITY TO RECEIVE BENEFIT REPLACEMENT PAY. (a) Provides that an eligible state employee who leaves state employment after August 31, 1995, for at least 30 consecutive days, rather than 12 consecutive months, on returning to state employment or on assuming a state office, is ineligible to receive benefit replacement pay.

(b) Provides that an eligible state-paid judge who leaves office after August 31, 1995, for at least 30 consecutive days, rather than 12 consecutive months, on return to state office or on accepting a state employment, is ineligible to receive benefit replacement pay.

(c) Provides that for purposes of Subsection (a), a state employee is not considered to have left state employment under certain circumstances

(d) Provides that an eligible state employee who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee is ineligible to receive benefit replacement pay.

SECTION 3.03. Amends Section 661.152, Government Code, by adding Subsection (l), as follows:

(l) Provides that for purposes of computing vacation leave under Subsection (d) for a state employee who receives an annuity based wholly or partly on service as a state officer or state employee in a public retirement system, as defined by Section 802.001, that was credited to the state employee, years of total state employment includes only the length of state employment after the date the state employee retired.

SECTION 3.04. Provides that this article takes effect September 1, 2005.

### ARTICLE 4. EXTENDING STATE REIMBURSEMENT PROGRAM: PETROLEUM STORAGE TANKS

SECTION 4.01. Amends Section 26.351(f), Water Code, to require the person performing corrective action under this section, if the release was reported to the Texas Commission on Environmental Quality (commission) on or before December 22, 1998, to meet the deadline for sites that require either a corrective action plan or groundwater monitoring, to have met all other deadlines under this subsection, and to have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to the executive director no later than September 1, 2007, rather than 2005. Deletes existing text requiring an agreement in writing that no corrective action plan was required to be received by the agency,

SECTION 4.02. Amends Section 26.355(b), Water Code, to provide that an owner or operator of an underground or aboveground storage tank from which a regulated substance is released is liable to the state unless the site at which the release occurred has been admitted into the

petroleum storage tank state-lead program under Section 26.3573(r-1). Makes nonsubstantive and conforming changes.

SECTION 4.03. Amends Section 26.35731(b), Water Code, to provide that the commission has discretion whether to postpone considering, processing, or paying, rather than prohibiting the commission from considering, processing, or paying a claim for reimbursement from the petroleum storage tank remediation account for corrective action work begun without prior commission approval after September 1, 1993, and filed with the commission prior to January 1, 2005. Deletes existing text relating to prior commission approval until all claims for reimbursement for corrective action work preapproved by the commission have been considered, processed, and paid.

SECTION 4.04. Amends Section 26.3573, Water Code, by amending Subsections (d), (r), and (s) and adding Subsection (r-1), as follows:

(d) Authorizes the commission to use the money in the petroleum storage tank remediation account to pay certain amounts. Deletes existing text relating to amounts to be paid.

(r) Prohibits the petroleum storage tank remediation account, except as provided by Subsection (r-1), from being used to reimburse any person for corrective action performed after September 1, 2005.

(r-1) Defines "state-lead program." Requires the executive director to grant an extension for corrective action reimbursement to a person who is an eligible owner or operator under Section 26.3571. Authorizes the petroleum storage tank remediation account to be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. Authorizes an eligible owner or operator who is granted an extension under this subsection to, not later than July 1, 2007, apply to the commission in writing using a form provided by the commission to have the site subject to corrective action placed in the state-lead program. Requires the eligible owner or operator to agree in the application to allow site access to state personnel and state contractors as a condition of placement in the state-lead program under this subsection. Requires the executive director by order, on receiving the application for placement in the state-lead program under this subsection, to place the site in the state-lead program until the corrective action is completed to the satisfaction of the commission. Provides that an eligible owner or operator of a site that is placed in the state-lead program under this subsection is not liable to the commission for any costs related to the corrective action.

(s) Prohibits the petroleum storage tank remediation account from being used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2008, rather than 2006.

SECTION 4.05. Amends Section 26.3574(b), Water Code, to provide that a fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Requires each operator of a bulk facility on withdrawal from bulk of a petroleum product to collect from the person who orders the withdrawal a fee in an amount determined by a certain method.

SECTION 4.06. Amends Section 26.361, Water Code, as follows:

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. Provides that notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2008, rather than 2006. Prohibits the commission, on or after September 1, 2008, rather than 2006, from using money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

SECTION 4.07. Effective date, this article: September 1, 2005.

ARTICLE 5. SCHOOL PROPERTY  
VALUATION AND INSPECTIONS

SECTION 5.01. Amends Section 46.008, Education Code, as follows:

Sec. 46.008. STANDARDS. (a) Creates this subsection from existing text.

(b) Requires all industrialized buildings, as defined by Section 1202.003, Occupations Code, that are purchased or leased after September 1, 2005, for use as school facilities, to be eligible to be financed with state or local tax funds, to be inspected as provided by Subchapter E, Chapter 1202, Occupations Code, to ensure compliance with the mandatory building codes or approved designs, plans, and specifications. Requires the cost of the inspections to be paid by the manufacturers or builders of the industrialized buildings as follows. Requires the Texas Commission of Licensing and Regulation to set the amount of registration fees for the manufacturers or builders of industrialized buildings under Chapter 1202, Occupations Code, and the amount of inspection fees under this section, in an amount sufficient to pay for the direct and indirect costs of inspections under this section.

SECTION 5.02. Amends Section 403.302(h), Government Code, to require the request for audit, except as otherwise provided by this subsection, to be filed with the comptroller of public accounts (comptroller) not later than the second, rather than the third, anniversary of the date of the final certification of the annual study findings. Deletes existing text relating to a change that results in a material reduction in the total taxable value of property in the school district.

ARTICLE 6. LOTTERY ADVERTISING

SECTION 6.01. Requires the Texas Lottery Commission to study and report to the legislature on the return on investment for advertising dollars spent by the Texas Lottery Commission during state fiscal year 2003 and fiscal year 2004.

ARTICLE 7. DRUG PURCHASING FOR STATE AGENCIES

SECTION 7.01. Amends Section 531.070(h), Government Code, to authorize the Health and Human Services Commission (HHSC) to negotiate with generic manufacturers and labelers, to obtain supplemental rebates for prescription drugs provided under certain programs.

SECTION 7.02. Amends Subchapter B, Chapter 531, Government Code, by adding Section 531.080, as follows:

Sec. 531.080. JOINT PURCHASING OF PRESCRIPTION DRUGS AND OTHER MEDICATIONS. (a) Authorizes HHSC and each health and human services agency authorized by the executive commissioner, subject to Subsection (b), to enter into an agreement with one or more other states for the joint bulk purchasing of prescription drugs and other medications to be used in the Medicaid program, the state child health plan, or another program under the authority of the HHSC.

(b) Prohibits an agreement under this section from being entered into until certain conditions exist.

(c) Requires HHSC, if an agreement is entered into, to adopt procedures applicable to an agreement and joint purchase required by this section. Requires the procedures to ensure that this state receives:

(1) all prescription drugs and other medications purchased with money provided by this state; and

(2) an equitable share of any price benefits resulting from the joint bulk purchase.

(d) Requires HHSC, in determining the feasibility and cost-effectiveness of entering into an agreement under this section, to identify:

(1) the most cost-effective existing joint bulk purchasing agreement; and

(2) any potential groups of states with which this state could enter into a new cost-effective joint bulk purchasing agreement.

(e) Requires the executive commissioner of HHSC to adopt rules relating to reimbursing providers that dispense drugs purchased under this section. Requires the rules to ensure that:

(1) beneficiaries of all state-funded and state and federally funded programs under which drugs purchased pursuant to this section are prescribed or dispensed have sufficient access to pharmaceutical care;

(2) participating pharmacies are reimbursed; and

(3) all pharmacies that are located in and licensed by this state are given the opportunity to participate in prescription drug programs that distribute or dispense drugs purchased under this section.

SECTION 7.03. Requires HHSC, not later than January 15, 2006, to determine the feasibility and cost-effectiveness of entering into an agreement under Section 531.080, Government Code, as added by this article. Requires HHSC, if it determines that such action is feasible and cost-effective, to take action to enter into an agreement that takes effect March 1, 2006.

SECTION 7.04. Requires the agency affected by the provision, if before implementing any provision of this article a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and authorizes a delay implementing that provision until the waiver or authorization is granted.

## ARTICLE 8. QUALITY ASSURANCE FEES

SECTION 8.01. Amends Chapter 242, Health and Safety Code, by adding Subchapter P, as follows:

### SUBCHAPTER P. QUALITY ASSURANCE FEE

Sec. 242.801. DEFINITIONS. Defines "commission," "department," "executive commissioner," and "gross receipts."

Sec. 242.802. APPLICABILITY. Provides entities to whom this subchapter does not apply.

Sec. 242.803. COMPUTING QUALITY ASSURANCE FEE. (a) Provides that a quality assurance fee is imposed on each institution subject to this subchapter for which a license fee must be paid under Section 242.034. Sets forth the characteristics of the quality assurance fee payment.

(b) Requires HHSC to establish a quality assurance fee for each patient day so that the fee does not produce annual revenues greater than six percent of the total annual gross receipts in this state. Provides that the fee is subject to adjustment as necessary. Authorizes the amount of the quality assurance fee to vary according to the number of patient days provided by an institution as necessary to obtain a waiver under federal regulations at 42 C.F.R. Section 433.68(e).

(c) Requires the amount of the quality assurance fee to be determined using certain patient days and gross receipts.

(d) Provides that the quality assurance fee is an allowable cost for reimbursement under the state Medicaid program.

(e) Prohibits a nursing facility from listing the quality assurance fee as a separate charge on a patient's or resident's billing statement or otherwise directly or indirectly attempting to charge the quality assurance fee to a patient or resident.

Sec. 242.804. PATIENT DAYS. Requires an institution, for each calendar day, to determine the number of patient days by adding certain amounts.

Sec. 242.805. REPORTING AND COLLECTION. (a) Requires HHSC or the Department of Aging and Disability Services (department) as directed by the executive commissioner of HHSC (executive commissioner) to collect the quality assurance fee.

(b) Requires each institution, not later than the 25th day after the last day of a month, to take certain actions.

Sec. 242.806. RULES; ADMINISTRATIVE PENALTY. (a) Requires the executive commissioner to adopt rules for the administration of this subchapter, including rules related to the imposition and collection of the quality assurance fee.

(b) Authorizes the executive commissioner to adopt rules granting exceptions from the quality assurance fee, including an exception for units of service reimbursed through Medicare Part A, if the commission obtains all waivers necessary under federal law, including 42 C.F.R. Section 433.68(e).

(c) Provides that an administrative penalty assessed under this subchapter in accordance with Section 242.066 may not exceed one-half of the amount of the outstanding quality assurance fee or \$20,000, whichever is greater.

Sec. 242.807. NURSING HOME QUALITY ASSURANCE FEE ACCOUNT. (a) Provides that the nursing home quality assurance fee account is a dedicated account in the general revenue fund. Requires interest earned on money in the account to be credited to the account.

(b) Requires the comptroller to deposit money collected under this subchapter to the credit of the account.

(c) Requires money in the account together with federal matching money, subject to legislative appropriation and this subchapter, to be used to support or maintain an increase in Medicaid reimbursement for institutions.

Sec. 242.808. REIMBURSEMENT OF INSTITUTIONS. (a) Authorizes HHSC, subject to legislative appropriation, to use money in the nursing home quality assurance fee account, together with any federal money available to match that money, to accomplish certain objectives.

(b) Requires HHSC to devise the formula by which amounts received under this subchapter increase the reimbursement rates paid to institutions under the state Medicaid program.

Sec. 242.809. INVALIDITY; FEDERAL FUNDS. Requires HHSC, if any portion of this subchapter is held invalid by a final order of a court that is not subject to appeal, or if the commission determines that the imposition of the fee and the expenditure as prescribed by this subchapter of amounts collected will not entitle the state to receive additional federal funds under the Medicaid program, to stop collection of the quality assurance fee and, not later than the 30th day after the date collection is stopped, to return to the institutions that paid the fees, in proportion to the total amount paid by those institutions, any money deposited to the credit of the nursing home quality assurance fee account but not spent.

Sec. 242.810. REVISION IN CASE OF DISAPPROVAL. Requires HHSC, if the Centers for Medicare and Medicaid Services disapproves the quality assurance fee plan established under this subchapter, to revise the associated state plan amendments and waiver requests as necessary to comply with federal regulations provided by 42 C.F.R. Section 433.68(e). Requires the revisions to be completed as soon as practicable after the date the commission receives notice of the disapproval.

Sec. 242.811. AUTHORITY TO ACCOMPLISH PURPOSES OF SUBCHAPTER. Authorizes the executive commissioner by rule, to adopt a definition, a method of computation, or a rate that differs from those expressly provided by or expressly authorized by this subchapter to the extent the difference is necessary to accomplish the purposes of this subchapter.

SECTION 8.02. Amends Subchapter B, Chapter 531, Government Code, by adding Sections 531.078-531.081, as follows:

Sec. 531.078. QUALITY ASSURANCE FEES ON CERTAIN WAIVER PROGRAM SERVICES. (a) Defines "gross receipts."

(b) Requires the executive commissioner by rule to establish a quality assurance fee program as provided by this section and impose a quality assurance fee on persons providing services under a home and community services waiver or a community living assistance and support services waiver.

(c) Requires the executive commissioner to establish the fee at an amount that will produce annual revenues of not more than six percent of the gross receipts of a person from services the person provides under the waiver.

(d) Requires the executive commissioner to adopt rules governing the administration and reporting of the collected fee.

(e) Requires fees collected under this section to be deposited in the waiver program quality assurance fee account.

Sec. 531.079. WAIVER PROGRAM QUALITY ASSURANCE FEE ACCOUNT. (a) The waiver program quality assurance fee account is a dedicated account in the general revenue fund. Provides that the account is exempt from the application of Section 403.095. Requires interest earned on money in the account to be credited to the account.

(b) Provides that the account consists of fees collected under Section 531.078 and interest earned on money in the account.

(c) Authorizes money in the account, subject to legislative appropriation and state and federal law, to be appropriated only to the commission to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program or to offset allowable expenses under the state Medicaid program.

Sec. 531.080. REIMBURSEMENT OF WAIVER PROGRAMS. Requires HHSC, subject to legislative appropriation and state and federal law, to use money from the waiver program quality assurance fee account, together with any federal money available to match money from the account, to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program.

Sec. 531.081. INVALIDITY; FEDERAL FUNDS. Require HHSC, if any portion of Sections 531.078-531.080 is held invalid by a final order of a court that is not subject to appeal, or if the commission determines that the imposition of the quality assurance fee and the expenditure of the money collected as provided by those sections will not entitle this state to receive additional federal money under the Medicaid program, to take certain actions.



SECTION 8.03. Amends Section 252.202(b), Health and Safety Code, to require HHSC or the department at the direction of HHSC to set the quality assurance fee for each day in an amount that will produce, rather than necessary to produce, annual revenues of not more than six percent of the total annual gross receipts in the state, rather than equal to an amount that is not more than six percent of the facility's total annual gross receipts in this state.

SECTION 8.04. Repealer: Section 252.209 (Legislative Review; Expiration), Health and Safety Code.

SECTION 8.05. (a) Requires the executive commissioner, notwithstanding Section 242.803, Health and Safety Code, as added by this article, to establish the initial quality assurance fee imposed under Subchapter P, Chapter 242, Health and Safety Code, as added by this article, based on available revenue and patient day information. Provides that the initial quality assurance fee established under this section remains in effect until HHSC obtains the information necessary to set the fee under Section 242.803, Health and Safety Code, as added by this article.

(b) Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt rules as necessary to implement Subchapter P, Chapter 242, Health and Safety Code, and Section 531.078, Government Code, as added by this article.

(c) Requires the agency affected by the provision, if before implementing any provision of this article a state agency determines a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and to delay implementing that provision until the waiver or authorization is granted.

#### ARTICLE 9. REDUCTION IN NUMBER OF LICENSE PLATES ISSUED

SECTION 9.01. Amends Subchapter A, Chapter 502, Transportation Code, by adding Section 502.010, as follows:

Sec. 502.010. ISSUANCE AND DISPLAY OF LICENSE PLATE. (a) Provides that, notwithstanding anything in this code to the contrary, including Section 502.180, the Texas Department of Transportation (TxDOT) shall issue only one license plate for attachment at the rear of the vehicle for which the plate is issued.

(b) Entitles a person, notwithstanding anything in this code to the contrary, including Section 502.404(a), to operate on a public highway a vehicle that displays only one license plate if the plate is attached at the rear of the vehicle. Authorizes a person to operate on a public highway a vehicle that displays two license plates if both plates were assigned by TxDOT for the registration period as a set of plates.

(c) Provides that in any provision of this code that relates to the issuance or display of "license plates," "plates," or a "set of plates," the term means only one license plate.

SECTION 9.02. Makes application of the article prospective.

SECTION 9.03. Effective date, this article: November 1, 2005.

#### ARTICLE 10. TRANSPORTATION FEES AND FISCAL MATTERS

SECTION 10.01. Amends Subchapter A, Chapter 222, Transportation Code, by adding Section 222.0021, as follows:

Sec. 222.0021. TRANSFERS TO GENERAL REVENUE FUND. Requires the comptroller each month, out of money in the state highway fund that is not dedicated by the Texas Constitution, to transfer the amount of \$5,666,667 from the state highway fund to the general revenue fund.

SECTION 10.02. Amends Section 502.161(a), Transportation Code, to set forth the fees for a registration year for registration of a passenger car, a municipal bus, or a private bus that weighs 6,000 pounds or less.

SECTION 10.03. Amends Section 502.162(a), Transportation Code, to set forth that the fee for a registration year for registration of a commercial motor vehicle or truck-tractor that weighs 6,000 pounds or less is \$58.50. Provides that the fees for a registration year for registration of all other commercial motor vehicles or truck-tractors is \$25 plus a certain amount determined according to the vehicle's total gross weight and tire equipment.

SECTION 10.04. Amends Section 502.168, Transportation Code, as follows:

Sec. 502.168. FEE: MOTOR BUS. Provides that the fee for a registration year for registration of a motor bus that weighs 6,000 pounds or less is \$58.50. Sets forth that the fees for a registration year for registration of all other motor buses is \$25 plus a certain amount determined according to the vehicle's total gross weight.

SECTION 10.05. Amends Section 522.021(a), Transportation Code, to require an application for a commercial driver's license or commercial driver learner's permit to include a copy of certain documents if the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction.

SECTION 10.06. Amends Section 522.029, Transportation Code, by amending Subsection (a) and adding Subsection (j) to read as follows:

(a) Provides that the fee for a commercial driver's license or commercial driver learner's permit issued by TxDOT is \$60, except as provided by Subsections (f), (h), and (j).

(j) Provides that the fee for a nonresident commercial driver's license is \$100.

SECTION 10.07. Amends Section 522.051, Transportation Code, by amending Subsection (a) and adding Subsection (f) to read as follows:

(a) Provides that an original commercial driver's license or commercial driver learner's permit expires six years after the applicant's next birthday, except as provided by Subsection (f) and Section 522.033.

(f) Provides that a nonresident commercial driver's license issued to an applicant described by Section 522.021(a)(6)(B) who submitted a copy of a visa expires on the date the person's visa expires.

## ARTICLE 11. NONSETTLING MANUFACTURER FEES

SECTION 11.01. Amends Chapter 161, Health and Safety Code, by adding Subchapter U, as follows:

### SUBCHAPTER U. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS MANUFACTURED BY CERTAIN COMPANIES

Sec. 161.601. PURPOSE. Sets forth the purposes of this subchapter.

Sec. 161.602. DEFINITIONS. Defines "brand family," "cigarette," "cigarette tobacco product," "manufacturer," "nonsettling manufacturer," "nonsettling manufacturer cigarettes," "nonsettling manufacturer cigarette tobacco products," and "tobacco settlement agreement."

Sec. 161.603. FEE IMPOSED. (a) Provides that a fee is imposed on the sale, use, consumption, or distribution in this state of certain tobacco products.

(b) Provides that the fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(c) Provides that the fee imposed by this subchapter is in addition to any other privilege, license, fee, or tax required or imposed by state law.

(d) Provides that the fee imposed by this subchapter is imposed, collected, paid, administered, and enforced in the same manner, taking into account that the fee is imposed on nonsettling manufacturers, as the taxes imposed by Chapters 154 and 155, Tax Code, as appropriate, except as otherwise provided by this subchapter.

Sec. 161.604. RATE OF FEE. (a) Provides that the fee is imposed at the rate of two cents for certain tobacco products, except as provided by Subsection (b).

(b) Requires the comptroller, on January 1 of each year, to increase the rate of the tax prescribed by Subsection (a) by the greater of certain percentages.

Sec. 161.605. DISTRIBUTOR'S REPORT. (a) Requires a distributor required to file a report under Section 154.210 (Distributor's Report) or 155.111 (Permit Year; Fees), Tax Code, to, in addition to the information required by those sections, include certain information in that required report, as appropriate.

(b) Requires the information required by Subsections (a)(1) and (2) to be itemized for each place of business and by manufacturer and brand family.

(c) Requires the requirement to report information under this section to be enforced in the same manner as the requirement to deliver to or file with the comptroller a report required under Section 154.210 or 155.111, Tax Code, as appropriate.

Sec. 161.606. NOTICE AND PAYMENT OF FEE. (a) Requires the comptroller each month, not later than the 10th day after the date the comptroller receives the information required by Section 161.605, to take certain actions.

(b) Requires the nonsettling manufacturer, not later than the 15th day of the month after the month in which the comptroller mails a nonsettling manufacturer a notice under Subsection (a), to send to the comptroller the amount of the fee due according to the notice.

Sec. 161.607. CERTIFICATION TO ATTORNEY GENERAL. (a) Requires a nonsettling manufacturer who is required to pay the fee imposed by this subchapter, not later than the first day of each month, to certify to the attorney general that the manufacturer is in compliance with this subchapter and has paid in full the fee imposed by this subchapter.

(b) Requires the attorney general to develop, maintain, and publish on the attorney general's Internet website a directory listing of all nonsettling manufacturers that have provided current, accurate, and complete certifications.

(c) Requires the attorney general to provide the list described by Subsection (b) to any person on request.

Sec. 161.608. PREPAYMENT BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) Prohibits the nonsettling manufacturer, if cigarettes or cigarette tobacco products of a nonsettling manufacturer are not offered for sale or distribution in this state on September 1, 2005, from offering those cigarettes or cigarette tobacco products for sale or distribution in this state after that date unless the manufacturer first prepays the fee imposed by this subchapter for sales of

cigarettes and cigarette tobacco products that will occur in the first calendar month in which they are sold or distributed in this state.

(b) Provides that the amount a nonsettling manufacturer is required to prepay under this section is equal to the greater of certain amounts.

(c) Provides that the fee imposed by this section does not apply to cigarettes or cigarette tobacco products that are included in computing payments due to be made by a settling manufacturer under the tobacco settlement agreement.

(d) Authorizes the comptroller to require a nonsettling manufacturer to provide any information reasonably necessary to determine the prepayment amount.

(e) Requires the comptroller to establish certain procedures.

(f) Requires a nonsettling manufacturer to pay the fee imposed by this subchapter in the manner provided by Section 161.606 beginning in the second calendar month in which the manufacturer offers the cigarettes or cigarette tobacco products for sale or distribution in this state.

Sec. 161.609. REPORT TO ATTORNEY GENERAL BEFORE OFFERING NONSETTLING MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR DISTRIBUTION IN THIS STATE. (a) Requires a nonsettling manufacturer described by Section 161.608(a), in addition to prepaying the fee required by Section 161.608, to, before the date the cigarettes or cigarette tobacco products are offered for sale or distribution in this state, provide certain information to the attorney general on a form prescribed by the attorney general.

(b) Requires the attorney general to make the information provided under this section available to the comptroller.

Sec. 161.610. PENALTIES FOR NONCOMPLIANCE. (a) Requires cigarettes and cigarette tobacco products of a nonsettling manufacturer that has not complied with this subchapter, including full payment of the fee imposed by this subchapter, to be treated as cigarettes for which the tax assessed by Chapter 154 or 155, Tax Code, as appropriate, has not been paid, and provides that the manufacturer is subject to all penalties imposed by those chapters for violations of those chapters.

(b) Requires the comptroller to provide to a nonsettling manufacturer a notice of noncompliance with this subchapter if the manufacturer fails to meet certain criteria.

(c) Prohibits the nonsettling manufacturer, on receipt of the notice of noncompliance, from taking certain actions.

Sec. 161.611. APPLICATION OF SUBCHAPTER. Provides that this subchapter applies without regard to Section 154.022 (Tax Imposed on First Sale of Cigarettes), Tax Code, or any other law that might be read to create an exemption for interstate sales.

SECTION 11.02. (a) Requires a nonsettling manufacturer, as that term is defined by Section 161.602, Health and Safety Code, as added by this Act, that is offering cigarettes or cigarette tobacco products for sale or distribution in this state on September 1, 2005, not later than September 30, 2005, to provide certain information to the attorney general on a form prescribed by the attorney general.

(b) Requires the attorney general to make the information provided under Subsection (a) of this section available to the comptroller.

SECTION 11.03. Provides that Sections 11.01 and 11.02 take effect September 1, 2005.

SECTION 11.04. Provides that if any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

## ARTICLE 12. SALE OF CIGARETTES AND TOBACCO PRODUCTS

SECTION 12.01. Amends Subchapter H, Chapter 161, Health and Safety Code, by adding Section 161.0821, as follows:

Sec. 161.0821. PURCHASE OF CIGARETTES OR TOBACCO PRODUCTS BY PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED. (a) Provides that a person who is younger than 18 years of age commits an offense if the person purchases or attempts to purchase cigarettes or tobacco products.

(b) Provides that for purposes of this section, a person attempts to purchase cigarettes or tobacco products if the person commits an act amounting to more than mere preparation that tends, but fails, to effect the purchase.

(c) Provides that an offense under this section is a Class C misdemeanor.

SECTION 12.02. (a) Amends Chapter 161, Health and Safety Code, by adding Subchapter V, as follows:

### SUBCHAPTER V. INTERNET OR MAIL-ORDER SALES OF CIGARETTES AND TOBACCO PRODUCTS

Sec. 161.651. DEFINITIONS. (a) Defines "cigarette" and "tobacco product"

(b) Defines "common carrier," "consumer," "distributor," "importer," "manufacturer," "permit holder," "retailer," and "wholesaler"

Sec. 161.652. APPLICABILITY OF SUBCHAPTER TO INDIAN TRIBES. Provides that this subchapter does not apply to cigarette or tobacco product sales by an Indian tribe, as defined by 25 U.S.C. Section 450b(e), or by members of the Indian tribe, to a consumer in this state if the consumer is a verified adult member of that Indian tribe and the buyer and seller are each located on land over which the tribe exercises governmental power and that is owned or occupied by that tribe.

Sec. 161.653. CERTAIN DELIVERIES OF CIGARETTES AND TOBACCO PRODUCTS PROHIBITED. (a) Prohibits a distributor, importer, manufacturer, retailer, wholesaler, or other person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products, including selling cigarettes or tobacco products over the Internet or through mail-order sales, from selling, offering for sale, delivering, or causing to be delivered any cigarettes or tobacco products to a person in this state except in a face-to-face transaction at the time of purchase unless the cigarettes or tobacco products are in a container or wrapping plainly and visibly marked on the exterior with the words "cigarettes" or "tobacco products" and the sale or delivery is made to one of certain persons for purposes other than personal consumption by the recipient.

(b) Prohibits a person within the jurisdiction of this state's laws, including a common carrier or commercial delivery service, from knowingly transporting cigarettes or tobacco products on behalf of another person for commercial or business purposes for delivery to a person in this state other than a person described by Subsection (a)(1), (2), or (3).

(c) Provides that this section does not apply to a common carrier or other delivery service operating within the scope of its business as a common carrier or delivery service, except as specifically provided by Subsection (b).

Sec. 161.654. PERMIT HOLDER LIST. Requires the comptroller to compile and make available on the comptroller's Internet website and by other means a list of all persons who hold a permit under Subchapter D (Permits), Chapter 154, or Subchapter C (Permits), Chapter 155, Tax Code. Requires the comptroller to periodically update the list of persons holding a permit under those subchapters.

Sec. 161.655. VIOLATOR'S LIST. (a) Requires The Texas Department of Health (TDH) to maintain a list of persons the department determines have violated Section 161.653(a) or are violating or offering to violate that subsection.

(b) Requires TDH to provide to the United States Postal Service, each common carrier and commercial delivery service operating in this state, and any other person who delivers cigarettes or tobacco products into or within this state a copy of this subchapter and the list maintained under Subsection (a). Requires TDH to provide updated copies of the list as the department determines is appropriate.

(c) Requires TDH, before adding a person to the list maintained under Subsection (a), to provide 10 days' written notice and an opportunity to be heard to that person. Requires the notice to include the text of this subchapter. Authorizes the notice to be made by an electronic communication.

(d) Provides that the list maintained under Subsection (a) is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code. Requires TDH and each person who receives a copy of the list from TDH under this section to maintain the list as confidential and authorizes the list to be used only to comply with this subchapter.

Sec. 161.656. CARRIER AND DELIVERY SERVICE RESPONSIBILITIES. (a) Prohibits a person who is a common carrier or commercial delivery service within the jurisdiction of this state's laws who receives a copy of a list maintained under Section 161.655 from making any deliveries in this state on behalf of a person identified in the list unless certain conditions exist.

(b) Provides that a person who delivers cigarettes or tobacco products and receives a copy of a list maintained under Section 161.155 is not required to take certain actions and is not subject to certain penalties and is authorized to collect a certain fee.

(c) Provides that an employee of a common carrier or commercial delivery service or of any other person making deliveries for a carrier or delivery service is not subject to criminal or civil penalties for violating this subchapter unless the employee knowingly violates this subchapter for the specific purpose of assisting a person engaged in the business of manufacturing, distributing, or selling cigarettes or tobacco products in violation of this subchapter.

Sec. 161.657. CIVIL PENALTIES. (a) Provides that a person who violates this subchapter is subject to a civil penalty for each violation in certain amounts, except as provided in Section 161.656(c).

(b) Requires a person who violates Section 161.653(a) to reimburse this state and the applicable political subdivisions of this state for all unpaid taxes that would otherwise have been imposed by this state and those political subdivisions on the cigarettes and tobacco products in question, plus interest, and for any other damages incurred by the state or the political subdivision as a result of the violation.

Sec. 161.658. CRIMINAL PENALTIES. Provides that a person who knowingly violates Section 161.653 or 161.656(a), except as provided by Sections 161.656(b)(3) and (c), commits an offense. Provides that an offense under this subsection is a Class A misdemeanor, except that if it is shown on the trial of the offense that the person has a previous conviction under this subsection, the offense is a state jail felony.

Sec. 161.659. COSTS. (a) Requires the comptroller to deposit an amount equal to 50 percent of the civil penalties recovered by this state under this subchapter to be appropriated only to the comptroller, TDH, attorney general, and other state agencies to enforce this subchapter or make related investigations or to enforce other state laws relating to contraband cigarettes and tobacco products, the collection of taxes on cigarettes and tobacco products, and the prohibition of cigarette and tobacco product sales to minors.

(b) Entitles the state, in a civil action brought to enforce this subchapter, to recover the costs of investigation, costs of the action, and reasonable attorney's fees, plus interest.

Sec. 161.660. ENFORCEMENT. (a) Authorizes the attorney general to bring an action in the appropriate court in this state to enforce this subchapter, seek civil penalties and related damages, and equitable relief, or to prevent or restrain actions by a person or a person controlling the person that violate this subchapter or assist or encourage a violation of this subchapter.

(b) Authorizes enforcement officials of a political subdivision of this state, on providing at least 15 days' notice to the attorney general, to bring an action in the appropriate court in this state, or join an action being brought by the attorney general, to seek damages and equitable relief or to prevent or restrain actions by a person or a person controlling the person that violate this subchapter or assist or encourage a violation of this subchapter.

(c) Authorizes a person who holds a valid permit under 26 U.S.C. Section 5712, on providing at least 15 days' notice to the attorney general, to bring an action in the appropriate court in this state, or join an action being brought by the attorney general, to prevent or restrain actions by a person or a person controlling the person that violate this subchapter or assist or encourage a violation of this subchapter.

(d) Authorizes the attorney general, on receiving notice from another person of the person's intent to bring an action under this subchapter in the appropriate court in this state, to choose to join in the other person's action or bring an action by this state in its stead and requires the attorney general to inform the person providing notice of how the attorney general will proceed not later than the 15th day after receiving the notice.

(e) Requires the attorney general to make public, by posting on the Internet and other means, a list of all actions taken to enforce this subchapter and a list of all persons found to have violated this subchapter, including the persons' names, addresses, and any other information the attorney general believes may be useful to other jurisdictions enforcing laws prohibiting or restricting cigarette or tobacco product sales for personal consumption in which the seller and buyer do not initiate and complete the entire transaction in each other's physical presence.

(b) Repealer: Effective September 1, 2006, Subchapter R (Delivery Sales of Cigarettes), Chapter 161, Health and Safety Code, as added by Chapter 730, Acts of the 78th Legislature, Regular Session, 2003.

(c) Requires the comptroller, not later than January 1, 2006, to post the list of persons who hold permits under Subchapter D, Chapter 154, Tax Code, or Subchapter C, Chapter 155, Tax Code, as required by Section 161.654, Health and Safety Code, as added by this section.

(d) Requires TDH, not later than June 1, 2006, to create and distribute the list as required by Section 161.655, Health and Safety Code, as added by this section.

(e) Provides that a person is not subject to a penalty for a violation of that subchapter before September 1, 2006, notwithstanding Subchapter V, Chapter 161, Health and Safety Code, as added by this section,

(f) Makes application of this section prospective.

(g) Provides that this section takes effect September 1, 2005, except that Sections 161.657-161.660, Health and Safety Code, as added by this section, take effect September 1, 2006.

SECTION 12.03. (a) Reenacts and amends Article 59.01(2), Code of Criminal Procedure, as amended by Section 2.141, Chapter 198, Section 17, Chapter 257, and Section 3, Chapter 649, Acts of the 78th Legislature, Regular Session, 2003, to redefine "contraband."

(b) Makes application of this section prospective.

(c) Effective date: September 1, 2006.

#### ARTICLE 13. POWERS AND DUTIES OF COMPTROLLER AND PROVISIONS RELATED TO TAXES COLLECTED BY THE COMPTROLLER OR LOCAL ENTITIES

SECTION 13.01. Amends Section 442.015, Government Code, by adding Subsection (h) to authorize the comptroller to manage the assets of the Texas preservation trust fund account in the same manner as the comptroller is authorized to manage the assets of certain permanent funds under Section 403.1068.

SECTION 13.02. Amends Section 552.025(c), Government Code, to provide that Subchapter C does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority, provided that, to preserve taxpayer confidentiality, requires a governmental body with taxing authority to remove any information that identifies a taxpayer from the letter, memorandum, or ruling.

SECTION 13.03. Amends Section 285.063, Health and Safety Code, by adding Subsection (b-1) to require the hospital district to submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this subchapter.

SECTION 13.04. Amends Section 775.0753, Health and Safety Code, by adding Subsection (d) to require the emergency services district to submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this subchapter.

SECTION 13.05. Amends Section 776.0753, Health and Safety Code, by adding Subsection (d) to require the emergency services district in a county of 125,000 or less to submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held as provided by this subchapter.

SECTION 13.06. Amends Article 1.16(b), Insurance Code, as follows:

(b) Requires assessments for the expenses of such domestic examination which are sufficient to meet all the expenses and disbursements necessary to comply with the provisions of the laws of Texas relating to the examination of insurance companies and to comply with the provisions of this Article and Articles 1.17 and 1.18 of this Code, to be made by the State Board of Insurance upon the corporations or associations to be examined taking into consideration annual premium receipts, and/or admitted assets that are not attributable to 90 percent of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)), and/or insurance in force; provided such assessments to be made and collected as follows: Requires expenses attributable directly to a specific examination including employees' salaries and expenses



and expenses provided by Section 803.007, rather than Article 1.28 of this Code, to be collected at the time of examination.

SECTION 13.07. Amends Section 222.002(b), Insurance Code, as follows:

(b) Requires the insurer or health maintenance organization, except as otherwise provided by this section, in determining an insurer's taxable gross premiums or a health maintenance organization's taxable gross revenues, to include the total gross amounts of premiums, membership fees, assessments, dues, revenues, and other considerations received by the insurer or health maintenance organization in a calendar year from any kind of health maintenance organization certificate or contract or insurance policy or contract covering risks on individuals or groups, rather than a person, located in this state and arising from the business of a health maintenance organization or the business of life insurance, accident insurance, health insurance, life and accident insurance, life and health insurance, health and accident insurance, life, health, and accident insurance, including variable life insurance, credit life insurance, and credit accident and health insurance for profit or otherwise or for mutual benefit or protection.

SECTION 13.08. Amends Section 223.003(a), Insurance Code, as follows:

(a) Provides that an annual tax is imposed on all, rather than, each title insurance company that receives, premiums from the business of title insurance. Provides that the rate of the tax is 1.35 percent of title insurance taxable premiums for a calendar year, including any premiums retained by a title insurance agent as provided by Section 223.005. Deletes existing text relating to the title insurance company.

SECTION 13.09. Amends Section 252.003, Insurance Code, as follows:

Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. Requires an insurer to pay maintenance taxes under this chapter on the correctly reported gross premiums from writing insurance in this state against loss or damage by an event covered under a home warranty insurance policy or an event covered under an inland marine insurance policy. Deletes existing text relating to collection.

SECTION 13.10. Amends Section 271.002(a), Insurance Code, to provide that a maintenance fee is imposed on all, rather than each insurer with gross, premiums subject to assessment under Section 271.006 (Premiums Subject to Assessment).

SECTION 13.11. Amends Section 1502.053, Insurance Code, as follows:

Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) Provides that the issuer of a children's health benefit plan approved under Section 1502.051 is not subject to the premium tax or the tax on revenues imposed under Chapter 222 (Life, Health, and Accident Insurance Premium Tax) with respect to money received for coverage provided under that plan.

(b) Provides that the issuer of a children's health benefit plan is not subject to the retaliatory tax imposed under Chapter 281 with respect to money received for coverage provided under that plan.

SECTION 13.12. Amends Section 383.101, Local Government Code, by adding Subsection (d) to require the county development district to submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this subchapter.

SECTION 13.13. Amends Section 387.012, Local Government Code, as follows:

Sec. 387.012. EFFECTIVE DATE OF TAX. (a) Creates this subsection from existing text

(b) Requires the county assistance district to submit to the comptroller a description of the boundaries of the district and a map of the district clearly showing the district's boundaries at the same time the district submits the results of the election held under this chapter.

SECTION 13.131. Amends Section 21.05(e), Tax Code, to require a commercial aircraft, for purposes of this subchapter, to mean an instrumentality of air commerce that meets certain criteria.

SECTION 13.14. Amends Section 111.009, Tax Code, by amending Subsection (a) and adding Subsections (e) and (f), as follows:

(a) Authorizes a person having a direct interest in a determination to assert legal and factual grounds to challenge the assessment.

(e) Authorizes the person filing the petition to assert credits or claim a refund for the same tax type and same period. Requires the assertion for the credits or the claim for the refund to be included in the petition or to be filed within the applicable limitations period, except as otherwise provided by this section. Requires the comptroller to adopt procedural rules that ensure that redetermination proceedings are expeditiously finalized and that provide that all parties receive equal time to prepare and submit their positions before the hearing.

(f) Authorizes a credit or refund for the same tax type and same period to be asserted or claimed in the redetermination proceeding for all issues if the credit is asserted or the refund is claimed not later than the first anniversary of the date the petition for redetermination is filed. Provides that this subsection does not authorize a filing for a separate credit or refund that is not authorized under Section 111.107(b).

SECTION 13.15. Amends Section 111.016, Tax Code, by adding Subsections (e) and (f), as follows:

(e) Authorizes the comptroller to assess the responsible individual liable under Subsection (b) at any time before the first anniversary of the later of certain dates.

(f) Entitles an individual that the comptroller asserts is liable for the payment of tax or other money under this section as a responsible individual to certain notices and contests.

SECTION 13.16. Amends Subchapter B, Chapter 111, Tax Code, by adding Section 111.0515, as follows:

Sec. 111.0515. RESTRICTED OR CONDITIONAL PAYMENTS OF TAXES, PENALTIES, AND INTEREST PROHIBITED. Provides that unless the restriction or condition is authorized by this title, a restriction or condition placed on a check in payment of taxes by the maker of the check that purports to limit the amount of taxes owed to an amount less than that stated in the comptroller's records, or a restriction or condition placed on a check in payment of penalties and interest on delinquent taxes by the maker that purports to limit the amount of the penalties and interest to an amount less than the amount of penalties and interest accrued on the delinquent taxes, is void.

SECTION 13.17. Amends Subchapter B, Chapter 111, Tax Code, by adding Section 111.065, as follows:

Sec. 111.065. EXPEDITIOUS ASSISTANCE FOR TAXPAYERS. (a) Requires the comptroller, as expeditiously as possible, to take certain actions.

(b) Requires the comptroller to amend any audit or the records of any audit period as expeditiously as possible if necessary to comply with Subsection (a).

SECTION 13.18. Amends Section 111.107, Tax Code, as follows:

Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED. (a) Authorizes a person to request a refund or a credit or the comptroller to make a refund or issue a credit for the overpayment of a tax imposed by this title at any time before the expiration of the period during which the comptroller may assess a deficiency for the tax and not thereafter unless the refund or credit is requested under certain statutes.

(b) Prohibits a person from refiling a refund claim for the same transaction or item, tax type, period, and ground or reason that was previously denied by the comptroller in a refund hearing.

SECTION 13.19. Amends Section 151.006, Tax Code, to redefine "sale for resale."

SECTION 13.20. Amends Section 151.011(a), Tax Code, to make nonsubstantive changes.

SECTION 13.21. Amends Section 151.3111(b), Tax Code, to provide that subsection (a) does not apply to the performance of certain services

SECTION 13.22. Amends Sections 151.3162(d) and (e), Tax Code, as follows:

(d) Provides that the exemption provided by Subsection (b) takes effect January 1, 2008. Entitles a person, until that date, to an exemption, rather than a credit or refund, of a portion of the taxes paid under this chapter on an item that after January 1, 2008, will be exempted from the taxes imposed by this chapter under Subsection (b). Provides that the amount of the exemption is determined by certain methods. Makes conforming changes.

(e) Authorizes a taxpayer entitled to a credit or refund under Subsection (d), as that subsection existed on September 30, 2005, to elect to receive either a credit or a refund. Requires a taxpayer who elects to receive a credit to claim the credit on the return for a period that ends not later than the first anniversary of the date on which the taxable event occurred. Requires a taxpayer who elects to receive a refund to apply to the comptroller for the refund before or during the calendar year following the year in which the tax on the item was paid.

SECTION 13.23. Amends Section 151.419(b), Tax Code, to require certain items to accompany the application.

SECTION 13.24. Amends Sections 151.424(a) and (c), Tax Code, as follows:

(a) Deletes existing text relating to the amount permitted to be deducted and withheld under Section 151.423 of this code.

(c) Deletes existing text entitling the taxpayer to the deduction permitted under Section 151.423 of this code on the amount of the remaining tax liability.

SECTION 13.25. Amends Section 151.425, Tax Code, as follows:

Sec. 151.425. FORFEITURE OF DISCOUNT OR REIMBURSEMENT. Deletes existing text relating to a deduction allowed under Section 151.423.

SECTION 13.26. Amends Section 151.428(c), Tax Code, to delete an exception under Section 151.423 to the reporting, collection, refund, and penalty provisions of this chapter and Subtitle B.

SECTION 13.27. Amends Section 152.047(a), Tax Code, to make conforming changes.

SECTION 13.28. Amends Section 152.123(b), Tax Code, to delete certain fiscal years in which the county is required to retain certain percentages of certain amounts. Makes nonsubstantive and conforming changes.

SECTION 13.29. Amends Section 162.227, Tax Code, by adding Subsections (c-1), (c-2), and (d-1), to read as follows:

(c-1) Authorizes a license holder to take a credit on a return for the period in which the purchase occurred, and provides that a person who does not hold a license may file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the diesel fuel is used in this state under certain conditions.

(c-2) Authorizes a person who does not hold a license under this subchapter to file a refund claim with the comptroller if the person paid tax on kerosene and used or consumed the kerosene in this state in manufacturing or as a component part of a product that is not a motor fuel.

(d-1) Authorizes a license holder to take a credit on a return for the period in which the purchase occurred, and a person who does not hold a license to file a refund claim with the comptroller, if the license holder or person paid tax on diesel fuel and the diesel fuel is used in this state by auxiliary power units or power take-off equipment on any motor vehicle. Authorizes the comptroller, if the quantity of that diesel fuel can be accurately measured while the motor vehicle is stationary by any metering or other measuring device or method designed to measure the fuel separately from fuel used to propel the motor vehicle, to approve and adopt the use of the device as a basis for determining the quantity of diesel fuel consumed in those operations for a tax credit or tax refund. Authorizes the license holder, if there is no separate metering device or other approved measuring method, to take the credit and authorizes the person who does not hold a license to claim the refund on a percentage of the diesel fuel consumed by each motor vehicle equipped with an auxiliary power unit or power take-off equipment. Requires the comptroller to determine the percentage of the credit or refund. Prohibits the climate-control air conditioning or heating system of a motor vehicle that has a primary purpose of providing for the convenience or comfort of the operator or passengers is not a power take-off system, and a credit or refund from being allowed for the tax paid on any portion of the diesel fuel that is used for that purpose. Prohibits a credit or refund from being allowed for the diesel fuel tax paid on that portion of the diesel fuel that is used for idling.

SECTION 13.30. Reenacts Section 171.109(g), Tax Code, as amended by Chapters 801 and 1198, Acts of the 71st Legislature, Regular Session, 1989, and amends it to authorize the corporation, notwithstanding the method of accounting, to elect to depreciate the corporation's oil and gas properties using any alternative method of depreciation recognized under generally accepted accounting principles. Requires the useful lives of intangible assets to be similar to the useful lives of tangible assets.

SECTION 13.31. Amends Section 171.110, Tax Code, is amended by adding Subsection (m) to provide that a corporation is considered to have made an election to use the same methods used in filing its federal income tax return, except as otherwise provided by this section, in computing taxable earned surplus.

SECTION 13.32. Amends Section 171.1121(b), Tax Code, to require a corporation, except as otherwise provided by this section, to use the same accounting methods to apportion taxable earned surplus as the corporation used to compute taxable earned surplus, rather than in computing reportable federal taxable income.

SECTION 13.33. Amends Section 171.801(2), Tax Code, to redefine "qualified capital investment."

SECTION 13.34. Amends Section 183.053(b), Tax Code, to prohibit the comptroller from setting the amount of security at less than \$1,000 or more than the greater of \$100,000 or four times the amount of the permittee's average monthly tax liability, rather than \$50,000.

SECTION 13.35. Amends Section 201.058(b), Tax Code, to entitle operators increasing production by marketing gas from a well, rather than an oil well or lease, that has been released into the air for six, rather than 12 months or more pursuant to the rules of the Railroad Commission of Texas, to an exemption from the tax imposed by this chapter on the production resulting from the marketing of such gas for the life of the well, but not a lease.

SECTION 13.36. Amends Section 201.102, Tax Code, as follows:

Sec. 201.102. CASH SALES. Requires the tax, if gas is sold for cash only, to be computed on the producer's gross cash receipts. Provides that payments from a purchaser of gas to a producer for the purpose of reimbursing the producer for taxes due under this chapter are not part of the gross cash receipts. Deletes existing text relating to the reimbursement amount for taxes due under this chapter that is separately stated in the sales contract.

SECTION 13.37. Amends Subchapter B, Chapter 202, Tax Code, by adding Section 202.060, as follows:

Sec. 202.060. TAX CREDIT FOR ENHANCED EFFICIENCY EQUIPMENT. (a) Defines "enhanced efficiency equipment."

(b) Entitles the taxpayer responsible for the payment of severance taxes on the production from a well in this state on which enhanced efficiency equipment is installed and used is to a credit in an amount equal to 20 percent of the cost of the equipment, provided that certain conditions exist.

(c) Authorizes the taxpayer to carry any unused credit forward until the credit is used.

SECTION 13.38. Amends Sections 313.021(1) and (2), Tax Code, to redefine "qualified investment" and "qualified property."

SECTION 13.39. Amends Section 321.203, Tax Code, by amending Subsections (b)-(e) and adding Subsection (n), as follows:

(b) Provides that all of the retailer's retail sales of taxable items, rather than tangible personal property, if a retailer has only one place of business in this state, are consummated at that place of business except as provided by Subsection (e).

(c)-(e) Makes conforming changes.

(n) Provides that a sale of a service described by Section 151.0047 (Real Property Repair and Remodeling) to remodel, repair, or restore nonresidential real property is consummated at the location of the job site. Provides, however, that if the job site includes areas in multiple municipalities, the sale is consummated at certain locations.

SECTION 13.40. Amends Section 321.302, Tax Code, by adding Subsection (c-1) to define "full amount of the tax due."

SECTION 13.41. Amends Section 321.503, Tax Code, to delete a provision under Section 321.501(c).

SECTION 13.42. Amends Section 323.102(c), Tax Code, to provide that a tax imposed under Section 323.105 (Crime Control District Tax) of this code or Chapter 326 (Library Districts) or 383, Local Government Code, takes effect on the first day of the first calendar quarter after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the action as required by Section 323.405(b) (Official Results of Election).

SECTION 13.43. Amends Section 323.203, Tax Code, by amending Subsections (b)-(e) and adding Subsection (m) to make conforming changes.

SECTION 13.44. Amends Section 323.503, Tax Code, to make conforming changes.

SECTION 13.45. Amends Section 502.1025(b), Transportation Code, to require a county tax assessor-collector to retain under Section 502.102(b) fees based on the certain percentages of the certain amounts calculated under Subsection (a) during certain fiscal years.

SECTION 13.46. Amends the heading to Subchapter A, Chapter 16, Utilities Code, to read as follows:

SUBCHAPTER A. ASSESSMENT ON UTILITY GROSS RECEIPTS

SECTION 13.47. Amends the heading to Section 16.001, Utilities Code, to read as follows:

Sec. 16.001. ASSESSMENT ON UTILITY GROSS RECEIPTS.

SECTION 13.48. Amends Sections 16.001(a) and (b), Utilities Code, as follows:

(a) Provides that, an assessment is imposed on each telecommunications utility, electric utility, rather than public utility, retail electric provider, and electric cooperative within the jurisdiction of the commission that serves the ultimate consumer, including each interexchange telecommunications carrier to defray the expenses incurred in the administration of this title.

(b) Makes conforming changes.

SECTION 13.49. Amends Section 16.002(b), Utilities Code, to authorize a telecommunications utility, electric utility, retail electric provider, or electric cooperative to instead make quarterly payments due August 15, November 15, February 15, and May 15.

SECTION 13.50. Repealer: Sections 151.103(d) (Collection by Retailer), 151.202(c) (Application for Permit), 151.423 (Reimbursement to Tax Payer For Tax Collection), 321.203(l) (Consummation of Sale), as added by Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003, and 323.203(l) (Consummation of Sale), Tax Code.

SECTION 13.51. Makes application of Section 201.102, Tax Code, prospective.

SECTION 13.52. Makes application of Section 111.009, Tax Code, prospective.

SECTION 13.53. Makes application of Section 151.006, Tax Code, prospective.

SECTION 13.54. Makes application of Section 171.109(g), Tax Code, prospective

SECTION 13.55. Provides that if a change in law made to Section 16.001 or 16.002, Utilities Code, by this article conflicts with another bill enacted by the 79th Legislature, Regular Session, 2005, that amends Section 16.001 or 16.002, including H.B. No. 1779, that other bill controls.

SECTION 13.56. Effective date, this article: October 1, 2005.

ARTICLE 14. INTEREST ON CERTAIN TAX REFUNDS

SECTION 14.01. Amends Section 111.064, Tax Code, by amending Subsections (a), (c), and (f) and adding Subsection (c-1), as follows:

(a) Provides that interest is at the rate set in Section 111.060 (Interest on Delinquent Tax) on the amount found to be erroneously paid for certain periods of time, except as otherwise provided by this section, rather than Subsections (b) and (c), in a comptroller's final decision on a claim for refund or in an audit.

(c) Provides that the rate of interest is the rate set in Section 111.060, for a refund claimed before September 1, 2005, and granted for a report period due on or after January 1, 2000. Provides that the rate of interest is the lesser of certain amounts, for a refund claimed on or after September 1, 2005, and granted for a report period due on or after January 1, 2000.

(c-1) Provides that a refund, without regard to the date claimed, for a report period due before January 1, 2000, does not accrue interest.

(f) Provides that a local revenue fund is not subject to Subsections (a)-(c-1), rather than (a)-(c).

SECTION 14.02. Effective date, this article: September 1, 2005.

## ARTICLE 15. LOCAL GASOLINE TAX

SECTION 15.01. Amends Chapter 370, Transportation Code, by adding Subchapter I, as follows:

### SUBCHAPTER I. FINANCIAL PARTICIPATION OF CERTAIN COUNTIES IMPOSING LOCAL GASOLINE TAX

Sec. 370.351. DEFINITIONS. Defines "dealer," "gasoline," "jobber," "motor vehicle," "net gallon," "public highway" and "sale."

Sec. 370.352. TAX ON SALE OF GASOLINE AUTHORIZED. (a) Authorizes a county, by order of the commissioners court, to impose a tax on the sale of gasoline sold in the county to propel a motor vehicle on the public highways of this state if certain conditions exist.

(a-1) Provides that this subchapter, including Subsection (a), does not apply to a county with a population of more than two million.

(b) Authorizes the counties located in a metropolitan planning area described by Subsection (a)(2) to hold the election to authorize the imposition of the tax on the same uniform election dates or on different uniform election dates. Prohibits a county included in that metropolitan planning area, if the counties hold the elections on different uniform election dates, from imposing the tax until the imposition of the tax has been approved in each county.

Sec. 370.353. RATE OF TAX. (a) Authorizes the tax authorized by this subchapter to be imposed in increments of one cent for each net gallon of gasoline sold in the county to propel a motor vehicle on the public highways of this state, with a minimum rate of three cents for each net gallon and a maximum rate of 10 cents for each net gallon.

(b) Provides that if the voters of the counties located in a metropolitan planning area described by Section 370.352(a)(3) authorize the imposition of the tax at different rates, each county is required to impose the tax at the lowest authorized rate.

Sec. 370.354. ADOPTION ELECTION PROCEDURE. (a) Provides that an election to adopt the tax authorized by this subchapter is called by an order of the commissioners court.

(b) Requires the ballot, at an election to adopt the tax, to be prepared to permit voting for or against the proposition. Sets forth the specific language for the proposition.

Sec. 370.355. COMPUTATION OF TAX. (a) Requires a person, including a dealer or jobber, who makes a sale of gasoline in a county authorized to impose the tax to a person who uses the gasoline to propel a motor vehicle on the public highways of this state to collect the tax authorized by this subchapter for the benefit of the county.

(b) Requires the seller to add the amount of the tax authorized by this subchapter to the selling price of gasoline, and provides that the tax is a part of the gasoline price, is a debt owed to the seller, and is recoverable at law in the same manner as the gasoline fuel charge.

(c) Provides that the tax authorized by this subchapter is in addition to the tax imposed by Chapter 162 (Motor Fuel Taxes), Tax Code.

Sec. 370.356. EXEMPTIONS APPLICABLE. Provides that the exemptions provided by Section 162.104 (Exemptions), Tax Code, apply to the tax authorized by this subchapter.

Sec. 370.357. EFFECTIVE DATE OF TAX. Requires the commissioners court of each county after the imposition of the tax has been approved in each county located in a metropolitan planning area described by Section 370.352(a)(2), to issue a concurrent order prescribing the date on which the adoption of the tax will take effect in those counties.

Sec. 370.358. COLLECTION AND ENFORCEMENT OF TAX. (a) Requires a person, including a dealer or jobber, required to collect the tax authorized by this subchapter to report and send the taxes to the county as provided by the county.

(b) Authorizes the county to prescribe monetary penalties, including interest charges, for failure to keep records required by this subchapter, to report when required, or to pay the tax when due.

(c) Authorizes the county to permit a person who is required to collect the tax authorized by this subchapter to retain a percentage of the amount collected and required to be reported as reimbursement to the person for the costs of collecting the tax. Authorizes the county to provide that the person may retain the amount only if the person pays the tax and files reports as required by the county.

(d) Authorizes the county attorney to bring suit against a person who violates this subchapter.

Sec. 370.359. REFUND. (a) Authorizes a person who has paid the tax authorized by this subchapter on gasoline used by the person for a purpose other than to propel a motor vehicle on the public highways of this state or for a use exempted under Section 370.356 to file a claim for a refund.

(b) Requires the county to prescribe the procedures a person must use to obtain a refund under this section.

Sec. 370.360. REQUIRED PERMIT. Authorizes the county to require a dealer, jobber, or other person required to collect, report, and pay the tax authorized by this subchapter to obtain a permit from the county.

Sec. 370.361. TRANSFER TO AUTHORITY. (a) Requires the county treasurer, not later than the last day of the first month following each calendar quarter, to send to the authority the taxes collected during that calendar quarter after payment of all refunds allowed by law and expenses of collection.

(b) Requires net tax revenue received by a regional mobility authority (authority) under this subchapter to be accounted for separately and prohibits it from being commingled with other authority revenue.

Sec. 370.362. USE OF TAX PROCEEDS. Requires an authority to use net tax revenue received under this subchapter only to accomplish certain objectives.

## ARTICLE 16. AUDITS OF STATE AGENCY EXPENDITURES TO RECOVER OVERPAYMENTS AND LOST DISCOUNTS

SECTION 16.01. Amends Subtitle C, Title 10, Government Code, by adding Chapter 2115, as follows:

### CHAPTER 2115. RECOVERY OF CERTAIN STATE AGENCY OVERPAYMENTS

Sec. 2115.001. DEFINITIONS. Defines "overpayment" and "state agency."



Sec. 2115.002. CONTRACT CONSULTANTS FOR RECOVERY AUDITS FOR CERTAIN OVERPAYMENTS. (a) Requires the comptroller to contract with one or more consultants to conduct recovery audits of payments made by state agencies to vendors. Requires the audits to be designed to detect and recover overpayments to the vendors and to recommend improved state agency accounting operations.

(b) Authorizes a contract under this section to contain certain provisions.

(c) Authorizes the comptroller or a state agency whose payments are being audited to provide a person acting under a contract authorized by this section with any confidential information in the custody of the comptroller or state agency that is necessary for the performance of the audit or the recovery of an overpayment, to the extent the comptroller and state agency are not prohibited from sharing the information under an agreement with another state or the federal government. Provides that a person acting under a contract authorized by this section, and each employee or agent of the person, is subject to all prohibitions against the disclosure of confidential information obtained from the state in connection with the contract that apply to the comptroller or applicable state agency or an employee of the comptroller or applicable state agency. Provides that a person acting under a contract authorized by this section or an employee or agent of the person who discloses confidential information in violation of a prohibition made applicable to the person under this subsection is subject to the same sanctions and penalties that would apply to the comptroller or applicable state agency or an employee of the comptroller or applicable state agency for that disclosure.

Sec. 2115.003. STATE AGENCIES SUBJECT TO MANDATORY RECOVERY AUDITS. (a) Requires the comptroller to require that recovery audits be performed on the payments to vendors made by each state agency that has total expenditures during a state fiscal biennium in an amount that exceeds \$100 million. Requires each state agency described by this subsection to provide the recovery audit consultant with all information necessary for the audit.

(b) Authorizes the comptroller to exempt from the mandatory recovery audit process a state agency that has a low proportion of its expenditures made to vendors, according to criteria the comptroller adopts by rule after consideration of the likely costs and benefits of performing recovery audits for agencies that make relatively few or small payments to vendors.

Sec. 2115.004. PAYMENT TO CONTRACTORS. (a) Requires a state agency to pay, from recovered money appropriated for the purpose, the recovery audit consultant responsible for obtaining for the agency a reimbursement from a vendor.

(b) Requires a state agency to expend or return to the federal government any federal money that is recovered through a recovery audit conducted under this chapter. Requires the state agency to expend or return the federal money in accordance with the rules of the federal program through which the agency received the federal money.

Sec. 2115.005. FORWARDING REPORTS. (a) Requires the comptroller to provide copies, including electronic form copies, of any reports received from a consultant contracting under Section 2115.002 to certain government officials and agencies.

(b) Requires the comptroller to provide the copies required by Subsection (a) not later than the seventh day after the date the comptroller receives the consultant's report.

(c) Requires the comptroller, not later than January 1 of each odd-numbered year, to issue a report to the legislature summarizing the contents of all reports received under this chapter during the state fiscal biennium ending August 31 of the previous year.

SECTION 16.02. Requires the comptroller to adopt rules under Chapter 2115, Government Code, as added by this article, in a timely manner so that the comptroller may begin contracting with a consultant under that chapter not later than January 1, 2006.

#### ARTICLE 17. MARKETING AND SALE OF CERTAIN LICENSE PLATES

SECTION 17.01. Amends Section 504.851, Transportation Code, by amending Subsections (a), (b), (c), (e), (f), (g), and (h) and adding Subsections (g-1) and (k), as follows:

(a) Requires TxDOT, rather than authorizing the Texas Transportation Commission (commission), to enter into a contract with the private vendor whose proposal is most advantageous to the state, as determined from competitive sealed proposals that satisfy the requirements of this section, for the marketing and sale of certain license plates.

(b) Requires the commission, instead of the fees established by Section 504.101(c), by rule to establish fees for the issuance or renewal of personalized, rather than prestige, license plates that are marketed and sold by the private vendor. Requires fees to be reasonable and not less than the greater of certain amounts.

(c) Requires the commission by rule to establish the fees for the issuance or renewal of souvenir license plates, specialty, rather than specialized license plates, or souvenir or specialty license plates that are personalized that are marketed and sold by the private vendor. Requires fees to be reasonable and not less than the amounts necessary to allow TxDOT to recover all reasonable costs to TxDOT associated with the evaluation of the competitive sealed proposals received by the department and with the implementation and enforcement of the contract, including direct, indirect, and administrative costs. Provides that a fee established under this subsection is in addition to certain fees. Deletes existing text relating to the commission contracting with a private vendor. Makes conforming changes.

(e) Provides that the portion of a contract with a private vendor regarding the marketing and sale of personalized license plates, rather than under Subsection (a)(1) is payable only from amounts derived from the collection of the fee established under Subsection (b). Provides that the portion of a contract with a private vendor regarding the marketing and sale of souvenir license plates, specialty license plates, or souvenir or specialty license plates that are personalized under Section 504.102 (Personalization of Other Specialty License Plates) is payable only from amounts derived from the collection of the fee established under Subsection (c).

(f) Authorizes TxDOT to approve, rather than create, new design and color combinations for personalized license plates that are marketed and, rather than or, sold by a private vendor under a contract entered into with the private vendor.

(g) Authorizes TxDOT to approve new design and color combinations for specialty license plates authorized by this chapter, including specialty license plates that may be personalized, that are marketed and sold by a private vendor under a contract entered into with the private vendor. Provides that each approved license plate design and color combination remains the property of the department. Provides that this subsection does not authorize certain actions, except as otherwise provided by this chapter.

(g-1) Prohibits TxDOT from taking certain actions relating to license plates.

(h) Authorizes TxDOT, subject to the limitations provided by Subsections (g) and (g-1), rather than in connection with a license plate that is marketed or sold by a private vendor under contract, to cancel a license plate or require the discontinuation of a license plate design or color combination that is marketed and sold by a private vendor under contract at any time if TxDOT determines that the cancellation or discontinuation is in the best interest of this state or the motoring public.

(k) Requires TxDOT to certify to the comptroller the estimate, with a detailed explanation of the basis on which the estimate is calculated, of all reasonable costs to the

department associated with the evaluation of competitive sealed proposals received by the department under this section and associated with the implementation and enforcement of a contract entered into under this section, including direct, indirect, and administrative costs for the issuance or renewal of personalized license plates or specialty license plates.

SECTION 17.02. Amends Subchapter J, Chapter 504, Transportation Code, by adding Section 504.852, as follows:

Sec. 504.852. **CONTRACT LIMITATIONS.** (a) Prohibits TxDOT, in a contract under Section 504.851, from including certain provisions.

(b) Requires the initial term of the contract, if a private vendor contracts to market and sell souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102, to be for at least five years from the effective date of the contract. Requires the contract to contain, at the option of either TxDOT or the private vendor, a second term at least equal in length to the initial term of the contract.

(c) Prohibits a private vendor, notwithstanding Subsection (b), from marketing and selling souvenir license plates, specialty license plates, or souvenir or specialty license plates personalized under Section 504.102 that compete directly for sales with another specialty license plate issued under this chapter unless TxDOT and the sponsoring agency or organization of the other license plate approve.

#### ARTICLE 18. TREATMENT OF CERTAIN FEES RECEIVED BY INSTITUTIONS OF HIGHER EDUCATION

SECTION 18.01. Amends Section 51.009(c), Education Code, to require certain fees to be accounted for as educational and general funds.

SECTION 18.02. Makes application of Section 51.009(c), Education Code, as amended by this article, prospective.

#### ARTICLE 19. AUTHORIZATION OF CERTAIN NONPROFIT ORGANIZATIONS TO CONDUCT BINGO

SECTION 19.01. Amends Section 2001.002(11), Occupations Code, to define "fraternal organization."

SECTION 19.02. Amends Subchapter C, Chapter 2001, Occupations Code, by adding Section 2001.1015, as follows:

Sec. 2001.1015. **CERTAIN TRIBAL ORGANIZATIONS EXEMPT FROM REGULATORY JURISDICTION AND LICENSE REQUIREMENTS.** (a) Authorizes a nonprofit organization in existence for at least 180 days that qualifies as a fraternal organization under Section 2001.002(11)(C) (Definitions) to conduct bingo on the reservation of the Indian tribe under whose tribal law the organization is organized on adoption by the tribe of rules governing the conduct of bingo by the organization that conform to the substantive provisions of this chapter and of Sections 47(b) and (c), Article III, Texas Constitution.

(b) Authorizes an organization described by Subsection (a), in accordance with Section 107(b), Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act (25 U.S.C. Section 1300g-6), to conduct bingo activities in accordance with the tribe's rules adopted under Subsection (a) without submitting to the regulatory jurisdiction, including licensing requirements, of this state.

(c) Prohibits a nonprofit organization described by Subsection (b) from conducting bingo under this section unless the organization transfers to the state on a monthly basis an amount equal to five percent of the gross receipts from bingo in a manner determined by the comptroller.

ARTICLE 20. REIMBURSEMENT OF EXCESSIVE OR  
UNFAIRLY DISCRIMINATORY RATES CHARGED BY CERTAIN INSURERS

SECTION 20.01. Amends Article 5.144, Insurance Code, by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows:

(b) Provides that, except as provided by Subsection (d) of this article, if the commissioner of insurance (commissioner) determines that an insurer has charged a rate for personal automobile insurance or residential property insurance that is excessive or unfairly discriminatory, as described by Article 5.13-2 (Rates and Forms for Certain Property Insurance), but not 5.101, of this code, the commissioner may order the insurer to take certain actions.

(b-1) Provides that the rate for interest assessed under Subsection (b) of this article is the lesser of 18 percent or the sum of the prime rate for the calendar year in which the order by the commissioner that the rate is excessive or unfairly discriminatory is issued and six percent. Provides that, for purposes of this subsection, the prime rate is the prime rate as published in The Wall Street Journal for the first day of the calendar year that is not a Saturday, Sunday, or legal holiday. Provides that the interest accrues beginning on the date on which the commissioner enters the order and continues to accrue until the refund is paid. Prohibits an insurer from being required to pay any interest penalty if the insurer prevails in an appeal of the commissioner's order under Subchapter D (Judicial Review), Chapter 36, of this code.

(b-2) Prohibits an insurer from claiming a premium tax credit to which the insurer is otherwise entitled unless the insurer has complied with this article.

ARTICLE 21. EFFECTIVE DATE

SECTION 21.01. Effective date: upon passage or the 91st day after adjournment.