

By: Ogden

S.B. No. 3

A BILL TO BE ENTITLED

AN ACT

relating to financing public schools in this state and reducing school property taxes.

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

ARTICLE 1. PUBLIC SCHOOL FINANCE

PART A. EDUCATION FUNDING AND SCHOOL PROPERTY TAX RELIEF

SECTION 1A.01. Section 41.002(e), Education Code, is amended to read as follows:

(e) Notwithstanding Subsection (a), and except as provided by Subsection (g), in accordance with a determination of the commissioner, the wealth per student that a school district may have after exercising an option under Section 41.003(2) or (3) may not be less than the amount needed to maintain state and local revenue in an amount equal to state and local revenue per weighted student for maintenance and operation of the district for the 1992-1993 school year less the district's current year distribution per weighted student from the available school fund, other than amounts distributed under Chapter 31, if the district imposes an effective tax rate for maintenance and operation of the district equal to the greater of the district's current tax rate or the maximum maintenance tax rate permitted under Section 45.003 [~~\$1.50 on the \$100 valuation of taxable property~~].

SECTION 1A.02. Section 41.157(d), Education Code, is amended to read as follows:

1 (d) Notwithstanding Section 45.003, the consolidated taxing  
2 district may levy, assess, and collect a maintenance tax for the  
3 benefit of the component districts at a rate that exceeds the  
4 maximum maintenance tax rate permitted under Section 45.003 [~~\$1.50~~  
5 ~~per \$100 valuation of taxable property~~] to the extent necessary to  
6 pay contracted obligations on the lease purchase of permanent  
7 improvements to real property entered into on or before May 12,  
8 1993. The proposition to impose taxes at the necessary rate must be  
9 submitted to the voters in the manner provided by Section 45.003.

10 SECTION 1A.03. Section 42.252(a), Education Code, is  
11 amended to read as follows:

12 (a) Each school district's share of the Foundation School  
13 Program is determined by the following formula:

$$14 \text{LFA} = \text{TR} \times \text{DPV}$$

15 where:

16 "LFA" is the school district's local share;

17 "TR" is a tax rate which for each hundred dollars of valuation  
18 is an effective tax rate of \$0.76 [~~\$0.86~~]; and

19 "DPV" is the taxable value of property in the school district  
20 for the preceding tax year determined under Subchapter M, Chapter  
21 403, Government Code.

22 SECTION 1A.04. Section 42.253, Education Code, is amended  
23 by adding Subsection (e-2) to read as follows:

24 (e-2) For the 2005-2006 school year, the limit authorized by  
25 Subsection (e) is reduced by \$0.20. For the 2006-2007 school year,  
26 the limit authorized by Subsection (e) is reduced by \$0.35. This  
27 subsection expires September 1, 2007.

1 SECTION 1A.05. Section 42.303, Education Code, is amended  
2 to read as follows:

3 Sec. 42.303. LIMITATION ON [~~ENRICHMENT~~] TAX RATE. The  
4 district [~~enrichment~~] tax rate ("DTR") under Section 42.302 may not  
5 exceed \$0.54 [~~\$0.64~~] per \$100 of valuation, or a greater amount for  
6 any year provided by appropriation.

7 SECTION 1A.06. Section 45.003, Education Code, is amended  
8 by amending Subsection (d) and adding Subsections (e) and (f) to  
9 read as follows:

10 (d) A proposition submitted to authorize the levy of  
11 maintenance taxes must include the question of whether the  
12 governing board or commissioners court may levy, assess, and  
13 collect annual ad valorem taxes for the further maintenance of  
14 public schools, at a rate not to exceed the rate, which may be not  
15 more than \$1.30 [~~\$1.50~~] on the \$100 valuation of taxable property in  
16 the district, stated in the proposition.

17 (e) Notwithstanding Subsection (d):

18 (1) for the 2006 tax year, a school district may not  
19 impose a maintenance tax at a rate that exceeds \$1.20 per \$100 of  
20 valuation; and

21 (2) for the 2007 and 2008 tax years, a school district  
22 may not impose a maintenance tax at a rate that exceeds \$1.25 per  
23 \$100 of valuation.

24 (f) An election held before January 1, 2005, authorizing a  
25 maintenance tax at a rate of at least \$1.30 on the \$100 valuation of  
26 taxable property in the district is sufficient to authorize a rate  
27 of \$1.30 or less for the 2005 tax year. An election held before

1 January 1, 2006, authorizing a maintenance tax at a rate of at least  
2 \$1.15 on the \$100 valuation of taxable property in the district is  
3 sufficient to authorize a rate of \$1.15 or less for the 2006 tax  
4 year. Beginning with the 2007 tax year and subject to Subsection  
5 (e), a district may not exceed a rate of \$1.15 unless authorized by  
6 a majority of the qualified voters of the district voting at an  
7 election held for that purpose.

8 SECTION 1A.07. Sections 45.006(b) and (f), Education Code,  
9 are amended to read as follows:

10 (b) Notwithstanding Section 45.003, a school district may  
11 levy, assess, and collect maintenance taxes at a rate that exceeds  
12 the maximum maintenance tax rate permitted under Section 45.003  
13 [\$1.50 per \$100 valuation of taxable property] if:

14 (1) additional ad valorem taxes are necessary to pay a  
15 debt of the district that:

16 (A) resulted from the rendition of a judgment  
17 against the district before May 1, 1995;

18 (B) is greater than \$5 million;

19 (C) decreases a property owner's ad valorem tax  
20 liability;

21 (D) requires the district to refund to the  
22 property owner the difference between the amount of taxes paid by  
23 the property owner and the amount of taxes for which the property  
24 owner is liable; and

25 (E) is payable according to the judgment in more  
26 than one of the district's fiscal years; and

27 (2) the additional taxes are approved by the voters of

1 the district at an election held for that purpose.

2 (f) The governing body of a school district that adopts a  
3 tax rate that exceeds the maximum maintenance tax rate permitted  
4 under Section 45.003 [~~\$1.50 per \$100 valuation of taxable property~~]  
5 may set the amount of the exemption from taxation authorized by  
6 Section 11.13(n), Tax Code, at any time before the date the  
7 governing body adopts the district's tax rate for the tax year in  
8 which the election approving the additional taxes is held.

9 SECTION 1A.08. (a) This part takes effect September 1,  
10 2005.

11 (b) This part applies beginning with the 2005-2006 school  
12 year.

13 PART B. [RESERVED]

14 PART C. REPEALER; TRANSITION; EFFECTIVE DATE

15 SECTION 1C.01. Effective September 1, 2005, the following  
16 laws are repealed:

17 (1) Sections 1-3, Chapter 201, Acts of the 78th  
18 Legislature, Regular Session, 2003; and

19 (2) Section 42.253(e-1), Education Code.

20 ARTICLE 2. RESTRICTIONS ON PROPERTY

21 VALUATION AND STATE AID TO

22 SCHOOL DISTRICTS

23 SECTION 2.01. Section 11.431(a), Tax Code, is amended to  
24 read as follows:

25 (a) The chief appraiser shall accept and approve or deny an  
26 application for a residence homestead exemption after the deadline  
27 for filing the application [~~it~~] has passed if the application [~~it~~]

1 is filed not later than [~~one year after~~] the delinquency date for  
2 the taxes on the homestead.

3 SECTION 2.02. Section 25.25(c), Tax Code, is amended to  
4 read as follows:

5 (c) The appraisal review board, on motion of the chief  
6 appraiser or of a property owner, may direct by written order  
7 changes in the appraisal roll for any of the five preceding years if  
8 the property is real property and may direct by written order  
9 changes in the appraisal roll for either or both of the two  
10 preceding years if the property is personal property to correct:

11 (1) clerical errors that affect a property owner's  
12 liability for a tax imposed in that tax year;

13 (2) multiple appraisals of a property in that tax  
14 year; or

15 (3) the inclusion of property that does not exist in  
16 the form or at the location described in the appraisal roll.

17 SECTION 2.03. Section 42.253(i), Education Code, is amended  
18 to read as follows:

19 (i) Not later than March 1 each year, the commissioner shall  
20 determine the actual amount of state funds to which each school  
21 district is entitled under the allocation formulas in this chapter  
22 for the current school year and shall compare that amount with the  
23 amount of the warrants issued to each district for that year.  
24 Except as provided by Section 42.257(b), if [~~if~~] the amount of the  
25 warrants differs from the amount to which a district is entitled  
26 because of variations in the district's tax rate, student  
27 enrollment, or taxable value of property, the commissioner shall

1 adjust the district's entitlement for the next fiscal year  
2 accordingly.

3 SECTION 2.04. Section 42.257(b), Education Code, is amended  
4 to read as follows:

5 (b) If the district would have received a greater amount  
6 from the foundation school fund for the applicable school year  
7 using the adjusted value, the commissioner shall add the difference  
8 to subsequent distributions to the district from the foundation  
9 school fund. If the final determination is made after the last day  
10 of the state fiscal year corresponding to the tax year for which the  
11 determination is made, the commissioner shall add one-fifth of the  
12 difference to the September payment to the district of the current  
13 year entitlement from the foundation school fund for each of the  
14 next five years. An adjustment does not affect the local fund  
15 assignment of any other district.

16 SECTION 2.05. Section 42.259(f), Education Code, is amended  
17 to read as follows:

18 (f) Except as provided by Section 42.257(b) or by Subsection  
19 (c)(8) or (d)(3) of this section, any previously unpaid additional  
20 funds from prior years owed to a district shall be paid to the  
21 district together with the September payment of the current year  
22 entitlement.

23 SECTION 2.06. Section 403.302(h), Government Code, is  
24 amended to read as follows:

25 (h) On request of the commissioner of education or a school  
26 district, the comptroller may audit the total taxable value of  
27 property in a school district and may revise the annual study

1 findings. The request for audit is limited to corrections and  
2 changes in a school district's appraisal roll that occurred after  
3 preliminary certification of the annual study findings by the  
4 comptroller. The ~~[Except as otherwise provided by this subsection,~~  
5 ~~the]~~ request for audit must be filed with the comptroller not later  
6 than the first ~~[third]~~ anniversary of the date of the final  
7 certification of the annual study findings. ~~[The request for audit~~  
8 ~~may be filed not later than the first anniversary of the date the~~  
9 ~~chief appraiser certifies a change to the appraisal roll if the~~  
10 ~~chief appraiser corrects the appraisal roll under Section 25.25 or~~  
11 ~~42.41, Tax Code, and the change results in a material reduction in~~  
12 ~~the total taxable value of property in the school district.]~~ The  
13 comptroller shall certify the findings of the audit to the  
14 commissioner of education.

15 SECTION 2.07. (a) The change in law made by this article to  
16 Section 11.431, Tax Code, applies only to an application for a  
17 residence homestead exemption for the 2005 and subsequent tax  
18 years. Section 11.431, Tax Code, as that section existed  
19 immediately before the effective date of this article, applies to  
20 an application for a residence homestead exemption for the 2004 tax  
21 year and is continued in effect for that purpose.

22 (b) The change in law made by this article to Section 25.25,  
23 Tax Code, does not affect a motion filed under that section before  
24 the effective date of this article.

25 SECTION 2.08. This article takes effect September 1, 2005,  
26 if this Act receives a vote of two-thirds of all the members elected  
27 to each house, as provided by Section 39, Article III, Texas



1 Constitution. If this Act does not receive the vote necessary for  
2 effect on that date, this article takes effect November 1, 2005.

3 [ARTICLE 3. DELETED]

4 ARTICLE 4. FRANCHISE TAX

5 SECTION 4.01. Section 171.001(a), Tax Code, is amended to  
6 read as follows:

7 (a) A franchise tax is imposed on[+]

8 [~~(1)~~] each taxable entity [~~corporation~~] that does  
9 business in this state or that is chartered or organized in this  
10 state[~~, and~~

11 [~~(2) each limited liability company that does business~~  
12 ~~in this state or that is organized under the laws of this state].~~

13 SECTION 4.02. Sections 171.001(b)(2), (4), and (5), Tax  
14 Code, are amended to read as follows:

15 (2) "Beginning date" means:

16 (A) for a taxable entity [~~corporation~~] chartered  
17 or organized in this state, the date on which the taxable entity's  
18 [~~corporation's~~] charter or organization takes effect; or [~~and~~

19 (B) for any other taxable entity [~~a foreign~~  
20 ~~corporation~~], the date on which the taxable entity [~~corporation~~]  
21 begins doing business in this state.

22 (4) "Charter" includes a limited liability company's  
23 certificate of organization, a limited partnership's certificate  
24 of limited partnership, and the registration of a limited liability  
25 partnership.

26 (5) "Internal Revenue Code" means the Internal Revenue  
27 Code of 1986 in effect [~~for the federal tax year beginning~~] on [~~or~~

1 ~~after~~] January 1, 2005, not including any changes made by federal  
2 law after that date [~~1996, and before January 1, 1997~~], and any  
3 regulations adopted under that code [~~applicable to that period~~].

4 SECTION 4.03. Section 171.001, Tax Code, is amended by  
5 adding Subsection (d) to read as follows:

6 (d) On or before November 1 of each even-numbered year, the  
7 comptroller shall submit proposed legislation to update the  
8 definition of "Internal Revenue Code" in Subsection (b) to:

9 (1) the governor;

10 (2) the lieutenant governor;

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

12 (4) the chair of the Senate Committee on Finance; and

13 (5) the chair of the House Committee on Ways and Means.

14 SECTION 4.04. Subchapter A, Chapter 171, Tax Code, is  
15 amended by amending Sections 171.0011 and 171.002 and adding  
16 Sections 171.0012, 171.0013, 171.0014, 171.003, and 171.004 to read  
17 as follows:

18 Sec. 171.0011. TAXABLE ENTITY. (a) Except as provided by  
19 Subsection (b), "taxable entity" means a general partnership,  
20 limited partnership, limited liability partnership, corporation,  
21 banking corporation, savings and loan association, limited  
22 liability company, trust, business trust, professional  
23 association, business association, joint venture, joint stock  
24 company, holding company, or other legal entity doing business in  
25 this state for profit.

26 (b) "Taxable entity" does not include a sole proprietorship  
27 or a passive entity as described by Subsection (c).

1        (c) An entity is a passive entity only if:

2            (1) the entity is a limited partnership or a trust,  
3 other than a business trust;

4            (2) the entity makes no payments of wages or other  
5 compensation to employees or independent contractors, other than  
6 for accounting or legal services reasonably necessary for the  
7 operation of the entity;

8            (3) during the period on which earned surplus is  
9 based, the entity receives at least 90 percent of its income from  
10 one or more of the following:

11                    (A) interest;

12                    (B) dividends;

13                    (C) real property rents;

14                    (D) gains from the sale of real property and  
15 securities, other than a sale of securities of an entity that  
16 constitutes a controlling interest held by the selling entity and  
17 its related parties; or

18                    (E) mineral royalties and other nonoperating  
19 mineral interests;

20            (4) the income described in Subdivision (3) comes only  
21 from assets acquired and held for investment purposes; and

22            (5) the entity was formed, created, or organized  
23 before April 30, 2005.

24        Sec. 171.0012. ELECTION OF RATES. (a) Except as otherwise  
25 provided by this section, a taxable entity shall elect to pay the  
26 tax imposed under this chapter:

27            (1) in the amounts and at the rate provided by Section

1 171.002; or

2 (2) in the amounts and at the alternate rate provided  
3 by Section 171.003.

4 (b) The election applies to a reporting period and may be  
5 changed from one reporting period to the next.

6 (c) A taxable entity that is in the business of leasing  
7 employees:

8 (1) may not elect to pay the tax imposed under this  
9 chapter at the rate provided by Section 171.002 and shall pay the  
10 tax imposed under this chapter at the alternate rate provided by  
11 Section 171.003; and

12 (2) for the purposes of this chapter, is considered as  
13 having elected to pay the tax imposed under this chapter at the  
14 alternate rate provided by Section 171.003.

15 Sec. 171.0013. MINIMUM TAX LIABILITY. The minimum tax  
16 liability for a taxable entity under this chapter is an amount equal  
17 to 0.25 percent of the entity's gross receipts from business done in  
18 this state under Section 171.1032, including the amounts excepted  
19 under Section 171.1032(a).

20 Sec. 171.0014. ADDITIONAL TAX. (a) An additional tax is  
21 imposed on a taxable entity that has elected to pay the tax imposed  
22 by this chapter at the rate provided by Section 171.002 and during  
23 the period in which that election is in effect [~~corporation that~~]  
24 for any reason becomes no longer subject to the earned surplus  
25 component of the tax, without regard to whether the taxable entity  
26 [~~corporation~~] remains subject to the taxable capital component of  
27 the tax, other than through a valid election to pay the tax imposed

1 under this chapter at the alternate rate provided by Section  
2 171.003. An additional tax is imposed on a taxable entity that has  
3 elected to pay the tax imposed by this chapter at the alternate rate  
4 provided by Section 171.003 and during the period in which that  
5 election is in effect for any reason becomes no longer subject to  
6 the tax imposed under this chapter.

7 (b) The additional tax for an entity that has elected to pay  
8 the tax under this chapter at the rate provided by Section 171.002  
9 is equal to 2.5 [~~4.5~~] percent of the taxable entity's  
10 [~~corporation's~~] net taxable earned surplus computed on the period  
11 beginning on the day after the last day for which the tax imposed on  
12 net taxable earned surplus was computed under Section 171.1532 and  
13 ending on the date the taxable entity [~~corporation~~] is no longer  
14 subject to the earned surplus component of the tax. The additional  
15 tax for an entity that has elected to pay the tax under this chapter  
16 at the alternate rate provided by Section 171.003 is computed as  
17 provided by that section for the period beginning on the day after  
18 the last day for which the tax imposed under this chapter was  
19 computed at the alternate rate provided by Section 171.003 and  
20 ending on the date the taxable entity is no longer subject to the  
21 tax.

22 (c) The additional tax imposed and any report required by  
23 the comptroller are due on the 60th day after the date the taxable  
24 entity [~~corporation~~] becomes no longer subject to the earned  
25 surplus component of the tax.

26 (d) Except as otherwise provided by this section, the  
27 provisions of this chapter apply to the tax imposed under this

1 section.

2 Sec. 171.002. RATES; COMPUTATION OF TAX. (a) The franchise  
3 tax for an entity that elects to pay the tax at the rate provided by  
4 this section is the greater of:

5 (1) the amount of the minimum tax liability of the  
6 taxable entity under Section 171.0013; or

7 (2) the amount of franchise tax computed at the rates  
8 and in the manner provided by this section.

9 (a-1) The rates of the franchise tax are, for purposes of  
10 Subsection (a)(2):

11 (1) 0.25 percent per year of privilege period of net  
12 taxable capital; and

13 (2) 2.5 [~~4.5~~] percent of net taxable earned surplus.

14 (b) The amount of franchise tax under Subsection (a)(2) on  
15 each taxable entity [~~corporation~~] is computed by adding the  
16 following:

17 (1) the amount calculated by applying the tax rate  
18 prescribed by Subsection (a)(1) to the taxable entity's  
19 [~~corporation's~~] net taxable capital; and

20 (2) the difference between:

21 (A) the amount calculated by applying the tax  
22 rate prescribed by Subsection (a)(2) to the taxable entity's  
23 [~~corporation's~~] net taxable earned surplus; and

24 (B) the amount determined under Subdivision (1).

25 (c) In making a computation under Subsection (b), an amount  
26 computed under Subsection (b)(1) or (b)(2) that is zero or less is  
27 computed as a zero.

1       Sec. 171.003. ALTERNATE RATE. The franchise tax for an  
2 entity that elects to pay the tax at the alternate rate provided by  
3 this section is the greater of:

4           (1) the amount of the minimum tax liability of the  
5 taxable entity under Section 171.0013; or

6           (2) the lesser of:

7                   (A) 1.75 percent of taxable wages for the taxable  
8 entity for the reporting period as determined under Subchapter C-1;

9 or

10                   (B) \$1,500 for each employee for the reporting  
11 period as determined under Subchapter C-1.

12       Sec. 171.004. EXEMPTION FOR CERTAIN SMALL BUSINESSES.

13 [~~(d)~~] A taxable entity [~~corporation~~] is not required to pay any tax  
14 and is not considered to owe any tax for a period if:

15           (1) the amount of tax computed for the taxable entity  
16 [~~corporation~~] is less than \$100; or

17           (2) the amount of the taxable entity's [~~corporation's~~]  
18 gross receipts:

19                   (A) from its entire business under Section  
20 171.105 is less than \$150,000; and

21                   (B) from its entire business under Section  
22 171.1051, including the amount excepted under Section 171.1051(a),  
23 is less than \$150,000.

24       SECTION 4.05. Subchapter B, Chapter 171, Tax Code, is  
25 amended by adding Section 171.088 to read as follows:

26       Sec. 171.088. EXEMPTION--NONCORPORATE TAXABLE ENTITY  
27 ELIGIBLE FOR CERTAIN EXEMPTIONS. A taxable entity that is not a

1 corporation but that, because of its activities, would qualify for  
2 a specific exemption under this subchapter if it were a corporation  
3 qualifies for the exemption and is exempt from the tax in the same  
4 manner and under the same conditions as a corporation.

5 SECTION 4.06. Subchapter C, Chapter 171, Tax Code, is  
6 amended by adding Section 171.1001 to read as follows:

7 Sec. 171.1001. DEFINITIONS. In this subchapter:

8 (1) "Arm's length" means the standard of conduct under  
9 which unrelated parties having substantially equal bargaining  
10 power, each acting in its own interest, would negotiate or carry out  
11 a particular transaction.

12 (2) "Controlling interest" means:

13 (A) for a corporation, either 50 percent or more,  
14 owned directly or indirectly, of the total combined voting power of  
15 all classes of stock of the corporation, or 50 percent or more,  
16 owned directly or indirectly, of the beneficial ownership interest  
17 in the voting stock of the corporation;

18 (B) for a partnership, association, trust, or  
19 other entity, 50 percent or more, owned directly or indirectly, of  
20 the capital, profits, or beneficial interest in the partnership,  
21 association, trust, or other entity; and

22 (C) notwithstanding Paragraphs (A) and (B), for a  
23 passive entity, 20 percent or more, owned directly or indirectly,  
24 of the capital, profits, or beneficial interest in the passive  
25 entity.

26 (3) "Interest payment" means an amount allowable as an  
27 interest deduction under Section 163, Internal Revenue Code.



1           (4) "Management fee" means a fee for services of a  
2 managerial or administrative nature, including services pertaining  
3 to management, accounts receivable and payable, employee benefit  
4 plans, insurance, legal matters, payroll, data processing,  
5 purchasing, taxes, financial matters, securities, accounting,  
6 reporting, and compliance.

7           (5) "Related party" means a person, corporation, or  
8 other entity, including an entity that is treated as a pass-through  
9 or disregarded entity for purposes of federal taxation, whether the  
10 person, corporation, or entity is a taxable entity or not, in which  
11 one person, corporation, or entity, or set of related persons,  
12 corporations, or entities, directly or indirectly owns or controls  
13 a controlling interest in another entity.

14           (6) "Royalty payment" means a payment directly  
15 connected to the acquisition, use, maintenance or management,  
16 ownership, sale, exchange, or any other disposition of licenses,  
17 trademarks, copyrights, trade names, trade dress, service marks,  
18 mask works, trade secrets, patents, or any other similar types of  
19 intangible assets as determined by the comptroller.

20           (7) "Valid business purpose" means one or more  
21 business purposes, other than the avoidance or reduction of taxes,  
22 that alone or in combination constitute the primary motivation for  
23 a business activity or transaction that changes in a meaningful  
24 way, apart from tax effects, the economic position of the entity. A  
25 valid business purpose includes compliance with a regulatory  
26 requirement of:

27           (A) the federal government;

- 1                    (B) a state or local government;
- 2                    (C) a foreign nation; or
- 3                    (D) an agency or political subdivision of any
- 4 entity listed in Paragraphs (A)-(C).

5            SECTION 4.07. Section 171.101, Tax Code, is amended to read  
6 as follows:

7            Sec. 171.101. DETERMINATION OF NET TAXABLE CAPITAL. The  
8 ~~[(a) Except as provided by Subsections (b) and (c), the]~~ net taxable  
9 capital of a taxable entity ~~[corporation]~~ is computed by:

10            (1) ~~[adding the corporation's stated capital, as~~  
11 ~~defined by Article 1.02, Texas Business Corporation Act, and the~~  
12 ~~corporation's surplus, to determine the corporation's taxable~~  
13 ~~capital;~~

14            ~~[(2)]~~ apportioning the taxable entity's surplus  
15 ~~[corporation's taxable capital]~~ to this state as provided by  
16 Section 171.106(a) or (c), as applicable, to determine the taxable  
17 entity's ~~[corporation's]~~ apportioned taxable capital; and

18            (2) ~~[(3)]~~ subtracting from the amount computed under  
19 Subdivision (1) ~~[(2)]~~ any other allowable deductions to determine  
20 the taxable entity's ~~[corporation's]~~ net taxable capital.

21            ~~[(b) The net taxable capital of a limited liability company~~  
22 ~~is computed by:~~

23            ~~[(1) adding the company's members' contributions, as~~  
24 ~~provided for under the Texas Limited Liability Company Act, and~~  
25 ~~surplus to determine the company's taxable capital;~~

26            ~~[(2) apportioning the amount determined under~~  
27 ~~Subdivision (1) to this state in the same manner that the taxable~~

1 ~~capital of a corporation is apportioned to this state under Section~~  
2 ~~171.106(a) or (c), as applicable, to determine the company's~~  
3 ~~apportioned taxable capital; and~~

4 ~~[(3) subtracting from the amount computed under~~  
5 ~~Subdivision (2) any other allowable deductions, to determine the~~  
6 ~~company's net taxable capital.~~

7 ~~[(c) The net taxable capital of a savings and loan~~  
8 ~~association is computed by:~~

9 ~~[(1) determining the association's net worth; and~~

10 ~~[(2) apportioning the amount determined under~~  
11 ~~Subdivision (1) to this state in the same manner that the taxable~~  
12 ~~capital of a corporation is apportioned to this state under Section~~  
13 ~~171.106(a) to determine the association's net taxable capital.]~~

14 SECTION 4.08. Section 171.103, Tax Code, is amended to read  
15 as follows:

16 Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS  
17 DONE IN THIS STATE FOR TAXABLE CAPITAL. (a) In apportioning  
18 taxable capital, the gross receipts of a taxable entity  
19 ~~[corporation]~~ from its business done in this state is the sum of the  
20 taxable entity's ~~[corporation's]~~ receipts from:

21 (1) each sale of tangible personal property if the  
22 property is delivered or shipped to a buyer in this state regardless  
23 of the FOB point or another condition of the sale, and each sale of  
24 tangible personal property shipped from this state to a purchaser  
25 in another state in which the seller is not subject to taxation;

26 (2) each service performed in this state;

27 (3) each rental of property situated in this state;

1 (4) the use of a patent, copyright, trademark,  
2 franchise, or license in this state;

3 (5) each sale of real property located in this state,  
4 including royalties from oil, gas, or other mineral interests; and

5 (6) other business done in this state.

6 (b) If related parties which are wholly owned subsidiaries  
7 of the same ultimate parent have collectively as of May 1, 2005,  
8 made an investment of at least \$100 million in a new manufacturing  
9 capital improvement project located in this state for which the  
10 total capital investment for real and personal property will be in  
11 excess of \$400 million and tangible personal property is sold from  
12 one related party to another and ultimately resold to an unrelated  
13 party in the normal course of business in the form or condition in  
14 which it is acquired or as an attachment to other tangible personal  
15 property, then the buyer or purchaser for purposes of Subsection  
16 (a)(1) is deemed to be the first unrelated purchaser to whom the  
17 tangible personal property is resold.

18 SECTION 4.09. Section 171.1032, Tax Code, is amended to  
19 read as follows:

20 Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM  
21 BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a) Except  
22 for the gross receipts of a taxable entity [~~corporation~~] that are  
23 subject to the provisions of Section 171.1061, in apportioning  
24 taxable earned surplus, the gross receipts of a taxable entity  
25 [~~corporation~~] from its business done in this state is the sum of the  
26 taxable entity's [~~corporation's~~] receipts from:

27 (1) each sale of tangible personal property if the

1 property is delivered or shipped to a buyer in this state regardless  
2 of the FOB point or another condition of the sale, and each sale of  
3 tangible personal property shipped from this state to a purchaser  
4 in another state in which the seller is not subject to any tax on, or  
5 measured by, net income, without regard to whether the tax is  
6 imposed;

7 (2) each service performed in this state;

8 (3) each rental of property situated in this state;

9 (4) the use of a patent, copyright, trademark,  
10 franchise, or license in this state;

11 (5) each sale of real property located in this state,  
12 including royalties from oil, gas, or other mineral interests;

13 (6) each partnership or joint venture to the extent  
14 provided by Subsection (c); and

15 (7) other business done in this state.

16 (b) A taxable entity [~~corporation~~] shall deduct from its  
17 gross receipts computed under Subsection (a) any amount to the  
18 extent included under Subsection (a) because of the application of  
19 Section 78 or Sections 951-964, Internal Revenue Code, any amount  
20 excludable under Section 171.110(k), and dividends received from a  
21 subsidiary, associate, or affiliated entity [~~corporation~~] that  
22 does not transact a substantial portion of its business or  
23 regularly maintain a substantial portion of its assets in the  
24 United States.

25 (c) A taxable entity [~~corporation~~] shall include in its  
26 gross receipts computed under Subsection (a) the taxable entity's  
27 [~~corporation's~~] share of the gross receipts of each entity that is

1 not a taxable entity [~~partnership and joint venture~~] of which the  
2 taxable entity [~~corporation~~] is a part apportioned to this state as  
3 though the taxable entity [~~corporation~~] directly earned the  
4 receipts, including receipts from business done with the taxable  
5 entity [~~corporation~~].

6 (d) If related parties which are wholly owned subsidiaries  
7 of the same ultimate parent have collectively as of May 1, 2005,  
8 made an investment of at least \$100 million in a new manufacturing  
9 capital improvement project located in this state for which the  
10 total capital investment is budgeted to be in excess of \$400 million  
11 and tangible personal property is sold from one related party to  
12 another and ultimately resold to an unrelated party in the normal  
13 course of business in the form or condition in which it is acquired  
14 or as an attachment to other tangible personal property, then the  
15 buyer or purchaser for purposes of Subsection (a)(1) is deemed to be  
16 the first unrelated purchaser to whom the tangible personal  
17 property is resold.

18 SECTION 4.10. Section 171.104, Tax Code, is amended to read  
19 as follows:

20 Sec. 171.104. GROSS RECEIPTS FROM BUSINESS DONE IN TEXAS:  
21 DEDUCTION FOR FOOD AND MEDICINE RECEIPTS. A taxable entity  
22 [~~corporation~~] may deduct from its receipts includable under Section  
23 171.103(a)(1) [~~of this code~~] the amount of the taxable entity's  
24 [~~corporation's~~] receipts from sales of the following items, if the  
25 items are shipped from outside this state and the receipts would be  
26 includable under Section 171.103(a)(1) [~~of this code~~] in the  
27 absence of this section:

1 (1) food that is exempted from the Limited Sales,  
2 Excise, and Use Tax Act by Section 151.314(a) [~~of this code~~]; and

3 (2) health care supplies that are exempted from the  
4 Limited Sales, Excise, and Use Tax Act by Section 151.313 [~~of this~~  
5 ~~code~~].

6 SECTION 4.11. Section 171.105, Tax Code, is amended to read  
7 as follows:

8 Sec. 171.105. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE  
9 BUSINESS FOR TAXABLE CAPITAL. (a) In apportioning taxable  
10 capital, the gross receipts of a taxable entity [~~corporation~~] from  
11 its entire business is the sum of the taxable entity's  
12 [~~corporation's~~] receipts from:

13 (1) each sale of the taxable entity's [~~corporation's~~]  
14 tangible personal property;

15 (2) each service, rental, or royalty; and

16 (3) other business.

17 (b) If a taxable entity [~~corporation~~] sells an investment or  
18 capital asset, the taxable entity's [~~corporation's~~] gross receipts  
19 from its entire business for taxable capital include only the net  
20 gain from the sale.

21 SECTION 4.12. Section 171.1051, Tax Code, is amended to  
22 read as follows:

23 Sec. 171.1051. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE  
24 BUSINESS FOR TAXABLE EARNED SURPLUS. (a) Except for the gross  
25 receipts of a taxable entity [~~corporation~~] that are subject to the  
26 provisions of Section 171.1061, in apportioning taxable earned  
27 surplus, the gross receipts of a taxable entity [~~corporation~~] from

1 its entire business is the sum of the taxable entity's  
2 [~~corporation's~~] receipts from:

3 (1) each sale of the taxable entity's [~~corporation's~~]  
4 tangible personal property;

5 (2) each service, rental, or royalty;

6 (3) each entity that is not a taxable entity  
7 [~~partnership and joint venture~~] as provided by Subsection (d); and

8 (4) other business.

9 (b) If a taxable entity [~~corporation~~] sells an investment or  
10 capital asset, the taxable entity's [~~corporation's~~] gross receipts  
11 from its entire business for taxable earned surplus includes only  
12 the net gain from the sale.

13 (c) A taxable entity [~~corporation~~] shall deduct from its  
14 gross receipts computed under Subsection (a) any amount to the  
15 extent included in Subsection (a) because of the application of  
16 Section 78 or Sections 951-964, Internal Revenue Code, any amount  
17 excludable under Section 171.110(k), and dividends received from a  
18 subsidiary, associate, or affiliated entity [~~corporation~~] that  
19 does not transact a substantial portion of its business or  
20 regularly maintain a substantial portion of its assets in the  
21 United States.

22 (d) A taxable entity [~~corporation~~] shall include in its  
23 gross receipts computed under Subsection (a) the taxable entity's  
24 [~~corporation's~~] share of the gross receipts of each entity that is  
25 not a taxable entity [~~partnership and joint venture~~] of which the  
26 taxable entity [~~corporation~~] is a part.

27 SECTION 4.13. Sections 171.106(a)-(d), Tax Code, are



1 amended to read as follows:

2 (a) Except as provided by Subsections (c) and (d), a taxable  
3 entity's [~~corporation's~~] taxable capital is apportioned to this  
4 state to determine the amount of the tax imposed under Section  
5 171.002(b)(1) by multiplying the taxable entity's [~~corporation's~~]  
6 taxable capital by a fraction, the numerator of which is the taxable  
7 entity's [~~corporation's~~] gross receipts from business done in this  
8 state, as determined under Section 171.103, and the denominator of  
9 which is the taxable entity's [~~corporation's~~] gross receipts from  
10 its entire business, as determined under Section 171.105.

11 (b) Except as provided by Subsections (c) and (d), a taxable  
12 entity's [~~corporation's~~] taxable earned surplus is apportioned to  
13 this state to determine the amount of tax imposed under Section  
14 171.002(b)(2) by multiplying the taxable earned surplus by a  
15 fraction, the numerator of which is the taxable entity's  
16 [~~corporation's~~] gross receipts from business done in this state, as  
17 determined under Section 171.1032, and the denominator of which is  
18 the taxable entity's [~~corporation's~~] gross receipts from its entire  
19 business, as determined under Section 171.1051.

20 (c) A taxable entity's [~~corporation's~~] taxable capital or  
21 earned surplus that is derived, directly or indirectly, from the  
22 sale of management, distribution, or administration services to or  
23 on behalf of a regulated investment company, including a taxable  
24 entity [~~corporation~~] that includes trustees or sponsors of employee  
25 benefit plans that have accounts in a regulated investment company,  
26 is apportioned to this state to determine the amount of the tax  
27 imposed under Section 171.002 by multiplying the taxable entity's

1 ~~[corporation's]~~ total taxable capital or earned surplus from the  
2 sale of services to or on behalf of a regulated investment company  
3 by a fraction, the numerator of which is the average of the sum of  
4 shares owned at the beginning of the year and the sum of shares  
5 owned at the end of the year by the investment company shareholders  
6 who are commercially domiciled in this state or, if the  
7 shareholders are individuals, are residents of this state, and the  
8 denominator of which is the average of the sum of shares owned at  
9 the beginning of the year and the sum of shares owned at the end of  
10 the year by all investment company shareholders. The taxable  
11 entity ~~[corporation]~~ shall make a separate computation to allocate  
12 taxable capital and earned surplus. In this subsection, "regulated  
13 investment company" has the meaning assigned by Section 851(a),  
14 Internal Revenue Code.

15 (d) A taxable entity's ~~[corporation's]~~ taxable capital or  
16 taxable earned surplus that is derived, directly or indirectly,  
17 from the sale of management, administration, or investment services  
18 to an employee retirement plan is apportioned to this state to  
19 determine the amount of the tax imposed under Section 171.002 by  
20 multiplying the taxable entity's ~~[corporation's]~~ total taxable  
21 capital or earned surplus from the sale of services to an employee  
22 retirement plan company by a fraction, the numerator of which is the  
23 average of the sum of beneficiaries domiciled in Texas at the  
24 beginning of the year and the sum of beneficiaries domiciled in  
25 Texas at the end of the year, and the denominator of which is the  
26 average of the sum of all beneficiaries at the beginning of the year  
27 and the sum of all beneficiaries at the end of the year. The taxable

1 entity [~~corporation~~] shall make a separate computation to apportion  
2 taxable capital and earned surplus. In this section, "employee  
3 retirement plan" means a plan or other arrangement that is  
4 qualified under Section 401(a), Internal Revenue Code, or satisfies  
5 the requirements of Section 403, Internal Revenue Code, or a  
6 government plan described in Section 414(d), Internal Revenue Code.  
7 The term does not include an individual retirement account or  
8 individual retirement annuity within the meaning of Section 408,  
9 Internal Revenue Code.

10 SECTION 4.14. Section 171.1061, Tax Code, is amended to  
11 read as follows:

12 Sec. 171.1061. ALLOCATION OF CERTAIN TAXABLE EARNED SURPLUS  
13 TO THIS STATE. An item of income included in a taxable entity's  
14 [~~corporation's~~] taxable earned surplus, except that portion  
15 derived from dividends and interest, that a state, other than this  
16 state, or a country, other than the United States, cannot tax  
17 because the activities generating that item of income do not have  
18 sufficient unitary connection with the taxable entity's  
19 [~~corporation's~~] other activities conducted within that state or  
20 country under the United States Constitution, is allocated to this  
21 state if the taxable entity's [~~corporation's~~] commercial domicile  
22 is in this state. Income that can only be allocated to the state of  
23 commercial domicile because the income has insufficient unitary  
24 connection with any other state or country shall be allocated to  
25 this state or another state or country net of expenses related to  
26 that income. A portion of a taxable entity's [~~corporation's~~]  
27 taxable earned surplus allocated to this state under this section

1 may not be apportioned under Section 171.110(a)(2).

2 SECTION 4.15. Sections 171.107(b), (d), and (e), Tax Code,  
3 are amended to read as follows:

4 (b) A taxable entity [~~corporation~~] may deduct from its  
5 apportioned taxable capital the amortized cost of a solar energy  
6 device or from its apportioned taxable earned surplus 10 percent of  
7 the amortized cost of a solar energy device if:

8 (1) the device is acquired by the taxable entity  
9 [~~corporation~~] for heating or cooling or for the production of  
10 power;

11 (2) the device is used in this state by the taxable  
12 entity [~~corporation~~]; and

13 (3) the cost of the device is amortized in accordance  
14 with Subsection (c) [~~of this section~~].

15 (d) A taxable entity [~~corporation~~] that makes a deduction  
16 under this section shall file with the comptroller an amortization  
17 schedule showing the period in which a deduction is to be made. On  
18 the request of the comptroller, the taxable entity [~~corporation~~]  
19 shall file with the comptroller proof of the cost of the solar  
20 energy device or proof of the device's operation in this state.

21 (e) A taxable entity [~~corporation~~] may elect to make the  
22 deduction authorized by this section either from apportioned  
23 taxable capital or apportioned taxable earned surplus for each  
24 separate regular annual period. An election for an initial period  
25 applies to the second tax period and to the first regular annual  
26 period.

27 SECTION 4.16. Section 171.109, Tax Code, is amended by

1 amending Subsections (a), (b)-(f), (h), (j), (k), (m), and (n), by  
2 reenacting and amending Subsection (g), as amended by Chapters 801  
3 and 1198, Acts of the 71st Legislature, Regular Session, 1989, and  
4 by adding Subsections (a-2) and (o) to read as follows:

5 (a) In this chapter:

6 (1) "Surplus" or "taxable capital" means the net  
7 assets of a taxable entity [~~corporation minus its stated capital.~~  
8 ~~For a limited liability company, "surplus" means the net assets of~~  
9 ~~the company minus its members' contributions~~]. Surplus includes  
10 unrealized, estimated, or contingent losses or obligations or any  
11 writedown of assets other than those listed in Subsection (i) [~~of~~  
12 ~~this section~~] net of appropriate income tax provisions. The  
13 definition under this subdivision does not apply to earned surplus.

14 (2) "Net assets" means the total assets of a taxable  
15 entity [~~corporation~~] minus its total debts.

16 (3) "Debt" means any legally enforceable obligation  
17 measured in a certain amount of money which must be performed or  
18 paid within an ascertainable period of time or on demand.

19 (a-2) In this section, "distribution" includes a dividend.

20 (b) Except as otherwise provided in this section, a taxable  
21 entity [~~corporation~~] must compute its surplus, assets, and debts  
22 according to generally accepted accounting principles. If  
23 generally accepted accounting principles are unsettled or do not  
24 specify an accounting practice for a particular purpose related to  
25 the computation of surplus, assets, or debts, the comptroller by  
26 rule may establish rules to specify the applicable accounting  
27 practice for that purpose.

1 (c) A taxable entity [~~corporation~~] whose taxable capital is  
2 less than \$1 million may report its surplus according to the method  
3 used in the taxable entity's [~~corporation's~~] most recent federal  
4 income tax return originally due on or before the date on which the  
5 taxable entity's [~~corporation's~~] franchise tax report is originally  
6 due. In determining if taxable capital is less than \$1 million, the  
7 taxable entity [~~corporation~~] shall apply the methods the taxable  
8 entity [~~corporation~~] used in computing that federal income tax  
9 return unless another method is required under this chapter.

10 (d) A taxable entity [~~corporation~~] shall report its surplus  
11 based solely on its own financial condition. Consolidated  
12 reporting of surplus is prohibited.

13 (e) A taxable entity [~~Unless the provisions of Section~~  
14 ~~171.111 apply due to an election under that section, a corporation~~]  
15 may not change the accounting methods used to compute its surplus  
16 more often than once every four years without the written consent of  
17 the comptroller. A change in accounting methods is not justified  
18 solely because it results in a reduction of tax liability.

19 (f) A taxable entity making a distribution [~~corporation~~  
20 ~~declaring dividends~~] shall exclude the distribution [~~those~~  
21 ~~dividends~~] from its taxable capital, and a taxable entity  
22 [~~corporation~~] receiving a distribution [~~dividends~~] shall include  
23 the distribution [~~those dividends~~] in its gross receipts and  
24 taxable capital as of the earlier of:

25 (1) the date the distribution is [~~dividends are~~]  
26 declared, if the distribution is [~~dividends are~~] actually paid in  
27 cash or property other than a note payable within one year after the

1 declaration date; or

2 (2) the date the distribution is [~~dividends are~~]  
3 actually paid in cash or property other than a note payable.

4 (g) All oil and gas exploration and production activities  
5 conducted by a taxable entity [~~corporation~~] that reports its  
6 surplus according to generally accepted accounting principles as  
7 required or permitted by this chapter must be reported according to  
8 the successful efforts or the full cost method of accounting.

9 (h) A parent or investor taxable entity [~~corporation~~] must  
10 use the cost method of accounting in reporting and calculating the  
11 franchise tax on its investments in subsidiary taxable entities  
12 [~~corporations~~] or other investees. The retained earnings of a  
13 subsidiary taxable entity [~~corporation~~] or other investee before  
14 acquisition by the parent or investor taxable entity [~~corporation~~]  
15 may not be excluded from the cost of the subsidiary taxable entity  
16 [~~corporation~~] or investee to the parent or investor taxable entity  
17 [~~corporation~~] and must be included by the parent or investor  
18 taxable entity [~~corporation~~] in calculating its surplus.

19 (j) A taxable entity [~~corporation~~] may not exclude from  
20 surplus:

21 (1) liabilities for compensation and other benefits  
22 provided to employees, other than wages, that are not debt as of the  
23 end of the accounting period on which the taxable capital component  
24 is based, including retirement, medical, insurance,  
25 postretirement, and other similar benefits; and

26 (2) deferred investment tax credits.

27 (k) Notwithstanding any other provision in this chapter, a

1 taxable entity [~~corporation~~] subject to the tax imposed by this  
2 chapter shall use double entry bookkeeping to account for all  
3 transactions that affect the computation of that tax.

4 (m) A taxable entity [~~corporation~~] may not use the push-down  
5 method of accounting in computing or reporting its surplus.

6 (n) A taxable entity [~~corporation~~] must use the equity  
7 method of accounting when reporting an investment in an entity that  
8 is not a taxable entity [~~a partnership or joint venture~~].

9 (o) Notwithstanding any other subsection in this section,  
10 there shall be excluded from the taxable capital of a parent or  
11 investor taxable entity the direct or indirect investment by that  
12 parent or investor taxable entity in the capital of one or more  
13 other taxable entities in which that parent or investor taxable  
14 entity has a "controlling interest" as that term is defined in  
15 Section 171.1001.

16 SECTION 4.17. Section 171.110, Tax Code, is amended by  
17 amending Subsections (a), (d), (e), (f), and (h) and adding  
18 Subsections (d-1), (m), and (n) to read as follows:

19 (a) The net taxable earned surplus of a taxable entity  
20 [~~corporation~~] is computed by:

21 (1) determining the taxable entity's [~~corporation's~~]  
22 reportable federal taxable income and making the following  
23 adjustments:

24 (A) for a corporation, subtracting [~~from that~~  
25 ~~amount~~] any amount excludable under Subsection (k) and[~~7~~] any  
26 amount included in reportable federal taxable income under Section  
27 78 or Sections 951-964, Internal Revenue Code;



1           (B) for a corporation, subtracting~~[, and]~~  
2 dividends received from a subsidiary, associate, or affiliated  
3 taxable entity ~~[corporation]~~ that does not transact a substantial  
4 portion of its business or regularly maintain a substantial portion  
5 of its assets in the United States;

6           (C) ~~[, and]~~ adding 100 percent of compensation as  
7 described by Subsection (m) ~~[to that amount any compensation of~~  
8 ~~officers or directors, or if a bank, any compensation of directors~~  
9 ~~and executive officers, to the extent excluded in determining~~  
10 ~~federal taxable income to determine the corporation's taxable~~  
11 ~~earned surplus]; and~~

12           (D) subtracting the lesser of:

13                   (i) 50 percent of the amount of  
14 compensation added in Paragraph (C); or

15                   (ii) \$30,000 for each full-time employee  
16 and a fractional amount of \$30,000 for each part-time employee  
17 proportionate to the extent of the part-time employee's employment;

18           (2) apportioning the taxable entity's ~~[corporation's]~~  
19 taxable earned surplus to this state as provided by Section  
20 171.106(b) or (c), as applicable, to determine the taxable entity's  
21 ~~[corporation's]~~ apportioned taxable earned surplus;

22           (3) adding the taxable entity's ~~[corporation's]~~  
23 taxable earned surplus allocated to this state as provided by  
24 Section 171.1061; and

25           (4) subtracting from that amount:

26                   (A) the amount paid to provide health benefits to  
27 employees in this state, provided that the total amount may not

1 exceed the lesser of:

2 (i) \$150,000; or

3 (ii) 10 percent of the taxable entity's

4 apportioned taxable earned surplus; and

5 (B) any allowable deductions and any business  
6 loss that is carried forward to the tax reporting period and  
7 deductible under Subsection (e).

8 (d) A corporation's reportable federal taxable income is  
9 the corporation's federal taxable income under Subsection (a)(1)  
10 after Schedule C special deductions and before net operating loss  
11 deductions as computed under the Internal Revenue Code, except that  
12 an S corporation's reportable federal taxable income is the amount  
13 of the income reportable to the Internal Revenue Service as taxable  
14 to the corporation's shareholders. Reportable federal taxable  
15 income for a partnership is the partnership's income as an entity as  
16 determined under rules adopted by the comptroller using principles  
17 similar to the standards applied to a corporation. Reportable  
18 federal taxable income for an entity other than a corporation or  
19 partnership is determined under rules adopted by the comptroller  
20 using principles similar to the standards applied to a corporation.

21 (d-1) A real estate investment trust may, in determining its  
22 reportable federal taxable income for the purpose of this section,  
23 deduct dividends paid to shareholders. In this subsection, a real  
24 estate investment trust is an entity that complies with Sections  
25 856-860, Internal Revenue Code.

26 (e) For purposes of this section, a business loss is any  
27 negative amount of earned surplus after apportionment and

1 allocation. The business loss shall be carried forward to the year  
2 succeeding the loss year as a deduction to net taxable earned  
3 surplus, then successively to the succeeding four taxable years  
4 after the loss year or until the loss is exhausted, whichever occurs  
5 first, but for not more than five taxable years after the loss year.  
6 Notwithstanding the preceding sentence, a business loss from a tax  
7 year that ends before January 1, 1991, may not be used to reduce net  
8 taxable earned surplus. A business loss can be carried forward only  
9 by the taxable entity [~~corporation~~] that incurred the loss and  
10 cannot be transferred to or claimed by any other entity, including  
11 the survivor of a merger if the loss was incurred by the taxable  
12 entity [~~corporation~~] that did not survive the merger.

13 (f) A taxable entity [~~corporation~~] may use either the "first  
14 in-first out" or "last in-first out" method of accounting to  
15 compute its net taxable earned surplus, but only to the extent that  
16 the taxable entity [~~corporation~~] used that method on its most  
17 recent federal income tax report originally due on or before the  
18 date on which the taxable entity's [~~corporation's~~] franchise tax  
19 report is originally due.

20 (h) A taxable entity [~~corporation~~] shall report its net  
21 taxable earned surplus based solely on its own financial condition.  
22 Consolidated reporting is prohibited.

23 (m) For purposes of this section, compensation for a taxable  
24 entity is the amount the taxable entity entered as total payments in  
25 Part 1, line 1, of the federal Internal Revenue Service Form 940 or  
26 940-EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return,  
27 and guaranteed payments to partners, during the period on which

1 earned surplus is based, except that:

2 (1) for a taxable entity that is a client company of a  
3 staff leasing services company, compensation is the amount the  
4 client company entered as total payments in Part 1, line 1, of Form  
5 940 or 940-EZ, plus payments by the staff leasing services company  
6 to assigned employees of the client company; and

7 (2) for a taxable entity that is a staff leasing  
8 services company, compensation is the amount the staff leasing  
9 services company entered as total payments in Part 1, line 1, of  
10 Form 940 or 940-EZ, minus payments by the staff leasing services  
11 company to assigned employees of a client company.

12 (n) For purposes of this section, the terms "assigned  
13 employee," "client company," "license holder," and "staff leasing  
14 services company" have the meanings assigned by Section 91.001,  
15 Labor Code.

16 SECTION 4.18. Subchapter C, Chapter 171, Tax Code, is  
17 amended by adding Sections 171.1101-171.1103 to read as follows:

18 Sec. 171.1101. ADD-BACK OF PAYMENTS TO RELATED PARTY.

19 (a) A taxable entity shall add back to reportable federal taxable  
20 income any payments made to a related party that is a passive entity  
21 as described by Section 171.0011(c) during the period on which  
22 earned surplus is based to the extent deducted in computing  
23 reportable federal taxable income. The safe harbors provided by  
24 Section 171.1102 do not apply to payments under this subsection.

25 (b) Except as provided by Section 171.1102, a taxable entity  
26 shall add back to reportable federal taxable income any royalty  
27 payments, interest payments, and management fees made to a related

1 party that is not a passive entity as described by Section  
2 171.0011(c), during the period on which earned surplus is based to  
3 the extent deducted in computing reportable federal taxable income.

4 Sec. 171.1102. SAFE HARBORS FOR CERTAIN PAYMENTS AND FEES.

5 (a) A taxable entity is not required to add back royalty payments  
6 to a related party to the extent:

7 (1) the related party during the period on which  
8 earned surplus is based directly or indirectly paid or incurred the  
9 amount to a person or entity that is not a related party, the  
10 transaction was done for a valid business purpose, and the payments  
11 were made at arm's length; or

12 (2) the royalty payments are paid or incurred to a  
13 related party organized under the laws of a foreign nation, are  
14 subject to a comprehensive income tax treaty between the foreign  
15 nation and the United States, and are taxed in the foreign nation at  
16 a tax rate equal to or greater than 2.5 percent.

17 (b) A taxable entity is not required to add back interest  
18 payments to a related party to the extent:

19 (1) the interest is at or below the applicable federal  
20 rate compounded annually for debt instruments under Section  
21 1274(d), Internal Revenue Code, that was in effect at the time of  
22 the agreement; or

23 (2) the related party during the period on which  
24 earned surplus is based directly or indirectly paid or incurred the  
25 amount to a person or entity that is not a related party, the  
26 transaction was done for a valid business purpose, and the payments  
27 were made at arm's length.

1       (c) A taxable entity is not required to add back a royalty  
2 payment or an interest payment made to a related party, or a  
3 management fee paid to a related party, if the combined tax paid to  
4 this state, or to this state and one or more other states each of  
5 which has a tax rate equal to or greater than the rate under Section  
6 171.002(a-1)(2), by the taxable entity and the related party  
7 exceeds the tax that would have been paid by the taxable entity if  
8 the royalty payment or interest payment had not been made.

9       (d) A taxable entity is not required to add back a  
10 management fee paid to a related party to the extent that the  
11 transaction was done for a valid business purpose and the fee was  
12 paid at arm's length.

13       Sec. 171.1103. ADJUSTMENT TO INCOME AND EXPENSES BY  
14 COMPTROLLER. (a) The comptroller may distribute, apportion, or  
15 allocate gross income, deductions, credits, or allowances between  
16 or among two or more organizations, trades, or businesses, whether  
17 or not incorporated, whether or not organized in the United States,  
18 and whether or not affiliated, if:

19               (1) the organizations, trades, or businesses are owned  
20 or controlled directly or indirectly by the same interests; and

21               (2) the comptroller determines that the distribution,  
22 apportionment, or allocation is necessary to reflect an arm's  
23 length standard, within the meaning of 26 C.F.R. Section 1.482-1,  
24 and to clearly reflect the income of those organizations, trades,  
25 or businesses.

26       (b) The comptroller shall apply the administrative and  
27 judicial interpretations of Section 482, Internal Revenue Code, in

1 administering this section.

2 SECTION 4.19. Sections 171.112(b)-(f) and (h), Tax Code,  
3 are amended to read as follows:

4 (b) Except as otherwise provided in this section, a taxable  
5 entity [~~corporation~~] must compute gross receipts in accordance with  
6 generally accepted accounting principles. If generally accepted  
7 accounting principles are unsettled or do not specify an accounting  
8 practice for a particular purpose related to the computation of  
9 gross receipts, the comptroller by rule may establish rules to  
10 specify the applicable accounting practice.

11 (c) A taxable entity [~~corporation~~] whose taxable capital is  
12 less than \$1 million may report its gross receipts according to the  
13 method used in the taxable entity's [~~corporation's~~] most recent  
14 federal income tax return originally due on or before the date on  
15 which the taxable entity's [~~corporation's~~] franchise tax report is  
16 originally due. In determining if taxable capital is less than \$1  
17 million, the taxable entity [~~corporation~~] shall apply the methods  
18 the taxable entity [~~corporation~~] used in computing that federal  
19 income tax return unless another method is required under this  
20 chapter.

21 (d) A taxable entity [~~corporation~~] shall report its gross  
22 receipts based solely on its own financial condition. Consolidated  
23 reporting is prohibited.

24 (e) Unless the provisions of Section 171.111 apply due to an  
25 election under that section, a taxable entity [~~corporation~~] may not  
26 change its accounting methods used to calculate gross receipts more  
27 often than once every four years without the express written

1 consent of the comptroller. A change in accounting methods is not  
2 justified solely because it results in a reduction of tax  
3 liability.

4 (f) Notwithstanding any other provision in this chapter, a  
5 taxable entity [~~corporation~~] subject to the tax imposed by this  
6 chapter shall use double entry bookkeeping to account for all  
7 transactions that affect the computation of that tax.

8 (h) Except as otherwise provided by this section, a taxable  
9 entity [~~corporation~~] shall use the same accounting methods to  
10 apportion its taxable capital as it used to compute its taxable  
11 capital.

12 SECTION 4.20. Sections 171.1121(a)-(d), Tax Code, are  
13 amended to read as follows:

14 (a) For purposes of this section, "gross receipts" means all  
15 revenues reportable by a taxable entity [~~corporation~~] on its  
16 federal tax return, without deduction for the cost of property  
17 sold, materials used, labor performed, or other costs incurred,  
18 unless otherwise specifically provided in this chapter. "Gross  
19 receipts" does not include revenues that are not included in  
20 taxable earned surplus. For example, Schedule C special deductions  
21 and any amounts subtracted from reportable federal taxable income  
22 under Section 171.110(a)(1) are not included in taxable earned  
23 surplus and therefore are not considered gross receipts.

24 (b) Except as otherwise provided by this section, a taxable  
25 entity [~~corporation~~] shall use the same accounting methods to  
26 apportion taxable earned surplus as used in computing reportable  
27 federal taxable income.



1 (c) A taxable entity [~~corporation~~] shall report its gross  
2 receipts based solely on its own financial condition. Consolidated  
3 reporting is prohibited.

4 (d) Unless the provisions of Section 171.111 apply due to an  
5 election under that section, a taxable entity [~~corporation~~] may not  
6 change its accounting methods used to calculate gross receipts more  
7 often than once every four years without the express written  
8 consent of the comptroller. A change in accounting methods is not  
9 justified solely because it results in a reduction of tax  
10 liability.

11 SECTION 4.21. Section 171.113, Tax Code, is amended to read  
12 as follows:

13 Sec. 171.113. ALTERNATE METHOD OF DETERMINING TAXABLE  
14 CAPITAL AND GROSS RECEIPTS FOR CERTAIN TAXABLE ENTITIES  
15 [~~CORPORATIONS~~]. (a) This section applies only to:

16 (1) a corporation organized as a close corporation  
17 under Part 12, Texas Business Corporation Act, that has not more  
18 than 35 shareholders;

19 (2) a foreign corporation organized under the close  
20 corporation law of another state that has not more than 35  
21 shareholders; [~~and~~]

22 (3) an S corporation as that term is defined by Section  
23 1361, Internal Revenue Code of 1986 (26 U.S.C. Section 1361); and

24 (4) a taxable entity other than a corporation that has  
25 35 or fewer owners.

26 (b) A taxable entity [~~corporation~~] to which this section  
27 applies may elect to compute its surplus, assets, debts, and gross

1 receipts according to the method the taxable entity [~~corporation~~]  
2 uses to report its federal income tax instead of as provided by  
3 Sections 171.109(b) and (g) and Section 171.112(b). This section  
4 does not affect the application of the other subsections of  
5 Sections 171.109 and 171.112 and other provisions of this chapter  
6 to a taxable entity [~~corporation~~] making the election.

7 (c) The comptroller may adopt rules as necessary to specify  
8 the reporting requirements for taxable entities [~~corporations~~] to  
9 which this section applies.

10 (d) This section does not apply to a subsidiary of a taxable  
11 entity [~~corporation~~] unless it applies to the parent [~~corporation~~]  
12 of the subsidiary.

13 (e) The election under Subsection (b) becomes effective  
14 when written notice of the election is received by the comptroller  
15 from the taxable entity [~~corporation~~]. An election under  
16 Subsection (b) must be postmarked not later than the due date for  
17 the electing taxable entity's [~~corporation's~~] franchise tax report  
18 to which the election applies.

19 SECTION 4.22. Chapter 171, Tax Code, is amended by adding  
20 Subchapter C-1 to read as follows:

21 SUBCHAPTER C-1. TAXABLE WAGES

22 Sec. 171.131. TAXABLE WAGES. (a) In this subchapter:

23 (1) "Employee" means an employee described by  
24 Section 171.133 or 171.134.

25 (2) "Wages" means:

26 (A) wages as defined under Subchapter F,  
27 Chapter 201, Labor Code, paid by a taxable entity and includes the

1 amounts excluded by Sections 201.082(1) and (9), Labor Code; and  
2 (B) wages, to the extent not covered by  
3 Paragraph (A), described under Section 171.132.

4 (b) The taxable wages of a taxable entity are the total  
5 amount of wages paid by the entity to all of the entity's employees  
6 during the reporting period as provided by Section 171.1533.

7 Sec. 171.132. LOCATION OF SERVICE. (a) Wages include wages  
8 for a service performed in this state or in and outside this state  
9 if:

10 (1) the service is localized in this state; or

11 (2) the service is not localized in any state and some  
12 of the service is performed in this state and:

13 (A) the base of operations is in this state, or  
14 there is no base of operations but the service is directed or  
15 controlled from this state; or

16 (B) the base of operations or place from which  
17 the service is directed or controlled is not in a state in which a  
18 part of the service is performed, and the residence of the person  
19 who performs the service is in this state.

20 (b) Wages include wages for a service performed anywhere in  
21 the United States, including service performed entirely outside  
22 this state, if:

23 (1) the service is not localized in a state;

24 (2) the service is performed by an individual who is  
25 one of a class of employees who are required to travel outside this  
26 state in performance of their duties; and

27 (3) the individual's base of operations is in this

1 state or, if there is no base of operations, the individual's  
2 service is directed or controlled from this state.

3 (c) Wages include wages for a service performed outside the  
4 United States by a citizen of the United States.

5 (d) For the purposes of this section, service is localized  
6 in a state if the service is performed entirely within the state or  
7 the service performed outside the state is incidental to the  
8 service performed in the state. In this section, a service that is  
9 "incidental" includes a service that is temporary or that consists  
10 of isolated transactions.

11 Sec. 171.133. FULL-TIME AND PART-TIME EMPLOYEES. (a) In  
12 this section, "contribution" has the meaning assigned by Section  
13 201.011, Labor Code.

14 (b) An individual is an employee if the taxable entity pays  
15 or is required to pay a contribution for a reporting period without  
16 regard to whether:

17 (1) the individual is a full-time or part-time  
18 employee; or

19 (2) the wages paid were for the entire reporting  
20 period or a portion of the reporting period.

21 Sec. 171.134. DETERMINATION OF WHETHER CERTAIN INDIVIDUALS  
22 ARE EMPLOYEES. An individual is an employee of a taxable entity as  
23 provided by this section, without regard to whether the taxable  
24 entity pays a contribution, as that term is defined by Section  
25 171.133, for the individual, if the individual provides services in  
26 this state to the taxable entity for compensation and the taxable  
27 entity has a right to direct and control how the individual performs

1 the services for which the individual is provided compensation,  
2 indicated by factors that include:

3 (1) whether the individual is subject to the taxable  
4 entity's instructions about when, where, and how to work;

5 (2) whether the individual is trained to perform  
6 services in a particular manner;

7 (3) the extent to which the individual has  
8 unreimbursed business expenses;

9 (4) the extent to which the individual has a  
10 significant investment in the facilities the individual uses in  
11 performing the services;

12 (5) the extent to which the individual makes the  
13 individual's services available to the relevant market by  
14 advertising, by maintaining a visible business location, or  
15 otherwise;

16 (6) the extent to which the individual can realize a  
17 profit or loss;

18 (7) the manner in which the individual is paid by the  
19 taxable entity;

20 (8) whether a written contract between the individual  
21 and the taxable entity provides that the individual is or is not an  
22 employee;

23 (9) whether the taxable entity provides the individual  
24 with employee-type benefits, including insurance, a pension plan,  
25 vacation pay, or sick pay;

26 (10) whether the relationship between the individual  
27 and the taxable entity is considered permanent or for a limited

1 period; and

2 (11) the extent to which services performed by the  
3 individual are a key aspect of the affairs of the taxable entity.

4 SECTION 4.23. Section 171.151, Tax Code, is amended to read  
5 as follows:

6 Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX. The  
7 franchise tax shall be paid for each of the following:

8 (1) an initial period beginning on the taxable  
9 entity's [~~corporation's~~] beginning date and ending on the day  
10 before the first anniversary of the beginning date;

11 (2) a second period beginning on the first anniversary  
12 of the beginning date and ending on December 31 following that date;  
13 and

14 (3) after the initial and second periods have expired,  
15 a regular annual period beginning each year on January 1 and ending  
16 the following December 31.

17 SECTION 4.24. Section 171.152(c), Tax Code, is amended to  
18 read as follows:

19 (c) Payment of the tax covering the regular annual period is  
20 due May 15, of each year after the beginning of the regular annual  
21 period. However, if the first anniversary of the taxable entity's  
22 [~~corporation's~~] beginning date is after October 3 and before  
23 January 1, the payment of the tax covering the first regular annual  
24 period is due on the same date as the tax covering the initial  
25 period.

26 SECTION 4.25. Sections 171.153(a) and (c), Tax Code, are  
27 amended to read as follows:

1 (a) The tax covering the initial period is reported on the  
2 initial report and is based on the business done by the taxable  
3 entity [~~corporation~~] during the period beginning on the taxable  
4 entity's [~~corporation's~~] beginning date and:

5 (1) ending on the last accounting period ending date  
6 that is at least six months after the beginning date and at least 60  
7 days before the original due date of the initial report; or

8 (2) if there is no such period ending date in  
9 Subdivision (1) [~~of this subsection~~], then ending on the day that is  
10 the last day of a calendar month and that is nearest to the end of  
11 the taxable entity's [~~corporation's~~] first year of business; or

12 (3) ending on the day after the merger occurs, for the  
13 survivor of a merger which occurs after the day on which the tax is  
14 based in Subdivision (1) or [~~Subdivision~~] (2), whichever is  
15 applicable, [~~of Subsection (a)~~] and before January 1, of the year an  
16 initial report is due by the survivor.

17 (c) The tax covering the regular annual period is based on  
18 the business done by the taxable entity [~~corporation~~] during its  
19 last accounting period that ends in the year before the year in  
20 which the tax is due; unless a taxable entity [~~corporation~~] is the  
21 survivor of a merger which occurs between the end of its last  
22 accounting period in the year before the report year and January 1  
23 of the report year, in which case the tax will be based on the  
24 financial condition of the surviving taxable entity [~~corporation~~]  
25 for the 12-month period ending on the day after the merger.  
26 However, if the first anniversary of the taxable entity's  
27 [~~corporation's~~] beginning date is after October 3 and before

1 January 1, the tax covering the first regular annual period is based  
2 on the same business on which the tax covering the initial period is  
3 based and is reported on the initial report.

4 SECTION 4.26. Section 171.1532, Tax Code, is amended to  
5 read as follows:

6 Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE EARNED  
7 SURPLUS IS BASED. (a) The tax covering the privilege periods  
8 included on the initial report, as required by Section 171.153, is  
9 based on the business done by the taxable entity [~~corporation~~]  
10 during the period beginning on the taxable entity's [~~corporation's~~]  
11 beginning date and:

12 (1) ending on the last accounting period ending date  
13 that is at least 60 days before the original due date of the initial  
14 report; or

15 (2) if there is no such period ending date in  
16 Subdivision (1) [~~of this subsection~~], then ending on the day that is  
17 the last day of a calendar month and that is nearest to the end of  
18 the taxable entity's [~~corporation's~~] first year of business.

19 (b) The tax covering the regular annual period, other than a  
20 regular annual period included on the initial report, is based on  
21 the business done by the taxable entity [~~corporation~~] during the  
22 period beginning with the day after the last date upon which net  
23 taxable earned surplus on a previous report was based and ending  
24 with its last accounting period ending date for federal income tax  
25 purposes in the year before the year in which the report is  
26 originally due.

27 SECTION 4.27. Subchapter D, Chapter 171, Tax Code, is



1 amended by adding Section 171.1533 to read as follows:

2 Sec. 171.1533. WAGES ON WHICH TAX ON TAXABLE WAGES IS BASED.

3 (a) The tax covering the privilege periods included on the initial  
4 report, as required by Section 171.153, is based on the taxable  
5 wages paid by the taxable entity during the period beginning on the  
6 taxable entity's beginning date and:

7 (1) ending on the last accounting period ending date  
8 that is at least 60 days before the original due date of the initial  
9 report; or

10 (2) if there is no such period ending date in  
11 Subdivision (1), then ending on the day that is the last day of a  
12 calendar month and that is nearest to the end of the taxable  
13 entity's first year of business.

14 (b) The tax covering the regular annual period, other than a  
15 regular annual period included on the initial report, is based on  
16 the taxable wages paid by the taxable entity during the period  
17 beginning with the day after the last date on which taxable wages on  
18 a previous report was based and ending with its last accounting  
19 period ending date for federal income tax purposes in the year  
20 before the year in which the report is originally due.

21 SECTION 4.28. Section 171.154, Tax Code, is amended to read  
22 as follows:

23 Sec. 171.154. PAYMENT TO COMPTROLLER. A taxable entity  
24 [corporation] on which a tax is imposed by this chapter shall pay  
25 the tax to the comptroller.

26 SECTION 4.29. Section 171.201, Tax Code, is amended to read  
27 as follows:

1           Sec. 171.201. INITIAL REPORT. (a) Except as provided by  
2 Section 171.2022, a taxable entity [~~corporation~~] on which the  
3 franchise tax is imposed shall file an initial report with the  
4 comptroller containing:

5           (1) information showing the financial condition of the  
6 taxable entity [~~corporation~~] on the day that is the last day of a  
7 calendar month and that is nearest to the end of the taxable  
8 entity's [~~corporation's~~] first year of business;

9           (2) the name and address of:

10                   (A) each officer, [and] director, and manager of  
11 the taxable entity [~~corporation~~];

12                   (B) for a limited partnership, each general  
13 partner;

14                   (C) for a general partnership or limited  
15 liability partnership, each managing partner or, if there is not a  
16 managing partner, each partner; or

17                   (D) for a trust, each trustee;

18           (3) the name and address of the agent of the taxable  
19 entity [~~corporation~~] designated under Section 171.354; [~~and~~]

20           (4) a statement declaring the entity's election of  
21 rate required under Section 171.0012; and

22           (5) other information required by the comptroller.

23           (b) The taxable entity [~~corporation~~] shall file the report  
24 on or before the date the payment is due under Subsection (a) of  
25 Section 171.152.

26           SECTION 4.30. Sections 171.202(a)-(c), (e), (f), and (i),  
27 Tax Code, are amended to read as follows:

1 (a) Except as provided by Section 171.2022, a taxable entity  
2 [~~corporation~~] on which the franchise tax is imposed shall file an  
3 annual report with the comptroller containing:

4 (1) financial and other information of the taxable  
5 entity [~~corporation~~] necessary to compute the tax under this  
6 chapter on both the rate provided by Section 171.002 and the  
7 alternate rate provided by Section 171.003;

8 (2) the name and address of each officer and director  
9 of the taxable entity [~~corporation~~];

10 (3) the name and address of the agent of the taxable  
11 entity [~~corporation~~] designated under Section 171.354; [~~and~~]

12 (4) a statement declaring the entity's election of  
13 rate under Section 171.0012 for the reporting period; and

14 (5) other information required by the comptroller.

15 (b) The taxable entity [~~corporation~~] shall file the report  
16 before May 16 of each year after the beginning of the regular annual  
17 period. The report shall be filed on forms supplied by the  
18 comptroller.

19 (c) The comptroller shall grant an extension of time to a  
20 taxable entity [~~corporation~~] that is not required by rule to make  
21 its tax payments by electronic funds transfer for the filing of a  
22 report required by this section to any date on or before the next  
23 November 15, if a taxable entity [~~corporation~~]:

24 (1) requests the extension, on or before May 15, on a  
25 form provided by the comptroller; and

26 (2) remits with the request:

27 (A) not less than 90 percent of the amount of tax

1 reported as due on the report filed on or before November 15; or

2 (B) 100 percent of the tax reported as due for the  
3 previous calendar year on the report due in the previous calendar  
4 year and filed on or before May 14.

5 (e) The comptroller shall grant an extension of time for the  
6 filing of a report required by this section by a taxable entity  
7 [~~corporation~~] required by rule to make its tax payments by  
8 electronic funds transfer to any date on or before the next August  
9 15, if the taxable entity [~~corporation~~]:

10 (1) requests the extension, on or before May 15, on a  
11 form provided by the comptroller; and

12 (2) remits with the request:

13 (A) not less than 90 percent of the amount of tax  
14 reported as due on the report filed on or before August 15; or

15 (B) 100 percent of the tax reported as due for the  
16 previous calendar year on the report due in the previous calendar  
17 year and filed on or before May 14.

18 (f) The comptroller shall grant an extension of time to a  
19 taxable entity [~~corporation~~] required by rule to make its tax  
20 payments by electronic funds transfer for the filing of a report due  
21 on or before August 15 to any date on or before the next November 15,  
22 if the taxable entity [~~corporation~~]:

23 (1) requests the extension, on or before August 15, on  
24 a form provided by the comptroller; and

25 (2) remits with the request the difference between the  
26 amount remitted under Subsection (e) and 100 percent of the amount  
27 of tax reported as due on the report filed on or before November 15.

1 (i) If a taxable entity [~~corporation~~] requesting an  
2 extension under Subsection (c) or (e) does not file the report due  
3 in the previous calendar year on or before May 14, the taxable  
4 entity [~~corporation~~] may not receive an extension under Subsection  
5 (c) or (e) unless the taxable entity [~~corporation~~] complies with  
6 Subsection (c)(2)(A) or (e)(2)(A), as appropriate.

7 SECTION 4.31. Section 171.202(d), Tax Code, is amended to  
8 read as follows:

9 (d) In the case of a taxpayer whose previous return was its  
10 initial report, the optional payment provided under Subsection  
11 (c)(2)(B) or (e)(2)(B) must be equal to the greatest [~~greater~~] of:

12 (1) an amount produced by multiplying the net taxable  
13 capital, as reported on the initial report filed on or before May  
14 14, by the rate of tax in Section 171.002(a-1)(1) [~~171.002(a)(1)~~]  
15 that is effective January 1 of the year in which the report is due;  
16 [~~or~~]

17 (2) an amount produced by multiplying the net taxable  
18 earned surplus, as reported on the initial report filed on or before  
19 May 14, by the rate of tax in Section 171.002(a-1)(2)  
20 [~~171.002(a)(2)~~] that is effective January 1 of the year in which the  
21 report is due; or

22 (3) an amount produced by multiplying taxable wages,  
23 as reported on the initial report filed on or before May 14, by the  
24 rate of tax in Section 171.003 that is effective January 1 of the  
25 year in which the report is due.

26 SECTION 4.32. Section 171.2022, Tax Code, is amended to  
27 read as follows:

1           Sec. 171.2022. EXEMPTION FROM REPORTING REQUIREMENTS. A  
2 taxable entity [~~corporation~~] that does not owe any tax under this  
3 chapter for any period is not required to file a report under  
4 Section 171.201 or [~~7~~] 171.202 [~~7~~, ~~or~~ ~~171.2021~~]. The exemption  
5 applies only to a period for which no tax is due.

6           SECTION 4.33. Section 171.204, Tax Code, is amended to read  
7 as follows:

8           Sec. 171.204. INFORMATION REPORT. (a) Except as provided  
9 by Subsection (b), to determine eligibility for the exemption  
10 provided by Section 171.2022, or to determine the amount of the  
11 franchise tax or the correctness of a franchise tax report, the  
12 comptroller may require [~~an officer of~~] a taxable entity  
13 [~~corporation~~] that may be subject to the tax imposed under this  
14 chapter to file an information report with the comptroller stating  
15 the amount of the taxable entity's [~~corporation's~~] taxable capital  
16 and earned surplus, or any other information the comptroller may  
17 request.

18           (b) The comptroller may require a taxable entity [~~an officer~~  
19 ~~of a corporation~~] that does not owe any tax because of the  
20 application of Section 171.004(2) [~~171.002(d)(2)~~] to file an  
21 abbreviated information report with the comptroller stating the  
22 amount of the taxable entity's [~~corporation's~~] gross receipts from  
23 its entire business. The comptroller may not require a taxable  
24 entity [~~corporation~~] described by this subsection to file an  
25 information report that requires the taxable entity [~~corporation~~]  
26 to report or compute its earned surplus or taxable capital.

27           SECTION 4.34. Section 171.205, Tax Code, is amended to read

1 as follows:

2           Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY  
3 COMPTROLLER. The comptroller may require a taxable entity  
4 [~~corporation~~] on which the franchise tax is imposed to furnish to  
5 the comptroller information from the taxable entity's  
6 [~~corporation's~~] books and records that has not been filed  
7 previously and that is necessary for the comptroller to determine  
8 the amount of the tax.

9           SECTION 4.35. Section 171.206, Tax Code, is amended to read  
10 as follows:

11           Sec. 171.206. CONFIDENTIAL INFORMATION. Except as provided  
12 by Section 171.207 [~~of this code~~], the following information is  
13 confidential and may not be made open to public inspection:

14           (1) information that is obtained from a record or  
15 other instrument that is required by this chapter to be filed with  
16 the comptroller; or

17           (2) information, including information about the  
18 business affairs, operations, profits, losses, or expenditures of a  
19 taxable entity [~~corporation~~], obtained by an examination of the  
20 books and records, officers, partners, trustees, agents, or  
21 employees of a taxable entity [~~corporation~~] on which a tax is  
22 imposed by this chapter.

23           SECTION 4.36. Section 171.208, Tax Code, is amended to read  
24 as follows:

25           Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION. A  
26 person, including a state officer or employee or an owner [~~a~~  
27 ~~shareholder~~] of a taxable entity [~~corporation~~], who has access to a

1 report filed under this chapter may not make known in a manner not  
2 permitted by law the amount or source of the taxable entity's  
3 ~~[corporation's]~~ income, profits, losses, expenditures, or other  
4 information in the report relating to the financial condition of  
5 the taxable entity ~~[corporation]~~.

6 SECTION 4.37. Section 171.209, Tax Code, is amended to read  
7 as follows:

8 Sec. 171.209. RIGHT OF OWNER ~~[SHAREHOLDER]~~ TO EXAMINE OR  
9 RECEIVE REPORTS. If an owner ~~[a person owning at least one share of~~  
10 ~~outstanding stock]~~ of a taxable entity ~~[corporation]~~ on whom the  
11 franchise tax is imposed presents evidence of the ownership to the  
12 comptroller, the person is entitled to examine or receive a copy of  
13 an initial or annual report that is filed under Section 171.201 or  
14 171.202 ~~[of this code]~~ and that relates to the taxable entity  
15 ~~[corporation]~~.

16 SECTION 4.38. Section 171.211, Tax Code, is amended to read  
17 as follows:

18 Sec. 171.211. EXAMINATION OF ~~[CORPORATE]~~ RECORDS. To  
19 determine the franchise tax liability of a taxable entity  
20 ~~[corporation]~~, the comptroller may investigate or examine the  
21 records of the taxable entity ~~[corporation]~~.

22 SECTION 4.39. Subchapter E, Chapter 171, Tax Code, is  
23 amended by adding Section 171.213 to read as follows:

24 Sec. 171.213. ACCESS TO TEXAS WORKFORCE COMMISSION REPORTS.  
25 The comptroller shall have full access to reports filed by a taxable  
26 entity on wages paid with the Texas Workforce Commission.

27 SECTION 4.40. The heading to Subchapter F, Chapter 171, Tax



1 Code, is amended to read as follows:

2 SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES

3 SECTION 4.41. Subchapter F, Chapter 171, Tax Code, is  
4 amended by adding Section 171.2515 to read as follows:

5 Sec. 171.2515. FORFEITURE OF RIGHT OF PARTNERSHIP TO  
6 TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the  
7 same reasons and using the same procedures the comptroller uses in  
8 relation to the forfeiture of the corporate privileges of a  
9 corporation, forfeit the right of a partnership subject to a tax  
10 imposed by this chapter to transact business in this state.

11 (b) The provisions of this subchapter, including Section  
12 171.255, that apply to the forfeiture of corporate privileges apply  
13 to the forfeiture of a partnership's right to transact business in  
14 this state.

15 SECTION 4.42. Section 171.351, Tax Code, is amended to read  
16 as follows:

17 Sec. 171.351. VENUE OF SUIT TO ENFORCE CHAPTER. Venue of a  
18 civil suit against a taxable entity [~~corporation~~] to enforce this  
19 chapter is either in a county where the taxable entity's  
20 [~~corporation's~~] principal office is located according to its  
21 charter or certificate of authority or in Travis County.

22 SECTION 4.43. Section 171.353, Tax Code, is amended to read  
23 as follows:

24 Sec. 171.353. APPOINTMENT OF RECEIVER. If a court forfeits  
25 a taxable entity's [~~corporation's~~] charter or certificate of  
26 authority, the court may appoint a receiver for the taxable entity  
27 [~~corporation~~] and may administer the receivership under the laws

1 relating to receiverships.

2 SECTION 4.44. Section 171.354, Tax Code, is amended to read  
3 as follows:

4 Sec. 171.354. AGENT FOR SERVICE OF PROCESS. Each taxable  
5 entity [~~corporation~~] on which a tax is imposed by this chapter shall  
6 designate a resident of this state as the taxable entity's  
7 [~~corporation's~~] agent for the service of process.

8 SECTION 4.45. Sections 171.362(a), (d), and (e), Tax Code,  
9 are amended to read as follows:

10 (a) If a taxable entity [~~corporation~~] on which a tax is  
11 imposed by this chapter fails to pay the tax when it is due and  
12 payable or fails to file a report required by this chapter when it  
13 is due, the taxable entity [~~corporation~~] is liable for a penalty of  
14 five percent of the amount of the tax due.

15 (d) If a taxable entity [~~corporation~~] electing to remit  
16 under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~]  
17 Section 171.202(c)(2)(A) [~~171.202 of this code~~] remits less than  
18 the amount required, the penalties imposed by this section and the  
19 interest imposed under Section 111.060 [~~of this code~~] are assessed  
20 against the difference between the amount required to be remitted  
21 under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~]  
22 Section 171.202(c)(2)(A) [~~171.202~~] and the amount actually  
23 remitted on or before May 15.

24 (e) If a taxable entity [~~corporation~~] remits the entire  
25 amount required by [~~Subsection (c) of~~] Section 171.202(c) [~~171.202~~  
26 ~~of this code~~], no penalties will be imposed against the amount  
27 remitted on or before November 15.

1 SECTION 4.46. Sections 171.363(a) and (b), Tax Code, are  
2 amended to read as follows:

3 (a) A taxable entity [~~corporation~~] commits an offense if the  
4 taxable entity [~~corporation~~] is subject to the provisions of this  
5 chapter and the taxable entity [~~corporation~~] wilfully:

6 (1) fails to file a report;

7 (2) fails to keep books and records as required by this  
8 chapter;

9 (3) files a fraudulent report;

10 (4) violates any rule of the comptroller for the  
11 administration and enforcement of the provisions of this chapter;

12 or

13 (5) attempts in any other manner to evade or defeat any  
14 tax imposed by this chapter or the payment of the tax.

15 (b) A person commits an offense if the person is an  
16 accountant or an agent for or an officer or employee of a taxable  
17 entity [~~corporation~~] and the person knowingly enters or provides  
18 false information on any report, return, or other document filed by  
19 the taxable entity [~~corporation~~] under this chapter.

20 SECTION 4.47. Subchapter H, Chapter 171, Tax Code, is  
21 amended by adding Sections 171.364-171.366 to read as follows:

22 Sec. 171.364. TAX NOT DEDUCTED FROM WAGES. A taxable entity  
23 may not deduct the tax imposed under this chapter from any wages of  
24 the taxable entity's employees.

25 Sec. 171.365. CRIMINAL PENALTY. (a) A person who violates  
26 Section 171.364 commits an offense.

27 (b) An offense under this section is a Class A misdemeanor.

1       Sec. 171.366. CIVIL PENALTY. (a) A person who violates  
2 Section 171.364 is liable to the state for a civil penalty not to  
3 exceed \$500 for each violation. Each day a violation continues may  
4 be considered a separate violation for purposes of a civil penalty  
5 assessment.

6       (b) On request of the comptroller, the attorney general  
7 shall file suit to collect a penalty under this section.

8       SECTION 4.48. Section 171.401, Tax Code, is amended to read  
9 as follows:

10       Sec. 171.401. REVENUE DEPOSITED IN FOUNDATION SCHOOL  
11 [GENERAL REVENUE] FUND. The revenue from the tax imposed by this  
12 chapter [~~on corporations~~] shall be deposited to the credit of the  
13 foundation school [general revenue] fund.

14       SECTION 4.49. Chapter 171, Tax Code, is amended by adding  
15 Subchapter V to read as follows:

16               SUBCHAPTER V. TAX CREDIT FOR CERTAIN PHYSICIANS

17       Sec. 171.901. DEFINITION. In this subchapter, "physician"  
18 means:

19               (1) an individual licensed to practice medicine in  
20 this state;

21               (2) a professional association organized under the  
22 Texas Professional Association Act (Article 1528f, Vernon's Texas  
23 Civil Statutes);

24               (3) an approved nonprofit health corporation  
25 certified under Chapter 162, Occupations Code; or

26               (4) another person wholly owned by physicians and  
27 engaged in the practice of medicine as permitted by Subtitle B,

1 Title 3, Occupations Code.

2 Sec. 171.902. QUALIFICATION. (a) A physician, dentist,  
3 optometrist, or podiatrist that participates in the Medicaid  
4 program or the Children's Health Insurance Program (CHIP) as a  
5 provider of health care services is entitled to a credit in the  
6 amount provided by Subsection (b) against the taxes imposed under  
7 this chapter for the period on which earned surplus is based.

8 (b) The amount of credit is equal to 20 percent of the total  
9 amount of payments the physician, dentist, optometrist, or  
10 podiatrist received from payments under the Medicaid or Children's  
11 Health Insurance Program (CHIP) during the period on which earned  
12 surplus is based that can be verified, if necessary.

13 Sec. 171.903. LIMITATIONS. A physician may not receive a  
14 credit in an amount that exceeds the amount of the tax or assessment  
15 due after applying any other credits.

16 Sec. 171.904. RULES. The comptroller shall adopt rules to  
17 implement this subchapter. The Health and Human Services  
18 Commission shall assist the comptroller in the formulation and  
19 adoption of the rules.

20 SECTION 4.50. Chapter 171, Tax Code, is amended by adding  
21 Subchapter W to read as follows:

22 SUBCHAPTER W. APPLICATION OF REFUNDS AND CREDITS TO NONCORPORATE  
23 TAXABLE ENTITIES

24 Sec. 171.921. APPLICATION OF REFUNDS AND CREDITS TO  
25 NONCORPORATE TAXABLE ENTITIES. A taxable entity that is not a  
26 corporation but that, because of its activities, would qualify for  
27 a specific refund or credit under this chapter if it were a

1 corporation qualifies for the refund or credit in the same manner  
2 and under the same conditions as a corporation.

3 SECTION 4.51. Sections 171.110(b), (c), (g), (i), and (j),  
4 Tax Code, are repealed.

5 SECTION 4.52. (a) Subject to other provisions of this  
6 section, this article applies to reports originally due on or after  
7 the effective date of this article.

8 (b) For an entity becoming subject to the franchise tax  
9 under this article:

10 (1) income or losses, and related gross receipts,  
11 occurring before January 1, 2005, may not be considered for  
12 purposes of the earned surplus component, or for apportionment  
13 purposes for the taxable capital component;

14 (2) an entity subject to the franchise tax on January  
15 1, 2006, for which January 1, 2006, is not the beginning date, shall  
16 file an annual report due May 15, 2006, based on the period:

17 (A) beginning on the later of:

18 (i) January 1, 2005; or

19 (ii) the date the entity was organized in  
20 this state or, if a foreign entity, the date it began doing business  
21 in this state; and

22 (B) ending on the date the entity's last  
23 accounting period ends in 2005 or, if none, on December 31, 2005;  
24 and

25 (3) an entity subject to the earned surplus component  
26 of the franchise tax at any time after October 31, 2005, and before  
27 January 1, 2006, but not subject to the earned surplus component on

1 January 1, 2006, shall file a final report computed on net taxable  
2 earned surplus, for the privilege of doing business at any time  
3 after October 31, 2005, and before January 1, 2006, based on the  
4 period:

5 (A) beginning on the later of:

6 (i) January 1, 2005; or

7 (ii) the date the entity was organized in  
8 this state or, if a foreign entity, the date it began doing business  
9 in this state; and

10 (B) ending on the date the entity became no  
11 longer subject to the earned surplus component of the tax.

12 (c) For purposes of this article, an existing partnership is  
13 considered as continuing if it is not terminated.

14 (d) A partnership is considered terminated only if no part  
15 of any business, financial operation, or venture of the partnership  
16 continues to be carried on by any of its partners in a partnership.

17 (e) For a merger or consolidation of two or more  
18 partnerships, the resulting partnership is, for purposes of this  
19 article, considered the continuation of any merging or  
20 consolidating partnership whose members own an interest of more  
21 than 50 percent in the capital and profits of the resulting  
22 partnership.

23 (f) For a division of a partnership into two or more  
24 partnerships, the resulting partnerships, other than any resulting  
25 partnership the members of which had an interest of 50 percent or  
26 less in the capital and profits of the prior partnership, are, for  
27 purposes of this article, considered a continuation of the prior

1 partnership.

2 SECTION 4.53. If a credit under Chapter 171, Tax Code, as  
3 amended by this article, is found by a court in a final judgment  
4 upheld on appeal or no longer subject to appeal to be  
5 unconstitutional, the credit is disallowed for all entities on or  
6 after the date the final judgment was entered by the court and an  
7 entity is not entitled to and may not apply for the credit on or  
8 after that date for any reporting period beginning before, on, or  
9 after that date.

10 SECTION 4.54. (a) This section applies to a suit brought by  
11 an entity subject to the tax under Chapter 171, Tax Code, as amended  
12 by this article, contending that the imposition of the tax on the  
13 entity is unconstitutional.

14 (b) The suit must be brought in a district court in Travis  
15 County.

16 (c) The judgment of the district court may be reviewed only  
17 by direct appeal to the supreme court filed on or before the 15th  
18 day after the date the district court enters its judgment. The  
19 district court shall try the suit and the supreme court shall hear  
20 any appeal relating to the suit as expeditiously as possible.

21 (d) If a final judgment upheld on appeal or no longer  
22 subject to appeal finds that the tax imposed under Chapter 171, Tax  
23 Code, is unconstitutional because of the requirements of Section  
24 24, Article VIII, Texas Constitution, all taxable entities, other  
25 than a corporation or limited liability company, shall pay the tax  
26 at the rate provided by Section 171.003.

27 SECTION 4.55. This article takes effect November 1, 2005,



1 and applies to reports originally due on or after that date.

2 ARTICLE 5. SALES AND USE TAXES

3 PART A. STATE SALES AND USE TAX

4 SECTION 5A.01. Section 151.051(b), Tax Code, is amended to  
5 read as follows:

6 (b) The sales tax rate is 6.5 [~~6-1/4~~] percent of the sales  
7 price of the taxable item sold.

8 SECTION 5A.01A. (a) Section 151.051(b), Tax Code, is  
9 amended to read as follows:

10 (b) The sales tax rate is 6.75 [~~6-1/4~~] percent of the sales  
11 price of the taxable item sold.

12 (b) This section takes effect on the first anniversary of  
13 the date Section 5A.01 of this Act takes effect.

14 SECTION 5A.02. Section 151.326(a), Tax Code, is amended to  
15 read as follows:

16 (a) The sale of an article of clothing or footwear designed  
17 to be worn on or about the human body is exempted from the taxes  
18 imposed by this chapter if:

19 (1) the sales price of the article is less than \$100;  
20 and

21 (2) the sale takes place during:

22 (A) a period beginning at 12:01 a.m. on the first  
23 Friday in August and ending at 12 midnight on the following Sunday;

24 or

25 (B) a period beginning at 12:01 a.m. on the first  
26 Friday in December and ending at 12 midnight on the following  
27 Sunday.

1 SECTION 5A.03. Subchapter H, Chapter 151, Tax Code, is  
2 amended by adding Section 151.327 to read as follows:

3 Sec. 151.327. SCHOOL SUPPLIES BEFORE START OF SCHOOL. (a)  
4 The sale or storage, use, or other consumption of a school supply,  
5 including a backpack, is exempted from the taxes imposed by this  
6 chapter if the school supply is purchased:

7 (1) for use by a student in a class in a public or  
8 private elementary or secondary school;

9 (2) during the period described by Section  
10 151.326(a)(2); and

11 (3) for a sales price of less than \$100 per item.

12 (b) The comptroller shall adopt rules specifying the school  
13 supplies that are exempt from taxation under this section.

14 (c) The exemption provided by this section does not apply to  
15 the purchase of a textbook.

16 SECTION 5A.04. (a) Subchapter I, Chapter 151, Tax Code, is  
17 amended by adding Section 151.433 to read as follows:

18 Sec. 151.433. TAX REIMBURSEMENT FOR FINANCIAL ASSISTANCE  
19 AND FOOD STAMP RECIPIENTS. (a) This section applies to a person  
20 who:

21 (1) receives financial assistance under Chapter 31,  
22 Human Resources Code, or nutritional assistance under Chapter 33,  
23 Human Resources Code, through the use of an electronic benefits  
24 transfer system; or

25 (2) is eligible to receive financial assistance under  
26 Chapter 31, Human Resources Code, through the use of an electronic  
27 benefits transfer system, but to whom that financial assistance is

1 not paid because a sanction is applied against the person under  
2 Section 31.0032, Human Resources Code.

3 (b) The comptroller and the executive commissioner of the  
4 Health and Human Services Commission by joint rule shall establish  
5 a program to reimburse a person to which this section applies for 20  
6 percent of the estimated tax the person will pay under this chapter  
7 during a state fiscal year.

8 (c) Not later than August 15 of each year, using available  
9 statistical data, the comptroller by rule shall estimate the amount  
10 of taxes a person to which this section applies will pay under this  
11 chapter during the next state fiscal year. In estimating that  
12 amount, the comptroller shall consider:

13 (1) the amount of the individual's federal adjusted  
14 gross income, as defined by federal law;

15 (2) the number of dependents the individual has for  
16 federal income tax purposes; and

17 (3) any other information the comptroller considers  
18 appropriate.

19 (d) Based on the estimations made under Subsection (c), the  
20 comptroller shall develop and adopt a table specifying by income  
21 bracket and number of dependents:

22 (1) the estimated amount of taxes persons to which  
23 this section applies will pay under this chapter during the next  
24 state fiscal year; and

25 (2) the amount of reimbursement the persons are  
26 eligible to receive under Subsection (b).

27 (e) The comptroller shall provide the table to the executive

1 commissioner of the Health and Human Services Commission as soon as  
2 possible after the date the table is adopted. Using the table, the  
3 executive commissioner shall provide to each person to which this  
4 section applies reimbursement in the form of:

5 (1) additional monthly state money payments if the  
6 person is receiving financial assistance under Chapter 31, Human  
7 Resources Code; or

8 (2) additional monthly nutritional assistance if the  
9 person is not receiving financial assistance under Chapter 31,  
10 Human Resources Code, but is receiving nutritional assistance under  
11 Chapter 33, Human Resources Code.

12 (f) Reimbursement provided under Subsection (e) must be  
13 made available to the person using the electronic benefits transfer  
14 system through which the person is receiving the financial or  
15 nutritional assistance. Except as provided by Subsection (g), the  
16 amount of the monthly reimbursement is equal to one-twelfth of the  
17 amount determined under Subsection (d)(2).

18 (g) Notwithstanding any other law, the total amount of  
19 reimbursements provided under this section may not exceed \$100  
20 million each state fiscal year. The comptroller and the executive  
21 commissioner of the Health and Human Services Commission shall take  
22 any necessary action to ensure that this limit is not exceeded,  
23 including:

24 (1) decreasing the percentage of reimbursement of  
25 taxes paid under this chapter for which a person is otherwise  
26 eligible;

27 (2) decreasing the amounts of the monthly state money

1 payments or monthly nutritional assistance on a pro rata basis or by  
2 a specific amount; or

3 (3) suspending the reimbursements.

4 (h) Notwithstanding any other law, a person described by  
5 Subsection (a)(2) is entitled to reimbursement provided under this  
6 section to the same extent the person would be entitled to that  
7 reimbursement if a sanction were not applied against the person  
8 under Section 31.0032, Human Resources Code.

9 (b) Subchapter B, Chapter 31, Human Resources Code, is  
10 amended by adding Section 31.0321 to read as follows:

11 Sec. 31.0321. EXCLUSION OF CERTAIN TAX REIMBURSEMENTS. The  
12 Health and Human Services Commission may not consider any  
13 reimbursement of estimated taxes to which a person may be entitled  
14 under Section 151.433, Tax Code, in determining:

15 (1) whether the person meets household income and  
16 resource requirements for financial assistance under this chapter;  
17 or

18 (2) the amount of financial assistance granted to the  
19 person under this chapter for the support of dependent children.

20 (c) Chapter 33, Human Resources Code, is amended by adding  
21 Section 33.028 to read as follows:

22 Sec. 33.028. EXCLUSION OF CERTAIN TAX REIMBURSEMENTS. To  
23 the extent permitted by federal law, the Health and Human Services  
24 Commission may not consider any reimbursement of estimated taxes to  
25 which a person may be entitled under Section 151.433, Tax Code, in  
26 determining whether the person meets the household income and  
27 resource requirements for eligibility for food stamps.

1 (d) If before implementing any provision of this section a  
2 state agency determines that a waiver or authorization from a  
3 federal agency is necessary for implementation of that provision,  
4 the agency affected by the provision shall request the waiver or  
5 authorization and may delay implementing that provision until the  
6 waiver or authorization is granted.

7 SECTION 5A.05. The change in law made by this part does not  
8 affect tax liability accruing before the effective date of this  
9 part. That liability continues in effect as if this part had not  
10 been enacted, and the former law is continued in effect for the  
11 collection of taxes due and for civil and criminal enforcement of  
12 the liability of those taxes.

13 SECTION 5A.06. Except as otherwise provided by this part,  
14 this part takes effect September 1, 2005, if this Act receives a  
15 vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for effect on that date,  
18 this part takes effect November 1, 2005.

19 PART B. MOTOR VEHICLE SALES AND USE TAX

20 SECTION 5B.01. Section 152.002, Tax Code, is amended by  
21 adding Subsection (f) to read as follows:

22 (f) Notwithstanding Subsection (a), the total consideration  
23 of a used motor vehicle is the amount on which the tax is computed as  
24 provided by Section 152.0412.

25 SECTION 5B.02. Section 152.021(b), Tax Code, is amended to  
26 read as follows:

27 (b) The tax rate is 6.5 [~~6-1/4~~] percent of the total

1 consideration.

2 SECTION 5B.02A. (a) Section 152.021(b), Tax Code, is  
3 amended to read as follows:

4 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total  
5 consideration.

6 (b) This section takes effect on the first anniversary of  
7 the date Section 5B.02 of this Act takes effect.

8 SECTION 5B.03. Section 152.022(b), Tax Code, is amended to  
9 read as follows:

10 (b) The tax rate is 6.5 [~~6-1/4~~] percent of the total  
11 consideration.

12 SECTION 5B.03A. (a) Section 152.022(b), Tax Code, is  
13 amended to read as follows:

14 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total  
15 consideration.

16 (b) This section takes effect on the first anniversary of  
17 the date Section 5B.03 of this Act takes effect.

18 SECTION 5B.04. Section 152.026(b), Tax Code, is amended to  
19 read as follows:

20 (b) The tax rate is 10 percent of the gross rental receipts  
21 from the rental of a rented motor vehicle for 30 days or less and 6.5  
22 [~~6-1/4~~] percent of the gross rental receipts from the rental of a  
23 rented motor vehicle for longer than 30 days.

24 SECTION 5B.04A. (a) Section 152.026(b), Tax Code, is  
25 amended to read as follows:

26 (b) The tax rate is 10 percent of the gross rental receipts  
27 from the rental of a rented motor vehicle for 30 days or less and

1 6.75 [~~6-1/4~~] percent of the gross rental receipts from the rental of  
2 a rented motor vehicle for longer than 30 days.

3 (b) This section takes effect on the first anniversary of  
4 the date Section 5B.04 of this Act takes effect.

5 SECTION 5B.05. Section 152.028(b), Tax Code, is amended to  
6 read as follows:

7 (b) The tax rate is 6.5 [~~6-1/4~~] percent of the total  
8 consideration.

9 SECTION 5B.05A. (a) Section 152.028(b), Tax Code, is  
10 amended to read as follows:

11 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total  
12 consideration.

13 (b) This section takes effect on the first anniversary of  
14 the date Section 5B.05 of this Act takes effect.

15 SECTION 5B.06. Section 152.041(a), Tax Code, is amended to  
16 read as follows:

17 (a) The tax assessor-collector of the county in which an  
18 application for registration or for a Texas certificate of title is  
19 made shall collect taxes imposed by this chapter, subject to  
20 Section 152.0412, unless another person is required by this chapter  
21 to collect the taxes.

22 SECTION 5B.07. Subchapter C, Chapter 152, Tax Code, is  
23 amended by adding Section 152.0412 to read as follows:

24 Sec. 152.0412. STANDARD PRESUMPTIVE VALUE; USE BY TAX  
25 ASSESSOR-COLLECTOR. (a) In this section, "standard presumptive  
26 value" means the average retail value of a motor vehicle as  
27 determined by the Texas Department of Transportation, based on a



1 nationally recognized motor vehicle industry reporting service.

2 (b) If the amount paid for a motor vehicle subject to the tax  
3 imposed by this chapter is equal to or greater than the standard  
4 presumptive value of the vehicle, a county tax assessor-collector  
5 shall compute the tax on the amount paid.

6 (c) If the amount paid for a motor vehicle subject to the tax  
7 imposed by this chapter is less than the standard presumptive value  
8 of the vehicle, a county tax assessor-collector shall compute the  
9 tax on the standard presumptive value unless the purchaser  
10 establishes the retail value of the vehicle as provided by  
11 Subsection (d).

12 (d) A county tax assessor-collector shall compute the tax  
13 imposed by this chapter on the retail value of a motor vehicle if:

14 (1) the retail value is shown on an appraisal  
15 certified by an adjuster licensed under Chapter 4101, Insurance  
16 Code, or by a motor vehicle dealer operating under Subchapter B,  
17 Chapter 503, Transportation Code;

18 (2) the appraisal is on a form prescribed by the  
19 comptroller for that purpose; and

20 (3) the purchaser of the vehicle obtains the appraisal  
21 not later than the 20th day after the date of purchase.

22 (e) On request, a motor vehicle dealer operating under  
23 Subchapter B, Chapter 503, Transportation Code, shall provide a  
24 certified appraisal of the retail value of a motor vehicle. The  
25 comptroller by rule shall establish a fee that a dealer may charge  
26 for providing the certified appraisal. The county tax  
27 assessor-collector shall retain a copy of a certified appraisal

1 received under this section for a period prescribed by the  
2 comptroller.

3 (f) The Texas Department of Transportation shall maintain  
4 information on the standard presumptive values of motor vehicles as  
5 part of the department's registration and title system. The  
6 department shall update the information at least quarterly each  
7 calendar year.

8 (g) This section does not apply to a transaction described  
9 by Section 152.024 or 152.025.

10 SECTION 5B.08. Not later than November 1, 2005, the Texas  
11 Department of Transportation shall:

12 (1) establish standard presumptive values for motor  
13 vehicles as provided by Section 152.0412, Tax Code, as added by this  
14 part;

15 (2) modify the department's registration and title  
16 system as needed to include that information and administer that  
17 section; and

18 (3) make that information available through the system  
19 to all county tax assessor-collectors.

20 SECTION 5B.09. (a) Except as provided by this part and  
21 Subsection (b) of this section, this part takes effect September 1,  
22 2005, if this Act receives a vote of two-thirds of all the members  
23 elected to each house, as provided by Section 39, Article III, Texas  
24 Constitution. If this Act does not receive the vote necessary for  
25 effect on that date, this part takes effect November 1, 2005.

26 (b) Section 152.0412, Tax Code, as added by this part, takes  
27 effect November 1, 2005.

1 PART C. BOAT AND MOTOR BOAT SALES AND USE TAX

2 SECTION 5C.01. Section 160.021(b), Tax Code, is amended to  
3 read as follows:

4 (b) The tax rate is 6.5 [~~6-1/4~~] percent of the total  
5 consideration.

6 SECTION 5C.01A. (a) Section 160.021(b), Tax Code, is  
7 amended to read as follows:

8 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total  
9 consideration.

10 (b) This section takes effect on the first anniversary of  
11 the date Section 5C.01 of this Act takes effect.

12 SECTION 5C.02. Section 160.022(b), Tax Code, is amended to  
13 read as follows:

14 (b) The tax rate is 6.5 [~~6-1/4~~] percent of the total  
15 consideration.

16 SECTION 5C.02A. (a) Section 160.022(b), Tax Code, is  
17 amended to read as follows:

18 (b) The tax rate is 6.75 [~~6-1/4~~] percent of the total  
19 consideration.

20 (b) This section takes effect on the first anniversary of  
21 the date Section 5C.02 of this Act takes effect.

22 SECTION 5C.03. This part takes effect September 1, 2005, if  
23 this Act receives a vote of two-thirds of all the members elected to  
24 each house, as provided by Section 39, Article III, Texas  
25 Constitution. If this Act does not receive the vote necessary for  
26 effect on that date, this part takes effect November 1, 2005.

PART D. MOTOR FUELS TAX

SECTION 5D.01. Section 162.503, Tax Code, is amended to read as follows:

Sec. 162.503. ALLOCATION OF GASOLINE TAX. (a) Except as provided by Subsection (b), on [On] or before the fifth workday after the end of each month, the comptroller, after making all deductions for refund purposes and for the amounts allocated under Sections 162.502 and 162.5025, shall allocate the net remainder of the taxes collected under Subchapter B as follows:

(1) one-fourth of the tax shall be deposited to the credit of the available school fund;

(2) one-half of the tax shall be deposited to the credit of the state highway fund for the construction and maintenance of the state road system under existing law; and

(3) from the remaining one-fourth of the tax the comptroller shall:

(A) deposit to the credit of the county and road district highway fund all the remaining tax receipts until a total of \$7,300,000 has been credited to the fund each fiscal year; and

(B) after the amount required to be deposited to the county and road district highway fund has been deposited, deposit to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of allocations made each month of the fiscal year, which sum shall be used by the Texas Department of Transportation for the construction, improvement, and maintenance of farm-to-market roads.

1        (b) During the months of June, July, and August of each  
2 odd-numbered year, the comptroller may not make the allocations to  
3 the state highway fund and county and road district highway fund  
4 otherwise required by Subsections (a)(2) and (3). After September  
5 5 and before September 11 of that year, the comptroller shall  
6 allocate and deposit to the state highway fund the total amount of  
7 revenue that would have been otherwise allocated and deposited to  
8 that fund during those months.

9        SECTION 5D.02. Section 162.504, Tax Code, is amended to  
10 read as follows:

11        Sec. 162.504. ALLOCATION OF DIESEL FUEL TAX. (a) Except as  
12 provided by Subsection (b), on [On] or before the fifth workday  
13 after the end of each month, the comptroller, after making  
14 deductions for refund purposes, for the administration and  
15 enforcement of this chapter, and for the amounts allocated under  
16 Section 162.5025, shall allocate the remainder of the taxes  
17 collected under Subchapter C as follows:

18                (1) one-fourth of the taxes shall be deposited to the  
19 credit of the available school fund; and

20                (2) three-fourths of the taxes shall be deposited to  
21 the credit of the state highway fund.

22        (b) During the months of June, July, and August of each  
23 odd-numbered year, the comptroller may not make the allocation to  
24 the state highway fund otherwise required by Subsection (a)(2).  
25 After September 5 and before September 11 of that year, the  
26 comptroller shall allocate and deposit to the state highway fund  
27 the total amount of revenue that would have been otherwise

1 allocated to that fund during those months.

2 SECTION 5D.03. Section 162.505, Tax Code, is amended to  
3 read as follows:

4 Sec. 162.505. ALLOCATION OF LIQUEFIED GAS TAX. (a) Except  
5 as provided by Subsection (b), on ~~On~~ or before the fifth workday  
6 after the end of each month, the comptroller, after making  
7 deductions for refund purposes and for the administration and  
8 enforcement of this chapter, shall allocate the remainder of the  
9 taxes collected under Subchapter D as follows:

10 (1) one-fourth of the taxes shall be deposited to the  
11 credit of the available school fund; and

12 (2) three-fourths of the taxes shall be deposited to  
13 the credit of the state highway fund.

14 (b) During the months of June, July, and August of each  
15 odd-numbered year, the comptroller may not make the allocation to  
16 the state highway fund otherwise required by Subsection (a)(2).  
17 After September 5 and before September 11 of that year, the  
18 comptroller shall allocate and deposit to the state highway fund  
19 the total amount of revenue that would have been otherwise  
20 allocated to that fund during those months.

21 SECTION 5D.04. This part takes effect August 1, 2005, if  
22 this Act receives a vote of two-thirds of all the members elected to  
23 each house, as provided by Section 39, Article III, Texas  
24 Constitution. If this Act does not receive the vote necessary for  
25 effect on that date, this part takes effect November 1, 2005.

26 PART E. HOTEL OCCUPANCY TAXES

27 SECTION 5E.01. Section 156.001, Tax Code, is amended to

1 read as follows:

2           Sec. 156.001. DEFINITION. In this chapter, "hotel" means a  
3 building in which members of the public obtain sleeping  
4 accommodations for consideration. The term includes a hotel,  
5 motel, tourist home, tourist house, tourist court, lodging house,  
6 inn, rooming house, or bed and breakfast. The term does not  
7 include:

8                   (1) a hospital, sanitarium, or nursing home; ~~or~~

9                   (2) a dormitory or other housing facility owned or  
10 leased and operated by an institution of higher education or a  
11 private or independent institution of higher education as those  
12 terms are defined by Section 61.003, Education Code, used by the  
13 institution for the purpose of providing sleeping accommodations  
14 for persons engaged in an educational program or activity at the  
15 institution; or

16                   (3) that part of an apartment or condominium building  
17 that consists of unfurnished dwelling units that are leased to  
18 tenants, as defined by Section 92.001, Property Code.

19           SECTION 5E.02. Section 351.002(c), Tax Code, is amended to  
20 read as follows:

21                   (c) The tax does not apply to a person who has the right to  
22 use or possess a room in a hotel for at least 30 consecutive days, so  
23 long as there is no interruption of payment for that period ~~[is a~~  
24 ~~permanent resident under Section 156.101 of this code]~~.

25           SECTION 5E.03. Section 352.001(1), Tax Code, is amended to  
26 read as follows:

27                   (1) "Hotel" has the meaning assigned by Section

1 156.001 [~~156.001(1)~~].

2 SECTION 5E.04. Section 352.002(c), Tax Code, is amended to  
3 read as follows:

4 (c) The tax does not apply to a person who has the right to  
5 use or possess a room in a hotel for at least 30 consecutive days, so  
6 long as there is no interruption of payment for that period [~~is a~~  
7 ~~permanent resident under Section 156.101 of this code~~].

8 SECTION 5E.05. Section 156.101, Tax Code, is repealed.

9 SECTION 5E.06. This part takes effect October 1, 2005, if  
10 this Act receives a vote of two-thirds of all the members elected to  
11 each house, as provided by Section 39, Article III, Texas  
12 Constitution. If this Act does not receive the vote necessary for  
13 effect on that date, this part takes effect January 1, 2006.

14 ARTICLE 6. TAX ON TOBACCO PRODUCTS AND ALCOHOL

15 PART A. CIGARETTE AND TOBACCO PRODUCTS

16 SECTION 6A.01. Section 154.021(b), Tax Code, is amended to  
17 read as follows:

18 (b) The tax rates are:

19 (1) \$58 [~~\$20.50~~] per thousand on cigarettes weighing  
20 three pounds or less per thousand; and

21 (2) the rate provided by Subdivision (1) plus \$2.10  
22 per thousand on cigarettes weighing more than three pounds per  
23 thousand.

24 SECTION 6A.02. Section 155.021(b), Tax Code, is amended to  
25 read as follows:

26 (b) The tax rates are:

27 (1) 1.25 cents [~~one cent~~] per 10 or fraction of 10 on



1 cigars weighing three pounds or less per thousand;

2 (2) \$9.375 [~~\$7.50~~] per thousand on cigars that:

3 (A) weigh more than three pounds per thousand;

4 and

5 (B) sell at factory list price, exclusive of any  
6 trade discount, special discount, or deal, for 3.3 cents or less  
7 each;

8 (3) \$13.75 [~~\$11~~] per thousand on cigars that:

9 (A) weigh more than three pounds per thousand;

10 (B) sell at factory list price, exclusive of any  
11 trade discount, special discount, or deal, for more than 3.3 cents  
12 each; and

13 (C) contain no substantial amount of nontobacco  
14 ingredients; and

15 (4) \$18.75 [~~\$15~~] per thousand on cigars that:

16 (A) weigh more than three pounds per thousand;

17 (B) sell at factory list price, exclusive of any  
18 trade discount, special discount, or deal, for more than 3.3 cents  
19 each; and

20 (C) contain a substantial amount of nontobacco  
21 ingredients.

22 SECTION 6A.03. Section 155.0211(b), Tax Code, is amended to  
23 read as follows:

24 (b) The tax rate for tobacco products other than cigars is  
25 44.02 [~~35.213~~] percent of the manufacturer's list price, exclusive  
26 of any trade discount, special discount, or deal.

27 SECTION 6A.04. This part takes effect September 1, 2005, if

1 this Act receives a vote of two-thirds of all the members elected to  
2 each house, as provided by Section 39, Article III, Texas  
3 Constitution. If this Act does not receive the vote necessary for  
4 effect on that date, this part takes effect November 1, 2005.

5 PART B. ALCOHOL TAXES

6 SECTION 6B.01. Section 201.03, Alcoholic Beverage Code, is  
7 amended to read as follows:

8 Sec. 201.03. TAX ON DISTILLED SPIRITS. (a) A tax is  
9 imposed on the first sale of distilled spirits at the rate of \$3  
10 [~~\$2.40~~] per gallon.

11 (b) The minimum tax imposed on packages of distilled spirits  
12 containing two ounces or less is 6.25 [~~five~~] cents per package.

13 (c) Should packages containing less than one-half pint but  
14 more than two ounces ever be legalized in this state, the minimum  
15 tax imposed on each of these packages is 15.25 cents [~~\$0.122~~].

16 SECTION 6B.02. Section 201.04, Alcoholic Beverage Code, is  
17 amended to read as follows:

18 Sec. 201.04. TAX ON VINOUS LIQUOR. (a) A tax is imposed on  
19 the first sale of vinous liquor that does not contain over 14  
20 percent of alcohol by volume at the rate of 25.5 [~~20.4~~] cents per  
21 gallon.

22 (b) A tax is imposed on vinous liquor that contains more  
23 than 14 percent of alcohol by volume at the rate of 51 [~~40.8~~] cents  
24 per gallon.

25 (c) A tax is imposed on artificially carbonated and natural  
26 sparkling vinous liquor at the rate of 64.5 [~~51.6~~] cents per gallon.

27 SECTION 6B.03. Section 201.42, Alcoholic Beverage Code, is

1 amended to read as follows:

2       Sec. 201.42. TAX ON ALE AND MALT LIQUOR. A tax is imposed on  
3 the first sale of ale and malt liquor at the rate of 24.75 cents  
4 [~~\$0.198~~] per gallon.

5       SECTION 6B.04. Section 203.01, Alcoholic Beverage Code, is  
6 amended to read as follows:

7       Sec. 203.01. TAX ON BEER. A tax is imposed on the first sale  
8 of beer manufactured in this state or imported into this state at  
9 the rate of \$7.50 [~~six dollars~~] per barrel.

10       SECTION 6B.05. Section 183.021, Tax Code, is amended to  
11 read as follows:

12       Sec. 183.021. TAX IMPOSED ON MIXED BEVERAGES. A tax at the  
13 rate of 17.5 [~~14~~] percent is imposed on the gross receipts of a  
14 permittee received from the sale, preparation, or service of mixed  
15 beverages or from the sale, preparation, or service of ice or  
16 nonalcoholic beverages that are sold, prepared, or served for the  
17 purpose of being mixed with an alcoholic beverage and consumed on  
18 the premises of the permittee.

19       SECTION 6B.06. This part takes effect September 1, 2005, if  
20 this Act receives a vote of two-thirds of all the members elected to  
21 each house, as provided by Section 39, Article III, Texas  
22 Constitution. If this Act does not receive the vote necessary for  
23 effect on that date, this part takes effect November 1, 2005.

24       ARTICLE 7. TRANSFERRING CERTAIN TOBACCO SETTLEMENT PROCEEDS INTO  
25                                   DEDICATED GENERAL REVENUE ACCOUNTS

26       SECTION 7.01. Subchapter G, Chapter 403, Government Code,  
27 is amended by adding Sections 403.109 and 403.1091-403.1093 to read

1 as follows:

2 Sec. 403.109. SECONDARY HEALTH ACCOUNT FOR HIGHER  
3 EDUCATION. (a) In this section:

4 (1) "Earnings account" means the account described by  
5 Subsection (d).

6 (2) "Secondary account" means the secondary health  
7 account for higher education.

8 (b) The secondary account and the earnings account are  
9 dedicated accounts in the general revenue fund.

10 (c) The secondary account consists of:

11 (1) money transferred to the account at the direction  
12 of the legislature; and

13 (2) donations to the account.

14 (d) The earnings account consists of the earnings received  
15 from investment of the assets in the secondary account. The  
16 comptroller shall periodically transfer those earnings from the  
17 secondary account to the earnings account.

18 (e) Money in the secondary account may be used only for a  
19 purpose described by Subsection (d) or (f).

20 (f) The comptroller shall manage and invest assets in the  
21 secondary account in authorized investments under Section 404.024.  
22 Any expenses incurred by the comptroller in managing and investing  
23 assets in the secondary account shall be paid from the account.

24 (g) Money in the earnings account may be appropriated only  
25 for a purpose specified in and subject to any conditions and  
26 reporting requirements prescribed by Subchapter A, Chapter 63,  
27 Education Code, for the use of money from the permanent health fund

1 for higher education.

2 (h) An institution of higher education that has accepted a  
3 gift under former Subchapter I, Chapter 51, Education Code, that  
4 was conditioned on the institution's receipt of state matching  
5 funds from the eminent scholars fund may use money the institution  
6 receives under this section to provide the state matching funds and  
7 treat the money as if it were a distribution to the institution from  
8 the eminent scholars fund for purposes of the former Subchapter I.

9 (i) An institution of higher education that receives a  
10 distribution from the earnings account shall include in the report  
11 required by Section 63.004, Education Code:

12 (1) the total amount of money the institution received  
13 from the account;

14 (2) the purpose for which the money was used; and

15 (3) any other information required by the Legislative  
16 Budget Board.

17 (j) Section 404.071 does not apply to the secondary account  
18 or the earnings account.

19 Sec. 403.1091. SECONDARY ACCOUNTS FOR EACH INSTITUTION OF  
20 HIGHER EDUCATION. (a) In this section:

21 (1) "Earnings account" means an account described by  
22 Subsection (e).

23 (2) "Secondary account" means the secondary accounts  
24 described by Subsection (b).

25 (b) In addition to the permanent endowment funds created by  
26 Section 63.101, Education Code, there is a secondary account for  
27 the benefit of each institution of higher education or group of

1 related components of an institution of higher education listed in  
2 Section 63.101(a), Education Code.

3 (c) Each secondary account and earnings account is a  
4 dedicated account in the general revenue fund.

5 (d) A secondary account consists of:

6 (1) money transferred to the account at the direction  
7 of the legislature; and

8 (2) donations to the account.

9 (e) An earnings account for an institution or group of  
10 related components of an institution consists of the earnings  
11 received from investment of the assets in the corresponding  
12 secondary account for the institution or group of components. The  
13 comptroller shall periodically transfer those earnings from the  
14 secondary account to the earnings account.

15 (f) Money in a secondary account may be used only for a  
16 purpose described by Subsection (e) or (g).

17 (g) The comptroller shall manage and invest assets in a  
18 secondary account in authorized investments under Section 404.024.  
19 Any expenses incurred by the comptroller in managing and investing  
20 assets in a secondary account shall be paid from the account.

21 (h) Money in an earnings account may be appropriated only  
22 for a purpose specified in and subject to any conditions and  
23 reporting requirements prescribed by Subchapter B, Chapter 63,  
24 Education Code, for the use of money from the corresponding  
25 permanent endowment fund established by that subchapter.

26 (i) An institution of higher education that has accepted a  
27 gift under former Subchapter I, Chapter 51, Education Code, that

1 was conditioned on the institution's receipt of state matching  
2 funds from the eminent scholars fund may use money the institution  
3 receives under this section to provide the state matching funds and  
4 treat the money as if it were a distribution to the institution from  
5 the eminent scholars fund for purposes of the former Subchapter I.

6 (j) An institution of higher education that receives an  
7 appropriation from an earnings account shall include in the report  
8 required by Section 63.103, Education Code:

9 (1) the total amount of money the institution received  
10 from the account;

11 (2) the purpose for which the money was used; and

12 (3) any other information required by the Legislative  
13 Budget Board.

14 (k) Section 404.071 does not apply to a secondary account or  
15 an earnings account.

16 Sec. 403.1092. SECONDARY ACCOUNT FOR HIGHER EDUCATION  
17 NURSING, ALLIED HEALTH, AND OTHER HEALTH-RELATED PROGRAMS. (a) In  
18 this section:

19 (1) "Earnings account" means the account described by  
20 Subsection (d).

21 (2) "Secondary account" means the secondary account  
22 for higher education nursing, allied health, and other  
23 health-related programs.

24 (b) The secondary account and the earnings account are  
25 dedicated accounts in the general revenue fund.

26 (c) The secondary account consists of:

27 (1) money transferred to the account at the direction

1 of the legislature; and

2 (2) donations to the account.

3 (d) The earnings account consists of the earnings received  
4 from investment of the assets in the secondary account. The  
5 comptroller shall periodically transfer those earnings from the  
6 secondary account to the earnings account.

7 (e) Money in the secondary account may be used only for a  
8 purpose described by Subsection (d) or (f).

9 (f) The comptroller shall manage and invest assets in the  
10 secondary account in authorized investments under Section 404.024.  
11 Any expenses incurred by the comptroller in managing and investing  
12 assets in the secondary account shall be paid from the account.

13 (g) Money in the earnings account may be appropriated only  
14 for a purpose specified in and subject to any conditions and  
15 reporting requirements prescribed by Subchapter C, Chapter 63,  
16 Education Code, for the use of money from the permanent fund for  
17 higher education nursing, allied health, and other health-related  
18 programs.

19 (h) The Texas Higher Education Coordinating Board shall  
20 include in the report required by Section 63.203, Education Code:

21 (1) the name of each institution that received a grant  
22 from the earnings account;

23 (2) the purpose for which the grant was used; and

24 (3) any additional information required by the  
25 Legislative Budget Board.

26 (i) Section 404.071 does not apply to the secondary account  
27 or the earnings account.



1           Sec. 403.1093. SECONDARY ACCOUNT FOR MINORITY HEALTH  
2 RESEARCH AND EDUCATION. (a) In this section:

3           (1) "Earnings account" means the account described by  
4 Subsection (d).

5           (2) "Secondary account" means the secondary account  
6 for minority health research and education.

7           (b) The secondary account and the earnings account are  
8 dedicated accounts in the general revenue fund.

9           (c) The secondary account consists of:

10           (1) money transferred to the account at the direction  
11 of the legislature; and

12           (2) donations to the account.

13           (d) The earnings account consists of the earnings received  
14 from investment of the assets in the secondary account. The  
15 comptroller shall periodically transfer those earnings from the  
16 secondary account to the earnings account.

17           (e) Money in the secondary account may be used only for a  
18 purpose described by Subsection (d) or (f).

19           (f) The comptroller shall manage and invest assets in the  
20 secondary account in authorized investments under Section 404.024.  
21 Any expenses incurred by the comptroller in managing and investing  
22 assets in the secondary account shall be paid from the account.

23           (g) Money in the earnings account may be appropriated only  
24 to the Texas Higher Education Coordinating Board for the purpose of  
25 providing grants as specified by Section 63.302(c), Education Code,  
26 for money from the permanent fund for minority health research and  
27 education.

1       (h) The Texas Higher Education Coordinating Board shall  
2 report regarding the money received under this section in the  
3 manner required by Section 63.302(f), Education Code, and shall  
4 include in the report:

5               (1) the total amount distributed under this section;

6               (2) the name of each institution that received a  
7 grant;

8               (3) the purpose of each grant, including a description  
9 of any partnership formed; and

10              (4) any additional information required by the  
11 Legislative Budget Board.

12       (i) Section 404.071 does not apply to the secondary account  
13 or the earnings account.

14       SECTION 7.02. Section 403.1069, Government Code, is amended  
15 to read as follows:

16       Sec. 403.1069. REPORTING REQUIREMENT. The Department of  
17 State Health Services [~~department~~] shall provide a report to the  
18 Legislative Budget Board on the permanent funds established under  
19 this subchapter from which the department may receive an  
20 appropriation of the available earnings [~~to the Legislative Budget~~  
21 ~~Board~~] no later than November 1 of each year. The report shall  
22 include the total amount of money distributed from each fund, the  
23 purpose for which the money was used, and any additional  
24 information that may be requested by the Legislative Budget Board.

25       SECTION 7.03. (a) On November 1, 2006, all amounts held in  
26 the following funds shall be transferred, in the estimated amount  
27 listed, to the accounts established under Sections 403.109,

1 403.1091, 403.1092, and 403.1093, Government Code, as added by this  
 2 Act, as specified by this section:

3 Fund Number	Fund Name	Amount
4 0810	Permanent Health Fund for	
5	Higher Education	\$376,600,000
6 0811	Permanent Endowment Fund for	
7	Health Related Institutions -	
8	University of Texas Health	
9	Science Center at San Antonio	\$215,200,000
10 0812	Permanent Endowment Fund for	
11	Health Related Institutions -	
12	University of Texas M.D.	
13	Anderson Cancer Center	\$107,600,000
14 0813	Permanent Endowment Fund for	
15	Health Related Institutions -	
16	University of Texas	
17	Southwestern Medical	
18	Center at Dallas	\$53,800,000
19 0814	Permanent Endowment Fund for	
20	Health Related Institutions -	
21	University of Texas Medical	
22	Branch at Galveston	\$26,900,000
23 0815	Permanent Endowment Fund for	
24	Health Related Institutions -	
25	University of Texas Health	
26	Science Center at Houston	\$26,900,000
27 0816	Permanent Endowment Fund for	

1		Health Related Institutions -	
2		University of Texas Health	
3		Science Center at Tyler	\$26,900,000
4	0817	Permanent Endowment Fund for	
5		Health Related Institutions -	
6		University of Texas at El Paso	\$26,900,000
7	0818	Permanent Endowment Fund for	
8		Health Related Institutions -	
9		Texas A&M University Health	
10		Science Center	\$25,600,000
11	0819	Permanent Endowment Fund for	
12		Health Related Institutions -	
13		University of North Texas	
14		Health Science Center at	
15		Fort Worth	\$25,400,000
16	0820	Permanent Endowment Fund for	
17		Health Related Institutions -	
18		Components of Texas Tech	
19		University Health Science	
20		Center in El Paso	\$26,500,000
21	0821	Permanent Endowment Fund for	
22		Health Related Institutions -	
23		Components of Texas Tech	
24		University Health Science	
25		Center other than El Paso	\$26,500,000
26	0822	Permanent Endowment Fund for	
27		Health Related Institutions -	

1		University of Texas Regional	
2		Academic Health Center	\$21,500,000
3	0823	Permanent Endowment Fund for	
4		Health Related Institutions -	
5		Baylor College of Medicine	\$24,400,000
6	0824	Permanent Fund for Higher	
7		Education Nursing, Allied	
8		Health and Other Health	
9		Related Programs	\$44,000,000
10	0825	Permanent Fund for Minority	
11		Health Research and Education	\$24,400,000
12		Informational Total:	\$1,079,100,000

13 (b) Amounts transferred from the Permanent Health Fund for  
 14 Higher Education shall be deposited to the credit of the secondary  
 15 health account for higher education established under Section  
 16 403.109, Government Code, as added by this Act.

17 (c) Amounts transferred from the Permanent Endowment Fund  
 18 for Health Related Institutions - University of Texas Health  
 19 Science Center at San Antonio shall be deposited to the credit of  
 20 the secondary account established for the benefit of The University  
 21 of Texas Health Science Center at San Antonio under Section  
 22 403.1091, Government Code, as added by this Act.

23 (d) Amounts transferred from the Permanent Endowment Fund  
 24 for Health Related Institutions - University of Texas M. D.  
 25 Anderson Cancer Center shall be deposited to the credit of the  
 26 secondary account established for the benefit of The University of  
 27 Texas M. D. Anderson Cancer Center under Section 403.1091,

1 Government Code, as added by this Act.

2 (e) Amounts transferred from the Permanent Endowment Fund  
3 for Health Related Institutions - University of Texas Southwestern  
4 Medical Center at Dallas shall be deposited to the credit of the  
5 secondary account established for the benefit of The University of  
6 Texas Southwestern Medical Center at Dallas under Section 403.1091,  
7 Government Code, as added by this Act.

8 (f) Amounts transferred from the Permanent Endowment Fund  
9 for Health Related Institutions - University of Texas Medical  
10 Branch at Galveston shall be deposited to the credit of the  
11 secondary account established for the benefit of The University of  
12 Texas Medical Branch at Galveston under Section 403.1091,  
13 Government Code, as added by this Act.

14 (g) Amounts transferred from the Permanent Endowment Fund  
15 for Health Related Institutions - University of Texas Health  
16 Science Center at Houston shall be deposited to the credit of the  
17 secondary account established for the benefit of The University of  
18 Texas Health Science Center at Houston under Section 403.1091,  
19 Government Code, as added by this Act.

20 (h) Amounts transferred from the Permanent Endowment Fund  
21 for Health Related Institutions - University of Texas Health  
22 Science Center at Tyler shall be deposited to the credit of the  
23 secondary account established for the benefit of The University of  
24 Texas Health Science Center at Tyler under Section 403.1091,  
25 Government Code, as added by this Act.

26 (i) Amounts transferred from the Permanent Endowment Fund  
27 for Health Related Institutions - University of Texas at El Paso

1 shall be deposited to the credit of the secondary account  
2 established for the benefit of The University of Texas at El Paso  
3 under Section 403.1091, Government Code, as added by this Act.

4 (j) Amounts transferred from the Permanent Endowment Fund  
5 for Health Related Institutions - Texas A&M University Health  
6 Science Center shall be deposited to the credit of the secondary  
7 account established for the benefit of The Texas A&M University  
8 Health Science Center under Section 403.1091, Government Code, as  
9 added by this Act.

10 (k) Amounts transferred from the Permanent Endowment Fund  
11 for Health Related Institutions - University of North Texas Health  
12 Science Center at Fort Worth shall be deposited to the credit of the  
13 secondary account established for the benefit of the University of  
14 North Texas Health Science Center at Fort Worth under Section  
15 403.1091, Government Code, as added by this Act.

16 (l) Amounts transferred from the Permanent Endowment Fund  
17 for Health Related Institutions - Components of Texas Tech  
18 University Health Sciences Center in El Paso shall be deposited to  
19 the credit of the secondary account established for the benefit of  
20 the components of Texas Tech University Health Sciences Center in  
21 El Paso under Section 403.1091, Government Code, as added by this  
22 Act.

23 (m) Amounts transferred from the Permanent Endowment Fund  
24 for Health Related Institutions - Components of Texas Tech  
25 University Health Sciences Center other than El Paso shall be  
26 deposited to the credit of the secondary account established for  
27 the benefit of the components of Texas Tech University Health

1 Sciences Center other than El Paso under Section 403.1091,  
2 Government Code, as added by this Act.

3 (n) Amounts transferred from the Permanent Endowment Fund  
4 for Health Related Institutions - University of Texas Regional  
5 Academic Health Center shall be deposited to the credit of the  
6 secondary account established for the benefit of The University of  
7 Texas Regional Academic Health Center under Section 403.1091,  
8 Government Code, as added by this Act.

9 (o) Amounts transferred from the Permanent Endowment Fund  
10 for Health Related Institutions - Baylor College of Medicine shall  
11 be deposited to the credit of the secondary account established for  
12 the benefit of Baylor College of Medicine under Section 403.1091,  
13 Government Code, as added by this Act.

14 (p) Amounts transferred from the Permanent Fund for Higher  
15 Education Nursing, Allied Health, and Other Health Related Programs  
16 shall be deposited to the credit of the secondary account for higher  
17 education nursing, allied health, and other health-related  
18 programs established under Section 403.1092, Government Code, as  
19 added by this Act.

20 (q) Amounts transferred from the Permanent Fund for  
21 Minority Health Research and Education shall be deposited to the  
22 credit of the secondary account for minority health research and  
23 education established under Section 403.1093, Government Code, as  
24 added by this Act.

25 SECTION 7.04. (a) The transfers to accounts in the general  
26 revenue fund made by this article may not result in a reduction in  
27 the amount available for distribution from those accounts, and the



1 same amount that would have been distributed from the permanent  
2 funds but for the transfers made by this article shall be  
3 appropriated and distributed from the applicable accounts created  
4 by this article. If the earnings from the secondary account that  
5 are transferred to the earnings account are inadequate to make a  
6 distribution of the same amount that would have been distributed  
7 from the permanent funds, to the extent that the difference is  
8 solely the result of an investment policy other than total return,  
9 the comptroller shall transfer the difference to the applicable  
10 earnings account from the unobligated portion of general revenue.

11 (b) The comptroller of public accounts shall determine the  
12 amount of any loss to the Permanent Health Fund for Higher Education  
13 and other funds administered by The University of Texas System as a  
14 result of the transfer to general revenue under this article. On  
15 August 31, 2007, the comptroller shall transfer from general  
16 revenue to the applicable secondary account created by this Act, an  
17 amount equal to the amount of the loss. In determining the amount  
18 of the loss, the comptroller shall consider the difference in the  
19 rate of return on investment of that secondary account and the rate  
20 of return over the preceding three years on investment of the  
21 Permanent University Fund.

22 (c) Notwithstanding any other provision of this article,  
23 the total of distributions under sections (a) and (b) from the  
24 accounts created by this article, plus transfers under Subsection  
25 (b) of this section, may not exceed \$65 million for any fiscal year.

26 SECTION 7.05. This article takes effect November 1, 2005.

ARTICLE 8. CHARITABLE BINGO

SECTION 8.01. Section 2001.002, Occupations Code, is amended by amending Subdivision (5) and adding Subdivisions (9-a), (9-b), (9-c), (20-a), (20-b), and (26-a) to read as follows:

(5) "Bingo equipment" means equipment used, made, or sold for the purpose of use in bingo. The term:

(A) includes:

(i) a machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;

(ii) an electronic or mechanical cardminding device;

(iii) a pull-tab dispenser;

(iv) a bingo card;

(v) a bingo ball; ~~and~~

(vi) an electronic monitoring terminal;

(vii) a site controller; and

(viii) any other device commonly used in the direct operation of a bingo game; and

(B) does not include:

(i) a bingo game set commonly manufactured and sold as a child's game for a retail price of \$20 or less unless the set or a part of the set is used in bingo subject to regulation under this chapter; or

(ii) a commonly available component part of bingo equipment such as a light bulb or fuse.

(9-a) "Electronic monitoring terminal" means a

1 computer or other electronic terminal with input capabilities and  
2 touch screen or other video monitors that may be used to play  
3 electronic pull-tab bingo. The term includes a portable, upright,  
4 or tabletop terminal.

5 (9-b) "Electronic pull-tab bingo" means an electronic  
6 version of pull-tab bingo that is played on a card-minding device or  
7 electronic monitoring terminal using electronic pull-tab bingo  
8 tickets.

9 (9-c) "Electronic pull-tab bingo ticket" means an  
10 electronic ticket used in electronic pull-tab bingo that is issued  
11 from a finite deal of tickets in which some of the tickets have been  
12 designated in advance as winning tickets.

13 (20-a) "Player account card" means a plastic, magnetic  
14 stripe, paper, or smart card that may be used to:

15 (A) enable or track the play of bingo games;

16 (B) track and record customer account data,  
17 including electronic credits purchased, played, won, or otherwise  
18 available for participating in bingo games; or

19 (C) redeem credits purchased, played, or won  
20 through a cashier or other point-of-sale station or redemption  
21 system.

22 (20-b) "Point-of-sale station" includes a cashier or a  
23 terminal that accepts or dispenses player account cards, debit  
24 cards, or cash.

25 (26-a) "Site controller" means computer hardware or  
26 software that:

27 (A) stores and distributes electronic pull-tab

1 bingo tickets for display on electronic monitoring terminals or  
2 card-minding devices; and

3 (B) is located on the premises of a licensed  
4 authorized organization.

5 SECTION 8.02. Section 2001.054, Occupations Code, is  
6 amended to read as follows:

7 Sec. 2001.054. RULEMAKING AUTHORITY. (a) The commission  
8 may adopt rules to enforce and administer this chapter.

9 (b) The commission has broad authority to adopt rules to  
10 administer and ensure compliance with Sections 2001.409(b) and  
11 2001.4091-2001.4094.

12 SECTION 8.03. Sections 2001.407(b), (d), and (f),  
13 Occupations Code, are amended to read as follows:

14 (b) A licensed distributor may not furnish by sale, lease,  
15 or otherwise, bingo equipment or supplies to a person other than a  
16 licensed authorized organization, another licensed distributor, or  
17 a person authorized to conduct bingo under Section 2001.551(b)(3)  
18 or (4). A sale or lease of bingo equipment or supplies authorized  
19 by this section must be made on terms requiring immediate payment or  
20 payment not later than the 30th day after the date of actual  
21 delivery.

22 (d) A licensed authorized organization may lease or  
23 purchase bingo equipment or supplies [~~electronic or mechanical~~  
24 ~~card-minding devices, pull-tab dispensers, bingo machines,~~  
25 ~~consoles, blowers, and flash boards~~] directly from a licensed  
26 distributor.

27 (f) With the prior written consent of the commission, a

1 licensed authorized organization may make an occasional sale of  
2 bingo equipment or supplies [~~cards or of a used bingo flash board or~~  
3 ~~blower~~] to another licensed authorized organization.

4 SECTION 8.04. Section 2001.408, Occupations Code, is  
5 amended to read as follows:

6 Sec. 2001.408. OTHER METHODS FOR PLAYING BINGO. (a)  
7 Subject to the commission's rules, bingo may be played using a  
8 pull-tab bingo ticket or an electronic pull-tab bingo ticket.

9 (b) All prize limitations and exemptions applicable to  
10 pull-tab bingo under Section 2001.420 are also applicable to  
11 electronic pull-tab bingo.

12 SECTION 8.05. Section 2001.409, Occupations Code, is  
13 amended by amending Subsection (a) and by adding Subsection (b) to  
14 read as follows:

15 (a) A person may use a card-minding device:

16 (1) to account for credits purchased, played, or won  
17 by playing electronic bingo games authorized by this chapter;

18 (2) to display and exchange credits described by  
19 Subdivision (1) for electronic bingo cards or electronic pull-tab  
20 bingo tickets that may be played by the person during a bingo  
21 occasion;

22 (3) to read a player account card;

23 (4) for purchasing, marketing, and playing electronic  
24 bingo games authorized by this chapter; and

25 (5) to display graphics and animation that correspond  
26 to or represent, in an entertaining manner, the outcome of an  
27 approved electronic pull-tab bingo ticket or game.

1        (b) The display of graphics and animation used to correspond  
2 to, display, or represent the outcome of an approved electronic  
3 pull-tab bingo ticket or electronic bingo card may not be the basis  
4 of a requirement that a card-minding device that has previously  
5 been approved for the play of electronic pull-tab bingo be retested  
6 or reapproved. [A person may not use a card-minding device:

7            ~~[(1) to generate or determine the random letters,~~  
8 ~~numbers, or other symbols used in playing the bingo card played with~~  
9 ~~the device's assistance;~~

10           ~~[(2) as a receptacle for the deposit of tokens or money~~  
11 ~~in payment for playing the bingo card played with the device's~~  
12 ~~assistance; or~~

13           ~~[(3) as a dispenser for the payment of a bingo prize,~~  
14 ~~including coins, paper currency, or a thing of value for the bingo~~  
15 ~~card played with the device's assistance.]~~

16        SECTION 8.06. Subchapter I, Chapter 2001, Occupations Code,  
17 is amended by adding Sections 2001.4091-2001.4094 to read as  
18 follows:

19        Sec. 2001.4091. SITE CONTROLLERS. (a) A site controller  
20 may be used to:

21           (1) create, shuffle, store, and configure electronic  
22 pull-tab bingo tickets;

23           (2) distribute electronic pull-tab bingo tickets to  
24 electronic monitoring terminals or card-minding devices;

25           (3) account for, through a means that may include a  
26 player account card, electronic credits purchased, played, or won  
27 by playing electronic bingo games authorized by this chapter;

1           (4) exchange credits described by Subdivision (3) for  
2 electronic bingo cards or electronic pull-tab bingo tickets that  
3 may be played by a person during a bingo occasion; or

4           (5) play electronic bingo games authorized by this  
5 chapter.

6           (b) The creation or distribution of electronic pull-tab  
7 bingo tickets or electronic bingo cards by or through a site  
8 controller or other method may not be the basis of a requirement  
9 that a preapproved site controller be retested or reapproved.

10          (c) A person who sells or supplies a site controller or  
11 other equipment used to play electronic pull-tab bingo is not  
12 required to hold a system service provider license, and the  
13 functions performed by a site controller or other equipment related  
14 to electronic pull-tab bingo may not be construed as the provision  
15 of automated bingo services governed by Subchapter F.

16          (d) A site controller used for electronic pull-tab bingo  
17 must be manufactured in accordance with the standards provided by  
18 this chapter and is subject to testing by the commission or by an  
19 independent testing facility reasonably acceptable to the  
20 commission.

21          (e) The commission may inspect a site controller.

22          (f) The manufacturer of a site controller shall maintain a  
23 central communications system or facility to provide the commission  
24 with the ability to review and audit electronic pull-tab bingo  
25 sales data.

26          (g) A site controller must provide a physical and electronic  
27 means, by use of a password or other method specified by commission

1 rule, for securing:

2 (1) electronic pull-tab bingo tickets created,  
3 shuffled, stored, and configured by the site controller; and

4 (2) accounting system data.

5 (h) Nothing in this chapter requires the use of a site  
6 controller to play electronic pull-tab bingo or prohibits the use  
7 of other means of creating, shuffling, storing, configuring, or  
8 distributing electronic pull-tab bingo tickets.

9 Sec. 2001.4092. ELECTRONIC MONITORING TERMINALS. (a) A  
10 person may use an electronic monitoring terminal:

11 (1) to insert or read a player account card;

12 (2) to display or exchange credits purchased, won, or  
13 otherwise available for play of electronic bingo games authorized  
14 by this chapter; or

15 (3) as a device capable of purchasing, marketing, and  
16 playing electronic bingo games authorized by this chapter.

17 (b) Nothing in this chapter prohibits an electronic  
18 monitoring terminal from generating or creating graphics and  
19 animation to correspond to, display, or represent, in an  
20 entertaining manner, the outcome of an approved electronic pull-tab  
21 bingo ticket or electronic bingo cards. The generation or creation  
22 of the graphics and animation may not be the basis of a requirement  
23 that a preapproved electronic monitoring terminal be retested or  
24 reapproved.

25 Sec. 2001.4093. USE OF CARD-MINDING DEVICES OR ELECTRONIC  
26 MONITORING TERMINALS IN ELECTRONIC BINGO. (a) A card-minding  
27 device, site controller, or an electronic monitoring terminal used



1 for electronic pull-tab bingo:

2 (1) must be manufactured in accordance with the  
3 standards provided under this chapter;

4 (2) is subject to testing by the commission or by an  
5 independent testing facility reasonably acceptable to the  
6 commission; and

7 (3) must be approved by the commission prior to use.

8 All requests for an approval of bingo equipment under this section,  
9 that are received within 30 days after the date of adoption of a  
10 rule establishing the standards for such approval and that satisfy  
11 all requirements applicable to such equipment, shall be approved on  
12 the same date, which shall be no later than 120 days after the date  
13 of adoption of such standards. Similar deadlines may be  
14 established for future approvals of new card-minding devices, site  
15 controllers, or electronic monitoring terminals.

16 (b) The commission may audit data relating to the sale,  
17 exchange, inventory, or play of electronic pull-tab bingo tickets.

18 (c) The commission may inspect a card-minding device or  
19 electronic monitoring terminal.

20 Sec. 2001.4094. AUDIT AND COMPLIANCE OF ELECTRONIC PULL-TAB  
21 BINGO. (a) The commission may adopt rules governing:

22 (1) the central communications system or facility  
23 required to be maintained by the manufacturer of a site controller  
24 to provide the commission with the ability to review and audit  
25 electronic pull-tab bingo sales data;

26 (2) the recording and reporting of:

27 (A) revenue generated from the play of electronic

1 pull-tab bingo;

2 (B) all stored but unplayed electronic pull-tab  
3 bingo tickets or prizes; and

4 (C) all electronic pull-tab bingo tickets played  
5 and total prizes awarded;

6 (3) if a player account card is used, the recording and  
7 tracking of player account information, including electronic  
8 credits purchased, played, won, or otherwise available for play for  
9 electronic bingo games authorized by this chapter and electronic  
10 credits redeemed for cash; and

11 (4) the retention of data necessary for audit  
12 compliance under this chapter, including a requirement that the  
13 data be retained electronically for one year.

14 (b) The commission may investigate a violation or alleged  
15 violation of this chapter.

16 SECTION 8.07. Subchapter I, Chapter 2001, Occupations Code,  
17 is amended by adding Sections 2001.421 and 2001.422 to read as  
18 follows:

19 Sec. 2001.421. PRIZE FEE, PAYOUT PERCENTAGE, AND REVENUE  
20 DEDICATION FOR ELECTRONIC PULL-TAB BINGO. (a) A licensed  
21 authorized organization shall collect from a person who wins an  
22 electronic pull-tab bingo prize of more than \$5 a fee in the amount  
23 of five percent of the amount or value of the prize and shall remit a  
24 fee in the amount of five percent for all prizes awarded as a result  
25 of an electronic pull-tab bingo game.

26 (b) The prize payout percentage for an electronic pull-tab  
27 bingo game may not be less than the prize payout percentage

1 established for a paper pull-tab bingo game.

2 (c) The revenue received by the state from the fee imposed  
3 by Subsection (a) shall be used to finance the public primary and  
4 secondary schools of this state or to reduce public school property  
5 taxes, or both, as provided by the General Appropriations Act or  
6 other law.

7 Sec. 2001.422. NO EXCLUSIVE VENDOR FOR ELECTRONIC PULL-TAB  
8 BINGO. The commission may not require that electronic pull-tab  
9 bingo be provided by a single vendor.

10 SECTION 8.08. Subchapter I, Chapter 2001, Occupations Code,  
11 is amended by adding Section 2001.423 to read as follows:

12 Sec. 2001.423. In addition to the other provisions  
13 contained in this chapter, electronic pull-tab bingo may be allowed  
14 only under the following circumstances:

15 (1) at a location authorized by the commission as of  
16 January 1, 2005, that is owned by a governmental agency where bingo  
17 is conducted;

18 (2) at a location that was owned by a licensed  
19 authorized organization where bingo was authorized to be conducted  
20 on January 1, 2005; and

21 (3) under a license held by a licensed commercial  
22 lessor whose license was in effect as of January 1, 2005, and whose  
23 license has been in effect continuously since that date.

24 SECTION 8.09. The legislature finds and declares the  
25 following:

26 (1) In light of the state's need to reduce school  
27 property taxes and finance the public schools, the Texas Lottery

1 Commission must be authorized to commence implementation and  
2 authorization of electronic pull-tab bingo games in accordance with  
3 changes to Chapter 2001, Occupations Code, as amended by this  
4 article, at the earliest possible date, consistent with legislative  
5 directive.

6 (2) The implementation of electronic pull-tab bingo  
7 described as authorized by Chapter 2001, Occupations Code, as  
8 amended by this article, may require significant time, including  
9 analysis and testing of electronic monitoring terminals,  
10 electronic pull-tab bingo tickets, site controllers, point-of-sale  
11 stations, and card-minding devices in order to establish the  
12 electronic pull-tab bingo system.

13 (3) The state's need for school finance reform and to  
14 reduce property taxes constitutes an imminent peril to the public  
15 welfare, requiring the adoption of rules and authorization for the  
16 Texas Lottery Commission to conduct certain pre-implementation  
17 activities related to regulating electronic pull-tab bingo to  
18 ensure:

19 (A) that the increase in state revenue from the  
20 prize fees derived from the conduct of electronic pull-tab bingo  
21 games is realized as soon as possible to further the public interest  
22 in reforming the public school finance system and property tax  
23 reduction; and

24 (B) that bingo is fairly conducted and the  
25 proceeds derived from bingo are used for an authorized purpose and  
26 to promote and ensure the integrity, security, honesty, and  
27 fairness of the electronic pull-tab bingo system.

1           (4) In order to commence operation of electronic  
2 pull-tab bingo, as authorized by the amendments in this article to  
3 Chapter 2001, Occupations Code, the Texas Lottery Commission may  
4 conduct limited pre-implementation acts as necessary to ensure the  
5 prompt approval of the electronic pull-tab bingo equipment after  
6 the effective date of this article.

7           (5) Before the effective date of the changes made in  
8 this article to Chapter 2001, Occupations Code, the Texas Lottery  
9 Commission may request and receive information related to  
10 applications for licensing and testing of electronic pull-tab bingo  
11 components as authorized under Chapter 2001, Occupations Code, as  
12 amended by this article.

13           SECTION 8.10. The Texas Lottery Commission may expend money  
14 from the commission's appropriations for the 2006-2007 biennium for  
15 purposes of conducting pre-implementation activities to implement  
16 the changes made by this article in Subchapter I, Chapter 2001,  
17 Occupations Code, including the development and approval of forms  
18 for applications for licensing and testing of electronic pull-tab  
19 bingo equipment authorized under Chapter 2001, Occupations Code, as  
20 amended by this article.

21           SECTION 8.11. (a) Not later than December 1, 2005, the  
22 Texas Lottery Commission shall adopt rules necessary to implement  
23 the changes in law made to Chapter 2001, Occupations Code, by this  
24 article.

25           (b) Notwithstanding any other law, the following provisions  
26 apply to the procedures for adoption of the rules required by  
27 Subsection (a):

1           (1) The commission shall give at least 15 days' notice  
2 of its intention to adopt a rule before it adopts the rule pursuant  
3 to this section.

4           (2) A rule adopted pursuant to this section takes  
5 effect on the date it is filed in the office of the secretary of  
6 state.

7           (3) The commission shall notify all holders of a  
8 manufacturer's license of the adoption of a rule pursuant to this  
9 section within 10 days of adoption.

10          (4) To the extent the provisions of this section are  
11 inconsistent with Subchapter B, Chapter 2001, Government Code, this  
12 section prevails.

13           ARTICLE 9. EFFECTS OF IMPLEMENTATION; EFFECTIVE DATE

14           SECTION 9.01. SPECIAL REPORT ON EFFECTS OF CERTAIN TAX  
15 POLICIES ON PERSONAL INCOME AND BUSINESSES. (a) The comptroller of  
16 public accounts shall prepare a report that provides a  
17 comprehensive analysis of the effects of tax policies adopted by  
18 the 79th Legislature, 1st Called Session, on the personal income of  
19 residents of this state and on businesses in this state. Not later  
20 than October 15, 2006, the comptroller shall submit the report to  
21 the governor, lieutenant governor, speaker of the house of  
22 representatives, and each other member of the legislature.

23           (b) The report required under Subsection (a) of this section  
24 must include at least the following information with respect to  
25 business taxes enacted or significantly reformed by the 79th  
26 Legislature, 1st Called Session:

27           (1) the total amount of the tax revenue collected from

1 businesses between the effective date of this Act and the date of  
2 the report;

3 (2) a profile of the businesses that paid the taxes by:

4 (A) the number of employees;

5 (B) the two-digit standard industrial  
6 classification; and

7 (C) for the period described by Subdivision (1)  
8 of this subsection:

9 (i) the total amount of wages paid and,  
10 reported separately, the total amount of taxable wages paid;

11 (ii) the total amount of profits made and,  
12 reported separately, the total amount of taxable profits made;

13 (iii) the total amount of taxes paid; and

14 (iv) any credits used to reduce tax  
15 liability;

16 (3) the percentage of the taxes that were paid by  
17 businesses with fewer than 100 employees;

18 (4) an estimate of the number and wages of workers not  
19 covered by the taxes; and

20 (5) an estimate of the number, two-digit standard  
21 industrial classification, and profits of, and an estimate of the  
22 wages paid by, businesses not covered by the taxes.

23 (c) The report required under Subsection (a) of this section  
24 must also include at least the following:

25 (1) with respect to major legislation enacted by the  
26 79th Legislature, 1st Called Session, a tax incidence analysis,  
27 categorized by industry sector and family income level, of the

1 effects of:

2 (A) any reduction in school district tax rates;

3 (B) any changes in business taxation;

4 (C) any changes in property taxation;

5 (D) any increase in the rate of the sales tax on  
6 the sales tax base as compared to the sales tax base that existed on  
7 January 1, 2005;

8 (E) any repeal of a sales tax exemption or  
9 exclusion;

10 (F) any increase in the rate of the motor vehicle  
11 sales and use tax;

12 (G) any increase in the rate of the boat and boat  
13 motor sales and use tax;

14 (H) any tax imposed on the sale of discretionary  
15 food and drink items;

16 (I) any increase in rate of the cigarette, cigar,  
17 or tobacco products tax; and

18 (J) any other changes in major state taxes; and

19 (2) with respect to residents of this state who  
20 itemize deductions on their federal income tax returns, an  
21 analysis, categorized by income level, of:

22 (A) the amount of state sales taxes deducted from  
23 those persons' federal income taxes; and

24 (B) the difference between the federal income tax  
25 deductions for property taxes paid that were claimed by those  
26 persons before property tax rate reductions were enacted by the  
27 79th Legislature, 1st Called Session, and the federal income tax



1 deductions for property taxes paid that were claimed by those  
2 persons after those reductions were enacted.

3 (d) Not later than October 15, 2008, the comptroller of  
4 public accounts shall:

5 (1) update the information contained in the report  
6 submitted under this section; and

7 (2) submit the updated report to the persons listed in  
8 Subsection (a) of this section.

9 SECTION 9.02. (a) Except as provided by Subsections (b) and  
10 (c) of this section, this Act takes effect September 1, 2005, if  
11 this Act receives a vote of two-thirds of all the members elected to  
12 each house, as provided by Section 39, Article III, Texas  
13 Constitution. If this Act does not receive the vote necessary for  
14 effect on that date, this Act takes effect November 1, 2005.

15 (b) If a section, part, or article of this bill provides a  
16 different effective date than provided by Subsection (a) of this  
17 section, that section, part, or article takes effect according to  
18 its terms.

19 (c) This Act takes effect only if \_\_\_\_ Bill No. \_\_, Acts of  
20 the 79th Legislature, 1st Called Session, 2005, becomes law. If  
21 that bill does not become law, this Act has no effect.