

1-1 By: McCall (Senate Sponsor - Duncan) H.B. No. 2425
1-2 (In the Senate - Received from the House May 12, 2003;
1-3 May 12, 2003, read first time and referred to Committee on Finance;
1-4 May 26, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 10, Nays 1; May 26, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2425 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to state and certain local fiscal matters; making an
1-11 appropriation.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 103.051(a), Civil Practice and Remedies
1-14 Code, is amended to read as follows:

1-15 (a) To apply for compensation under this subchapter, the
1-16 claimant must file with the ~~[judicial section of the]~~ comptroller's
1-17 judiciary section [office]:

1-18 (1) an application for compensation provided for that
1-19 purpose by the comptroller;

1-20 (2) a verified copy of the pardon or court order
1-21 justifying the application for compensation; ~~and~~

1-22 (3) a statement provided by the Texas Department of
1-23 Criminal Justice verifying the length of incarceration; and

1-24 (4) a certification of the claimant's actual innocence
1-25 of the crime for which the claimant was sentenced that is signed by
1-26 the attorney representing the state in the prosecution of felonies
1-27 in the county in which the sentence was rendered.

1-28 SECTION 2. Section 14(e), Article 42.12, Code of Criminal
1-29 Procedure, as added by Chapter 1188, Acts of the 76th Legislature,
1-30 Regular Session, 1999, is amended to read as follows:

1-31 (e) The clerk of a court that collects a fee imposed under
1-32 Subsection (c)(2) shall remit the fee to the comptroller not later
1-33 than the last day of the month following the end of the calendar
1-34 quarter in which the fee is collected, and the comptroller shall
1-35 deposit the fee into the general revenue fund. If the clerk does
1-36 not collect a fee imposed under Subsection (c)(2), the clerk is not
1-37 required to file any report required by the comptroller relating to
1-38 the collection of the fee. In requiring the payment of a fee under
1-39 Subsection (c)(2), the judge shall consider fines, fees, and other
1-40 necessary expenses for which the defendant is obligated in
1-41 establishing the amount of the fee. The judge may not:

1-42 (1) establish the fee in an amount that is greater than
1-43 25 percent of the defendant's gross income while the defendant is a
1-44 participant in residential aftercare; or

1-45 (2) require the defendant to pay the fee at any time
1-46 other than a time at which the defendant is both employed and a
1-47 participant in residential aftercare.

1-48 SECTION 3. Section 19(f), Article 42.12, Code of Criminal
1-49 Procedure, is amended to read as follows:

1-50 (f) A community corrections and supervision department
1-51 shall remit fees collected under Subsection (e) of this section to
1-52 the comptroller not later than the last day of the month following
1-53 the end of the calendar quarter in which the fee is collected. The
1-54 comptroller shall deposit the fee in the special revenue fund to the
1-55 credit of the sexual assault program established under Section
1-56 44.0061, Health and Safety Code. If the department does not collect
1-57 a fee imposed under Subsection (e), the department is not required
1-58 to file any report required by the comptroller relating to the
1-59 collection of the fee.

1-60 SECTION 4. Sections 42.259(c), (d), and (f), Education
1-61 Code, are amended to read as follows:

1-62 (c) Payments from the foundation school fund to each
1-63 category 2 school district shall be made as follows:

2-1 (1) 22 percent of the yearly entitlement of the
2-2 district shall be paid in an installment to be made on or before the
2-3 25th day of September of a fiscal year;

2-4 (2) 18 percent of the yearly entitlement of the
2-5 district shall be paid in an installment to be made on or before the
2-6 25th day of October;

2-7 (3) 9.5 percent of the yearly entitlement of the
2-8 district shall be paid in an installment to be made on or before the
2-9 25th day of November;

2-10 (4) 7.5 percent of the yearly entitlement of the
2-11 district shall be paid in an installment to be made on or before the
2-12 25th day of April;

2-13 (5) five percent of the yearly entitlement of the
2-14 district shall be paid in an installment to be made on or before the
2-15 25th day of May;

2-16 (6) 10 percent of the yearly entitlement of the
2-17 district shall be paid in an installment to be made on or before the
2-18 25th day of June;

2-19 (7) 13 percent of the yearly entitlement of the
2-20 district shall be paid in an installment to be made on or before the
2-21 25th day of July; and

2-22 (8) 15 percent of the yearly entitlement of the
2-23 district shall be paid in an installment to be made after the fifth
2-24 day of September and not later than the 10th day of September of the
2-25 calendar year following the calendar year of the payment made under
2-26 Subdivision (1) [on or before the 25th day of August].

2-27 (d) Payments from the foundation school fund to each
2-28 category 3 school district shall be made as follows:

2-29 (1) 45 percent of the yearly entitlement of the
2-30 district shall be paid in an installment to be made on or before the
2-31 25th day of September of a fiscal year;

2-32 (2) 35 percent of the yearly entitlement of the
2-33 district shall be paid in an installment to be made on or before the
2-34 25th day of October; and

2-35 (3) 20 percent of the yearly entitlement of the
2-36 district shall be paid in an installment to be made after the fifth
2-37 day of September and not later than the 10th day of September of the
2-38 calendar year following the calendar year of the payment made under
2-39 Subdivision (1) [on or before the 25th day of August].

2-40 (f) Except as provided by Subsection (c)(8) or (d)(3), any
2-41 [Any] previously unpaid additional funds from prior years owed to a
2-42 district shall be paid to the district together with the September
2-43 payment of the current year entitlement.

2-44 SECTION 5. Section 44.901, Education Code, as amended by
2-45 Chapter 573, Acts of the 77th Legislature, Regular Session, 2001,
2-46 is amended to read as follows:

2-47 Sec. 44.901. ENERGY SAVINGS PERFORMANCE CONTRACTS [OR WATER
2-48 CONSERVATION MEASURES]. (a) In this section, "energy savings
2-49 performance contract" means a contract for energy or water
2-50 conservation measures to reduce energy or water consumption or
2-51 operating costs of school facilities in which the estimated savings
2-52 in utility costs resulting from the measures is guaranteed to
2-53 offset the cost of the measures over a specified period. The term
2-54 includes a contract for the installation or implementation of:
2-55 [The board of trustees of a school district may enter into a
2-56 contract for energy or water conservation measures to reduce energy
2-57 or water consumption or operating costs of school facilities in
2-58 accordance with this section.

2-59 [(b) A contract to which this section applies includes a
2-60 contract for the installation of:]

2-61 (1) insulation of a [the] building structure
2-62 [structures] and systems within the building;

2-63 (2) storm windows or doors, caulking or
2-64 weatherstripping, multiglazed windows or doors, heat absorbing or
2-65 heat reflective glazed and coated window or door systems, or other
2-66 window or door system modifications that reduce energy consumption;

2-67 (3) automatic energy control systems, including
2-68 computer software and technical data licenses;

2-69 (4) heating, ventilating, or air-conditioning system

3-1 modifications or replacements that reduce energy or water
3-2 consumption;

3-3 (5) lighting fixtures that increase energy
3-4 efficiency;

3-5 (6) energy recovery systems;

3-6 (7) electric systems improvements;

3-7 (8) water-conserving fixtures, appliances, and
3-8 equipment or the substitution of non-water-using fixtures,
3-9 appliances, and equipment;

3-10 (9) water-conserving landscape irrigation equipment;

3-11 (10) landscaping measures that reduce watering
3-12 demands and capture and hold applied water and rainfall, including:
3-13 (A) landscape contouring, including the use of
3-14 berms, swales, and terraces; and
3-15 (B) the use of soil amendments that increase the
3-16 water-holding capacity of the soil, including compost;

3-17 (11) rainwater harvesting equipment and equipment to
3-18 make use of water collected as part of a storm-water system
3-19 installed for water quality control;

3-20 (12) equipment for recycling or reuse of water
3-21 originating on the premises or from other sources, including
3-22 treated municipal effluent;

3-23 (13) equipment needed to capture water from
3-24 nonconventional, alternate sources, including air conditioning
3-25 condensate or graywater, for nonpotable uses;

3-26 (14) metering equipment needed to segregate water use
3-27 in order to identify water conservation opportunities or verify
3-28 water savings; or

3-29 (15) other energy or water conservation-related
3-30 improvements or equipment, [~~including improvements or equipment~~
3-31 relating to renewable energy or nonconventional water sources or
3-32 water reuse~~].~~

3-33 (b) The board of trustees of a school district may enter
3-34 into an energy savings performance contract in accordance with this
3-35 section.

3-36 (c) Each [All] energy or water conservation measure
3-37 [measures] must comply with current local, state, and federal
3-38 construction, plumbing, and environmental codes and regulations.
3-39 Notwithstanding [~~anything to the contrary in~~] Subsection (a) [~~(b)~~],
3-40 an energy savings performance [a] contract may [~~for energy or water~~
3-41 conservation measures shall] not include improvements or equipment
3-42 that allow or cause water from any condensing, cooling, or
3-43 industrial process or any system of nonpotable usage over which the
3-44 public water supply system officials do not have sanitary control,
3-45 to be returned to the potable water supply.

3-46 (d) The [~~person with whom the~~] board may enter into energy
3-47 savings performance contracts only with persons who are [~~must be~~
3-48 experienced in the design, implementation, and installation of the
3-49 energy or water conservation measures addressed by the contract.

3-50 (e) Before entering into an energy savings performance [a]
3-51 contract [~~for energy or water conservation measures~~], the board
3-52 shall require the provider of the energy or water conservation
3-53 measures to file with the board a payment and performance bond
3-54 relating to the installation of the [~~energy or water conservation~~
3-55 measures in accordance with Chapter 2253, Government Code. The
3-56 [~~that is in an amount the~~] board [~~finds reasonable and necessary to~~
3-57 protect the interests of the school district and that] may also
3-58 require a separate bond to cover the value of the guaranteed savings
3-59 on the contract [~~and is conditioned on the faithful execution of the~~
3-60 terms of the contract].

3-61 (f) An energy savings performance contract [~~Energy or water~~
3-62 conservation measures with respect to existing buildings or
3-63 facilities] may be financed:

3-64 (1) under a lease/purchase contract that has a term
3-65 not to exceed 15 years from the final date of installation and that
3-66 meets federal tax requirements for tax-free municipal leasing or
3-67 long-term financing;

3-68 (2) with the proceeds of bonds; or

3-69 (3) under a contract with the provider of the energy or

4-1 water conservation measures that has a term not to exceed 15 years
4-2 from the final date of installation.

4-3 (g) An energy savings performance [A] contract ~~[for energy~~
4-4 ~~or water conservation measures]~~ shall contain provisions requiring
4-5 ~~[pursuant to which]~~ the provider of the energy or water
4-6 conservation measures to guarantee ~~[guarantees]~~ the amount of the
4-7 savings to be realized by the school district under the contract.
4-8 If the term of an energy savings performance [a] contract ~~[for~~
4-9 ~~energy or water conservation measures]~~ exceeds one year, the school
4-10 district's contractual obligations in any one year during the term
4-11 of the contract beginning after the final date of installation may
4-12 not exceed the total energy, water, wastewater, and operating cost
4-13 savings, including ~~[but not limited to]~~ electrical, gas, water,
4-14 wastewater, or other utility cost savings and operating cost
4-15 savings resulting from the measures, ~~[automatic monitoring and~~
4-16 ~~control]~~ as determined by the school district in this subsection,
4-17 divided by the number of years in the contract term.

4-18 (h) An energy savings performance [A] contract shall ~~[under~~
4-19 ~~this section may]~~ be let according to the procedures established
4-20 for procuring certain professional services by Section 2254.004,
4-21 Government Code ~~[under competitive proposal procedures]~~. Notice of
4-22 the request for qualifications ~~[proposals]~~ shall be published in
4-23 the manner provided for competitive bidding. ~~[Requests for~~
4-24 ~~proposals must solicit quotations and must specify the relative~~
4-25 ~~importance of guaranteed savings, price, return on investment,~~
4-26 ~~financial performance and stability, quality, technical ability,~~
4-27 ~~experience, and other evaluation factors. The contract shall be~~
4-28 ~~awarded to the responsible offeror whose proposal, following~~
4-29 ~~negotiations, is determined to be the most advantageous to the~~
4-30 ~~school district considering the guaranteed savings and other~~
4-31 ~~evaluation factors set forth in the request for proposals.]~~

4-32 (i) Before ~~[To obtain the best final offers, the school~~
4-33 ~~district may allow proposal revisions after submissions and before~~
4-34 ~~the award of the contract.~~

4-35 ~~[(j) Prior to]~~ entering into an energy savings performance
4-36 [a] contract ~~[under this section]~~, the board must require that the
4-37 cost savings projected by an offeror be reviewed by a licensed
4-38 professional engineer who is not an officer or employee of an
4-39 offeror for the contract under review or otherwise associated with
4-40 the contract or the offeror. An engineer who reviews a contract
4-41 shall maintain the confidentiality of any proprietary information
4-42 the engineer acquires while reviewing the contract. Sections
4-43 1001.053 and 1001.407, Occupations Code, apply ~~[Section 19, The~~
4-44 ~~Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil~~
4-45 ~~Statutes), applies]~~ to work performed under the contract.

4-46 SECTION 6. Section 51.927, Education Code, as amended by
4-47 Chapter 573, Acts of the 77th Legislature, Regular Session, 2001,
4-48 is amended to read as follows:

4-49 Sec. 51.927. ENERGY SAVINGS PERFORMANCE CONTRACTS ~~[OR WATER~~
4-50 ~~CONSERVATION MEASURES]~~. (a) In this section, "energy savings
4-51 performance contract" means a contract for energy or water
4-52 conservation measures to reduce energy or water consumption or
4-53 operating costs of institutional facilities in which the estimated
4-54 savings in utility costs resulting from the measures is guaranteed
4-55 to offset the cost of the measures over a specified period. The
4-56 term ~~[The governing board of an institution of higher education may~~
4-57 ~~enter into a contract for energy or water conservation measures to~~
4-58 ~~reduce energy or water consumption or operating costs of~~
4-59 ~~institutional facilities in accordance with this section.~~

4-60 ~~[(b) A contract to which this section applies]~~ includes a
4-61 contract for the installation or implementation of:

4-62 (1) insulation of a building structure and systems
4-63 within a building;

4-64 (2) storm windows or doors, caulking or weather
4-65 stripping, multiglazed windows or doors, heat-absorbing or
4-66 heat-reflective glazed and coated window or door systems, or other
4-67 window or door system modifications that reduce energy consumption;

4-68 (3) automatic energy control systems, including
4-69 computer software and technical data licenses;

5-1 (4) heating, ventilating, or air conditioning system
5-2 modifications or replacements that reduce energy or water
5-3 consumption;
5-4 (5) lighting fixtures that increase energy
5-5 efficiency;
5-6 (6) energy recovery systems;
5-7 (7) electric systems improvements;
5-8 (8) water-conserving fixtures, appliances, and
5-9 equipment or the substitution of non-water-using fixtures,
5-10 appliances, and equipment;
5-11 (9) water-conserving landscape irrigation equipment;
5-12 (10) landscaping measures that reduce watering
5-13 demands and capture and hold applied water and rainfall, including:
5-14 (A) landscape contouring, including the use of
5-15 berms, swales, and terraces; and
5-16 (B) the use of soil amendments that increase the
5-17 water-holding capacity of the soil, including compost;
5-18 (11) rainwater harvesting equipment and equipment to
5-19 make use of water collected as part of a storm-water system
5-20 installed for water quality control;
5-21 (12) equipment for recycling or reuse of water
5-22 originating on the premises or from other sources, including
5-23 treated municipal effluent;
5-24 (13) equipment needed to capture water from
5-25 nonconventional, alternate sources, including air conditioning
5-26 condensate or graywater, for nonpotable uses;
5-27 (14) metering equipment needed to segregate water use
5-28 in order to identify water conservation opportunities or verify
5-29 water savings; or
5-30 (15) other energy or water conservation-related
5-31 improvements or equipment, [~~including improvements or equipment~~
5-32 ~~related to renewable energy or nonconventional water sources or~~
5-33 ~~water reuse~~].
5-34 (b) The governing board of an institution of higher
5-35 education may enter into an energy savings performance contract in
5-36 accordance with this section.
5-37 (c) Each [~~All~~] energy or water conservation measure
5-38 [~~measures~~] must comply with current local, state, and federal
5-39 construction, plumbing, and environmental codes and regulations.
5-40 Notwithstanding [~~anything to the contrary in~~] Subsection (a) [~~(b)~~],
5-41 an energy savings performance [~~a~~] contract may [~~for energy or water~~
5-42 ~~conservation measures shall~~] not include improvements or equipment
5-43 that allow or cause water from any condensing, cooling, or
5-44 industrial process or any system of nonpotable usage over which the
5-45 public water supply system officials do not have sanitary control,
5-46 to be returned to the potable water supply.
5-47 (d) The [~~entity with whom the~~] board may enter into energy
5-48 savings performance contracts only with entities that are [~~must be~~]
5-49 experienced in the design, implementation, and installation of the
5-50 energy or water conservation measures addressed by the contract.
5-51 (e) Before entering into an energy savings performance [~~a~~]
5-52 contract [~~for energy or water conservation measures~~], the board
5-53 shall require the provider of the energy or water conservation
5-54 measures to file with the board a payment and performance bond in
5-55 accordance with Chapter 2253, Government Code. The [~~that is in an~~
5-56 ~~amount the~~] board may also require a separate bond to cover the
5-57 value of the guaranteed savings on [~~finds reasonable and necessary~~
5-58 ~~to protect the interests of the institution and is conditioned on~~
5-59 ~~the faithful execution of the terms of~~] the contract.
5-60 (f) The board may enter into an energy savings performance
5-61 [~~a~~] contract for a period of more than one year only [~~for energy or~~
5-62 ~~water conservation measures with an entity~~] if the board finds that
5-63 the amount the institution would spend on the energy or water
5-64 conservation measures will not exceed the amount to be saved in
5-65 energy, water, wastewater, and operating costs over 15 years from
5-66 the date of installation. If the term of the [~~a~~] contract [~~for~~
5-67 ~~energy or water conservation measures~~] exceeds one year, the
5-68 institution's [~~board's~~] contractual obligation in any year during
5-69 the term of the contract beginning after the final date of

6-1 installation may not exceed the total energy, water, wastewater,
 6-2 and operating cost savings, including ~~[but not limited to]~~
 6-3 electrical, gas, water, wastewater, or other utility cost savings
 6-4 and operating cost savings resulting from the measures ~~[automatic~~
 6-5 ~~monitoring and control]~~, as determined by the board in this
 6-6 subsection, divided by the number of years in the contract term
 6-7 beginning after the final date of installation. The board shall
 6-8 consider all costs of the energy or water conservation measures,
 6-9 including costs of design, engineering, installation, maintenance,
 6-10 repairs, and debt service.

6-11 (g) An energy savings performance contract ~~[Energy or water~~
 6-12 ~~conservation measures]~~ may be financed:

6-13 (1) under a lease/purchase contract that has a term
 6-14 not to exceed 15 years from the final date of installation and that
 6-15 meets federal tax requirements for tax-free municipal leasing or
 6-16 long-term financing, including a lease/purchase contract under the
 6-17 master equipment lease purchase program administered by the Texas
 6-18 Public Finance Authority under Chapter 1232, Government Code;

6-19 (2) with the proceeds of bonds; or

6-20 (3) under a contract with the provider of the energy or
 6-21 water conservation measures that has a term not to exceed 15 years
 6-22 from the final date of installation.

6-23 (h) An energy savings performance [A] contract ~~[for energy~~
 6-24 ~~or water conservation measures]~~ shall contain provisions requiring
 6-25 ~~[pursuant to which]~~ the provider of the energy or water
 6-26 conservation measures to guarantee ~~[guarantees]~~ the amount of the
 6-27 savings to be realized by the institution of higher education under
 6-28 the contract. ~~[The Master Equipment Lease Purchase Program~~
 6-29 ~~operated by the Texas Public Finance Authority may be utilized by an~~
 6-30 ~~institution to fund a contract for energy or water conservation~~
 6-31 ~~measures so long as the costs of the energy or water conservation~~
 6-32 ~~measures, including costs of design, engineering, installation,~~
 6-33 ~~maintenance, repairs, and anticipated debt service requirements of~~
 6-34 ~~the Master Equipment Lease Purchase Program, do not exceed the~~
 6-35 ~~total energy and operating cost savings, as described in Subsection~~
 6-36 ~~(f), beginning after the final date of installation.]~~

6-37 (i) An energy savings performance [A] contract shall ~~[under~~
 6-38 ~~this section may]~~ be let according to the procedures established
 6-39 for procuring certain professional services by Section 2254.004,
 6-40 Government Code ~~[under competitive sealed proposal procedures]~~.
 6-41 Notice of the request for qualifications ~~[proposals]~~ shall be given
 6-42 in the manner provided by Section 2156.002 ~~[for in Chapter 2156]~~,
 6-43 Government Code. The Texas Higher Education Coordinating Board, in
 6-44 consultation with the State Energy Conservation Office ~~[and the~~
 6-45 ~~Texas Energy Coordination Council]~~ with regard to energy and water
 6-46 conservation measures, shall establish guidelines and an approval
 6-47 process for awarding energy savings performance contracts ~~[awarded~~
 6-48 ~~under this section]~~. The guidelines must require that the cost
 6-49 savings projected by an offeror be reviewed by a licensed
 6-50 professional engineer who is not an officer or employee of an
 6-51 offeror for the contract under review or otherwise associated with
 6-52 the contract. An engineer who reviews a contract shall maintain the
 6-53 confidentiality of any proprietary information the engineer
 6-54 acquires while reviewing the contract. A contract is not required
 6-55 to be reviewed or approved by the State Energy Conservation Office
 6-56 ~~[or Texas Energy Coordination Council]~~. Sections 1001.053 and
 6-57 1001.407, Occupations Code, apply ~~[Section 19, The Texas~~
 6-58 ~~Engineering Practice Act (Article 3271a, Vernon's Texas Civil~~
 6-59 ~~Statutes), applies]~~ to work performed under the contract. ~~[The~~
 6-60 ~~contract shall be awarded to the responsible offeror whose~~
 6-61 ~~proposal, following negotiations, is determined by the institution~~
 6-62 ~~to be the most advantageous to the institution considering the~~
 6-63 ~~guaranteed savings and other evaluation factors set forth in the~~
 6-64 ~~request for proposals, except that if the institution finds that no~~
 6-65 ~~offer is acceptable, it shall refuse all offers.]~~

6-66 (j) ~~[In accordance with regulations adopted by the~~
 6-67 ~~institution, the institution may conduct discussions with offerors~~
 6-68 ~~who submit proposals and who are determined to be reasonably~~
 6-69 ~~qualified for the award of the contract. Offerors shall be treated~~

7-1 ~~fairly and equally with respect to any opportunity for discussion~~
7-2 ~~and revision of proposals. To obtain the best final offers, the~~
7-3 ~~institution may allow proposal revisions after submissions and~~
7-4 ~~before the award of the contract.~~

7-5 ~~[(k) If provided in a request for proposals under Subsection~~
7-6 ~~(i), proposals shall be opened in a manner that avoids disclosure of~~
7-7 ~~the contents to competing offerors and keeps the proposals secret~~
7-8 ~~during negotiations. All proposals are open for public inspection~~
7-9 ~~after a contract is awarded unless the information is excepted from~~
7-10 ~~disclosure under Chapter 552, Government Code.~~

7-11 ~~[(1)]~~ The legislature shall base an institution's
7-12 appropriation for energy, water, and wastewater costs during a
7-13 fiscal year on the sum of:

7-14 (1) the institution's estimated energy, water, and
7-15 wastewater costs for that fiscal year; and

7-16 (2) if an energy savings performance [a] contract
7-17 ~~[under this section]~~ is in effect, the institution's estimated net
7-18 savings resulting from the contract during the contract term,
7-19 divided by the number of years in the contract term.

7-20 SECTION 7. Section 54.619, Education Code, is amended by
7-21 adding Subsection (j) to read as follows:

7-22 (j) The board may temporarily suspend new enrollment in the
7-23 program on the request of the comptroller as the comptroller
7-24 considers necessary to ensure the actuarial soundness of the fund.

7-25 SECTION 8. Section 54.624, Education Code, is amended to
7-26 read as follows:

7-27 Sec. 54.624. SENIOR COLLEGE PLAN. (a) Through the senior
7-28 college plan, a prepaid tuition contract shall provide prepaid
7-29 tuition and required fees for the beneficiary to attend a public
7-30 senior college or university for a specified number of
7-31 undergraduate credit hours not to exceed the typical number of
7-32 hours required for a baccalaureate degree awarded by a public
7-33 senior college or university.

7-34 (b) When the beneficiary of a senior college plan prepaid
7-35 tuition contract enrolls in a public senior college or university,
7-36 the university shall accept as payment in full of the beneficiary's
7-37 tuition and required fees the lesser of:

7-38 (1) the amount of tuition and required fees charged by
7-39 the institution; or

7-40 (2) an amount paid by the board under the contract
7-41 equal to the weighted average amount of tuition and required fees of
7-42 all public senior colleges and universities for that semester or
7-43 other academic period as determined by the board.

7-44 (c) Each public senior college or university shall provide
7-45 the information requested by the board on or before June 1 each year
7-46 to assist the board in determining the weighted average amount of
7-47 tuition and required fees of all public senior colleges and
7-48 universities for each semester or other academic term of the
7-49 following academic year for purposes of this section.

7-50 SECTION 9. Section 403.016(f), Government Code, is amended
7-51 to read as follows:

7-52 (f)(1) Except as provided by Subdivisions [Subdivision]

7-53 (2) and (4) and subject to any limitation in rules adopted by the
7-54 comptroller, an automated clearinghouse, or the federal
7-55 government, the comptroller may use the electronic funds transfer
7-56 system to deposit payments only to one or more accounts of a payee
7-57 at one or more financial institutions, including credit unions.

7-58 (2) The comptroller may also use the electronic funds
7-59 transfer system to deposit a portion of an employee's gross pay into
7-60 the employee's account at a credit union as prescribed by
7-61 Subchapter G, Chapter 659.

7-62 (3) A single electronic funds transfer may contain
7-63 payments to multiple payees. Individual transfers or warrants are
7-64 not required for each payee.

7-65 (4) The comptroller may also use the electronic funds
7-66 transfer system to deposit a portion of an employee's gross pay into
7-67 an account of an eligible state employee organization for a
7-68 membership as prescribed by Subchapter G, Chapter 659.

7-69 SECTION 10. Section 403.020, Government Code, is amended to

8-1 read as follows:

8-2 Sec. 403.020. PERFORMANCE REVIEW OF SCHOOL DISTRICTS AND
 8-3 INSTITUTIONS OF HIGHER EDUCATION. (a) In this section, "public
 8-4 junior college" and "general academic teaching institution" have
 8-5 the meanings assigned by Section 61.003, Education Code.

8-6 (b) The comptroller may periodically review the
 8-7 effectiveness and efficiency of the budgets and operations of:

8-8 (1) school districts;

8-9 (2) public junior colleges; and

8-10 (3) general academic teaching institutions.

8-11 (c) A review of a school district may be initiated by the
 8-12 comptroller or by the request of the [school] district. A review of
 8-13 a public junior college or general academic teaching institution
 8-14 may be initiated only at the request of:

8-15 (1) the governor;

8-16 (2) the Legislative Budget Board; or

8-17 (3) the governing body of the college or institution.

8-18 (d) A review may be initiated by a school district only by
 8-19 resolution adopted by a majority of the members of the board of
 8-20 trustees of the district. A review may be initiated by a public
 8-21 junior college or general academic teaching institution only at the
 8-22 request of the president of the college or institution or by a
 8-23 resolution adopted by a majority of the governing body of the
 8-24 college or institution.

8-25 (e) [~~b~~] If a review is initiated by the school district,
 8-26 public junior college, or general academic teaching institution,
 8-27 the district, college, or institution shall pay 25 percent of the
 8-28 cost incurred in conducting the review.

8-29 (f) [~~c~~] The comptroller shall:

8-30 (1) prepare a report showing the results of each
 8-31 review conducted under this section;

8-32 (2) file the report with:

8-33 (A) the school district, public junior college,
 8-34 or general academic teaching institution that is the subject of the
 8-35 report;

8-36 (B) [] the governor;

8-37 (C) [] the lieutenant governor;

8-38 (D) [] the speaker of the house of
 8-39 representatives;

8-40 (E) [] the chairs of the standing committees of
 8-41 the senate and of the house of representatives with jurisdiction
 8-42 over public education;

8-43 (F) the commissioner of higher education, if a
 8-44 public junior college or general academic teaching institution is
 8-45 the subject of the report; [] and

8-46 (G) the commissioner of education, if a school
 8-47 district is the subject of the report; and

8-48 (3) make the entire report and a summary of the report
 8-49 available to the public on the Internet.

8-50 SECTION 11. Section 403.027(g), Government Code, is amended
 8-51 to read as follows:

8-52 (g) In this section, "digital signature" means an
 8-53 electronic identifier intended by the person using it to have the
 8-54 same force and effect as the use of a manual signature [~~has the~~
 8-55 meaning assigned by Section 2.108(d), Business & Commerce Code].

8-56 SECTION 12. Section 403.054, Government Code, is amended by
 8-57 amending Subsection (b) and adding Subsection (i) to read as
 8-58 follows:

8-59 (b) The comptroller may not issue a replacement warrant if:

8-60 (1) the comptroller has paid the original warrant,
 8-61 unless the comptroller:

8-62 (A) has received [~~obtained~~] a refund of the
 8-63 payment; or

8-64 (B) is satisfied that the state agency on whose
 8-65 behalf the comptroller issued the original warrant has taken
 8-66 reasonable steps to obtain a refund of the payment;

8-67 (2) the period during which the comptroller may pay
 8-68 the original warrant has expired under Section 404.046 or other
 8-69 applicable law;

9-1 (3) the payee of the replacement warrant is not the
9-2 same as the payee of the original warrant; or

9-3 (4) the comptroller is prohibited by a payment law
9-4 [~~Section 403.055 or 481.0841, or by Section 57.48, Education Code,~~]
9-5 from issuing a warrant to the payee of the replacement warrant.

9-6 (i) In this section, "payment law" means:

9-7 (1) Section 403.055;

9-8 (2) Section 57.48, Education Code;

9-9 (3) Section 231.007, Family Code; or

9-10 (4) any similar law that prohibits the comptroller
9-11 from issuing a warrant or initiating an electronic funds transfer
9-12 to a person.

9-13 SECTION 13. Sections 403.092(a) and (b), Government Code,
9-14 are amended to read as follows:

9-15 (a) To allow efficient management of the cash flow of the
9-16 general revenue fund and to avoid a temporary cash deficiency in
9-17 that fund, the comptroller may transfer available [~~surplus~~] cash,
9-18 except constitutionally dedicated revenues, between funds that are
9-19 managed by or in the custody of the comptroller [~~state treasury~~].
9-20 As soon as practicable the comptroller shall return the available
9-21 [~~surplus~~] cash to the fund from which it was transferred. The
9-22 comptroller shall preserve the [~~fund~~] equity of the fund from which
9-23 the cash was transferred and shall allocate the earned [~~depository~~]
9-24 interest as if the transfer had not been made.

9-25 (b) If the comptroller submits a statement under Article
9-26 III, Section 49a, of the Texas Constitution when available
9-27 [~~surplus~~] cash transferred under Subsection (a) is in the general
9-28 revenue fund, the comptroller shall indicate in that statement that
9-29 the transferred available [~~surplus~~] cash is in the general revenue
9-30 fund, is a liability of that fund, and is not available for
9-31 appropriation by the legislature except as necessary to return cash
9-32 to the fund from which it was transferred as required by Subsection
9-33 (a).

9-34 SECTION 14. Sections 403.1042(b), (c), (e), and (f),
9-35 Government Code, are amended to read as follows:

9-36 (b) The advisory committee is composed of 11 members
9-37 appointed [~~by the advisory committee~~] as follows:

9-38 (1) one member appointed [~~nominated~~] by the
9-39 comptroller to represent a public hospital or hospital district
9-40 located in a county with a population of 50,000 or less or a public
9-41 hospital owned or maintained by a municipality;

9-42 (2) one member appointed [~~nominated~~] by the political
9-43 subdivision that, in the year preceding the appointment, received
9-44 the largest annual distribution paid from the account;

9-45 (3) one member appointed [~~nominated~~] by the political
9-46 subdivision that, in the year preceding the appointment, received
9-47 the second largest annual distribution paid from the account;

9-48 (4) four members appointed [~~nominated~~] by political
9-49 subdivisions that:

9-50 (A) in the year preceding the appointment,
9-51 received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th
9-52 largest annual distribution paid from the account; and

9-53 (B) do not have an appointee [~~a nominee~~] serving
9-54 on the advisory committee at the time of appointment;

9-55 (5) one member appointed [~~nominated~~] by the County
9-56 Judges and Commissioners Association of Texas;

9-57 (6) one member appointed [~~nominated~~] by the North and
9-58 East Texas County Judges and Commissioners Association;

9-59 (7) one member appointed [~~nominated~~] by the South
9-60 Texas County Judges and Commissioners Association; and

9-61 (8) one member appointed [~~nominated~~] by the West Texas
9-62 County Judges and Commissioners Association.

9-63 (c) A commissioners court that sets the tax rate for a
9-64 hospital district must approve any person appointed [~~nominated~~] by
9-65 the hospital district to serve on the advisory committee.

9-66 (e) Except as provided by this subsection, members
9-67 [~~Members~~] of the advisory committee serve staggered six-year terms
9-68 expiring on August 31 of each odd-numbered year. A member of the
9-69 advisory committee whose term expires or who attempts to resign

10-1 from the committee remains a member of the committee until the
10-2 member's successor is appointed.

10-3 (f) An individual or entity authorized to make an
10-4 appointment [~~or nominate someone for appointment~~] to the advisory
10-5 committee created under this section shall attempt to appoint [~~or~~
10-6 ~~nominate~~] persons who represent the gender composition, minority
10-7 populations, and geographic regions of the state.

10-8 SECTION 15. Section 404.024, Government Code, is amended by
10-9 amending Subsection (b) and adding Subsection (1) to read as
10-10 follows:

10-11 (b) State funds not deposited in state depositories shall be
10-12 invested by the comptroller in:

10-13 (1) direct security repurchase agreements;
10-14 (2) reverse security repurchase agreements;
10-15 (3) direct obligations of or obligations the principal
10-16 and interest of which are guaranteed by the United States;

10-17 (4) direct obligations of or obligations guaranteed by
10-18 agencies or instrumentalities of the United States government;

10-19 (5) bankers' acceptances that:
10-20 (A) are eligible for purchase by the Federal
10-21 Reserve System;

10-22 (B) do not exceed 270 days to maturity; and
10-23 (C) are issued by a bank that has received the
10-24 highest short-term credit rating by a nationally recognized
10-25 investment rating firm;

10-26 (6) commercial paper that:
10-27 (A) does not exceed 270 days to maturity; and
10-28 (B) except as provided by Subsection (i), has
10-29 received the highest short-term credit rating by a nationally
10-30 recognized investment rating firm;

10-31 (7) contracts written by the treasury in which the
10-32 treasury grants the purchaser the right to purchase securities in
10-33 the treasury's marketable securities portfolio at a specified price
10-34 over a specified period and for which the treasury is paid a fee and
10-35 specifically prohibits naked-option or uncovered option trading;

10-36 (8) direct obligations of or obligations guaranteed by
10-37 the Inter-American Development Bank, the International Bank for
10-38 Reconstruction and Development (the World Bank), the African
10-39 Development Bank, the Asian Development Bank, and the International
10-40 Finance Corporation that have received the highest credit rating by
10-41 a nationally recognized investment rating firm;

10-42 (9) bonds issued, assumed, or guaranteed by the State
10-43 of Israel;

10-44 (10) obligations of a state or an agency, county,
10-45 city, or other political subdivision of a state;

10-46 (11) mutual funds secured by obligations that are
10-47 described by Subdivisions (1) through (6), including pooled funds:

10-48 (A) established by the Texas Treasury
10-49 Safekeeping Trust Company;

10-50 (B) operated like a mutual fund; and
10-51 (C) with portfolios consisting only of
10-52 dollar-denominated securities; and

10-53 (12) foreign currency for the sole purpose of
10-54 facilitating investment by state agencies that have the authority
10-55 to invest in foreign securities.

10-56 (1) The comptroller may lend securities under procedures
10-57 established by the comptroller. The procedures must be consistent
10-58 with industry practice and must include a requirement to fully
10-59 secure the loan with cash, obligations, or a combination of cash and
10-60 obligations. In this subsection, "obligation" means an item
10-61 described by Subsections (b)(1)-(6).

10-62 SECTION 16. Section 404.102, Government Code, is amended by
10-63 amending Subsection (a) and adding Subsection (c) to read as
10-64 follows:

10-65 (a) The comptroller may incorporate a special-purpose trust
10-66 company called the Texas Treasury Safekeeping Trust Company. The
10-67 purposes of the trust company are to provide a means for the
10-68 comptroller to obtain direct access to services provided by the
10-69 Federal Reserve System and to enable the comptroller to manage,

11-1 disburse, transfer, safekeep, and invest funds and securities more
11-2 efficiently and economically by using established and reasonable
11-3 financial practices, including the pooling of funds and the lending
11-4 of securities to the extent practical or necessary. The
11-5 comptroller may deposit funds and securities with the trust company
11-6 to achieve its purpose.

11-7 (c) The trust company may establish government investment
11-8 pools consisting of state agency funds not required to be deposited
11-9 in the state treasury and local government funds that are placed
11-10 into the pools for investment or reinvestment by the trust company.
11-11 A state agency or local government may place funds into the pools
11-12 for investment or reinvestment as authorized by Subsection (a) or
11-13 other law. In this subsection, "local government" and "state
11-14 agency" have the meanings assigned by Section 2256.002.

11-15 SECTION 17. Section 404.107(b), Government Code, is amended
11-16 to read as follows:

11-17 (b) A participant that has money or securities on [Agencies
11-18 and local political subdivisions of the state and nonprofit
11-19 corporations, foundations, and other charitable organizations
11-20 created on behalf of the state or an agency or local political
11-21 subdivision of the state that are authorized or required to]
11-22 deposit [money and securities] with the trust company shall pay the
11-23 fees provided in [established on] the trust company's fee schedule
11-24 developed under Section 404.103(f). The trust company may:

- 11-25 (1) deduct a fee from the principal or earning of a
11-26 participant on deposit with the trust company; or
- 11-27 (2) require a participant to pay a fee from an amount
11-28 not on deposit with the trust company.

11-29 SECTION 18. Section 404.123(b), Government Code, is amended
11-30 to read as follows:

11-31 (b) The committee may impose a limit on the sum of the total
11-32 amount of the notes outstanding and the total outstanding liability
11-33 of the general revenue fund under Section 403.092 [may not at any
11-34 time exceed 25 percent of the taxes and revenues to be credited to
11-35 the general revenue fund for the fiscal year as determined by the
11-36 comptroller, based on the certification made by the comptroller in
11-37 the enactment of the General Appropriations Act applicable to that
11-38 fiscal year].

11-39 SECTION 19. Chapter 447, Government Code, as amended by
11-40 Chapters 573, 1158, and 1398, Acts of the 77th Legislature, Regular
11-41 Session, 2001, is reenacted to read as follows:

11-42 CHAPTER 447. STATE ENERGY CONSERVATION OFFICE

11-43 Sec. 447.001. GOVERNANCE AND GENERAL AUTHORITY. The state
11-44 energy conservation office:

- 11-45 (1) is under the direction and control of the
11-46 comptroller;
- 11-47 (2) shall promote the policies enumerated in this
11-48 chapter; and
- 11-49 (3) may act in any capacity authorized by state or
11-50 federal law.

11-51 Sec. 447.002. INFORMATION; PROCEDURES AND RULES; MEASURES
11-52 AND PROGRAMS. (a) The state energy conservation office shall
11-53 develop and provide energy and water conservation information for
11-54 the state.

11-55 (b) The state energy conservation office may establish
11-56 procedures and adopt rules relating to the development and
11-57 implementation of energy and water conservation measures and
11-58 programs applicable to state buildings and facilities.

11-59 (c) A procedure established or a rule adopted under
11-60 Subsection (b) may include provisions relating to:

- 11-61 (1) the retrofitting of existing state buildings and
11-62 facilities with energy-saving or water-saving devices; and
- 11-63 (2) the energy-related or water-related renovation of
11-64 those buildings and facilities.

11-65 (d) To the extent that the governor receives money
11-66 appropriated for energy and water efficiency measures and programs,
11-67 the governor, through the state energy conservation office, shall
11-68 implement measures and programs that the state energy conservation
11-69 office identifies as encouraging energy or water conservation by

12-1 state government.

12-2 (e) A state agency shall implement an energy or water
12-3 conservation measure or program in accordance with plans developed
12-4 under Section 447.009.

12-5 (f) The state energy conservation office shall coordinate
12-6 all water conservation-related activities with the Texas Water
12-7 Development Board. The board shall assist the office in the
12-8 development of all proposed water conservation and reuse
12-9 requirements and provide training and expertise to the office
12-10 regarding water conservation issues.

12-11 Sec. 447.003. LIAISON TO FEDERAL GOVERNMENT. The state
12-12 energy conservation office is the state liaison to the federal
12-13 government for the implementation and administration of federal
12-14 programs relating to state agency energy matters. The office shall
12-15 administer state programs established under:

12-16 (1) Part D, Title III, Energy Policy and Conservation
12-17 Act (42 U.S.C. Section 6321 et seq.), and its subsequent
12-18 amendments;

12-19 (2) Part G, Title III, Energy Policy and Conservation
12-20 Act (42 U.S.C. Section 6371 et seq.), and its subsequent
12-21 amendments; and

12-22 (3) other federal energy conservation programs as
12-23 assigned to the office by the governor or the legislature.

12-24 Sec. 447.004. DESIGN STANDARDS. (a) The state energy
12-25 conservation office shall establish and publish mandatory energy
12-26 and water conservation design standards for each new state building
12-27 or major renovation project, including a new building or major
12-28 renovation project of a state-supported institution of higher
12-29 education. The office shall define "major renovation project" for
12-30 purposes of this section and shall review and update the standards
12-31 biennially.

12-32 (b) The standards established under Subsection (a) must:

12-33 (1) include performance and procedural standards for
12-34 the maximum energy and water conservation allowed by the latest and
12-35 most cost-effective technology that is consistent with the
12-36 requirements of public health, safety, and economic resources;

12-37 (2) be stated in terms of energy and water consumption
12-38 levels;

12-39 (3) consider the various types of building uses; and

12-40 (4) allow for design flexibility.

12-41 (c) Any procedural standard established under this section
12-42 must be directed toward specific design and building practices that
12-43 produce good thermal resistance and low infiltration and toward
12-44 requiring practices in the design of mechanical and electrical
12-45 systems that maximize energy and water efficiency. The procedural
12-46 standards must address, as applicable:

12-47 (1) insulation;

12-48 (2) lighting;

12-49 (3) ventilation;

12-50 (4) climate control;

12-51 (5) water-conserving fixtures, appliances, and
12-52 equipment or the substitution of non-water-using fixtures,
12-53 appliances, and equipment;

12-54 (6) water-conserving landscape irrigation equipment;

12-55 (7) landscaping measures that reduce watering demands
12-56 and capture and hold applied water and rainfall, including:

12-57 (A) landscape contouring, including the use of
12-58 berms, swales, and terraces; and

12-59 (B) the use of soil amendments that increase the
12-60 water-holding capacity of the soil, including compost;

12-61 (8) rainwater harvesting equipment and equipment to
12-62 make use of water collected as part of a storm-water system
12-63 installed for water quality control;

12-64 (9) equipment for recycling or reusing water
12-65 originating on the premises or from other sources, including
12-66 treated municipal effluent;

12-67 (10) equipment needed to capture water from
12-68 nonconventional, alternate sources, including air conditioning
12-69 condensate or graywater, for nonpotable uses;

13-1 (11) metering equipment needed to segregate water use
13-2 in order to identify water conservation opportunities or verify
13-3 water savings;

13-4 (12) special energy requirements of health-related
13-5 facilities of higher education and state agencies; and

13-6 (13) any other item that the state energy conservation
13-7 office considers appropriate.

13-8 (d) A state agency or an institution of higher education
13-9 shall submit a copy of its design and construction manuals to the
13-10 state energy conservation office as the office considers necessary
13-11 to demonstrate compliance by the agency or institution with the
13-12 standards established under this section.

13-13 (e) A state agency or an institution of higher education may
13-14 not begin construction of a new state building or a major renovation
13-15 project before the design architect or engineer for the
13-16 construction or renovation has:

13-17 (1) certified to the agency or institution that the
13-18 construction or renovation complies with the standards established
13-19 under this section; and

13-20 (2) provided a copy of that certification to the state
13-21 energy conservation office.

13-22 Sec. 447.005. ENERGY AND WATER EFFICIENCY PROJECTS.
13-23 Subject to applicable state and federal laws or guidelines, the
13-24 state energy conservation office may:

13-25 (1) implement an energy or water efficiency project at
13-26 a state agency; or

13-27 (2) assist the agency in implementing the project
13-28 through an energy or water efficiency program.

13-29 Sec. 447.006. ADDITIONAL ENERGY AND WATER SERVICES.
13-30 (a) The state energy conservation office may provide additional
13-31 energy and water services, including:

13-32 (1) training of designated state employees in energy
13-33 and water management, energy-accounting techniques,
13-34 water-accounting techniques, and energy efficient and water
13-35 efficient design and construction;

13-36 (2) technical assistance regarding energy efficient
13-37 and water efficient capital improvements, energy efficient and
13-38 water efficient building design, and cogeneration and thermal
13-39 storage investments;

13-40 (3) technical assistance to the state auditor or a
13-41 state agency regarding energy and water management performance
13-42 audits and the monitoring of utility bills to detect billing
13-43 errors;

13-44 (4) technical assistance to a state agency regarding
13-45 third-party financing of an energy efficient and water efficient
13-46 capital improvement project; and

13-47 (5) other energy-related and water-related assistance
13-48 that the office considers appropriate, if the assistance is
13-49 requested by a state agency, an institution of higher education, a
13-50 consortium of institutions of higher education, or another
13-51 governmental entity created by state law.

13-52 (b) Using available state, federal, or oil overcharge
13-53 funds, the state energy conservation office may provide technical
13-54 assistance to a state agency or an institution of higher education
13-55 in analyzing or negotiating rates for electricity or natural gas
13-56 supplies from a locally certificated electric supplier, a natural
13-57 gas supplier, or a state-owned energy resource, including a
13-58 transportation charge for natural gas.

13-59 (c) A state agency or an institution of higher education may
13-60 request the assistance of the state energy conservation office
13-61 before negotiating or contracting for the supply or transportation
13-62 of natural gas or electricity.

13-63 (d) A state agency or an institution of higher education
13-64 with expertise in rate analysis, negotiation, or any other matter
13-65 related to the procurement of electricity and natural gas supplies
13-66 from a locally certificated electric supplier, a natural gas
13-67 supplier, or a state-owned energy resource may assist the state
13-68 energy conservation office whenever practicable. The attorney
13-69 general on request shall assist the office and other state agencies

14-1 and institutions of higher education in negotiating rates for
14-2 electricity and other terms of electric utility service.

14-3 (e) Using available funds from any source, the state energy
14-4 conservation office may assist a state agency, an institution of
14-5 higher education, a consortium of institutions of higher education,
14-6 or another governmental entity created by state law to further the
14-7 goals and pursue the policies of the state in energy research as may
14-8 be determined by the governor or the legislature. The office may
14-9 assist a state agency in implementing current federal energy
14-10 policy.

14-11 (f) The state energy conservation office on request may
14-12 negotiate rates for electricity and other terms of electric utility
14-13 service for a state agency or an institution of higher education.
14-14 The office also may negotiate the rates and the other terms of
14-15 service for a group of agencies or institutions in a single
14-16 contract.

14-17 (g) The state energy conservation office may analyze the
14-18 rates for electricity charged to and the amount of electricity used
14-19 by state agencies and institutions of higher education to determine
14-20 ways the state could obtain lower rates and use less electricity.
14-21 Each state agency, including the Public Utility Commission of
14-22 Texas, and institution of higher education shall assist the office
14-23 in obtaining the information the office needs to perform its
14-24 analysis.

14-25 Sec. 447.007. ENERGY AND WATER AUDITS. (a) The state
14-26 energy conservation office may audit a state-owned building used by
14-27 a state agency to assist the agency in reducing energy and water
14-28 consumption and costs through improved energy and water efficiency.

14-29 (b) Based on any audit performed under Subsection (a), the
14-30 state energy conservation office may recommend changes to improve
14-31 energy and water efficiency.

14-32 (c) Each state agency or institution of higher education
14-33 shall review and audit utility billings and contracts to detect
14-34 billing errors. Any contract with a private person to conduct the
14-35 review or audit must comply with all applicable provisions of
14-36 Subchapter A, Chapter 2254, regarding professional services
14-37 contracts. The contract may not be awarded on a contingent fee
14-38 basis unless the governor determines that the contract is
14-39 necessary, reasonable, and prudent.

14-40 Sec. 447.008. ENERGY-SAVING AND WATER-SAVING DEVICES OR
14-41 MEASURES. (a) On approval by the state energy conservation
14-42 office, a state agency that reduces its energy or water expenses may
14-43 use any funds saved by the agency from appropriated utility funds
14-44 for the purchase of an energy-saving or water-saving device or
14-45 measure. For purposes of this section, "energy-saving or
14-46 water-saving device or measure" means a device or measure that
14-47 directly reduces:

14-48 (1) energy or water costs; or

14-49 (2) the energy or water consumption of equipment,
14-50 including a lighting, heating, ventilation, air-conditioning
14-51 system, or other water-using system, without materially altering
14-52 the quality of the equipment.

14-53 (b) A state agency, in accordance with the recommendations
14-54 of an energy or water audit, may purchase energy-saving and
14-55 water-saving devices or measures from appropriated utility funds if
14-56 the savings in utility funds projected by the audit will offset the
14-57 purchase. The agency shall retain in its files a copy of the
14-58 recommendation and repayment schedule as evidence of the projected
14-59 savings.

14-60 Sec. 447.009. ENERGY AND WATER MANAGEMENT PLANNING.
14-61 (a) The state energy conservation office shall provide energy and
14-62 water management planning assistance to a state agency or an
14-63 institution of higher education, including:

14-64 (1) preparation by the agency or institution of a
14-65 long-range plan for the delivery of reliable, cost-effective
14-66 utility services for the state agency or institution;

14-67 (2) assistance to the Department of Public Safety for
14-68 energy emergency contingency planning, using state or federal funds
14-69 when available;

15-1 (3) assistance to each state agency or institution of
 15-2 higher education in preparing comprehensive energy and water
 15-3 management plans; and

15-4 (4) assistance to state agencies other than
 15-5 institutions of higher education in meeting the requirements of
 15-6 Section 447.002, including assistance in scheduling and assigning
 15-7 priorities to implementation plans to ensure that state agencies
 15-8 adopt qualified cost-effective efficiency measures and programs
 15-9 for all state facilities not later than September 1, 2006.

15-10 (b) A state agency or an institution of higher education
 15-11 shall develop the plan described in Subsection (a)(1) and submit
 15-12 the plan to the state energy conservation office upon request. The
 15-13 agency or institution shall use the plan in preparing its five-year
 15-14 construction and major renovation plans. After other energy-saving
 15-15 or water-saving alternatives are considered, district heating and
 15-16 cooling or on-site generation of electricity may be considered in
 15-17 planning for reliable, efficient, and cost-effective utility
 15-18 services.

15-19 (c) The state energy conservation office shall prepare
 15-20 guidelines for preparation of the plan described in Subsection
 15-21 (a)(3). A state agency or an institution of higher education that
 15-22 occupies a state-owned building shall prepare and implement a
 15-23 five-year energy and water management plan and shall submit that
 15-24 plan to the office upon request. The agency or institution shall
 15-25 update its plan biennially. A state agency or an institution of
 15-26 higher education that occupies a building not owned by the state
 15-27 shall cooperate with the office in addressing the energy or water
 15-28 management of that building.

15-29 (d) The comprehensive energy and water management plan
 15-30 described in Subsection (a)(3) shall be included in the five-year
 15-31 construction and major repair and rehabilitation plans for
 15-32 institutions of higher education as required by Section 61.0651,
 15-33 Education Code.

15-34 SECTION 20. Subchapter A, Chapter 609, Government Code, is
 15-35 amended by adding Section 609.014 to read as follows:

15-36 Sec. 609.014. COORDINATION OF PLANS. Notwithstanding any
 15-37 other provision of this chapter, an institution of higher
 15-38 education, as defined by Section 61.003, Education Code,
 15-39 participating in a group benefits program under Chapter 1551,
 15-40 Insurance Code, may participate under this chapter only in a
 15-41 deferred compensation plan described by Subchapter C.

15-42 SECTION 21. Section 659.102, Government Code, is amended by
 15-43 amending Subsection (c) and adding Subsection (d) to read as
 15-44 follows:

15-45 (c) The supplemental optional benefits program may include
 15-46 permanent life insurance, catastrophic illness insurance,
 15-47 disability insurance, ~~or~~ prepaid legal services, or a qualified
 15-48 transportation benefit.

15-49 (d) A qualified transportation benefit is a transportation
 15-50 benefit meeting the requirements of Section 132(f), Internal
 15-51 Revenue Code of 1986. The Employees Retirement System of Texas
 15-52 shall determine a fee or charge that may be paid as a qualified
 15-53 transportation benefit.

15-54 SECTION 22. Subchapter G, Chapter 659, Government Code, is
 15-55 amended by adding Section 659.1031 to read as follows:

15-56 Sec. 659.1031. DEDUCTION OF MEMBERSHIP FEES FOR ELIGIBLE
 15-57 STATE EMPLOYEE ORGANIZATIONS. (a) An employee of a state agency
 15-58 may authorize in writing a deduction each pay period from the
 15-59 employee's salary or wage payment for payment to an eligible state
 15-60 employee organization of a membership fee in the organization.

15-61 (b) In this section, "eligible state employee organization"
 15-62 means a state employee organization with a membership of at least
 15-63 2,000 active or retired state employees who hold or who have held
 15-64 certification from the Commission on Law Enforcement Officer
 15-65 Standards and Education.

15-66 SECTION 23. Section 659.104(a), Government Code, is amended
 15-67 to read as follows:

15-68 (a) An authorization for a deduction under this subchapter
 15-69 must direct the comptroller or, if applicable, the appropriate

16-1 financial officer of an institution of higher education to transfer
16-2 the withheld funds to the program, eligible state employee
16-3 organization, or credit union designated by the employee.

16-4 SECTION 24. Section 659.110, Government Code, is amended to
16-5 read as follows:

16-6 Sec. 659.110. RULES. The comptroller may establish
16-7 procedures and adopt rules to administer the credit union and the
16-8 eligible state employee organization membership fee deduction
16-9 programs [~~program~~] authorized by this subchapter.

16-10 SECTION 25. Section 659.131(8), Government Code, is amended
16-11 to read as follows:

16-12 (8) "Indirect services" means [~~health and human~~]
16-13 services that:

16-14 (A) enable, augment, or otherwise support the
16-15 [are not] direct delivery of health and human services; and

16-16 (B) demonstrably benefit residents of this
16-17 state.

16-18 SECTION 26. Section 659.146(c), Government Code, is amended
16-19 to read as follows:

16-20 (c) A federation or fund that seeks statewide participation
16-21 in a state employee charitable campaign must apply on behalf of
16-22 itself and its affiliated agencies to the state policy committee
16-23 during the annual eligibility determination period specified by the
16-24 committee. The state policy committee shall review each
16-25 application and may approve a federation or fund for statewide
16-26 participation only if the federation or fund qualifies as a
16-27 statewide charitable organization [~~or as an international~~
16-28 ~~federation or fund~~]. The state policy committee may approve an
16-29 affiliated charitable organization for statewide participation
16-30 only if the organization qualifies as a statewide charitable
16-31 organization [~~or is an affiliated agency of an international~~
16-32 ~~federation or fund~~].

16-33 SECTION 27. Section 659.150(b), Government Code, is amended
16-34 to read as follows:

16-35 (b) A participating charitable organization may not use
16-36 contributions under this subchapter to:

16-37 (1) directly or indirectly fund [~~conduct~~] litigation;
16-38 or

16-39 (2) make expenditures that would require the
16-40 organization to register under Chapter 305 if the organization were
16-41 not an entity exempt from registration under that chapter.

16-42 SECTION 28. Section 659.253, Government Code, is amended to
16-43 read as follows:

16-44 Sec. 659.253. TRANSFER WITHIN AGENCY FROM EXEMPT TO
16-45 CLASSIFIED POSITION. (a) Except as provided by Subsection (b), a
16-46 [A] state employee who transfers [~~moves~~] within a state agency from
16-47 an exempt [~~a~~] position [~~exempt from the state's position~~
16-48 ~~classification plan~~] to a classified position is entitled to [~~will~~]
16-49 receive an annual salary in the [~~proper~~] salary group to which the
16-50 classified position is allocated.

16-51 (b) During the fiscal biennium in which a state employee
16-52 transfers within a state agency from an exempt position to a
16-53 classified position, the employee's annual salary rate after the
16-54 transfer may not [~~to~~] exceed:

16-55 (1) the rate for the salary step equal to the rate
16-56 received by the employee when holding the [~~employee's current~~]
16-57 exempt position [~~salary~~] or the rate for the next higher salary
16-58 step, if the classified position is allocated [~~moving~~] to a
16-59 [position in a] salary group that is divided into steps; or

16-60 (2) the rate received by the employee when holding the
16-61 [employee's current] exempt position [~~salary~~] or the maximum rate
16-62 of the [~~new~~] salary group to which the classified position is
16-63 allocated, whichever is lower, if the classified position is
16-64 allocated to [~~moving to a position in~~] a salary group that is not
16-65 divided into steps.

16-66 [~~(b) Except as provided by this section, a state agency that~~
16-67 ~~at any time during a state fiscal biennium pays a state employee an~~
16-68 ~~exempt salary specifically established in the General~~
16-69 ~~Appropriations Act may not subsequently during the state fiscal~~

~~biennium pay the employee a greater salary under Salary Schedule A, B, or C of the General Appropriations Act.]~~

~~(c) A merit salary increase for [state agency that pays] a state employee who transfers to a classified position from an exempt position for which the [an exempt] salary is specifically established in the General Appropriations Act [and that then transfers the employee to a position in which the employee is paid under Salary Schedule A, B, or C of the General Appropriations Act] may not take effect if:~~

~~(1) the employee has spent less than [grant a merit salary increase to the employee until at least] six months in the classified position; or~~

~~(2) the increase would cause the salary limitation prescribed by Subsection (b) to be exceeded [after the date that the agency begins to pay the employee under Salary Schedule A, B, or C of the General Appropriations Act].~~

~~(d) The Legislative Budget Board and the governor together may approve an exception to the salary limitations prescribed by Subsection (b) [this section] for a state employee:~~

~~(1) on receiving the employing state agency's application for the exception; and~~

~~(2) if the employee's job responsibilities with the state agency have changed substantially during the [state fiscal] biennium.~~

~~(e) In this section:~~

~~(1) "Classified position" means a position classified under the state's position classification plan.~~

~~(2) "Exempt position" means a position exempt from the state's position classification plan.~~

~~SECTION 29. Subchapter K, Chapter 659, Government Code, is amended by adding Section 659.2531 to read as follows:~~

~~Sec. 659.2531. TRANSFER WITHIN AGENCY BETWEEN CLASSIFIED POSITIONS ALLOCATED TO SAME SALARY GROUP. (a) In this section:~~

~~(1) "Classified position" means a position classified under the state's position classification plan.~~

~~(2) "Transfer" means the transfer of a state employee within a state agency between two classified positions that:~~

~~(A) are allocated to the same salary group; and~~

~~(B) have different position titles as listed in the General Appropriations Act.~~

~~(b) Except as provided by Subsection (c), a state employee's annual salary rate immediately after a transfer may not exceed:~~

~~(1) the rate for the salary step that is one step higher than the salary step at which the employee was paid immediately before the transfer, if the classified position to which the employee transfers is allocated to a salary group that is divided into steps; or~~

~~(2) 103.4 percent of the employee's annual salary rate immediately before the transfer, if the classified position to which the employee transfers is allocated to a salary group that is not divided into steps.~~

~~(c) A state employee's annual salary rate immediately after a transfer may not exceed the maximum rate for the appropriate salary group.~~

~~SECTION 30. Section 659.255, Government Code, is amended to read as follows:~~

~~Sec. 659.255. MERIT SALARY INCREASES; ONE-TIME MERIT PAYMENTS. (a) In this [this] section:~~

~~(1) "Classified employee" means a state employee who holds a classified position.~~

~~(2) "Classified position" means a position [applies only to positions] classified under the state's position classification plan.~~

~~(3) "Merit salary increase" means an increase in compensation to:~~

~~(A) a higher step rate in the same classified salary group, if the classified employee is compensated under Salary Schedule A of the General Appropriations Act; or~~

~~(B) a higher rate within the range of the same~~

18-1 classified salary group, if the classified employee is compensated
 18-2 under Salary Schedule B of the General Appropriations Act.

18-3 ~~(b) [A state agency administrator may grant merit salary~~
 18-4 ~~increases including one-time merit payments to employees~~
 18-5 ~~compensated under Salary Schedules A and B of the General~~
 18-6 ~~Appropriations Act whose job performance and productivity are~~
 18-7 ~~consistently above that normally expected or required. For~~
 18-8 ~~classified employees compensated under Salary Schedule A of the~~
 18-9 ~~General Appropriations Act, a merit increase involves an increase~~
 18-10 ~~in an employee's salary to a higher step rate in the same salary~~
 18-11 ~~group. For classified employees compensated under Salary Schedule~~
 18-12 ~~B of the General Appropriations Act, a merit increase involves an~~
 18-13 ~~increase in an employee's salary to a higher rate within the range~~
 18-14 ~~of the same salary group. Merit increases including one-time merit~~
 18-15 ~~payments are subject to the restrictions prescribed by Subsections~~
 18-16 ~~(c)-(e).~~

18-17 ~~[(c)]~~ The comptroller shall prescribe accounting and
 18-18 reporting procedures as necessary to ensure the availability of
 18-19 information reflecting each state agency's use of merit salary
 18-20 increases, including one-time merit payments.

18-21 (c) Each state agency shall establish:

18-22 (1) a procedure for determining the eligibility of a
 18-23 classified employee to receive a merit salary increase or a
 18-24 one-time merit payment from the agency; and

18-25 (2) requirements for substantiating the eligibility
 18-26 of a classified employee who receives a merit salary increase or a
 18-27 one-time merit payment from the agency.

18-28 (d) Merit salary increases and [including] one-time merit
 18-29 payments shall be applied throughout the range of classified salary
 18-30 groups used by each state agency.

18-31 (e) A state agency may award a merit salary increase to a
 18-32 classified employee in relation to the employee's performance in
 18-33 the current classified position held by the employee if [For an
 18-34 employee to be eligible for a merit salary increase or a one-time
 18-35 merit payment, the following additional criteria must be met]:

18-36 (1) the employee has [must have] been employed by the
 18-37 [state] agency in that position for at least six continuous months
 18-38 before [prior to] the effective date [award] of the increase [or
 18-39 payment];

18-40 (2) the effective date of the increase is at least six
 18-41 months after the effective date of the employee's [must have
 18-42 elapsed since the employee's] last:

18-43 (A) promotion; [, enhanced compensation award
 18-44 authorized by the General Appropriations Act, one-time merit
 18-45 payment,] or

18-46 (B) merit salary increase for performance in that
 18-47 position [at the agency]; [and]

18-48 (3) the agency has complied with Subsection (c);

18-49 (4) the employee's job performance and productivity in
 18-50 that position are consistently above that normally expected or
 18-51 required; and

18-52 (5) the effective date of the increase is at least six
 18-53 months after the effective date of the agency's last:

18-54 (A) payment to the employee of an enhanced
 18-55 compensation award authorized by the General Appropriations Act; or

18-56 (B) one-time merit payment for performance in
 18-57 that position.

18-58 (f) A state agency may make a one-time merit payment to a
 18-59 classified employee in relation to the employee's performance in
 18-60 the current classified position held by the employee if:

18-61 (1) the employee has been employed by the agency in
 18-62 that position for at least six continuous months before the
 18-63 effective date of the payment;

18-64 (2) the effective date of the payment is at least six
 18-65 months after the effective date of the employee's last:

18-66 (A) promotion; or

18-67 (B) merit salary increase for performance in that
 18-68 position;

18-69 (3) the agency has complied with Subsection (c);

19-1 (4) the employee's job performance and productivity in
 19-2 that position are consistently above that normally expected or
 19-3 required; and

19-4 (5) the effective date of the payment is at least six
 19-5 months after the effective date of the agency's last:

19-6 (A) payment to the employee of an enhanced
 19-7 compensation award authorized by the General Appropriations Act; or

19-8 (B) one-time merit payment for performance in
 19-9 that position. [~~criteria for granting merit salary increases or~~
 19-10 ~~one-time merit payments must include specific criteria and~~
 19-11 ~~documentation to substantiate the granting of a merit increase or~~
 19-12 ~~one-time merit payment.]~~

19-13 SECTION 31. Subchapter K, Chapter 659, Government Code, is
 19-14 amended by adding Section 659.262 to read as follows:

19-15 Sec. 659.262. ADMINISTRATION. The comptroller may
 19-16 establish procedures and adopt rules to administer this subchapter.

19-17 SECTION 32. Section 661.152(d), Government Code, is amended
 19-18 to read as follows:

19-19 (d) An employee accrues vacation leave and may carry
 19-20 vacation leave forward from one fiscal year to the next in
 19-21 accordance with the following schedule:

	Hours Accrued Per Month for Full-time Employment	Maximum Hours Carried Forward From One Fiscal Year to the Next for a Full-time Employee
19-22 Employees With Total		
19-23 State Employment of:		
19-24 less than 2 years	8 [7]	180 [168]
19-25 at least 2 but less than 5 years	9 [8]	244 [232]
19-26 at least 5 but less than 10 years	10 [9]	268 [256]
19-27 at least 10 but less than 15 years	11 [10]	292 [280]
19-28 at least 15 but less than 20 years	13 [12]	340 [328]
19-29 at least 20 but less than 25 years	15 [14]	388 [376]
19-30 at least 25 but less than 30 years	17 [16]	436 [424]
19-31 at least 30 but less than 35 years	19 [18]	484 [472]
19-32 at least 35 years or more	21 [20]	532 [520]

19-33 SECTION 33. Subchapter A, Chapter 811, Government Code, is
 19-34 amended by adding Sections 811.007 and 811.008 to read as follows:

19-35 Sec. 811.007. IMMUNITY FROM LIABILITY. The board of
 19-36 trustees, executive director, and employees of the retirement
 19-37 system are not liable for any action taken or omission made or
 19-38 suffered by them in good faith in the performance of any duty in
 19-39 connection with any program or system administered by the
 19-40 retirement system.

19-41 Sec. 811.008. INSURANCE. Notwithstanding any other law,
 19-42 the board of trustees may self-insure or purchase any insurance in
 19-43 amounts the board considers reasonable and prudent.

19-44 SECTION 34. The heading to Section 813.104, Government
 19-45 Code, is amended to read as follows:

19-46 Sec. 813.104. ALTERNATIVE PAYMENTS AND METHODS TO ESTABLISH
 19-47 OR REESTABLISH SERVICE CREDIT.

19-48 SECTION 35. Section 813.104, Government Code, is amended by
 19-49 adding Subsection (e) to read as follows:

19-50 (e) The retirement system may provide for the electronic
 19-51 filing of agreements to establish or reestablish service credit.
 19-52 In this subsection, "electronic filing" has the meaning assigned by
 19-53 Section 814.010(a).

19-54 SECTION 36. Subchapter A, Chapter 814, Government Code, is
 19-55 amended by adding Section 814.010 to read as follows:

19-56 Sec. 814.010. ELECTRONIC FILING OF BENEFICIARY
 19-57 DESIGNATION. (a) In this section, "electronic filing" means the
 19-58 filing of data in the form of digital electronic signals
 19-59 transformed by computer and stored on magnetic tape, optical disks,
 19-60 or any other medium.

19-61 (b) A person entitled to designate a beneficiary under any
 19-62 system or program administered by the retirement system may make
 19-63 the designation by electronic filing under procedures adopted by
 19-64 the retirement system.

SECTION 37. Section 815.103, Government Code, is amended by adding Subsection (f) to read as follows:

(f) Chapter 412, Labor Code, does not apply to the retirement system. The board of trustees may acquire services described by that chapter in any manner or amount the board considers reasonable.

SECTION 38. Section 832.002, Government Code, is amended to read as follows:

Sec. 832.002. MEMBERSHIP FEE. (a) Each member of the retirement system annually shall pay the system a membership fee of \$10. A contributing member shall pay the fee with the member's first contribution to the retirement system in each fiscal year in the manner provided by Section 835.101 for payment of the member's contribution to the retirement system.

(b) If the membership fee is not paid with the member's first contribution of the fiscal year to the retirement system, the board of trustees may deduct the amount of the fee from that contribution or from any benefit to which the member becomes entitled.

SECTION 39. Sections 2101.0115(a) and (b), Government Code, are amended to read as follows:

(a) A state agency shall submit an annual report to:

- (1) the governor;
- (2) ~~the comptroller,~~
- ~~(3)~~ the Legislative Reference Library;
- (3) ~~(4)~~ the state auditor; and
- (4) ~~(5)~~ the Legislative Budget Board.

(b) A state agency's annual report must cover an entire fiscal year. The agency shall submit the report not later than December 31 of each year [the date and in the form prescribed by the comptroller].

SECTION 40. Section 2113.205(b), Government Code, is amended to read as follows:

(b) The comptroller may authorize a [A] state agency to [may] use money appropriated for a particular fiscal year to pay the entire cost or amount of a service, including an Internet connection, a periodical subscription, a maintenance contract, a post office box rental, insurance, or a surety or honesty bond, regardless of whether the service is provided over [it covers] more than one fiscal year.

SECTION 41. Section 2162.001, Government Code, is amended to read as follows:

Sec. 2162.001. DEFINITIONS [DEFINITION]. In this chapter:

(1) "Council" [,"council"] means the State Council on Competitive Government.

(2) "Local government" means a county, municipality, special district, school district, junior college district, or other legally constituted political subdivision of the state.

SECTION 42. Section 2162.102, Government Code, is amended by adding Subsection (d) to read as follows:

(d) To the extent the council determines is feasible, a local government may voluntarily participate in a contract awarded by the council or a state agency under this chapter. A local government that purchases a good or a service under a contract awarded under this chapter is considered to have satisfied any state law requiring the local government to follow a competitive purchasing procedure for the purchase.

SECTION 43. Section 2166.406, Government Code, as amended by Chapter 573, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 2166.406. ENERGY SAVINGS PERFORMANCE CONTRACTS [OR WATER CONSERVATION MEASURES]. (a) In this section, "energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of governmental facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term [Notwithstanding any other provisions of this chapter, the governing body of a state agency, without the consent of the

21-1 ~~commission, may enter into a contract for energy conservation~~
21-2 ~~measures to reduce energy or water consumption or operating costs~~
21-3 ~~of governmental facilities in accordance with this section.~~

21-4 ~~[(b) A contract authorized under this section]~~ includes a
21-5 contract for the installation of:

21-6 (1) insulation of a ~~[the]~~ building structure and
21-7 systems within the building;

21-8 (2) storm windows or doors, caulking or weather
21-9 stripping, multiglazed windows or doors, heat absorbing or heat
21-10 reflective glazed and coated window or door systems, or other
21-11 window or door system modifications that reduce energy consumption;

21-12 (3) automatic energy control systems, including
21-13 computer software and technical data licenses;

21-14 (4) heating, ventilating, or air-conditioning system
21-15 modifications or replacements that reduce energy or water
21-16 consumption;

21-17 (5) lighting fixtures that increase energy
21-18 efficiency;

21-19 (6) energy recovery systems;

21-20 (7) electric systems improvements;

21-21 (8) water-conserving fixtures, appliances, and
21-22 equipment or the substitution of non-water-using fixtures,
21-23 appliances, and equipment;

21-24 (9) water-conserving landscape irrigation equipment;

21-25 (10) landscaping measures that reduce watering
21-26 demands and capture and hold applied water and rainfall, including:

21-27 (A) landscape contouring, including the use of
21-28 berms, swales, and terraces; and

21-29 (B) the use of soil amendments that increase the
21-30 water-holding capacity of the soil, including compost;

21-31 (11) rainwater harvesting equipment and equipment to
21-32 make use of water collected as part of a storm-water system
21-33 installed for water quality control;

21-34 (12) equipment for recycling or reuse of water
21-35 originating on the premises or from other sources, including
21-36 treated municipal effluent;

21-37 (13) equipment needed to capture water from
21-38 nonconventional, alternate sources, including air conditioning
21-39 condensate or graywater, for nonpotable uses;

21-40 (14) metering equipment needed to segregate water use
21-41 in order to identify water conservation opportunities or verify
21-42 water savings; or

21-43 (15) other energy or water conservation-related
21-44 improvements or equipment including improvements or equipment
21-45 related to renewable energy or nonconventional water sources or
21-46 water reuse.

21-47 (b) Notwithstanding any other provision of this chapter, a
21-48 state agency, without the consent of the commission, may enter into
21-49 an energy savings performance contract in accordance with this
21-50 section.

21-51 (c) Each ~~[All]~~ energy or water conservation measure
21-52 ~~[measures]~~ must comply with current local, state, and federal
21-53 construction, plumbing, and environmental codes and regulations.
21-54 Notwithstanding ~~[anything to the contrary in]~~ Subsection (a) ~~[(b)]~~,
21-55 an energy savings performance ~~[a]~~ contract may ~~[for energy or water~~
21-56 ~~conservation measures shall]~~ not include improvements or equipment
21-57 that allow or cause water from any condensing, cooling, or
21-58 industrial process or any system of nonpotable usage over which the
21-59 public water supply system officials do not have sanitary control
21-60 to be returned to the potable water supply.

21-61 (d) A state agency may enter into energy savings performance
21-62 ~~[The entity with whom the board]~~ contracts only with a person who is
21-63 ~~[must be]~~ experienced in the design, implementation, and
21-64 installation of the energy or water conservation measures addressed
21-65 by the contract.

21-66 (e) Before entering into an energy savings performance ~~[a]~~
21-67 contract ~~[for energy or water conservation measures]~~, a ~~[the~~
21-68 ~~governing body of the]~~ state agency shall require the provider of
21-69 the energy or water conservation measures to file with the agency

22-1 ~~[governing body]~~ a payment and performance bond relating to the
 22-2 installation of the measures in accordance with Chapter 2253. The
 22-3 agency may also require a separate bond to cover the value of the
 22-4 guaranteed savings on the contract ~~[that is in an amount the~~
 22-5 ~~governing body finds reasonable and necessary to protect the~~
 22-6 ~~interests of the state agency and that is conditioned on the~~
 22-7 ~~faithful execution of the terms of the contract].~~

22-8 (f) The state agency may enter into an energy savings
 22-9 performance ~~[a]~~ contract for a period of more than one year only
 22-10 ~~[for energy or water conservation measures with an entity]~~ if the
 22-11 state agency finds that the amount the state agency would spend on
 22-12 the energy or water conservation measures will not exceed the
 22-13 amount to be saved in energy, water, wastewater, and operating
 22-14 costs over 15 years from the date of installation.

22-15 (g) An energy savings performance contract ~~[Energy or water~~
 22-16 ~~conservation measures]~~ with respect to existing buildings or
 22-17 facilities may be financed:

22-18 (1) under a lease/purchase contract that has a term
 22-19 not to exceed 15 years from the final date of installation and that
 22-20 meets federal tax requirements for tax-free municipal leasing or
 22-21 long-term financing, including a lease/purchase contract under the
 22-22 master equipment lease purchase program administered by the Texas
 22-23 Public Finance Authority under Chapter 1232;

22-24 (2) with the proceeds of bonds; or

22-25 (3) under a contract with the provider of the energy or
 22-26 water conservation measures that has a term not to exceed 15 years
 22-27 from the final date of installation.

22-28 (h) An energy savings performance ~~[A]~~ contract ~~[for energy~~
 22-29 ~~or water conservation measures]~~ shall contain provisions requiring
 22-30 [pursuant to which] the provider of the energy or water
 22-31 conservation measures to guarantee ~~[guarantees]~~ the amount of the
 22-32 savings to be realized by the state agency under the contract. If
 22-33 the term of the ~~[a]~~ contract ~~[for energy or water conservation~~
 22-34 ~~measures]~~ exceeds one year, the agency's contractual obligation,
 22-35 including costs of design, engineering, installation, and
 22-36 anticipated debt service, in any one year during the term of the
 22-37 contract beginning after the final date of installation may not
 22-38 exceed the total energy, water, wastewater, and operating cost
 22-39 savings, including [but not limited to] electrical, gas, water,
 22-40 wastewater, or other utility cost savings and operating cost
 22-41 savings resulting from the measures ~~[automatic monitoring and~~
 22-42 ~~control]~~, as determined by the state agency in this subsection,
 22-43 divided by the number of years in the contract term.

22-44 (i) An energy savings performance ~~[A]~~ contract shall ~~[under~~
 22-45 ~~this section may]~~ be let according to the procedures established
 22-46 for procuring certain professional services by Section 2254.004
 22-47 ~~[under competitive sealed proposal procedures]~~. Notice of the
 22-48 request for qualifications ~~[proposals]~~ shall be given in the manner
 22-49 provided by Section 2156.002 ~~[for in Chapter 2156]~~. The State
 22-50 Energy Conservation Office shall establish guidelines and an
 22-51 approval process for awarding energy savings performance
 22-52 contracts ~~[awarded under this section]~~. The guidelines adopted under this
 22-53 subsection must require that the cost savings projected by an
 22-54 offeror be reviewed by a licensed professional engineer who is not
 22-55 an officer or employee of an offeror for the contract under review
 22-56 or otherwise associated with the contract. An engineer who reviews
 22-57 a contract shall maintain the confidentiality of any proprietary
 22-58 information the engineer acquires while reviewing the contract. An
 22-59 energy savings performance contract may not be entered into unless
 22-60 the contract has been approved by the State Energy Conservation
 22-61 Office. Sections 1001.053 and 1001.407, Occupations Code, apply
 22-62 [Section 19, The Texas Engineering Practice Act (Article 3271a,
 22-63 Vernon's Texas Civil Statutes), applies] to work performed under
 22-64 the contract. ~~[The contract shall be awarded to the responsible~~
 22-65 ~~offeror whose proposal, following negotiations, is determined to be~~
 22-66 ~~the most advantageous to the state agency considering the savings~~
 22-67 ~~and other evaluation factors set forth in the request for proposals~~
 22-68 ~~except that if the state agency finds that no offer is acceptable,~~
 22-69 ~~it shall refuse all offers.]~~

23-1 (j) ~~[In accordance with regulations adopted by the state~~
 23-2 ~~agency, the state agency may conduct discussions with offerors who~~
 23-3 ~~submit proposals and who are determined to be reasonably qualified~~
 23-4 ~~for the award of the contract. Offerors shall be treated fairly and~~
 23-5 ~~equally with respect to any opportunity for discussion and revision~~
 23-6 ~~of proposals.~~

23-7 ~~[(k) If provided in a request for proposals, proposals shall~~
 23-8 ~~be opened in a manner that avoids disclosure of the contents to~~
 23-9 ~~competing offerors and keeps the proposals secret during~~
 23-10 ~~negotiations. All proposals are open for public inspection after a~~
 23-11 ~~contract is awarded unless the information is excepted from~~
 23-12 ~~disclosure under Chapter 552.~~

23-13 ~~[(l) To obtain the best final offers, the state agency may~~
 23-14 ~~allow proposal revisions after submissions and before the award of~~
 23-15 ~~a contract for energy or water conservation measures. Final review~~
 23-16 ~~and approval of the contract will be provided by the State Energy~~
 23-17 ~~Conservation Office.~~

23-18 ~~[(m)]~~ The legislature shall base an agency's appropriation
 23-19 for energy, water, and wastewater costs during a fiscal year on the
 23-20 sum of:

23-21 (1) the agency's estimated energy, water, and
 23-22 wastewater costs for that fiscal year; and

23-23 (2) if an energy savings performance [a] contract
 23-24 ~~[under this section]~~ is in effect, the agency's estimated net
 23-25 savings resulting from the contract during the contract term,
 23-26 divided by the number of years in the contract term.

23-27 SECTION 44. Section 2201.002, Government Code, is amended
 23-28 to read as follows:

23-29 Sec. 2201.002. USE OF FUND. ~~[(a)]~~ The fund may be used
 23-30 ~~[only]~~ to finance:

23-31 (1) the acquisition, construction, repair,
 23-32 improvement, or equipping of a building by a state agency for a
 23-33 state purpose;

23-34 (2) the acquisition of real or personal property
 23-35 necessary for a state agency to take an action described by
 23-36 Subdivision (1); ~~[or]~~

23-37 (3) the administration of the asset management
 23-38 division of the General Land Office; or

23-39 (4) any other purpose for which funds may be
 23-40 appropriated from general revenue.

23-41 ~~[(b) The fund may not be used to pay for an activity of:~~

23-42 ~~[(1) the Texas Department of Transportation;~~

23-43 ~~[(2) an institution of higher education as defined by~~
 23-44 ~~Section 61.003, Education Code;~~

23-45 ~~[(3) the Texas State Technical College System;~~

23-46 ~~[(4) the Southwest Collegiate Institute for the Deaf;~~

23-47 ~~[(5) the Employees Retirement System of Texas; or~~

23-48 ~~[(6) the Teacher Retirement System of Texas.~~

23-49 ~~[(c) The fund may not be used to pay salaries.]~~

23-50 SECTION 45. Section 2201.003(b), Government Code, is
 23-51 amended to read as follows:

23-52 (b) At the end of each fiscal biennium the unencumbered
 23-53 balance of the fund ~~[in excess of \$500 million]~~ shall be transferred
 23-54 to the credit of the general revenue fund.

23-55 SECTION 46. Section 2251.025(b), Government Code, is
 23-56 amended to read as follows:

23-57 (b) The rate of interest that [Interest] accrues on an
 23-58 overdue payment is [at] the rate in effect on September 1 of the
 23-59 fiscal year in which the payment becomes overdue. The rate in
 23-60 effect on September 1 is equal to the sum of:

23-61 (1) one percent; and

23-62 (2) the prime rate as published in the Wall Street
 23-63 Journal on the first day of July of the preceding fiscal year that
 23-64 does not fall on a Saturday or Sunday [each month].

23-65 SECTION 47. Section 2252.903(e), Government Code, is
 23-66 amended by adding Subdivision (4) to read as follows:

23-67 (4) "Written contract" does not include a contract the
 23-68 payments for which must be made through the comptroller's issuance
 23-69 of warrants or initiation of electronic funds transfers under

24-1 Section 404.046, 404.069, or 2103.003.

24-2 SECTION 48. Section 2305.012, Government Code, is amended
24-3 to read as follows:

24-4 Sec. 2305.012. ADMINISTRATION [~~STAFF~~]; ASSISTANCE.
24-5 (a) The energy office shall [~~provide staff to~~] implement and
24-6 administer this chapter.

24-7 (b) The energy office or the governor through the energy
24-8 office may [~~also~~] enlist the assistance of a private entity or a
24-9 state agency, department, commission, or other entity to:

- 24-10 (1) evaluate or review a proposal;
- 24-11 (2) audit a program participant or a supervising state
24-12 agency;
- 24-13 (3) perform administrative duties under this chapter;
- 24-14 or
- 24-15 (4) develop eligibility or evaluation criteria.

24-16 SECTION 49. Section 2305.032(a), Government Code, is
24-17 amended to read as follows:

24-18 (a) The energy office under the loanstar revolving loan
24-19 program may [~~approve and finance projects that~~] provide loans to
24-20 finance energy and water efficiency measures for public facilities
24-21 [~~eligible applicants for energy-saving capital improvements.~~
24-22 ~~Projects approved by the energy office should benefit.~~

- 24-23 [~~(1) a state agency or institution of higher~~
24-24 ~~education;~~
- 24-25 [~~(2) a public school;~~
- 24-26 [~~(3) a political subdivision of the state;~~
- 24-27 [~~(4) a small to medium-sized business; and~~
- 24-28 [~~(5) a public or nonprofit hospital or health care~~
24-29 ~~facility].~~

24-30 SECTION 50. Sections 2305.033(b) and (d), Government Code,
24-31 are amended to read as follows:

24-32 (b) In accordance with Part D, Title III [B], Energy Policy
24-33 and Conservation Act (42 U.S.C. Sec. 6321 et seq.), and its
24-34 subsequent amendments, the energy office, under the program, shall
24-35 distribute funds for projects that save measurable quantities of
24-36 energy.

- 24-37 (d) A proposal under Subsection (b) must:
- 24-38 (1) promote the conservation of energy; or [~~and~~]
- 24-39 (2) improve the efficient use of energy through
24-40 activities that result in quantifiable energy savings, including:
- 24-41 (A) energy audits of buildings;
- 24-42 (B) technical assistance in reducing energy
24-43 bills;
- 24-44 (C) training to building operators and fiscal
24-45 officers on various energy issues such as utility bill analysis and
24-46 energy management techniques; or [~~and~~]
- 24-47 (D) other technical assistance to programs for
24-48 which funds are appropriated.

24-49 SECTION 51. Section 2305.034, Government Code, is amended
24-50 to read as follows:

24-51 Sec. 2305.034. STATE AGENCIES PROGRAM. The energy office
24-52 is the supervising agency for the state agencies program that may
24-53 distribute funds through Chapter 447. Projects funded under this
24-54 section may include:

- 24-55 (1) energy manager training;
- 24-56 (2) energy savings performance contracting services,
24-57 including:
- 24-58 (A) education and training;
- 24-59 (B) contract review and approval;
- 24-60 (C) third-party contract review;
- 24-61 (D) development and dissemination of guidelines;
- 24-62 and
- 24-63 (E) identification of contract financing sources
24-64 [~~described by Section 51.927, Education Code~~];

- 24-65 (3) energy-efficient design assistance for new
24-66 facilities, including major renovation;
- 24-67 (4) projects for state building design standards
24-68 compliance;
- 24-69 (5) projects to create awareness of model energy codes

25-1 at the local and state levels;
 25-2 (6) projects to develop and maintain the state's
 25-3 utility database; and
 25-4 (7) other appropriate energy and information
 25-5 applications.

25-6 SECTION 52. Section 2305.039(b), Government Code, is
 25-7 amended to read as follows:

25-8 (b) A project may:

25-9 (1) assist a service provider in providing services
 25-10 such as:

25-11 (A) ~~traffic light synchronization,~~
 25-12 ~~fleet management,~~
 25-13 ~~computerized transit routing that is~~
 25-14 energy efficient;

25-15 (B) commuting solutions
 25-16 ~~car-care clinics,~~
 25-17 ~~vanpooling or ridesharing efforts]; and~~
 25-18 (C) public education related to mass
 25-19 transit;

25-20 ~~driver training in energy conservation~~
 25-21 ~~awareness; and~~

25-22 ~~transportation services for the elderly or~~
 25-23 ~~persons with a disability;] and~~

25-24 (2) include studies to improve existing systems and
 25-25 plan for future transportation systems in this state.

25-26 SECTION 53. Section 2306.783(a), Government Code, as added
 25-27 by Chapter 432, Acts of the 77th Legislature, Regular Session,
 25-28 2001, is amended to read as follows:

25-29 (a) The Texas Interagency Council for the Homeless is
 25-30 composed of:

25-31 (1) one representative from each of the following
 25-32 agencies, appointed by the administrative head of that agency:

25-33 (A) the Texas Department of Health;
 25-34 (B) the Texas Department of Human Services;
 25-35 (C) the Texas Department of Mental Health and
 25-36 Mental Retardation;

25-37 (D) the Texas Department of Criminal Justice;
 25-38 (E) the Texas Department on Aging;
 25-39 (F) the Texas Rehabilitation Commission;
 25-40 (G) the Texas Education Agency;
 25-41 (H) the Texas Commission on Alcohol and Drug
 25-42 Abuse;

25-43 (I) the Department of Protective and Regulatory
 25-44 Services;

25-45 (J) the Health and Human Services Commission;
 25-46 (K) the Texas Workforce Commission;
 25-47 (L) the Texas Youth Commission; and
 25-48 (M) the Texas Veterans Commission;

25-49 (2) ~~one representative from the office of the~~
 25-50 ~~comptroller appointed by the comptroller;~~

25-51 ~~two~~ two representatives from the department, one
 25-52 each from the community affairs division and the housing finance
 25-53 division, appointed by the director; and

25-54 (3) ~~three~~ three members representing service
 25-55 providers to the homeless, one each appointed by the governor, the
 25-56 lieutenant governor, and the speaker of the house of
 25-57 representatives.

25-58 SECTION 54. Article 4.73(a), Insurance Code, is amended to
 25-59 read as follows:

25-60 (a) The comptroller shall prepare a biennial report with
 25-61 respect to results of the implementation of this subchapter. The
 25-62 report must include:

25-63 (1) the number of certified capital companies holding
 25-64 certified capital;

25-65 (2) the amount of certified capital invested in each
 25-66 certified capital company;

25-67 (3) the amount of certified capital the certified
 25-68 capital company has invested in qualified businesses as of January
 25-69 1, 2006 ~~2004~~, and the cumulative total for each subsequent year;

(4) the total amount of tax credits granted under this subchapter for each year that credits have been granted;

(5) the performance of each certified capital company with respect to renewal and reporting requirements imposed under this subchapter;

(6) with respect to the qualified businesses in which certified capital companies have invested:

(A) the classification of the qualified businesses according to the industrial sector and the size of the business;

(B) the total number of jobs created by the investment and the average wages paid for the jobs; and

(C) the total number of jobs retained as a result of the investment and the average wages paid for the jobs; and

(7) the certified capital companies that have been decertified or that have failed to renew the certification and the reason for any decertification.

SECTION 55. Section 101.251, Insurance Code, is amended by amending Subsections (b), (g), (i), and (j) and adding Subsection (k) to read as follows:

(b) Except as provided by Subsection (j), an ~~unauthorized~~ insurer shall pay to the comptroller, on a form prescribed by the comptroller, a premium receipts tax of 4.85 percent of gross premiums charged for insurance on a subject resident, located, or to be performed in this state.

(g) The ~~unauthorized~~ insurer shall pay the premium receipts tax required by this section before:

(1) March 1 following the calendar year in which the insurance was effectuated, continued, or renewed; or

(2) another date specified by the comptroller.

(i) The tax under this section, if not paid when due, is a liability [On default] of the [an unauthorized] insurer, the insurer agent, and [in the payment of the tax,] the insured [shall pay the tax].

(j) This section does not apply to premiums on:

(1) insurance procured by a licensed surplus lines agent from an eligible surplus lines insurer as defined by Article 1.14-2 on which premium tax is paid in accordance with Article 1.14-2; ~~or~~

(2) an independently procured contract of insurance on which premium tax is paid in accordance with this chapter; or

(3) a contract of insurance written by an insurer that holds a certificate of authority in this state and that is authorized to write the contract.

(k) In this section, "insurer" has the meaning assigned by Section 101.002 and includes an insurer that does not hold a certificate of authority in this state, an eligible surplus lines insurer, and an insurer that holds a certificate of authority in this state.

SECTION 56. The heading to Chapter 302, Local Government Code, is amended to read as follows:

CHAPTER 302. ENERGY SAVINGS PERFORMANCE CONTRACTS [OR WATER CONSERVATION MEASURES] FOR LOCAL GOVERNMENTS

SECTION 57. Section 302.001, Local Government Code, is amended to read as follows:

Sec. 302.001. DEFINITIONS [DEFINITION]. In this chapter:

(1) "Energy savings performance contract" means a contract for energy or water conservation measures to reduce energy or water consumption or operating costs of local government facilities in which the estimated savings in utility costs resulting from the measures is guaranteed to offset the cost of the measures over a specified period. The term includes a contract for the installation or implementation of:

(A) insulation of a building structure and systems within the building;

(B) storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed and coated window or door systems, or other window or door system modifications that reduce energy consumption;

- 27-1 (C) automatic energy control systems, including
- 27-2 computer software and technical data licenses;
- 27-3 (D) heating, ventilating, or air-conditioning
- 27-4 system modifications or replacements that reduce energy or water
- 27-5 consumption;
- 27-6 (E) lighting fixtures that increase energy
- 27-7 efficiency;
- 27-8 (F) energy recovery systems;
- 27-9 (G) electric systems improvements;
- 27-10 (H) water-conserving fixtures, appliances, and
- 27-11 equipment or the substitution of non-water-using fixtures,
- 27-12 appliances, and equipment;
- 27-13 (I) water-conserving landscape irrigation
- 27-14 equipment;
- 27-15 (J) landscaping measures that reduce watering
- 27-16 demands and capture and hold applied water and rainfall, including:
- 27-17 (i) landscape contouring, including the use
- 27-18 of berms, swales, and terraces; and
- 27-19 (ii) the use of soil amendments that
- 27-20 increase the water-holding capacity of the soil, including compost;
- 27-21 (K) rainwater harvesting equipment and equipment
- 27-22 to make use of water collected as part of a storm-water system
- 27-23 installed for water quality control;
- 27-24 (L) equipment for recycling or reuse of water
- 27-25 originating on the premises or from other sources, including
- 27-26 treated municipal effluent;
- 27-27 (M) equipment needed to capture water from
- 27-28 nonconventional, alternate sources, including air-conditioning
- 27-29 condensate or graywater, for nonpotable uses;
- 27-30 (N) metering equipment needed to segregate water
- 27-31 use in order to identify water conservation opportunities or verify
- 27-32 water savings; or
- 27-33 (O) other energy or water conservation-related
- 27-34 improvements or equipment, including improvements or equipment
- 27-35 relating to renewable energy or nonconventional water sources or
- 27-36 water reuse.

27-37 (2) "Local [~~,"local~~] government" means a county,
 27-38 municipality, or other political subdivision of this state. The
 27-39 term [~~local government~~] does not include a school district
 27-40 authorized to enter into an energy savings performance [~~a~~] contract
 27-41 [~~for energy or water conservation measures~~] under Section 44.901,
 27-42 Education Code.

27-43 SECTION 58. Section 302.002, Local Government Code, is
 27-44 amended to read as follows:

27-45 Sec. 302.002. ENERGY SAVINGS PERFORMANCE CONTRACTS [~~OR~~
 27-46 ~~WATER CONSERVATION MEASURES~~]. (a) The governing body of a local
 27-47 government may enter into an energy savings performance [~~a~~]
 27-48 contract [~~for energy or water conservation measures to reduce~~
 27-49 ~~energy or water consumption or operating costs of governmental~~
 27-50 ~~facilities~~] in accordance with this chapter.

27-51 (b) Each [~~A contract authorized under this chapter includes~~
 27-52 ~~a contract for the installation or implementation of:~~

- 27-53 [~~(1) insulation of the building structure and systems~~
- 27-54 ~~within the building;~~
- 27-55 [~~(2) storm windows or doors, caulking or weather~~
- 27-56 ~~stripping, multiglazed windows or doors, heat-absorbing or~~
- 27-57 ~~heat-reflective glazed and coated window or door systems, or other~~
- 27-58 ~~window or door system modifications that reduce energy consumption;~~
- 27-59 [~~(3) automatic energy control systems, including~~
- 27-60 ~~computer software and technical data licenses;~~
- 27-61 [~~(4) heating, ventilating, or air conditioning system~~
- 27-62 ~~modifications or replacements that reduce energy or water~~
- 27-63 ~~consumption;~~
- 27-64 [~~(5) lighting fixtures that increase energy~~
- 27-65 ~~efficiency;~~
- 27-66 [~~(6) energy recovery systems;~~
- 27-67 [~~(7) electric systems improvements;~~
- 27-68 [~~(8) water-conserving fixtures, appliances, and~~
- 27-69 ~~equipment or the substitution of non-water-using fixtures,~~

28-1 appliances, and equipment,
 28-2 [~~(9) water-conserving landscape irrigation equipment,~~
 28-3 [~~(10) landscaping measures that reduce watering~~
 28-4 demands and capture and hold applied water and rainfall, including:
 28-5 [~~(A) landscape contouring, including the use of~~
 28-6 berms, swales, and terraces, and
 28-7 [~~(B) the use of soil amendments that increase the~~
 28-8 water-holding capacity of the soil, including compost,
 28-9 [~~(11) rainwater harvesting equipment and equipment to~~
 28-10 make use of water collected as part of a storm-water system
 28-11 installed for water quality control,
 28-12 [~~(12) equipment for recycling or reuse of water~~
 28-13 originating on the premises or from other sources, including
 28-14 treated municipal effluent,
 28-15 [~~(13) equipment needed to capture water from~~
 28-16 nonconventional, alternate sources, including air conditioning
 28-17 condensate or graywater, for nonpotable uses,
 28-18 [~~(14) metering equipment needed to segregate water use~~
 28-19 in order to identify water conservation opportunities or verify
 28-20 water savings, or
 28-21 [~~(15) other energy or water conservation-related~~
 28-22 improvements or equipment, including improvements or equipment
 28-23 related to renewable energy or nonconventional water sources or
 28-24 water reuse.

28-25 [~~(c) All~~] energy or water conservation measure [measures]
 28-26 must comply with current local, state, and federal construction,
 28-27 plumbing, and environmental codes and regulations.
 28-28 Notwithstanding Section 302.001(1) [~~anything to the contrary in~~
 28-29 Subsection (b)], an energy savings performance [a] contract may
 28-30 [~~for energy or water conservation measures shall~~] not include
 28-31 improvements or equipment that allow or cause water from any
 28-32 condensing, cooling, or industrial process or any system of
 28-33 nonpotable usage over which public water supply system officials do
 28-34 not have sanitary control to be returned to the potable water
 28-35 supply.

28-36 SECTION 59. Section 302.003, Local Government Code, as
 28-37 amended by Chapter 1319, Acts of the 77th Legislature, Regular
 28-38 Session, 2001, is amended to read as follows:

28-39 Sec. 302.003. PAYMENT AND PERFORMANCE BOND.
 28-40 Notwithstanding any other law [~~to the contrary~~], before entering
 28-41 into an energy savings performance [a] contract [~~for energy~~
 28-42 ~~conservation measures~~], the governing body of the local government
 28-43 shall require the provider of the energy or water conservation
 28-44 measures to file with the governing body a payment and performance
 28-45 bond relating to the installation of the [~~energy conservation~~]
 28-46 measures in accordance with Chapter 2253, Government Code. The
 28-47 governing body may also require a separate bond to cover the value
 28-48 of the guaranteed savings on the contract.

28-49 SECTION 60. Section 302.004, Local Government Code, is
 28-50 amended to read as follows:

28-51 Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT.
 28-52 (a) An energy savings performance contract [~~Energy or water~~
 28-53 ~~conservation measures with respect to buildings or facilities~~] may
 28-54 be financed:

28-55 (1) under a lease-purchase contract that has a term
 28-56 not to exceed 15 years from the final date of installation and that
 28-57 meets federal tax requirements for tax-free municipal leasing or
 28-58 long-term financing;

28-59 (2) with the proceeds of bonds; or
 28-60 (3) under a contract with the provider of the energy or
 28-61 water conservation measures that has a term not to exceed 15 years
 28-62 from the final date of installation.

28-63 (b) An energy savings performance [~~The~~] contract shall
 28-64 contain provisions requiring [~~pursuant to which~~] the provider of
 28-65 the energy or water conservation measures to guarantee [~~guarantees~~]
 28-66 the amount of the savings to be realized by the local government
 28-67 under the contract. If the term of the [a] contract [~~for energy or~~
 28-68 ~~water conservation measures~~] exceeds one year, the local
 28-69 government's contractual obligations in any one year during the

term of the contract beginning after the final date of installation may not exceed the total energy, water, wastewater, and operating cost savings, including ~~[but not limited to]~~ electrical, gas, water, wastewater, or other utility cost savings and operating cost savings resulting from the measures as determined by the local government in this subsection, divided by the number of years in the contract term.

SECTION 61. Section 302.005, Local Government Code, as amended by Chapters 573 and 1319, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT. (a) An energy savings performance [A] contract under this chapter may be let in accordance with the procedures established for procuring certain professional services by Section 2254.004, Government Code. Notice of the request for qualifications shall be published in the manner provided for competitive bidding.

(b) Before ~~[-(d) Prior to]~~ entering into an energy savings performance [a] contract ~~[under this section]~~, the governing body must require that the cost savings projected by an offeror be reviewed by a licensed ~~[professional]~~ engineer who is not an officer or employee of an offeror for the contract under review or otherwise associated with the contract or the offeror. An engineer who reviews a contract shall maintain the confidentiality of any proprietary information the engineer acquires while reviewing the contract. Sections 1001.053 and 1001.407, Occupations Code, apply ~~[Section 19, The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), applies]~~ to work performed under the contract.

SECTION 62. Section 74.103, Property Code, is amended by adding Subsection (d) to read as follows:

(d) The comptroller may determine the liability of a holder required to file a property report under Section 74.101 using the best information available to the comptroller if the records of the holder are unavailable or incomplete for any portion of the required retention period.

SECTION 63. Section 74.501, Property Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) On receipt of a claim form and all necessary documentation and as may be appropriate under the circumstances, the comptroller may approve the claim of:

- (1) the reported owner of the property;
- (2) if the reported owner died testate:
 - (A) the appropriate legal beneficiaries of the owner as provided by the last will and testament of the owner that has been accepted into probate or filed as a muniment of title; or
 - (B) the executor of the owner's last will and testament who holds current letters testamentary;
- (3) if the reported owner died intestate:
 - (A) the legal heirs of the owner as provided by Section 38, Texas Probate Code; or
 - (B) the court-appointed administrator of the owner's estate;
- (4) the legal heirs of the reported owner as established by an affidavit of heirship order signed by a judge of the county probate court or by a county judge;
- (5) if the reported owner is a minor child or an adult who has been adjudged incompetent by a court of law, the parent or legal guardian of the child or adult;
- (6) if the reported owner is a corporation:
 - (A) the president or chair of the board of directors of the corporation, on behalf of the corporation; or
 - (B) any person who has legal authority to act on behalf of the corporation;
- (7) if the reported owner is a corporation that has been dissolved or liquidated:
 - (A) the sole surviving shareholder of the corporation, if there is only one surviving shareholder;
 - (B) the surviving shareholders of the corporation in proportion to their ownership of the corporation, if

30-1 there is more than one surviving shareholder;
 30-2 (C) the corporation's bankruptcy trustee; or
 30-3 (D) the court-ordered receiver for the
 30-4 corporation; or

30-5 (8) any other person that is entitled to receive the
 30-6 unclaimed property under other law or comptroller policy.

30-7 (e) The comptroller may not pay to the following persons a
 30-8 claim to which this section applies:

30-9 (1) a creditor, a judgment creditor, a lienholder, or
 30-10 an assignee of the reported owner or of the owner's heirs; or

30-11 (2) a person holding a power of attorney from the
 30-12 reported owner or the owner's heirs.

30-13 SECTION 64. Sections 111.104(b) and (c), Tax Code, are
 30-14 amended to read as follows:

30-15 (b) A tax refund claim may be filed with the comptroller
 30-16 only by the person who directly paid the tax to this state or by the
 30-17 person's attorney, assignee, or other successor.

30-18 (c) A claim for a refund must:

30-19 (1) be written;

30-20 (2) state fully and in detail each reason or ground
 30-21 [~~the grounds~~] on which the claim is founded; and

30-22 (3) be filed before the expiration of the applicable
 30-23 limitation period as provided by this code or before the expiration
 30-24 of six months after a jeopardy or deficiency determination becomes
 30-25 final, whichever period expires later.

30-26 SECTION 65. Section 111.1042, Tax Code, is amended by
 30-27 adding Subsection (d) to read as follows:

30-28 (d) If the right to a hearing is not exercised on a full or
 30-29 partial denial of a claim for refund, the period during which the
 30-30 comptroller informally reviewed the claim for refund does not toll
 30-31 the limitation period for any subsequent claim for refund on the
 30-32 same period and type of tax for which the claim for refund was fully
 30-33 or partially denied.

30-34 SECTION 66. Section 111.105, Tax Code, is amended by
 30-35 amending Subsection (a) and adding Subsection (e) to read as
 30-36 follows:

30-37 (a) A person claiming a refund under Section 111.104 [~~of~~
 30-38 ~~this code~~] is entitled to a hearing on the claim if the person
 30-39 requests a hearing on or before the 30th day after the date [in
 30-40 accordance with procedures prescribed by] the comptroller issues a
 30-41 letter denying the claim for refund. The person is entitled to 20
 30-42 days' notice of the time and place of the hearing.

30-43 (e) During the administrative hearing process, a person
 30-44 claiming a refund under Section 111.104 must submit documentation
 30-45 to enable the comptroller to verify the claim for refund. The
 30-46 comptroller may issue a notice of demand that all evidence to
 30-47 support the claim for refund must be produced before the expiration
 30-48 of a specified date in the notice. The specified date in the notice
 30-49 may not be earlier than 180 days after the date the refund is
 30-50 claimed. The comptroller may not consider evidence produced after
 30-51 the specified date in the notice in an administrative hearing. The
 30-52 limitation provided by this subsection does not apply to a judicial
 30-53 proceeding filed in accordance with Chapter 112.

30-54 SECTION 67. Section 111.107, Tax Code, is amended to read as
 30-55 follows:

30-56 Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED.

30-57 (a) Except as otherwise expressly provided, a person may request a
 30-58 refund or a credit or the comptroller may make a refund or issue a
 30-59 credit for the overpayment of a tax imposed by this title at any
 30-60 time before the expiration of the period during which the
 30-61 comptroller may assess a deficiency for the tax and not thereafter
 30-62 unless the refund or credit is requested:

30-63 (1) under Subchapter B of Chapter 112 and the refund is
 30-64 made or the credit is issued under a court order;

30-65 (2) under the provision of Section 111.104(c)(3)
 30-66 applicable to a refund claim filed after a jeopardy or deficiency
 30-67 determination becomes final; or

30-68 (3) under Chapter 153, except Section 153.1195(e),
 30-69 153.121(d), 153.2225(e), or 153.224(d).

31-1 (b) A person may not refile a refund claim for the same
 31-2 transaction or item, tax type, period, and ground or reason that was
 31-3 previously denied by the comptroller.

31-4 SECTION 68. Sections 111.206(b), (c), and (d), Tax Code,
 31-5 are amended to read as follows:

31-6 (b) A final determination that affects the amount of
 31-7 liability of a tax imposed by this title shall be reported to the
 31-8 comptroller before the expiration of 120 ~~60~~ days after the day on
 31-9 which the determination becomes final. The report must include a
 31-10 detailed statement of the reasons for the difference in tax
 31-11 liability as required by the comptroller.

31-12 (c) Notwithstanding the expiration of a period of
 31-13 limitation provided in this title, the comptroller may assess and
 31-14 collect or bring suit for the collection of any tax deficiency,
 31-15 including penalties and interest, resulting from a final
 31-16 determination ~~[or from investigation]~~ at any time before the
 31-17 expiration of one year after:

31-18 (1) the later of the day the report is required to be
 31-19 filed as provided by Subsection (b) or the day [of this section is
 31-20 received, if] the report is received [filed within the 60-day
 31-21 period]; or

31-22 (2) ~~[if the report is not made or is made after the~~
 31-23 ~~60-day period, the day the report is received or] the day the final~~
 31-24 ~~determination is discovered, if a report is not filed [whichever~~
 31-25 ~~period is the shorter].~~

31-26 (d) If a final determination ~~[or investigation]~~ results in
 31-27 the taxpayer having overpaid the amount of tax due the state, the
 31-28 taxpayer may file a claim for refund with the comptroller [shall
 31-29 refund or issue a credit] for the amount of the overpayment before
 31-30 the first anniversary of the date the final determination becomes
 31-31 final. If the comptroller assesses tax by issuing a deficiency
 31-32 determination within the [at any time during the one-year] period
 31-33 provided by [during which assessments may be made under] Subsection
 31-34 (c), the taxpayer may file a claim for refund for an amount of tax
 31-35 that has been found due in a deficiency determination before the
 31-36 180th day after the deficiency determination becomes final, but the
 31-37 claim is limited to the items and the tax payment period for which
 31-38 the determination was issued [of this section].

31-39 SECTION 69. Sections 111.207(a) and (b), Tax Code, are
 31-40 amended to read as follows:

31-41 (a) In determining the expiration date for a period when a
 31-42 tax imposed by this title may be assessed, ~~or~~ collected, or
 31-43 refunded, the following periods are not considered:

31-44 (1) the period following the date of a tax payment made
 31-45 under protest, but only if a lawsuit is timely filed in accordance
 31-46 with Chapter 112;

31-47 (2) the period during which a judicial proceeding is
 31-48 pending in a court of competent jurisdiction to determine the
 31-49 amount of the tax due; and

31-50 (3) the period during which an administrative
 31-51 redetermination or refund hearing [proceeding] is pending before
 31-52 the comptroller [for a redetermination of the tax liability].

31-53 (b) The suspension of a period of limitation under
 31-54 Subsection (a) is limited [of this section applies only] to the
 31-55 issues that were contested [amount of taxes in issue] under
 31-56 Subdivision (1), (2), or (3) of that subsection.

31-57 SECTION 70. Section 112.058(a), Tax Code, is amended to
 31-58 read as follows:

31-59 (a) Payments [Except as provided in Subsections (b) and (c)
 31-60 of this section, payments] made under protest are to be handled as
 31-61 follows:

31-62 (1) An officer who receives payments made under
 31-63 protest as required by Section 112.051 ~~[of this code]~~ shall each day
 31-64 send to the comptroller the payments, a list of the persons making
 31-65 the payments, and a written statement that the payments were made
 31-66 under protest.

31-67 (2) The comptroller shall, immediately on receipt,
 31-68 credit the payments to each fund to which the tax or fee paid under
 31-69 protest is allocated by law.

32-1 (3) The comptroller shall maintain detailed records of
32-2 payments made under protest.

32-3 (4) A payment under protest bears pro rata interest.
32-4 The pro rata interest is the amount of interest earned by the
32-5 protested funds [that would be due if the amount had been placed in
32-6 the suspense account of the comptroller].

32-7 SECTION 71. Section 142.002, Tax Code, is amended by
32-8 amending Subdivisions (1), (2), (3), (4), and (6) and adding
32-9 Subdivisions (3-a), (3-b), and (3-c) to read as follows:

32-10 (1) "Agreement" means the Streamlined Sales and Use
32-11 Tax Agreement as amended and adopted on November 12, 2002 [~~January~~
32-12 ~~27, 2001~~].

32-13 (2) "Certified automated system" means software
32-14 certified under [~~jointly by the states that are signatories to~~]
32-15 the agreement to calculate [~~compute~~] the tax imposed by each
32-16 jurisdiction on a transaction, determine the amount of tax to remit
32-17 to the appropriate state, and maintain a record of the transaction.

32-18 (3) "Certified service provider" means an agent
32-19 certified under [~~jointly by the states that are signatories to~~]
32-20 the agreement to perform all of the seller's sales tax functions, other
32-21 than the seller's obligation to remit tax on the seller's own
32-22 purchases.

32-23 (3-a) "Model 1 seller" means a seller that has
32-24 selected a certified service provider as the seller's agent to
32-25 perform all of the seller's sales and use tax functions, other than
32-26 the seller's obligation to remit tax on the seller's own purchases.

32-27 (3-b) "Model 2 seller" means a seller that has
32-28 selected a certified automated system to perform part of the
32-29 seller's sales and use tax functions, but retains responsibility
32-30 for remitting the tax.

32-31 (3-c) "Model 3 seller" means a seller that has sales in
32-32 at least five member states, has total annual sales revenue of at
32-33 least \$500 million, has a proprietary system that calculates the
32-34 amount of tax due each jurisdiction, and has entered into a
32-35 performance agreement with the member states that establishes a tax
32-36 performance standard for the seller. The term includes an
32-37 affiliated group of sellers using the same proprietary system.

32-38 (4) "Sales tax" means a sales tax administered or
32-39 computed under Chapter 151 [~~this subtitle or Subtitle C, Title 3, or~~
32-40 ~~in a similar manner~~].

32-41 (6) "Use tax" means a use tax administered or computed
32-42 under Chapter 151 [~~this subtitle or Subtitle C, Title 3, or in a~~
32-43 ~~similar manner~~].

32-44 SECTION 72. Section 142.005, Tax Code, is amended by adding
32-45 Subsection (c) to read as follows:

32-46 (c) The comptroller may enter into the agreement on behalf
32-47 of this state if the governor, lieutenant governor, speaker of the
32-48 house of representatives, and comptroller unanimously agree that it
32-49 would be in this state's best interest to be a signatory to the
32-50 agreement.

32-51 SECTION 73. Chapter 142, Tax Code, is amended by adding
32-52 Section 142.0055 to read as follows:

32-53 Sec. 142.0055. RULES. The comptroller may adopt rules
32-54 relating to the administration and collection of the sales and use
32-55 tax as necessary to comply with the agreement, including rules
32-56 establishing the requirements for a seller to be a Model 1 seller,
32-57 Model 2 seller, or Model 3 seller.

32-58 SECTION 74. Chapter 142, Tax Code, is amended by adding
32-59 Section 142.011 to read as follows:

32-60 Sec. 142.011. SETTLEMENT OF TAX, PENALTY, AND INTEREST. On
32-61 or after the later of the date on which the agreement takes effect
32-62 as provided by the terms of the agreement or this state becomes a
32-63 signatory to the agreement, the comptroller may settle a claim for
32-64 tax, penalty, or interest on tax imposed by Chapter 151 if necessary
32-65 for the comptroller to comply with the terms of the agreement.

32-66 SECTION 75. Section 151.011(a), Tax Code, is amended to
32-67 read as follows:

32-68 (a) Except as provided by Subsection (c) of this section,
32-69 "use" means the exercise of a right or power incidental to the

ownership of tangible personal property over tangible personal property, including tangible personal property other than printed material that has been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state, and, except as provided by Section 151.056(b) of this code, includes the incorporation of tangible personal property into real estate or into improvements of real estate whether or not the real estate is subsequently sold.

SECTION 76. Subchapter A, Chapter 151, Tax Code, is amended by adding Section 151.012 to read as follows:

Sec. 151.012. EFFECTIVE DATE OF TAX RATE CHANGES. (a) A change in the rate of the tax imposed under Sections 151.051 and 151.101 must take effect on the first day of a calendar quarter.

(b) If the performance of a taxable service begins before the effective date of a change in the tax rate and the performance will not be completed until after that effective date, the change in the tax rate applies to the first billing period for the service performed on or after that effective date.

SECTION 77. Section 151.025, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) If any nontaxable charges are combined with and not separately stated from taxable telecommunications service charges on the customer bill or invoice of a provider of telecommunications services, the combined charge is subject to tax unless the provider can identify the portion of the charges that are nontaxable through the provider's books and records kept in the regular course of business. If the nontaxable charges cannot reasonably be identified, the charges from the sale of both nontaxable services and taxable telecommunications services are attributable to taxable telecommunications services. The provider of telecommunications services has the burden of proving nontaxable charges.

SECTION 78. Section 151.103, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) A retailer who holds a sales tax permit issued by the comptroller under this chapter shall collect any applicable local use tax that is due from a purchaser even if the retailer is not engaged in business in the local jurisdiction into which the taxable item is shipped or delivered.

SECTION 79. Section 151.152(b), Tax Code, is amended to read as follows:

(b) A resale certificate must:

(1) be signed by the purchaser or contain an electronic form of the purchaser's signature authorized by the comptroller and contain the purchaser's name and address;

(2) state the purchaser's tax permit number or that the purchaser's application for a tax permit is pending before the comptroller; and

(3) contain a description of the tangible personal property sold, leased, or rented by the purchaser in the regular course of business or transferred as an integral part of a taxable service performed in the regular course of business.

SECTION 80. Section 151.202, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) A person desiring to be a seller in this state must agree to collect any applicable local use tax that may be imposed by a local jurisdiction even if the seller is not engaged in business in the local jurisdiction into which the taxable item is shipped or delivered.

SECTION 81. Section 151.307(b), Tax Code, is amended to read as follows:

(b) When an exemption is claimed because tangible personal property is exported beyond the territorial limits of the United States, proof of export may be shown only by:

(1) a bill of lading issued by a licensed and certificated carrier of persons or property showing the seller as consignor, the buyer as consignee, and a delivery point outside the territorial limits of the United States;

(2) ~~documentation.~~

34-1 ~~[(A) provided by a United States Customs Broker~~
34-2 ~~licensed by the comptroller under Section 151.157;~~

34-3 ~~[(B) certifying that delivery was made to a point~~
34-4 ~~outside the territorial limits of the United States; and~~

34-5 ~~[(C) to which a stamp issued under Section~~
34-6 ~~151.158 is affixed in the manner required by that section or Section~~
34-7 ~~151.157;~~

34-8 ~~[(3)]~~ import documents from the country of destination
34-9 showing that the property was imported into a country other than the
34-10 United States;

34-11 (3) ~~[(4)]~~ an original airway, ocean, or railroad bill
34-12 of lading and a forwarder's receipt if an air, ocean, or rail
34-13 freight forwarder takes possession of the property; or

34-14 (4) ~~[(5)]~~ any other manner provided by the comptroller
34-15 for an enterprise authorized to make tax-free purchases under
34-16 Section 151.156.

34-17 SECTION 82. Section 151.314, Tax Code, is amended by
34-18 amending Subsections (c), (e), (f), and (g) and adding Subsections
34-19 (c-1), (c-2), and (c-3) to read as follows:

34-20 (c) "Food products" shall not include:

34-21 (1) drugs, medicines, tonics, vitamins, dietary
34-22 supplements, and medicinal preparations in any form;

34-23 (2) carbonated and noncarbonated packaged soft
34-24 drinks, which are nonalcoholic beverages that contain natural or
34-25 artificial sweeteners [and diluted juices and ice and candy];

34-26 (3) ice; or

34-27 (4) candy [foods and drinks (which include meals, milk
34-28 and milk products, fruit and fruit products, sandwiches, salads,
34-29 processed meats and seafoods, vegetable juices, ice cream in cones
34-30 or small cups) served, prepared, or sold ready for immediate
34-31 consumption in or by restaurants, lunch counters, cafeterias,
34-32 vending machines, hotels, or like places of business or sold ready
34-33 for immediate consumption from pushcarts, motor vehicles, or any
34-34 other form of vehicle].

34-35 (c-1) For purposes of this section, diluted juice that is
34-36 more than 50 percent vegetable or fruit juice by volume is not
34-37 considered to be a soft drink.

34-38 (c-2) The exemption provided by Subsection (a) does not
34-39 include the following prepared food:

34-40 (1) food, food products, and drinks, including meals,
34-41 milk and milk products, fruit and fruit products, sandwiches,
34-42 salads, processed meats and seafoods, vegetable juice, and ice
34-43 cream in cones or small cups, served, prepared, or sold ready for
34-44 immediate consumption in or by restaurants, lunch counters,
34-45 cafeterias, vending machines, hotels, or like places of business or
34-46 sold ready for immediate consumption from pushcarts, motor
34-47 vehicles, or any other form of vehicle;

34-48 (2) food sold in a heated state or heated by the
34-49 seller; or

34-50 (3) two or more food ingredients mixed or combined by
34-51 the seller for sale as a single item, including items that are sold
34-52 in an unheated state by weight or volume as a single item, but not
34-53 including food that is only cut, repackaged, or pasteurized by the
34-54 seller.

34-55 (c-3) The exemption provided by Subsection (a) includes:

34-56 (1) bakery items sold without plates or other eating
34-57 utensils, including bread, rolls, buns, biscuits, bagels,
34-58 croissants, pastries, doughnuts, Danish, cakes, tortes, pies,
34-59 tarts, muffins, bars, cookies, and tortillas; and

34-60 (2) eggs, fish, meat, and poultry, and foods
34-61 containing these raw animal foods, that require cooking by the
34-62 consumer as recommended by the Food and Drug Administration in
34-63 Chapter 3, Section 401.11 of its Food Code to prevent food-borne
34-64 illness and any other food that requires cooking by the consumer
34-65 before the food is edible.

34-66 (e) Food products, candy, and soft drinks [carbonated
34-67 beverages, and diluted juices] are exempted from the taxes imposed
34-68 by this chapter if sold at an exempt sale qualifying under this
34-69 subsection or if stored or used by the purchaser of the item at the

35-1 exempt sale. A sale is exempted under this subsection if:

35-2 (1) the sale is made by a person under 19 years old who
35-3 is a member of a nonprofit organization devoted to the exclusive
35-4 purpose of education or religious or physical training or by a group
35-5 associated with a public or private elementary or secondary school;

35-6 (2) the sale is made as a part of a fund-raising drive
35-7 sponsored by the organization or group; and

35-8 (3) all net proceeds from the sale go to the
35-9 organization or group for its exclusive use.

35-10 (f) ~~The exemption provided by this section does~~
35-11 ~~[Subsections (a), (b), and (c) of this section do]~~ not apply to the
35-12 sale of food products through the use or operation of a vending
35-13 machine for which [edible products for human consumption] the
35-14 receipts or sales prices are determined by ~~[price for which are~~
35-15 ~~taxed subject to]~~ Section 151.007(d) ~~[of this code].~~

35-16 (g) The exemption provided by Subsection (d)(3) does not
35-17 apply to food products, meals, soft drinks, and candy ~~[for human~~
35-18 ~~consumption]~~ sold to a person confined in a correctional facility
35-19 operated under the authority or jurisdiction of or under contract
35-20 with this state or a political subdivision of the state.

35-21 SECTION 83. Section 151.317(a), Tax Code, is amended to
35-22 read as follows:

35-23 (a) Subject to Subsection (d), gas and electricity are
35-24 exempted from the taxes imposed by this chapter when sold for:

35-25 (1) residential use;

35-26 (2) use in powering equipment exempt under Section
35-27 151.318 or 151.3185 by a person processing tangible personal
35-28 property for sale as tangible personal property, other than
35-29 preparation or storage of prepared food described by Section
35-30 151.314(c-2) [food for immediate consumption];

35-31 (3) use in lighting, cooling, and heating in the
35-32 manufacturing area during the actual manufacturing or processing of
35-33 tangible personal property for sale as tangible personal property,
35-34 other than preparation or storage of prepared food described by
35-35 Section 151.314(c-2) [food for immediate consumption];

35-36 (4) use directly in exploring for, producing, or
35-37 transporting, a material extracted from the earth;

35-38 (5) use in agriculture, including dairy or poultry
35-39 operations and pumping for farm or ranch irrigation;

35-40 (6) use directly in electrical processes, such as
35-41 electroplating, electrolysis, and cathodic protection;

35-42 (7) use directly in the off-wing processing, overhaul,
35-43 or repair of a jet turbine engine or its parts for a certificated or
35-44 licensed carrier of persons or property;

35-45 (8) use directly in providing, under contracts with or
35-46 on behalf of the United States government or foreign governments,
35-47 defense or national security-related electronics, classified
35-48 intelligence data processing and handling systems, or
35-49 defense-related platform modifications or upgrades;

35-50 (9) a direct or indirect use, consumption, or loss of
35-51 electricity by an electric utility engaged in the purchase of
35-52 electricity for resale; or

35-53 (10) use in timber operations, including pumping for
35-54 irrigation of timberland.

35-55 SECTION 84. Section 151.317(c), Tax Code, as amended by
35-56 Chapters 631 and 1467, Acts of the 76th Legislature, Regular
35-57 Session, 1999, is reenacted to read as follows:

35-58 (c) In this section, "residential use" means use:

35-59 (1) in a family dwelling or in a multifamily apartment
35-60 or housing complex or building or in a part of a building occupied
35-61 as a home or residence when the use is by the owner of the dwelling,
35-62 apartment, complex, or building or part of the building occupied;
35-63 or

35-64 (2) in a dwelling, apartment, house, or building or
35-65 part of a building occupied as a home or residence when the use is by
35-66 a tenant who occupies the dwelling, apartment, house, or building
35-67 or part of a building under a contract for an express initial term
35-68 for longer than 29 consecutive days.

35-69 SECTION 85. Section 151.318, Tax Code, is amended by

36-1 amending Subsections (b) and (s) and adding Subsection (q-1) to
36-2 read as follows:

36-3 (b) The exemption includes:

36-4 (1) chemicals, catalysts, and other materials that are
36-5 used during a manufacturing, processing, or fabrication operation
36-6 to produce or induce a chemical or physical change, to remove
36-7 impurities, or to make the product more marketable; ~~and~~

36-8 (2) semiconductor fabrication cleanrooms and
36-9 equipment; and

36-10 (3) pharmaceutical biotechnology cleanrooms and
36-11 equipment that are installed as part of the construction of a new
36-12 facility with a value of at least \$150 million and on which
36-13 construction began after July 1, 2003, and before August 31, 2004.

36-14 (q-1) For purposes of Subsection (b), "pharmaceutical
36-15 biotechnology cleanrooms and equipment" means all tangible
36-16 personal property, without regard to whether the property is
36-17 affixed to or incorporated into realty, used in connection with the
36-18 manufacturing, processing, or fabrication in a cleanroom
36-19 environment of a pharmaceutical biotechnology product, without
36-20 regard to whether the property is actually contained in the
36-21 cleanroom environment. The term includes integrated systems,
36-22 fixtures, and piping, all property necessary or adapted to reduce
36-23 contamination or to control airflow, temperature, humidity,
36-24 chemical purity, or other environmental conditions or
36-25 manufacturing tolerances, and production equipment and machinery.
36-26 The term does not include the building or a permanent, nonremovable
36-27 component of the building that houses the cleanroom environment.
36-28 The term includes moveable cleanroom partitions and cleanroom
36-29 lighting. "Pharmaceutical biotechnology cleanrooms and equipment"
36-30 are not "intraplant transportation equipment" as that term is used
36-31 in Subsection (c)(1).

36-32 (s) The following do not apply to the semiconductor
36-33 fabrication cleanrooms and equipment in Subsection (q) or the
36-34 pharmaceutical biotechnology cleanrooms and equipment in
36-35 Subsection (q-1):

36-36 (1) limitations in Subsection (a)(2) that refer to
36-37 tangible personal property directly causing chemical and physical
36-38 changes to the product being manufactured, processed, or fabricated
36-39 for ultimate sale;

36-40 (2) Subsection (c)(1); and

36-41 (3) Subsection (c)(4).

36-42 SECTION 86. Section 151.3181, Tax Code, is amended by
36-43 adding Subsection (h) to read as follows:

36-44 (h) The use of "pharmaceutical biotechnology cleanrooms and
36-45 equipment," as that term is defined by Section 151.318(q-1), to
36-46 manufacture, process, or fabricate a pharmaceutical biotechnology
36-47 product that is not sold is not a divergent use if the use occurs
36-48 during the certification process by the United States Food and Drug
36-49 Administration.

36-50 SECTION 87. Section 153.119(d), Tax Code, is amended to
36-51 read as follows:

36-52 (d) If the quantity of gasoline used in Texas by auxiliary
36-53 power units or power take-off equipment on any motor vehicle can be
36-54 accurately measured while the motor vehicle is stationary by any
36-55 metering or other measuring device or method designed to measure
36-56 the fuel separately from fuel used to propel the motor vehicle, the
36-57 comptroller may approve and adopt the use of any device as a basis
36-58 for determining the quantity of gasoline consumed in those
36-59 operations for tax credit or tax refund. The climate-control air
36-60 conditioning or heating system of a motor vehicle that has a primary
36-61 purpose of providing for the convenience or comfort of the operator
36-62 or passengers is not a power take-off system, and a refund may not
36-63 be allowed for the tax paid on any portion of the gasoline that is
36-64 used for that purpose.

36-65 SECTION 88. Section 153.222(d), Tax Code, is amended to
36-66 read as follows:

36-67 (d) If the quantity of diesel fuel used in Texas by
36-68 auxiliary power units or power take-off equipment on any motor
36-69 vehicle can be accurately measured while the motor vehicle is

37-1 stationary by any metering or other measuring device or method
 37-2 designed to measure the fuel separately from fuel used to propel the
 37-3 motor vehicle, the comptroller may approve and adopt the use of any
 37-4 device as a basis for determining the quantity of diesel fuel
 37-5 consumed in those operations for tax credit or tax refund. If no
 37-6 separate metering device or other approved measuring method is
 37-7 provided, the following credit or refund procedures are authorized.
 37-8 A permitted supplier, a dyed diesel fuel bonded user, or an
 37-9 agricultural bonded user who operates diesel-powered motor
 37-10 vehicles equipped with a power take-off or a diesel-powered
 37-11 auxiliary power unit mounted on the motor vehicle and using the fuel
 37-12 supply tank of the motor vehicle may be allowed a deduction from the
 37-13 taxable gallons used in this state in each motor vehicle so
 37-14 equipped. The comptroller shall determine the percentage of the
 37-15 deduction. A user who is required to pay the tax on diesel fuel used
 37-16 in motor vehicles so equipped may file a claim for a refund not to
 37-17 exceed the percentage allowed by the comptroller of the total
 37-18 taxable fuel used in this state in each motor vehicle so equipped.
 37-19 The climate-control air conditioning or heating system of a motor
 37-20 vehicle that has a primary purpose of providing for the convenience
 37-21 or comfort of the operator or passengers is not a power take-off
 37-22 system, and a refund may not be allowed for the tax paid on any
 37-23 portion of the diesel fuel that is used for that purpose.

37-24 SECTION 89. Section 171.001, Tax Code, is amended by
 37-25 amending Subsections (a) and (b) and adding Subsection (d) to read
 37-26 as follows:

37-27 (a) A franchise tax is imposed on:

37-28 (1) each corporation that does business in this state
 37-29 or that is organized under the laws of ~~[chartered or authorized to~~
 37-30 ~~do business in]~~ this state, and

37-31 (2) each limited liability company that does business
 37-32 in this state or that is organized under the laws of this state ~~[or~~
 37-33 ~~is authorized to do business in this state]~~.

37-34 (b) In this chapter:

37-35 (1) "Banking corporation" means each state, national,
 37-36 domestic, or foreign bank, whether organized under the laws of this
 37-37 state, another state, or another country, or under federal law,
 37-38 including a limited banking association organized under Subtitle A,
 37-39 Title 3, Finance Code, and each bank organized under Section 25(a),
 37-40 Federal Reserve Act (12 U.S.C. Secs. 611-631) (edge corporations),
 37-41 but does not include a bank holding company as that term is defined
 37-42 by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec.
 37-43 1841).

37-44 (2) "Beginning date" means:

37-45 (A) for a corporation chartered in this state,
 37-46 the date on which the corporation's charter takes effect; and

37-47 (B) for a foreign corporation, the earlier of the
 37-48 date on which:

37-49 (i) the corporation's certificate of
 37-50 authority takes effect; or

37-51 (ii) the corporation begins doing business
 37-52 in this state.

37-53 (3) "Corporation" includes:

37-54 (A) a limited liability company, as defined under
 37-55 the Texas Limited Liability Company Act;

37-56 (B) a savings and loan association; and

37-57 (C) a banking corporation.

37-58 (4) "Charter" includes a limited liability company's
 37-59 certificate of organization.

37-60 (5) "Internal Revenue Code" means, except as otherwise
 37-61 provided in this chapter, the Internal Revenue Code of 1986 in
 37-62 effect for the federal tax year beginning on or after January 1,
 37-63 1996, and before January 1, 1997, and any regulations adopted under
 37-64 that code applicable to that period.

37-65 (6) (A) "Investment partnership":

37-66 (i) means a partnership in which:

37-67 (a) not less than 90 percent of either
 37-68 the original federal income tax basis under the Internal Revenue
 37-69 Code or the current fair market value of the partnership's total

38-1 assets consist of qualified investment securities and operating
 38-2 assets reasonably necessary to carry on the partnership's
 38-3 investment activities and not less than 90 percent of the
 38-4 partnership's gross income is passive investment income; or

38-5 (b) not less than 90 percent of the
 38-6 partnership interests are owned directly or indirectly by an
 38-7 Employee Stock Ownership Plan that has received a favorable
 38-8 determination letter from the Internal Revenue Service; and

38-9 (ii) does not include a partnership that is
 38-10 a dealer in securities, as defined by Section 475(c)(1), Internal
 38-11 Revenue Code.

38-12 (B) For purposes of Paragraph (A)(i)(a), a
 38-13 partnership shall exclude the basis in or value of an interest in a
 38-14 limited liability company and the gross income from an interest in a
 38-15 limited liability company unless the limited liability company
 38-16 would qualify as an investment partnership if the limited liability
 38-17 company were organized as a partnership.

38-18 (7) "Investment partnership interest" means a limited
 38-19 partnership interest in an investment partnership or a beneficial
 38-20 interest in a trust or business trust that is an investment
 38-21 partnership.

38-22 (8) "Officer" and "director" include a limited
 38-23 liability company's directors and managers and a limited banking
 38-24 association's directors and managers and participants if there are
 38-25 no directors or managers.

38-26 (9) "Partnership" includes:

38-27 (A) a joint venture;

38-28 (B) a general partnership;

38-29 (C) a limited partnership, except an Exempt
 38-30 Wholesale Generator, as defined by the Energy Policy Act of 1992 (15
 38-31 U.S.C. Sec. 79z-5A) and the Utilities Code, if that entity entered
 38-32 into contracts prior to December 31, 2002, for the sale of
 38-33 electricity that do not provide for modification to pricing by
 38-34 reason of amendments to this chapter; and

38-35 (D) a trust or business trust.

38-36 (10) "Partner" includes a beneficiary in a trust or
 38-37 business trust.

38-38 (11) "Partnership interest" includes a beneficial
 38-39 interest in a trust or business trust.

38-40 (12) "Passive investment income" means dividends,
 38-41 interest, or other gross income attributable to the ownership or
 38-42 disposition of qualified investment securities.

38-43 (13) "Public partnership" means a partnership that is:

38-44 (A) a publicly traded partnership as defined by
 38-45 Section 7704(b), Internal Revenue Code of 1986, as effective
 38-46 January 1, 2003, and was formed on or before January 1, 2003,
 38-47 without regard to whether such partnership qualifies under any
 38-48 exceptions to Section 7704(a), Internal Revenue Code of 1986, as
 38-49 effective January 1, 2003;

38-50 (B) a limited partnership to the extent the
 38-51 limited partnership interests are owned directly or indirectly by
 38-52 an entity described by Paragraph (A) or a trust or business trust to
 38-53 the extent the beneficial interests are owned directly or
 38-54 indirectly by an entity described by Paragraph (A);

38-55 (C) a limited partnership to the extent the
 38-56 limited partnership interests are owned directly or indirectly by
 38-57 an entity qualifying as a financial asset securitization investment
 38-58 trust as defined by Section 860L, Internal Revenue Code of 1986, as
 38-59 effective January 1, 2003; a real estate investment trust as
 38-60 defined by Section 856, Internal Revenue Code of 1986, as effective
 38-61 January 1, 2003; a qualified REIT subsidiary as defined by Section
 38-62 856(i), Internal Revenue Code of 1986, as effective January 1,
 38-63 2003; a real estate mortgage investment conduit as defined by
 38-64 Section 860D, Internal Revenue Code of 1986, as effective January
 38-65 1, 2003; or a regulated investment company as defined by Section
 38-66 851, Internal Revenue Code of 1986, as effective January 1, 2003; or

38-67 (D) a trust or business trust that qualifies as
 38-68 an entity described in paragraph (C).

38-69 (14) "Public partnership interest" means:

39-1 (A) a limited partnership interest in a publicly
 39-2 traded partnership as defined by Section 7704(b), Internal Revenue
 39-3 Code of 1986, as effective January 1, 2003, and was formed on or
 39-4 before January 1, 2003, without regard to whether such partnership
 39-5 qualifies under any exceptions to Section 7704(a), Internal Revenue
 39-6 Code of 1986, as effective January 1, 2003;

39-7 (B) a limited partnership interest owned
 39-8 directly or indirectly by an entity described by Paragraph (A) or a
 39-9 beneficial interest in a trust or business trust owned directly or
 39-10 indirectly by an entity described by paragraph (A);

39-11 (C) a limited partnership interest owned
 39-12 directly or indirectly by an entity qualifying as a financial asset
 39-13 securitization investment trust as defined by Section 860L,
 39-14 Internal Revenue Code of 1986, as effective January 1, 2003; a real
 39-15 estate investment trust as defined by Section 856, Internal Revenue
 39-16 Code of 1986, as effective January 1, 2003; a qualified REIT
 39-17 subsidiary as defined by Section 856(i), Internal Revenue Code of
 39-18 1986, as effective January 1, 2003; a real estate mortgage
 39-19 investment conduit as defined by Section 860D, Internal Revenue
 39-20 Code of 1986, as effective January 1, 2003; or a regulated
 39-21 investment company as defined by Section 851, Internal Revenue Code
 39-22 of 1986, as effective January 1, 2003; or

39-23 (D) a beneficial interest in a trust or business
 39-24 trust that qualifies as an entity described in paragraph (C).

39-25 (15) "Qualified investment securities":

39-26 (A) means:

39-27 (i) common stock, including preferred or
 39-28 debt securities convertible into common stock, and preferred stock;

39-29 (ii) bonds, debentures, and other debt
 39-30 securities;

39-31 (iii) deposits and any other obligations of
 39-32 banks and other financial institutions;

39-33 (iv) stock and bond index securities,
 39-34 futures contracts, options on securities, and other similar
 39-35 financial securities and instruments;

39-36 (v) an investment partnership interest or a
 39-37 public partnership interest; and

39-38 (vi) an interest in a limited liability
 39-39 company that would qualify as an investment partnership if the
 39-40 limited liability company were organized as a partnership; and

39-41 (B) does not include an interest in a partnership
 39-42 unless that partnership is an investment partnership or a public
 39-43 partnership.

39-44 (16) [~~7~~] "Savings and loan association" means a
 39-45 savings and loan association or savings bank, whether organized
 39-46 under the laws of this state, another state, or another country, or
 39-47 under federal law.

39-48 (17) [~~8~~] "Shareholder" includes a limited liability
 39-49 company's member and a limited banking association's participant.

39-50 (18) "Temporary amortization" means the amortization
 39-51 of the Texas asset basis using the straight-line method over 30
 39-52 privilege periods, beginning with the privilege period covered by
 39-53 the report which corresponds to the first period a limited partner
 39-54 became subject to the franchise tax under Subsection (d).

39-55 (19) "Texas asset basis" means a limited partner's
 39-56 total net asset basis for financial accounting purposes computed in
 39-57 accordance with generally accepted accounting principles less the
 39-58 adjusted tax basis of the partner's total net assets for federal
 39-59 income tax purposes as of the first day of the tax year covered by
 39-60 the report which corresponds to the first period a limited partner
 39-61 became subject to the franchise tax under Subsection (d).

39-62 (20) "Tiered partnership arrangement" means an
 39-63 ownership structure in which some or all of the interests in one
 39-64 partnership (a "lower tier partnership") are owned by a second
 39-65 partnership (an "upper tier partnership"). A tiered partnership
 39-66 arrangement may have two or more tiers.

39-67 (d)(1) Except as otherwise provided in this subsection, a
 39-68 corporation does business in this state if the corporation is a
 39-69 general or limited partner in a partnership whose activities, if

40-1 conducted directly by the corporation, would cause that corporation
 40-2 to be subject to the franchise tax.

40-3 (2) Notwithstanding any other provision in this
 40-4 subsection, a corporation is not doing business in this state
 40-5 solely by reason of owning an investment partnership interest or a
 40-6 public partnership interest.

40-7 (3) A corporation is not doing business in this state
 40-8 solely by reason of owning a beneficial interest in a trust or
 40-9 business trust that does business in this state, unless the
 40-10 corporation and its related entities, as defined in Section
 40-11 171.1101(b)(2)(A), have the power or authority to:

40-12 (A) remove and/or replace the trustee of the
 40-13 trust or business trust or, if more than one trustee, a majority of
 40-14 the trustees of the trust or business trust; or

40-15 (B) compel the trustee or trustees of the trust
 40-16 or business trust to take actions, or refrain from taking actions,
 40-17 relating to the management, activities or policies of the trust or
 40-18 business trust.

40-19 (4) Partners owning interests in upper tier
 40-20 partnerships are considered to be partners in lower tier
 40-21 partnerships for purposes of this subsection, except that partners
 40-22 owning upper tier public partnership interests are not considered
 40-23 to be partners in lower tier partnerships.

40-24 (5) If this subsection is found by any court of
 40-25 competent jurisdiction to be invalid as extending the Texas
 40-26 franchise tax beyond the limits of the United States Constitution
 40-27 and federal law adopted under the United States Constitution, then
 40-28 the franchise tax will be imposed on the partnership and the
 40-29 franchise tax liability of the partnership shall be calculated
 40-30 under Tax Code Section 171.006(b) as if the partnership were a
 40-31 corporation.

40-32 SECTION 90. Subchapter A, Chapter 171, Tax Code, is amended
 40-33 by adding Section 171.006 to read as follows:

40-34 Sec. 171.006. WITHHOLDING TAX OBLIGATION IMPOSED ON
 40-35 PARTNERSHIPS WITH RESPECT TO NONREPORTING CORPORATE PARTNERS.

40-36 (a) Each partnership that does business in this state other than a
 40-37 public partnership or an investment partnership is subject to a
 40-38 franchise tax withholding obligation as described by this section.

40-39 (b) The withholding tax payable by a partnership shall be
 40-40 equal to the amount of tax computed under Section 171.002 as if such
 40-41 partnership were a corporation, multiplied by the nonreporting
 40-42 corporate partners' percentage share of the partnership's federal
 40-43 taxable income determined as if such partnership were a
 40-44 corporation. If a lower tier partnership is subject to this
 40-45 section, an upper tier partnership's income attributable to the
 40-46 interest in the lower tier partnership shall be deducted for
 40-47 purposes of computing the upper tier partnership's withholding tax
 40-48 payable under this section.

40-49 (c) In determining whether a partner is a nonreporting
 40-50 corporate partner, a partnership may rely on the statement of a
 40-51 person owning an interest in the partnership, on a form prescribed
 40-52 by the comptroller, that the person is not a corporate partner. An
 40-53 upper tier partnership submitting a statement under this subsection
 40-54 to a lower tier partnership must disclose any direct partner or
 40-55 indirect partner in the upper tier partnership or any tiered
 40-56 partnership arrangement that is a corporate partner. Public
 40-57 partnerships and investment partnerships are not required to
 40-58 identify or disclose interests directly or indirectly owned by
 40-59 corporations or limited liability companies.

40-60 (d) Each nonreporting corporate partner shall be allowed a
 40-61 credit against its franchise tax liability under this chapter for
 40-62 any withholding tax paid by a partnership in connection with the
 40-63 nonreporting corporate partner's interest in the partnership.

40-64 (e) A partnership shall not be liable for failing to
 40-65 withhold tax as required by this section with respect to the
 40-66 interest of a nonreporting corporate partner to the extent the
 40-67 nonreporting corporate partner pays the tax against which the
 40-68 withholding tax may be credited.

40-69 (f) A partnership is subject to the application of

41-1 Subchapters D and E, other than Section 171.203, with regard to any
 41-2 withholding tax imposed by this section as if the partnership were a
 41-3 corporation. A partnership that does not owe any withholding tax
 41-4 for a period specified by Subchapter D because it does not have any
 41-5 nonreporting corporate partners shall not be required to file a
 41-6 report under Section 171.201 or 171.202 for that period, but shall
 41-7 file an information report for that period stating that the
 41-8 partnership has no nonreporting corporate partners and including
 41-9 such other information as the comptroller may require. The reports
 41-10 required by this subsection shall include copies of all partner
 41-11 reporting agreements received by the partnership during any
 41-12 partnership reporting period. If a partnership fails to timely
 41-13 file a copy of a partner reporting agreement, the partnership shall
 41-14 treat the corporate partner submitting the agreement as a
 41-15 nonreporting corporate partner.

41-16 (g) A partner reporting agreement filed with a partnership
 41-17 is effective until revoked in writing by a corporate partner or
 41-18 until the comptroller notifies the partnership in writing to treat
 41-19 the interest of a corporate partner as an interest of a nonreporting
 41-20 corporate partner because of the corporate partner's failure to
 41-21 comply with the terms of the partner reporting agreement.

41-22 (h) Every partnership that withholds tax under this section
 41-23 shall furnish to each nonreporting corporate partner a written
 41-24 statement, as prescribed by the comptroller, showing the amount of
 41-25 withheld tax under this section allocable to such corporate
 41-26 partner's interest in the partnership and such other information as
 41-27 the comptroller may require.

41-28 (i) In this section:

41-29 (1) "Corporate partner" means a direct partner or an
 41-30 indirect partner that is a corporation or limited liability company
 41-31 that is not exempted from the franchise tax. The term does not
 41-32 include:

41-33 (A) an interest directly or indirectly owned by a
 41-34 corporation or limited liability company in or through an
 41-35 investment partnership interest or a public partnership interest;
 41-36 or

41-37 (B) a beneficial interest directly or indirectly
 41-38 held or owned by a corporation or limited liability company in a
 41-39 trust or business trust that is not deemed to be doing business in
 41-40 this State pursuant to sections 171.001(d)(2) or 171.001(d)(3).

41-41 (2) "Direct partner" means a person that directly owns
 41-42 an interest in a partnership.

41-43 (3) "Indirect partner" means, with respect to a lower
 41-44 tier partnership, a person that owns an interest in an upper tier
 41-45 partnership.

41-46 (4) "Nonreporting corporate partner" means a
 41-47 corporate partner that does not file a partner reporting agreement
 41-48 with a partnership. The term does not include:

41-49 (A) an interest directly or indirectly owned by a
 41-50 corporation or limited liability company in or through an
 41-51 investment partnership interest or a public partnership interest;
 41-52 or

41-53 (B) a beneficial interest directly or indirectly
 41-54 held or owned by a corporation or limited liability company in a
 41-55 trust or business trust that is not deemed to be doing business in
 41-56 this State pursuant to sections 171.001(d)(2) or 171.001(d)(3).

41-57 (5) "Partner reporting agreement" means a form
 41-58 prescribed by the comptroller in which a corporate partner consents
 41-59 to the imposition of the franchise tax under this chapter on such
 41-60 corporate partner, agrees to file returns and make timely payment
 41-61 of all taxes imposed by this chapter, and agrees to be subject to
 41-62 personal jurisdiction in this state for purposes of the collection
 41-63 of any unpaid franchise tax under this chapter, together with
 41-64 related interest and penalties.

41-65 SECTION 91. Subsection (c), Section 171.1032, Tax Code, is
 41-66 amended to read as follows:

41-67 (c) A corporation shall include in its gross receipts
 41-68 computed under Subsection (a) the corporation's share of the gross
 41-69 receipts of each partnership and joint venture in which the

42-1 corporation owns an interest directly or indirectly [~~of which the~~
 42-2 ~~corporation is a part~~] apportioned to this state as though the
 42-3 corporation directly earned the receipts [~~, including receipts from~~
 42-4 ~~business done with the corporation~~]. A corporation owning an
 42-5 interest in an upper tier partnership is considered to be a partner
 42-6 in each lower tier partnership, and the corporation's share of the
 42-7 gross receipts of each partnership shall be computed and
 42-8 apportioned to this state as though the corporation directly earned
 42-9 the receipts at the partnership tier at which the receipts were
 42-10 originally earned.

42-11 SECTION 92. Subsection (d), Section 171.1051, Tax Code, is
 42-12 amended to read as follows:

42-13 (d) A corporation shall include in its gross receipts
 42-14 computed under Subsection (a) the corporation's share of the gross
 42-15 receipts of each partnership and joint venture in which the
 42-16 corporation owns an interest directly or indirectly [~~of which the~~
 42-17 ~~corporation is a part~~]. A corporation owning an interest in an
 42-18 upper tier partnership is considered to be a partner in each lower
 42-19 tier partnership, and the corporation's share of the gross receipts
 42-20 of each partnership shall be computed as though the corporation
 42-21 directly earned the receipts at the partnership tier at which the
 42-22 receipts were originally earned.

42-23 SECTION 93. Subsection (d), Section 171.110, Tax Code, is
 42-24 amended to read as follows:

42-25 (d) A corporation's reportable federal taxable income is
 42-26 the corporation's federal taxable income after Schedule C special
 42-27 deductions and before net operating loss deductions as computed
 42-28 under the Internal Revenue Code, except that an S corporation's
 42-29 reportable federal taxable income is the amount of the income
 42-30 reportable to the Internal Revenue Service as taxable to the
 42-31 corporation's shareholders. A corporation shall include in its
 42-32 earned surplus and gross receipts for earned surplus its share of a
 42-33 partnership's items of income or loss, regardless if the
 42-34 partnership is taxed as a corporation for federal income tax
 42-35 purposes.

42-36 SECTION 94. Subchapter C, Chapter 171, Tax Code, is amended
 42-37 by adding Section 171.1101 to read as follows:

42-38 Sec. 171.1101. RELATED ENTITY EXPENSE ADD-BACK. (a) For
 42-39 the purpose of determining net taxable earned surplus under Section
 42-40 171.110, a corporation must add back to reportable federal taxable
 42-41 income any excess management fees, excess royalty payments, and
 42-42 excess interest payments made to a related entity during the
 42-43 taxable year to the extent deducted in calculating reportable
 42-44 federal taxable income.

42-45 (b) For purposes of this section:

42-46 (1) "Excess management fees" means the amount by which
 42-47 a corporation's total management fee expenses exceed an arms length
 42-48 charge for those fees in a transaction between unrelated parties.
 42-49 The term includes all management fee expenses made for the purpose
 42-50 of tax avoidance and not for legitimate business purposes.

42-51 (2) "Excess royalty payments" means the amount by
 42-52 which a corporation's total royalty payments exceed an arms length
 42-53 charge for those payments in a transaction between unrelated
 42-54 parties. The term includes all royalty payments made for the
 42-55 purpose of tax avoidance and not for legitimate business purposes.

42-56 (3) "Excess interest payments" means the amount by
 42-57 which an interest payment exceeds the amount implied by the rate as
 42-58 set forth in Tax Code Section 111.060(b), as determined when the
 42-59 loan transaction was entered into or during the term of the loan.

42-60 (4) "Interest payments" means expenses allowed as
 42-61 deductions under Section 163, Internal Revenue Code, for purposes
 42-62 of determining reportable federal taxable income.

42-63 (5) "Management fee" means a payment made directly or
 42-64 indirectly to a parent from a subsidiary for supervision and
 42-65 oversight of its business affairs.

42-66 (6)(A) "Related entity" means a person that, with
 42-67 respect to the corporation during all or any portion of a privilege
 42-68 period, is:

42-69 (i) a component member as defined by

43-1 Section 1563(b), Internal Revenue Code;

43-2 (ii) a person to or from whom there is
43-3 attribution of stock ownership in accordance with Section 1563(e),
43-4 Internal Revenue Code;

43-5 (iii) a person that, notwithstanding its
43-6 form of organization, bears the same relationship to the
43-7 corporation as a person described by Subparagraphs (i) and (ii);

43-8 (iv) a stockholder who is an individual, or
43-9 a member of the stockholder's family enumerated in Section 318,
43-10 Internal Revenue Code, if the stockholder and the members of the
43-11 stockholder's family own, directly, indirectly, beneficially, or
43-12 constructively, in the aggregate, at least 50 percent of the value
43-13 of the corporation's outstanding stock;

43-14 (v) a stockholder, or a stockholder's
43-15 partnership, limited liability company, estate, trust, or
43-16 corporation, if the stockholder and the stockholder's
43-17 partnerships, limited liability companies, estates, trusts, and
43-18 corporations own, directly, indirectly, beneficially, or
43-19 constructively, in the aggregate, at least 50 percent of the value
43-20 of the corporation's outstanding stock; or

43-21 (vi) a corporation, or a party related to
43-22 such corporation in a manner that would require an attribution of
43-23 stock from the corporation to the party or from the party to the
43-24 corporation under the attribution rules of the Internal Revenue
43-25 Code, if such corporation owns, directly, indirectly,
43-26 beneficially, or constructively, at least 50 percent of the value
43-27 of the corporation's outstanding stock.

43-28 (B) The attribution rules of Section 318,
43-29 Internal Revenue Code, shall apply for purposes of determining
43-30 whether the ownership requirements under this subdivision have been
43-31 met.

43-32 (7) "Royalty payments" means payments, including
43-33 royalty and copyright fees, for the use of trademarks, copyrights,
43-34 trade names, trade dress, service marks, mask works, trade secrets,
43-35 and other similar types of intangible assets.

43-36 (c) For the purpose of computing its net taxable earned
43-37 surplus, a corporation must subtract management fees, royalty
43-38 payments and interest payments directly or indirectly received from
43-39 a related entity during the taxable year to the extent included in
43-40 calculating reportable federal taxable income unless such royalty
43-41 or interest payments would not be required to be added back under
43-42 this section.

43-43 (d) The comptroller shall have exclusive jurisdiction to
43-44 interpret this section.

43-45 SECTION 95. Subchapter C, Chapter 171, Tax Code, is amended
43-46 by adding Section 171.1102 to read as follows:

43-47 Sec. 171.1102. TEMPORARY AMORTIZATION OF TEXAS ASSET BASIS.
43-48 For the purpose of determining net taxable earned surplus under
43-49 Section 171.110, a corporate limited partner may deduct the
43-50 temporary amortization of the Texas asset basis from reportable
43-51 federal taxable income.

43-52 SECTION 96. Subchapter C, Chapter 171, Tax Code, is amended
43-53 by adding Section 171.1103 to read as follows:

43-54 Sec. 171.1103. PREEXISTING ELECTRIC RELIABILITY COUNCIL
43-55 CONTRACTS. For purposes of determining net taxable earned surplus
43-56 under Section 171.110 for report years ending on or before December
43-57 31, 2007, an entity formed on or after October 1, 2000, and on or
43-58 before September 30, 2002, that derives income predominantly from
43-59 the sale of electricity must subtract from reportable taxable
43-60 income any income (and add any loss) derived directly or indirectly
43-61 from contracts that:

43-62 (1) are for the sale of electricity at wholesale
43-63 within the Electric Reliability Council of Texas, Inc (or its
43-64 successor) market;

43-65 (2) were entered into prior to December 31, 2002; and

43-66 (3) do not provide for modification of pricing by
43-67 reason of amendments to this chapter that are effective on or after
43-68 May 31, 2003.

43-69 SECTION 97. Subsection (e), Section 171.1121, Tax Code, is

44-1 amended to read as follows:

44-2 (e) A corporation shall include in its earned surplus and
 44-3 gross receipts for earned surplus its share of a partnership's
 44-4 items of income or loss, regardless if the partnership is taxed as a
 44-5 corporation for federal income tax purposes. [A corporation's share
 44-6 of a partnership's gross receipts that is included in the
 44-7 corporation's federal taxable income must be used in computing the
 44-8 corporation's gross receipts under this section.] Unless otherwise
 44-9 provided by this chapter, a corporation may not deduct costs
 44-10 incurred from the corporation's share of a partnership's gross
 44-11 receipts. The gross receipts must be apportioned as though the
 44-12 corporation directly earned them. A corporation owning an interest
 44-13 in an upper tier partnership is considered to be a partner in each
 44-14 lower tier partnership, and the corporation's share of the gross
 44-15 receipts of each partnership shall be computed and apportioned as
 44-16 though the corporation directly earned the receipts at the
 44-17 partnership tier at which the receipts were originally earned.

44-18 SECTION 98. Section 171.151, Tax Code, is amended to read as
 44-19 follows:

44-20 Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX. The
 44-21 franchise tax shall be paid for each of the following:

44-22 (1) an initial period beginning on the corporation's
 44-23 beginning date and ending on the day before the first anniversary of
 44-24 the beginning date;

44-25 (2) a second period beginning on the first anniversary
 44-26 of the beginning date and ending on December 31 following that date;
 44-27 [~~and~~]

44-28 (3) after the initial and second periods have expired,
 44-29 a regular annual period beginning each year on January 1 and ending
 44-30 the following December 31;

44-31 (4) for a corporation that becomes subject to the tax
 44-32 imposed under this chapter by the enactment of Section
 44-33 171.001(d)(1), an initial period beginning on September 1, 2003 and
 44-34 ending on December 31, 2003; and

44-35 (5) for a corporation that becomes subject to the tax
 44-36 imposed under this chapter by the enactment of Section
 44-37 171.001(d)(1), a regular annual period beginning on January 1, 2004
 44-38 and ending on December 31, 2004.

44-39 SECTION 99. Section 171.152, Tax Code, is amended by adding
 44-40 Subsection (d) to read as follows:

44-41 (d) Payment of the tax covering the initial period provided
 44-42 by Section 171.151(4) is due on April 1, 2004.

44-43 SECTION 100. Section 171.153, Tax Code, is amended by
 44-44 adding Subsection (d) to read as follows:

44-45 (d) The tax covering the initial period provided by Section
 44-46 171.151(4) is based on the business done by the corporation during
 44-47 the period beginning on September 1, 2003 and ending on December 31,
 44-48 2003.

44-49 SECTION 101. Section 171.1532, Tax Code, is amended by
 44-50 adding Subsection (c) to read as follows:

44-51 (c) The tax covering the initial period provided by Section
 44-52 171.151(4) is based on the business done by the corporation during
 44-53 the period beginning on September 1, 2003 and ending on December 31,
 44-54 2003.

44-55 SECTION 102. Subchapter F, Chapter 171, Tax Code, is
 44-56 amended by adding Section 171.2515 to read as follows:

44-57 Section. 171.2515. FORFEITURE OF RIGHT OF PARTNERSHIP TO
 44-58 TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the
 44-59 same reasons and using the same procedure the comptroller uses in
 44-60 relation to the forfeiture of the corporate privileges of a
 44-61 corporation, forfeit the right of a partnership subject to a tax
 44-62 imposed by this subchapter to transact business in this state.

44-63 (b) The provisions of this subchapter, including Section
 44-64 171.255, that apply to the forfeiture of corporate privileges apply
 44-65 to forfeiture of a partnership's right to transact business in this
 44-66 state.

44-67 SECTION 103. Subchapter G, Chapter 171, Tax Code, is
 44-68 amended by adding Section 171.3015 to read as follows:

44-69 Section. 171.3015. FORFEITURE OF CERTIFICATE OR REGISTRATION

45-1 OF PARTNERSHIP. (a) A partnership's certificate or registration
 45-2 may be forfeited for the same reasons and using the same procedure
 45-3 that are used in relation to the forfeiture of a corporation's
 45-4 charter or certificate of authority.

45-5 (b) The provisions of this subchapter that apply to the
 45-6 forfeiture of a corporation's charter or certificate of authority
 45-7 apply to the forfeiture of a partnership's certificate or
 45-8 registration.

45-9 SECTION 104. Section 201.057(i), Tax Code, is amended to
 45-10 read as follows:

45-11 (i) If, before the commission certifies that a well produces
 45-12 high-cost gas or before the comptroller approves an application for
 45-13 an exemption or tax reduction under this section, the tax imposed by
 45-14 this chapter is paid on high-cost gas that otherwise qualifies for
 45-15 the exemption or tax reduction provided by this section, the
 45-16 producer or producers of the gas are entitled to a credit against
 45-17 other taxes imposed by this chapter in an amount equal to the amount
 45-18 of the tax paid on the gas that otherwise qualified for the
 45-19 exemption or tax reduction on or after the first day of the next
 45-20 month after the month in which the application for certification
 45-21 under this section was filed with the commission. If the
 45-22 application for certification is submitted to the commission after
 45-23 January 1, 2004, the total allowable credit for taxes paid for
 45-24 reporting periods before the date the application is filed may not
 45-25 exceed the total tax paid on the gas that otherwise qualified for
 45-26 the exemption or tax reduction and that was produced during the 24
 45-27 consecutive calendar months immediately preceding the month in
 45-28 which the application for certification under this section was
 45-29 filed with the commission. The credit is allocated to each producer
 45-30 according to the producer's proportionate share in the gas. To
 45-31 receive a credit, one or more of the producers must apply to the
 45-32 comptroller for the credit not later than the first anniversary
 45-33 after the date the comptroller approves the application for an
 45-34 exemption or tax reduction under this section. If a producer
 45-35 demonstrates that the producer does not have sufficient tax
 45-36 liability under this chapter to claim the credit within five years
 45-37 from the date the application for the credit is made, the producer
 45-38 is entitled to a refund in the amount of any credit the comptroller
 45-39 determines may not be claimed within that five years. Nothing in
 45-40 this subsection shall relieve the obligation imposed by Subsection
 45-41 (b) to pay tax when due on high-cost gas produced from co-production
 45-42 projects on or before July 31, 1995.

45-43 SECTION 105. Section 201.101, Tax Code, is amended to read
 45-44 as follows:

45-45 Sec. 201.101. MARKET VALUE. (a) The market value of gas is
 45-46 its value at the mouth of the well from which it is produced. The
 45-47 value of gas at the mouth of the well is determined by ascertaining
 45-48 the producer's actual marketing costs and subtracting those costs
 45-49 from the producer's gross cash receipts from the sale of the gas.

45-50 (b) Marketing costs are the costs incurred by the producer
 45-51 to get the gas from the mouth of the well to the market, including:

- 45-52 (1) costs for compressing the gas sold;
- 45-53 (2) costs for dehydrating the gas sold;
- 45-54 (3) costs for sweetening the gas sold; and
- 45-55 (4) costs for delivering the gas to the purchaser.

45-56 (c) Marketing costs do not include:

- 45-57 (1) costs incurred in producing the gas;
- 45-58 (2) costs incurred in normal lease separation of the
 45-59 oil or condensate; or
- 45-60 (3) insurance premiums on the marketing facility.

45-61 (d) Marketing costs are determined by adding:

- 45-62 (1) a reasonable charge for depreciation of the
 45-63 marketing facility being used, provided that, if the facility is
 45-64 rented, the actual rental fee is added;
- 45-65 (2) a return on the producer-owned investment equal to
 45-66 six percent per year on the average depreciable balance;
- 45-67 (3) costs of direct or allocated labor associated with
 45-68 the marketing facility;
- 45-69 (4) costs of materials, supplies, maintenance,

46-1 repairs, and fuel associated with the marketing facility; and

46-2 (5) ad valorem taxes paid on the marketing facility.

46-3 (e) If the facility is used for a purpose other than
46-4 marketing the gas being sold, the cost shall be allocated
46-5 accordingly.

46-6 (f) If the facility is handling gas for outside parties, the
46-7 average cost for handling all of the gas shall be applied against
46-8 the facility owner's gas.

46-9 (g) The actual cost being charged a producer by an outside
46-10 party for marketing functions may be used for tax purposes if no
46-11 other benefit or value accrues to the producer.

46-12 (h) A producer receiving a cost reimbursement from the gas
46-13 purchaser shall include the reimbursement in the gross cash
46-14 receipts and is entitled to deduct the actual marketing costs
46-15 incurred.

46-16 SECTION 106. Section 201.102, Tax Code, is amended to read
46-17 as follows:

46-18 Sec. 201.102. CASH SALES. If gas is sold for cash only, the
46-19 tax shall be computed on the producer's gross cash receipts.
46-20 Payments from a purchaser of gas to a producer for the purpose of
46-21 reimbursing the producer for taxes due under this chapter are [~~not~~]
46-22 part of the gross cash receipts unless the reimbursement amount for
46-23 taxes due under this chapter is separately stated in the sales
46-24 contract.

46-25 SECTION 107. Section 313.021(2), Tax Code, is amended to
46-26 read as follows:

46-27 (2) "Qualified property" means:

46-28 (A) land:

46-29 (i) that is located in an area designated as
46-30 a reinvestment zone under Chapter 311 or 312 or as an enterprise
46-31 zone under Chapter 2303, Government Code;

46-32 (ii) on which a person proposes to
46-33 construct a new building or erect or affix a new improvement that
46-34 does not exist before the date the owner applies for a limitation on
46-35 appraised value under this subchapter;

46-36 (iii) that is not subject to a tax abatement
46-37 agreement entered into by a school district under Chapter 312; and

46-38 (iv) on which, in connection with the new
46-39 building or new improvement described by Subparagraph (ii), the
46-40 owner of the land proposes to:

46-41 (a) make a qualified investment in an
46-42 amount equal to at least the minimum amount required by Section
46-43 313.023; and

46-44 (b) create at least 25 new jobs;

46-45 (B) the new building or other new improvement
46-46 described by Paragraph (A)(ii); and

46-47 (C) tangible personal property that:

46-48 (i) is not subject to a tax abatement
46-49 agreement entered into by a school district under Chapter 312; and

46-50 (ii) except for new equipment described in
46-51 Section 151.318(q) or (q-1), is first placed in service in the new
46-52 building or in or on the new improvement described by Paragraph
46-53 (A)(ii), or on the land on which that new building or new
46-54 improvement is located, if the personal property is ancillary and
46-55 necessary to the business conducted in that new building or in or on
46-56 that new improvement.

46-57 SECTION 108. Section 321.003, Tax Code, is amended to read
46-58 as follows:

46-59 Sec. 321.003. OTHER PORTIONS OF TAX APPLICABLE. Subtitles
46-60 A and B, Title 2, and Chapters 142 and [Chapter] 151 apply to the
46-61 taxes and to the administration and enforcement of the taxes
46-62 imposed by this chapter in the same manner that those laws apply to
46-63 state taxes, unless modified by this chapter.

46-64 SECTION 109. Section 321.203, Tax Code, is amended by
46-65 amending Subsections (b), (c), (d), (e), and (g) and adding
46-66 Subsections (g-1), (g-2), (g-3), and (l) to read as follows:

46-67 (b) If a retailer has only one place of business in this
46-68 state, all of the retailer's retail sales of tangible personal
46-69 property are consummated at that place of business except as

47-1 provided by Subsection (e).

47-2 (c) If a retailer has more than one place of business in this
47-3 state, a sale of tangible personal property [~~a taxable item~~] by the
47-4 retailer is consummated at the retailer's place of business:

47-5 (1) from which the retailer ships or delivers the
47-6 property [~~item~~], if the retailer ships or delivers the property
47-7 [~~item~~] to a point designated by the purchaser or lessee; or

47-8 (2) where the purchaser or lessee takes possession of
47-9 and removes the property [~~item~~], if the purchaser or lessee takes
47-10 possession of and removes the property [~~item~~] from a place of
47-11 business of the retailer.

47-12 (d) If neither the possession of tangible personal property
47-13 [~~a taxable item~~] is taken at nor shipment or delivery of the
47-14 property [~~item~~] is made from the retailer's place of business in
47-15 this state, the sale is consummated at:

47-16 (1) the retailer's place of business in this state
47-17 where the order is received; or

47-18 (2) if the order is not received at a place of business
47-19 of the retailer, the place of business from which the retailer's
47-20 salesman who took the order operates.

47-21 (e) A sale of tangible personal property is consummated at
47-22 the location in this state to which the property [~~a taxable item~~] is
47-23 shipped or delivered or at which possession is taken by the customer
47-24 if transfer of possession of the property [~~a taxable item~~] occurs
47-25 at, or shipment or delivery of the property [~~item~~] originates from,
47-26 a location in this state other than a place of business of the
47-27 retailer and if:

47-28 (1) the retailer is an itinerant vendor who has no
47-29 place of business;

47-30 (2) the retailer's place of business where the
47-31 purchase order is initially received or from which the retailer's
47-32 salesman who took the order operates is outside this state; or

47-33 (3) the purchaser places the order directly with the
47-34 retailer's supplier and the property [~~item~~] is shipped or delivered
47-35 directly to the purchaser by the supplier.

47-36 (g) ~~The [sale of telecommunications services is consummated
47-37 at the location of the telephone or other telecommunications device
47-38 from which the call or other transmission originates, unless the
47-39 point of origin cannot be determined, in which case the sale is at
47-40 the address to which the call is billed. However, the] sale of
47-41 mobile telecommunications services is consummated in accordance
47-42 with [the provisions of] Section 151.061.~~

47-43 (g-1) The sale of telecommunications services sold based on
47-44 a price that is measured by individual calls is consummated at the
47-45 location where the call originates and terminates or the location
47-46 where the call either originates or terminates and at which the
47-47 service address is also located.

47-48 (g-2) Except as provided by Subsection (g-3), the sale of
47-49 telecommunications services sold on a basis other than on a
47-50 call-by-call basis is consummated at the location of the customer's
47-51 place of primary use. In this subsection, "place of primary use"
47-52 has the meaning assigned by Section 151.061(a)(2).

47-53 (g-3) A sale of post-paid calling services is consummated at
47-54 the location of the origination point of the telecommunications
47-55 signal as first identified by the seller's telecommunications
47-56 system or by information received by the seller from the seller's
47-57 service provider if the system used to transport the signal is not
47-58 that of the seller.

47-59 (1) Except as otherwise provided by this section, the sale
47-60 of a taxable service, other than a service described by Section
47-61 151.330(f), is consummated at the location at which the service is
47-62 performed or otherwise delivered.

47-63 SECTION 110. Section 321.3022, Tax Code, is amended by
47-64 amending Subsection (a) and adding Subsection (i) to read as
47-65 follows:

47-66 (a) The comptroller on request shall provide to a
47-67 municipality that has adopted a tax under this chapter and that has
47-68 a population of not more than 275,000 information relating to the
47-69 amount of tax paid to the municipality under this chapter during the

48-1 preceding or current calendar year by each person doing business in
 48-2 the municipality who annually remits to the comptroller state and
 48-3 local sales tax payments of more than \$25,000 [~~\$100,000~~].

48-4 (i) Notwithstanding Chapter 551, Government Code, the
 48-5 governing body of a municipality is not required to confer with one
 48-6 or more employees or a third party in an open meeting to receive
 48-7 information or question the employees or third party regarding the
 48-8 information received by the municipality under this section.

48-9 SECTION 111. Section 322.107, Tax Code, is amended to read
 48-10 as follows:

48-11 Sec. 322.107. EXEMPTION: SALES TAX ON ITEMS LEAVING
 48-12 ENTITY. There are exempted from the sales tax of a taxing entity
 48-13 the receipts of the sale of a taxable item that, under a sales
 48-14 contract, is shipped to a point outside the entity by means of:

- 48-15 (1) facilities operated by the retailer;
- 48-16 (2) delivery by the retailer to a carrier for shipment
 48-17 to a consignee at that point; or
- 48-18 (3) delivery by the retailer to a [~~customs broker or a~~]
 48-19 forwarding agent for shipment outside the entity.

48-20 SECTION 112. Section 323.003, Tax Code, is amended to read
 48-21 as follows:

48-22 Sec. 323.003. OTHER PORTIONS OF TAX APPLICABLE. Subtitles
 48-23 A and B, Title 2, and Chapters 142 and [Chapter] 151 apply to the
 48-24 taxes and to the administration and enforcement of the taxes
 48-25 imposed by this chapter in the same manner that those laws apply to
 48-26 state taxes unless modified by this chapter.

48-27 SECTION 113. Section 323.203, Tax Code, is amended by
 48-28 amending Subsections (b), (c), (d), (e), and (g) and adding
 48-29 Subsections (g-1), (g-2), (g-3), and (l) to read as follows:

48-30 (b) If a retailer has only one place of business in this
 48-31 state, all of the retailer's retail sales of tangible personal
 48-32 property are consummated at that place of business except as
 48-33 provided by Subsection (e).

48-34 (c) If a retailer has more than one place of business in this
 48-35 state, a sale of tangible personal property [~~a taxable item~~] by the
 48-36 retailer is consummated at the retailer's place of business:

48-37 (1) from which the retailer ships or delivers the
 48-38 property [~~item~~], if the retailer ships or delivers the property
 48-39 [~~item~~] to a point designated by the purchaser or lessee; or

48-40 (2) where the purchaser or lessee takes possession of
 48-41 and removes the property [~~item~~], if the purchaser or lessee takes
 48-42 possession of and removes the property [~~item~~] from a place of
 48-43 business of the retailer.

48-44 (d) If neither the possession of tangible personal property
 48-45 [~~a taxable item~~] is taken at nor shipment or delivery of the
 48-46 property [~~item~~] is made from the retailer's place of business in
 48-47 this state, the sale is consummated at:

48-48 (1) the retailer's place of business in this state
 48-49 where the order is received; or

48-50 (2) if the order is not received at a place of business
 48-51 of the retailer, the place of business from which the retailer's
 48-52 salesman who took the order operates.

48-53 (e) A sale of tangible personal property is consummated at
 48-54 the location in this state to which the property [~~a taxable item~~] is
 48-55 shipped or delivered or at which possession is taken by the customer
 48-56 if transfer of possession of the property [~~a taxable item~~] occurs
 48-57 at, or shipment or delivery of the property [~~taxable item~~]
 48-58 originates from, a location in this state other than a place of
 48-59 business of the retailer and if:

48-60 (1) the retailer is an itinerant vendor who has no
 48-61 place of business;

48-62 (2) the retailer's place of business where the
 48-63 purchase order is initially received or from which the retailer's
 48-64 salesman who took the order operates is outside this state; or

48-65 (3) the purchaser places the order directly with the
 48-66 retailer's supplier and the property [~~taxable item~~] is shipped or
 48-67 delivered directly to the purchaser by the supplier.

48-68 (g) The sale of [~~telecommunications services is consummated~~
 48-69 ~~at the location of the telephone or other telecommunications device~~

49-1 ~~from which the call or other transmission originates, unless the~~
49-2 ~~point of origin cannot be determined, in which case the sale is at~~
49-3 ~~the address to which the call is billed. However, the sale of]~~
49-4 mobile telecommunications services is consummated in accordance
49-5 with ~~[the provisions of]~~ Section 151.061.

49-6 (g-1) The sale of telecommunications services sold based on
49-7 a price that is measured by individual calls is consummated at the
49-8 location where the call originates and terminates or the location
49-9 where the call either originates or terminates and at which the
49-10 service address is also located.

49-11 (g-2) Except as provided by Subsection (g-3), the sale of
49-12 telecommunications services sold on a basis other than on a
49-13 call-by-call basis is consummated at the location of the customer's
49-14 place of primary use. In this subsection, "place of primary use"
49-15 has the meaning assigned by Section 151.061(a)(2).

49-16 (g-3) A sale of post-paid calling services is consummated at
49-17 the location of the origination point of the telecommunications
49-18 signal as first identified by the seller's telecommunications
49-19 system or by information received by the seller from the seller's
49-20 service provider if the system used to transport the signal is not
49-21 that of the seller.

49-22 (l) Except as otherwise provided by this section, the sale
49-23 of a taxable service, other than a service described by Section
49-24 151.330(f), is consummated at the location at which the service is
49-25 performed or otherwise delivered.

49-26 SECTION 114. Section 256.009, Transportation Code, is
49-27 amended to read as follows:

49-28 Sec. 256.009. REPORT TO COMPTROLLER. (a) Not later than
49-29 January 30 of each year, the county auditor or, if the county does
49-30 not have a county auditor, the official having the duties of the
49-31 county auditor shall file a report with the comptroller that
49-32 includes:

49-33 (1) an account of how the money allocated to a county
49-34 under Section 256.002 during the preceding year was spent;

49-35 (2) a description, including location, of any new
49-36 roads constructed in whole or in part with the money allocated to a
49-37 county under Section 256.002 during the preceding year;

49-38 (3) any other information related to the
49-39 administration of Sections 256.002 and 256.003 that the comptroller
49-40 requires; and

49-41 (4) ~~[stating]~~ the total amount of expenditures for
49-42 county road and bridge construction, maintenance, rehabilitation,
49-43 right-of-way acquisition, and utility construction and other
49-44 appropriate road expenditures of county funds in the preceding
49-45 county fiscal year that are required by the constitution or other
49-46 law to be spent on public roads or highways.

49-47 (b) The report must be in a form prescribed by the
49-48 comptroller.

49-49 (c) ~~[(b)]~~ The comptroller may distribute money under
49-50 Section 256.002(a) to a county only if the most recent report
49-51 required by Subsection (a) has been filed.

49-52 (d) A county official or employee shall provide to the
49-53 comptroller on request any information necessary to determine the
49-54 legality of the use of money allocated under Section 256.002.

49-55 SECTION 115. (a) The comptroller of public accounts shall
49-56 conduct a study of the economic and other costs to political
49-57 subdivisions of this state of changing the sourcing laws relating
49-58 to the sale of tangible personal property to comply with the
49-59 Streamlined Sales and Use Tax Agreement.

49-60 (b) The comptroller of public accounts may request from a
49-61 political subdivision of this state any information the comptroller
49-62 requires to complete the study, and the political subdivision shall
49-63 provide the requested information as soon as possible.

49-64 (c) Not later than December 31, 2004, the comptroller shall
49-65 provide to the lieutenant governor, speaker of the house of
49-66 representatives, and presiding officers of the senate and house
49-67 committees having primary jurisdiction over the comptroller a
49-68 report on the results of the study.

49-69 SECTION 116. The following are repealed:

- 50-1 (1) Section 44.901, Education Code, as amended by
- 50-2 Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001;
- 50-3 (2) Section 51.927, Education Code, as amended by
- 50-4 Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001;
- 50-5 (3) Section 395.103, Finance Code;
- 50-6 (4) Subchapters O and P, Chapter 403, Government Code;
- 50-7 (5) Section 609.515, Government Code;
- 50-8 (6) Section 659.131(10), Government Code;
- 50-9 (7) Section 659.146(b), Government Code;
- 50-10 (8) Section 659.152, Government Code;
- 50-11 (9) Section 815.211, Government Code;
- 50-12 (10) Section 840.210, Government Code;
- 50-13 (11) Section 2166.406, Government Code, as amended by
- 50-14 Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001;
- 50-15 (12) Section 2305.025, Government Code;
- 50-16 (13) Section 2305.032(c), Government Code;
- 50-17 (14) Section 2305.033(c), Government Code;
- 50-18 (15) Section 2305.073, Government Code;
- 50-19 (16) Section 2305.074, Government Code;
- 50-20 (17) Section 2305.076, Government Code;
- 50-21 (18) Article 4.74, Insurance Code;
- 50-22 (19) Section 1551.054, Insurance Code, as effective
- 50-23 June 1, 2003;
- 50-24 (20) Section 302.003, Local Government Code, as
- 50-25 amended by Chapter 573, Acts of the 77th Legislature, Regular
- 50-26 Session, 2001;
- 50-27 (21) Section 111.207(d), Tax Code;
- 50-28 (22) Sections 112.058(b) and (c), Tax Code;
- 50-29 (23) Section 151.025(c), Tax Code;
- 50-30 (24) Section 151.157, Tax Code;
- 50-31 (25) Section 151.158, Tax Code;
- 50-32 (26) Section 151.159, Tax Code;
- 50-33 (27) Sections 151.307(c), (d), and (e), Tax Code;
- 50-34 (28) Section 151.326(c), Tax Code;
- 50-35 (29) Section 151.712, Tax Code;
- 50-36 (30) Section 151.713, Tax Code;
- 50-37 (31) Chapter 326, Tax Code;
- 50-38 (32) Sections 256.003(b) and (c), Transportation
- 50-39 Code; and
- 50-40 (33) Sections 1.02(b)-(i), Chapter 753, Acts of the
- 50-41 76th Legislature, Regular Session, 1999.

50-42 SECTION 117. (a) For the fiscal biennium beginning

50-43 September 1, 2003, the comptroller is appropriated from the general

50-44 revenue fund the amount needed to return any available cash that was

50-45 transferred to that fund from a fund outside the state treasury and

50-46 to maintain the equity of the fund from which the transfer was made,

50-47 as required by Section 403.092, Government Code, as amended by this

50-48 Act.

50-49 (b) The changes in law made by this Act to Sections 54.619

50-50 and 54.624, Education Code, apply to each academic term or semester

50-51 that begins after the effective date of this Act, other than a term

50-52 or semester before the 2003 fall semester.

50-53 (c) The changes in law made by this Act to Section 403.1042,

50-54 Government Code, do not affect the entitlement of a member serving

50-55 on the tobacco settlement permanent trust account advisory

50-56 committee immediately before the effective date of this Act to

50-57 serve the remainder of the member's current term. As the terms of

50-58 the members of the tobacco settlement permanent trust account

50-59 investment advisory committee first expire after the effective date

50-60 of this Act, the entities authorized to appoint the committee

50-61 members under Section 403.1042(b), Government Code, as amended by

50-62 this Act, shall appoint their successors.

50-63 (d) Section 659.2531, Government Code, as added by this Act,

50-64 applies only to a transfer that takes effect on or after September

50-65 1, 2003. A transfer that takes effect before September 1, 2003, is

50-66 governed by the law in effect on the effective date of the transfer,

50-67 and the former law is continued in effect for that purpose. In this

50-68 subsection, "transfer" has the meaning assigned by Section

50-69 659.2531, Government Code, as added by this Act.

51-1 (e) The changes in law made by this Act to Section 659.255,
 51-2 Government Code, apply only to a merit salary increase or a one-time
 51-3 merit payment that takes effect or is made on or after September 1,
 51-4 2003. A merit salary increase or a one-time merit payment that
 51-5 takes effect or is made before September 1, 2003, is governed by the
 51-6 law in effect on the date the increase takes effect or the payment
 51-7 is made, and the former law is continued in effect for that purpose.

51-8 (f) The rate of interest that accrues on a payment that
 51-9 becomes overdue on or after September 1, 2004, is the rate
 51-10 determined under Section 2251.025(b), Government Code, as amended
 51-11 by this Act. The rate of interest that accrues on a payment that
 51-12 becomes overdue before September 1, 2004, is the rate determined
 51-13 under the law in effect before July 1, 2004, and the former law is
 51-14 continued in effect for that purpose.

51-15 (g) The changes in law made by this Act to Section 2252.903,
 51-16 Government Code, apply only to a written contract that is entered
 51-17 into on or after September 1, 2003. A written contract that is
 51-18 entered into before September 1, 2003, is governed by the law in
 51-19 effect on the date the contract is entered into, and the former law
 51-20 is continued in effect for that purpose.

51-21 (h) The changes in law made by this Act to Section 74.103,
 51-22 Property Code, apply only to an examination begun on or after
 51-23 September 1, 2003. An examination begun before September 1, 2003,
 51-24 is governed by the law in effect on the date the examination begins,
 51-25 and the former law is continued in effect for that purpose.

51-26 (i) The changes in law made by this Act to Chapter 111, Tax
 51-27 Code, apply only to a claim for a refund made on or after the
 51-28 effective date of this Act, without regard to whether the taxes that
 51-29 are the subject of the claim were due before, on, or after that
 51-30 date.

51-31 (j) The changes in law made by this Act to Sections
 51-32 153.119(d) and 153.222(d), Tax Code, apply only to fuel used on or
 51-33 after September 1, 2003, for climate-control air conditioning or
 51-34 heating in a motor vehicle. Fuel used before that date is governed
 51-35 by the law in effect on the date the fuel is used, and that law is
 51-36 continued in effect for that purpose.

51-37 SECTION 118. The comptroller shall adopt rules and forms as
 51-38 necessary to implement Article 4.73(a), Insurance Code, as amended
 51-39 by this Act, not later than the 90th day after the effective date of
 51-40 this Act.

51-41 SECTION 119. (a) Except as provided by this section, this
 51-42 Act takes effect immediately if it receives a vote of two-thirds of
 51-43 all the members elected to each house, as provided by Section 39,
 51-44 Article III, Texas Constitution. If this Act does not receive the
 51-45 vote necessary for immediate effect, this Act takes effect
 51-46 September 1, 2003.

51-47 (b) The amendments by this Act to the following sections
 51-48 take effect September 1, 2003:

51-49 (1) Section 14(e), Article 42.12, Code of Criminal
 51-50 Procedure, as added by Chapter 1188, Acts of the 76th Legislature,
 51-51 Regular Session, 1999;

51-52 (2) Section 19(f), Article 42.12, Code of Criminal
 51-53 Procedure;

51-54 (3) Section 659.253, Government Code;

51-55 (4) Section 659.255, Government Code;

51-56 (5) Sections 2101.0115(a) and (b), Government Code;

51-57 (6) Section 2113.205(b), Government Code;

51-58 (7) Section 2252.903(e), Government Code;

51-59 (8) Section 74.103, Property Code;

51-60 (9) Section 74.501, Property Code;

51-61 (10) Section 112.058(a), Tax Code;

51-62 (11) Section 153.119(d), Tax Code;

51-63 (12) Section 153.222(d), Tax Code;

51-64 (13) Section 201.057(i), Tax Code;

51-65 (14) Section 201.101, Tax Code;

51-66 (15) Section 201.102, Tax Code; and

51-67 (16) Section 256.009, Transportation Code.

51-68 (c) The amendments by this Act to Section 2251.025(b),
 51-69 Government Code, and Sections 321.203 and 323.203, Tax Code, take

52-1 effect July 1, 2004. Sections 151.103(d) and 151.202(c), Tax Code,
52-2 as added by this Act, take effect July 1, 2004.

52-3 (d) The repeal by this Act of Section 395.103, Finance Code,
52-4 and Sections 112.058(b) and (c), Tax Code, takes effect September
52-5 1, 2003.

52-6 (e) Sections 659.2531 and 659.262, Government Code, as
52-7 added by this Act, take effect September 1, 2003.

52-8 (f) The amendments by this Act to the following sections
52-9 take effect October 1, 2003:

- 52-10 (1) Section 142.002, Tax Code;
- 52-11 (2) Section 142.005, Tax Code;
- 52-12 (3) Section 151.011(a), Tax Code;
- 52-13 (4) Section 151.152(b), Tax Code;
- 52-14 (5) Section 151.307(b), Tax Code;
- 52-15 (6) Section 151.314, Tax Code;
- 52-16 (7) Section 151.317, Tax Code;
- 52-17 (8) Section 321.003, Tax Code;
- 52-18 (9) Section 322.107, Tax Code; and
- 52-19 (10) Section 323.003, Tax Code.

52-20 (g) Sections 142.0055, 142.011, and 151.012, Tax Code, as
52-21 added by this Act, take effect October 1, 2003.

52-22 (h) The repeal by this Act of the following provisions takes
52-23 effect October 1, 2003:

- 52-24 (1) Section 151.157, Tax Code;
- 52-25 (2) Section 151.158, Tax Code;
- 52-26 (3) Section 151.159, Tax Code;
- 52-27 (4) Sections 151.307(c), (d), and (e), Tax Code;
- 52-28 (5) Section 151.326(c), Tax Code;
- 52-29 (6) Section 151.712, Tax Code;
- 52-30 (7) Section 151.713, Tax Code; and
- 52-31 (8) Chapter 326, Tax Code.

52-32 (i) The repeal by this Act of Section 151.025(c), Tax Code,
52-33 takes effect July 1, 2003, if this Act receives a vote of two-thirds
52-34 of all the members elected to each house, as provided by Section 39,
52-35 Article III, Texas Constitution. If this Act does not receive the
52-36 vote necessary for effect on that date, the repeal of Section
52-37 151.025(c), Tax Code, takes effect October 1, 2003.

52-38 (j) Section 151.025(d), Tax Code, as added by this Act,
52-39 takes effect July 1, 2003, if this Act receives a vote of two-thirds
52-40 of all the members elected to each house, as provided by Section 39,
52-41 Article III, Texas Constitution. If this Act does not receive the
52-42 vote necessary for effect on that date, Section 151.025(d), Tax
52-43 Code, takes effect October 1, 2003.

52-44 (k) The change in law made by Sections 89 through 103 of this
52-45 Act does not affect taxes or fees imposed before the effective date
52-46 of this Act, and the former law is continued in effect for purposes
52-47 of the liability for and collection of those taxes and fees.

52-48 * * * * *