

## **BILL ANALYSIS**

Senate Research Center

H.B. 3  
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Finance  
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Engrossed

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

The property tax costs Texans more than any other state or local tax. In tax year 2003, 3,702 local taxing units levied almost \$29 billion in property taxes, of which school districts accounted for more than 60 percent, according to the comptroller of public accounts. From 1985-2003, the school district property tax levy increased by approximately 260 percent. Currently, Texas ranks 45th among the states in terms of homeownership levels. The high property tax burden impairs Texans' ability to own their own homes.

H.B. 3 raises state revenue to fund a significant property tax reduction for Texas taxpayers.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1H.01 (Section 542.405, Transportation Code), SECTION 2.01 (Sections 251.002, 251.0025, 251.019, and 251.020, Tax Code), SECTION 2.05 (Section 171.0013, Tax Code), SECTION 3B.07 (Section 152.0412, Tax Code), and SECTION 3D.01 (Section 164.053, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. PROPERTY TAXATION

##### PART A. LIMITATION ON SCHOOL DISTRICT TAX RATE

SECTION 1A.01. Amends Section 45.003, Education Code, by amending Subsection (d) and adding Subsections (e) and (f), as follows:

(d) Requires a proposition submitted to authorize the levy of maintenance taxes to include the question of whether the governing board or commissioners court may levy, assess, and collect annual ad valorem taxes for the further maintenance of public schools, at a rate not to exceed the rate, which may not be more than \$.997, rather than \$1.50, on the \$100 valuation of taxable property in the district, stated in the proposition.

(e) Provides that an election held before September 1, 2005, authorizing a maintenance tax at a rate of at least \$.997 on the \$100 valuation of taxable property in the district is sufficient to authorize a rate not to exceed \$.997.

(f) Authorizes a district permitted by special law on January 1, 2005, to impose an ad valorem tax at a rate greater than \$1.50, to continue to impose a rate that is \$.503 less than the rate previously authorized.

##### PART B. BUY-DOWN OF SCHOOL DISTRICT TAXES

SECTION 1B.01. Amends Chapter 403, Government Code, by adding Subchapter O, as follows:

#### SUBCHAPTER O. DISTRIBUTION OF INCREASES IN AVAILABLE STATE REVENUE FOR SCHOOL DISTRICT TAX RATE REDUCTION

Sec. 403.351. DEFINITIONS. Defines "available state revenue" and "increase in available state revenue."

Sec. 403.352. CERTIFICATION OF INCREASE IN AVAILABLE STATE REVENUE. Requires the comptroller of public accounts (comptroller), in the statement required by Section 49a, Article III, Texas Constitution, to certify the amount, if any, of the increase in available state revenue for the succeeding fiscal biennium and the total amount of school district maintenance and operations taxes levied under Section 3(e), Article VII, Texas Constitution, for the tax year beginning in the second year of the current fiscal biennium.

Sec. 403.353. DISTRIBUTION OF AVAILABLE STATE REVENUE FOR TAX RATE REDUCTION. (a) Requires the comptroller, for the fiscal biennium following a certification under Section 403.352, to distribute to the school districts in this state for tax rate reduction an amount of available state revenue that is equal to the sum of 15 percent of the increase in available state revenue for the current fiscal biennium certified under Section 403.352 and the amount of available state revenue distributed in the preceding fiscal biennium under this section for school district tax rate reduction.

(b) Requires the comptroller to distribute the amount required by Subsection (a) in equal amounts in each fiscal year of the fiscal biennium. Sets forth the method for determining the apportionment among the school districts.

(c) Requires the money received by each school district under this section to be applied to reducing the rollback tax rate of the district, as provided by Section 26.08 (Election to Ratify School Taxes), Tax Code.

SECTION 1B.02. Amends Subchapter E, Chapter 42, Education Code, by adding Section 42.2518, as follows:

Sec. 42.2518. ADDITIONAL STATE AID FOR PROPERTY TAX RELIEF. (a) Entitles a school district, for any school year, to additional state aid to the extent that an increase in the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302 applicable to that school year does not compensate the district for a reduction in district ad valorem tax revenue caused by ad valorem tax rate reduction made pursuant to Subchapter O, Chapter 403, Government Code.

(b) Provides that a determination by the commissioner of education under this section is final and may not be appealed.

SECTION 1B.03. Amends Sections 26.08(i) and (k), Tax Code, as follows:

(i) Includes the state funds for property tax rate relief that will be distributed to the district under Subchapter O, Chapter 403, Government Code, in addition to the state funds under Chapter 42, Education Code, in the calculation of the rollback tax rate of a school district. Makes a conforming change.

(k) Makes conforming changes. Deletes the references to the 2003 and 2004 tax years.

#### PART C. MANDATORY SALES PRICE DISCLOSURE

SECTION 1C.01. Amends the heading to Subchapter C, Chapter 22, Tax Code, to read as follows:

#### SUBCHAPTER C. REPORTS OF POLITICAL SUBDIVISION ACTIONS

SECTION 1C.02. Amends Chapter 22, Tax Code, by adding Subchapter D, as follows:

#### SUBCHAPTER D. REPORT OF SALES PRICE

Sec. 22.61. SALES PRICE DISCLOSURE REPORT. (a) Requires the purchaser or grantee of real property under a recorded deed conveying an interest in the real property, except as provided by Subsection (b), not later than the 10th day after the date the deed is recorded in the county real property records, to file a sales price disclosure report with the chief appraiser of the appraisal district established for the county in which the property is located.

(b) Sets forth the sales and transfers of real property to which this section does not apply.

(c) Requires the sales price disclosure report to be signed by the purchaser or grantee of the real property described in the report.

Sec. 22.62. REPORT FORM. (a) Sets forth the required form for a sales price disclosure report filed under this subchapter.

(b) Requires the appraisal district to include at the end of the form instructions for the filing of the form by certain means.

(c) Requires each appraisal district to prepare and make available sales price disclosure report forms that conform to the requirements of this section. Provides that no additional information may be required to be included in a sales price disclosure report form, except for instructions for the filing of the form.

(d) Requires each county clerk's or combined county and district clerk's office to provide at no charge a sales price disclosure report form to each grantee or agent of a grantee who appears in person and tenders a deed to real property for recording. Requires the sales price disclosure form to be the form that is prepared and made available by the appraisal district established for the county in which the property is located.

(e) Requires the county clerk or the combined county and district clerk, at the end of a calendar month in which a deed to real property has been recorded in the deed records of the county, to provide the appraisal district established for the county with a copy of the grantee index or a report or list of deeds to real property filed for recording in that month.

Sec. 22.63. FILING AND RECEIPT OF REPORT. (a) Sets forth the methods by which a purchaser or grantee may file a sales price disclosure report with the chief appraiser.

(b) Requires the chief appraiser, on receipt of the report, to provide to the purchaser or grantee a written acknowledgment of receipt. Requires the chief appraiser, if the acknowledgment of receipt is mailed, to mail it to the purchaser or grantee at the address provided in the report.

Sec. 22.64. PREPARATION OF REPORT; IMMUNITY FROM LIABILITY. (a) Requires a sales price disclosure report to be prepared by certain persons.

(b) Provides that a title insurance company, lender, real estate agent, or attorney who prepares a sales price disclosure report is not liable to any person for preparing the report or for any unintentional errors or omissions in the report.

(c) Requires the applicable title insurance company, lender, real estate agent, or attorney to provide a sales price disclosure report form and filing instructions to each purchaser or grantee of real property, unless certain conditions apply.

Sec. 22.65. ACTION TO COMPEL COMPLIANCE. Requires the chief appraiser to bring an action for an injunction to compel a person to comply with the requirements of this subchapter. Requires the court, on finding that this subchapter applies and that the person has failed to comply with its requirements, to order the person to comply and authorizes the court to assess costs and reasonable attorney's fees against the person.

SECTION 1C.03. Amends Section 23.013, Tax Code, to authorize the chief appraiser to use information contained in a sales price disclosure report filed under Subchapter D, Chapter 22, in determining the market value of real property. Prohibits the chief appraiser from increasing the market value of the real property solely on the basis of the report. Creates a subsection from existing text.

#### PART D. CONFIDENTIALITY OF CERTAIN APPRAISAL INFORMATION

SECTION 1D.01. Amends Chapter 25, Tax Code, by adding Section 25.027, as follows:

Sec. 25.027. CONFIDENTIALITY OF PHOTOGRAPHS OF CERTAIN RESIDENTIAL PROPERTY. (a) Provides that photographs or floorplans of an improvement to real property that is designed primarily as use as a residence contained in appraisal records are confidential information, only available for the official use of certain entities and officials.

(b) Provides that this section does not apply to certain aerial photographs.

#### PART E. TEXAS ECONOMIC DEVELOPMENT ACT

SECTION 1E.01. Amends Section 313.051, Tax Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Provides that, notwithstanding Subsection (a), if on January 1, 2002, this chapter (Texas Economic Development Act) applied to a school district in whose territory is located a federal nuclear facility, this subchapter (Limitation on Appraised Value of Property in Certain Rural School Districts) continues to apply to the school district regardless of whether the school district ceased or ceases to be described by Subsection (a) after that date.

(b) Requires certain property owners to create only at least 10 new jobs on the owner's qualified property, 10 percent, rather than 80 percent, of which must be qualifying jobs as defined by Section 313.021(3) (certain full-time, permanent jobs with certain salaries and health benefit plans).

SECTION 1E.02. Makes application of Section 313.051(b), Tax Code, as amended by this part, prospective.

#### PART F. PROPERTY TAX RELIEF FOR CULTURALLY SIGNIFICANT SITES

SECTION 1F.01. Amends Section 11.24, Tax Code, as follows:

Sec. 11.24. New heading: HISTORIC AND CULTURALLY SIGNIFICANT SITES. Adds structures or archeological sites designated as culturally significant sites to the list of structures and sites that may be exempted from taxation.

SECTION 1F.02. Makes the change in law made by SECTION 1F.01 prospective to a tax year that begins on or after the effective date of this Act.

SECTION 1F.03. Effective date of this part: upon passage or the 91st day after adjournment.

#### PART G. INFORMATION ON TAX BILLS RELATING TO PROPERTY VALUES AND TAXES

SECTION 1G.01. Amends Section 31.01, Tax Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Adds Subdivision (11) to require the tax bill or a separate statement accompanying the tax bill, for real property, to state for the current tax year and each of the preceding five tax years the appraised value and taxable value of the property, the total tax rate for the

unit, the amount of taxes imposed on the property by the unit, and the difference, expressed as a percent increase or decrease, as applicable, in the amount of taxes imposed on the property by the unit compared to the amount imposed for the preceding tax year. Adds Subdivision (12) to require the tax bill or a separate statement accompanying the tax bill, for real property, to state the differences, expressed as a percent increase or decrease, as applicable, in the following for the current tax year as compared to the fifth tax year before that tax year: the appraised value and taxable value of the property, the total tax rate for the unit, and the amount of taxes imposed on the property by the unit. Redesignates existing Subdivision (11) as Subdivision (13) and makes a nonsubstantive change.

(c-1) Requires the tax bill or statement, if information from the preceding six tax years required by Subsection (c)(11) or (12) to be included in the tax bill or separate statement is not available, to state that the information is not available for that year. Provides that this subsection expires December 31, 2011.

#### PART H. DEPOSIT OF CERTAIN TRAFFIC PENALTIES IN FOUNDATION SCHOOL PROGRAM

SECTION 1H.01. Amends Subchapter D, Chapter 542, Transportation Code, by adding Section 542.405, as follows:

Sec. 542.405. DEPOSIT OF REVENUE FROM CERTAIN TRAFFIC PENALTIES FOR FOUNDATION SCHOOL PROGRAM. (a) Defines "photographic traffic signal enforcement system."

(b) Provides that this chapter applies only to the civil or administrative penalties relating to certain violations of traffic laws recorded by certain photographic traffic signal enforcement systems.

(c) Authorizes the local authority, of the gross amount received from the imposition of a civil or administrative penalty against the owner of a motor vehicle, to retain \$1 and remit the remainder to the comptroller for deposit to the credit of the foundation school fund.

(d) Requires the comptroller to adopt rules and forms to implement and enforce this section.

SECTION 1H.02. Provides that Section 542.405, Transportation Code, as added by this part, applies to revenue received by a local authority unit of this state from the imposition of a civil or administrative penalty on or after the effective date of this article, regardless of when the penalty was imposed.

#### PART I. SPLIT PAYMENT OF RESIDENCE HOMESTEAD TAXES

SECTION 1I.01. Amends Section 31.03, Tax Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes the governing body of a taxing unit that collects its own taxes to provide, in a certain manner, that a person who pays one-half of the unit's taxes on the taxpayer's residential homestead, as defined in Section 11.13, before December 1 may pay the remaining one-half of the taxes without penalty or interest before July 1 of the following year.

(e) Provides that the split payment option for residential homesteads set forth in Subsection (d) applies to taxes for all units for which the adopting taxing unit collects taxes.

#### PART J. AD VALOREM TAXATION--RAIL FACILITY

SECTION 1J.01. (a) Amends Section 25.07(b), Tax Code, to prohibit a leasehold or other possessory interest in exempt property from being listed if the property is part of a rail facility owned by certain rural transportation districts. Makes nonsubstantive changes.

(b) Makes application of this section prospective to appraisal records for a tax year that begins on or after January 1, 2006.

(c) Effective date of this section: January 1, 2006.

#### PART K. EFFECTIVE DATES

SECTION 1K.01. (a) Requires each appraisal district, as soon as practicable after the effective date of this Act, but not later than September 1, 2005, to prepare and make available sales price disclosure report forms as provided by Section 22.62, Tax Code, as added by this article.

(b) Makes application of Subchapter D, Chapter 22, Tax Code, as added by this article, prospective to a sale of real property that occurs on or after September 1, 2005.

SECTION 1K.02. Provides that Section 25.027, Tax Code, as added by this article, prohibits the disclosure of information in appraisal records made confidential under that section only on or after the effective date of that section.

SECTION 1K.03. (a) Provides that this article takes effect January 1, 2006, except as provided by this section, and applies only to an ad valorem tax year that begins on or after that date.

(b) Effective date of this section and Part D of this article: upon passage or the 91st day after adjournment.

#### ARTICLE 2. REFORMED FRANCHISE TAX

SECTION 2.01. Amends Title 2, Tax Code, by adding Subtitle K, as follows:

##### SUBTITLE K. REFORMED FRANCHISE TAX

##### CHAPTER 251. REFORMED FRANCHISE TAX

Sec. 251.001. DEFINITIONS. Defines "business," "calendar quarter," "commission," "compensation fund," "contribution," "employer," "taxable business," and "wages."

Sec. 251.002. RULES. Authorizes the comptroller to adopt rules to implement and administer this chapter.

Sec. 251.0025. RULES: AVOIDANCE OF DOUBLE TAXATION. (a) Requires the comptroller to adopt rules that work in conjunction with the rules adopted under Section 171.0013, so that when a taxable business entity is owned through an ownership chain, whether or not each entity in the chain is subject to taxation under this chapter, the direct and indirect owners of the taxable business entity are not subject to taxation with respect to the same wages.

(b) Provides that the avoidance of double taxation rules adopted under this section shall apply regardless of whether the direct or indirect owner itself elects to be subject to the tax under this chapter, is subject to the tax under Chapter 171 (Franchise Tax), or is exempt from taxation under this chapter or Chapter 171.

Sec. 251.003. LOCATION OF SERVICE. (a) Sets forth the circumstances under which the tax imposed by this chapter applies to wages for a service performed in this state or in and outside this state.

(b) Sets forth the circumstances under which the tax imposed by this chapter applies to wages for a service performed anywhere in the United States.

(c) Provides that the tax imposed by this chapter applies to wages for a service performed outside the United States by a citizen of the United States.

(d) Defines, for purposes of this section, when service is localized in a state. Defines, for purposes of this section, a service that is "incidental."

Sec. 251.004. **TAXABLE BUSINESS.** Provides that, subject to Section 251.007, the tax imposed by this chapter applies only to a business that is an employer that pays or is required to pay a contribution under Subtitle A (Texas Unemployment Compensation Act), Title 4, Labor Code.

Sec. 251.005. **ELECTION OF TAXES.** (a) Authorizes a business, except as otherwise provided by this section, to elect to pay the tax imposed under this chapter or the tax imposed under Chapter 171.

(b) Requires a business that is wholly or partially in the business of leasing employees, except as provided by Subsection (b-1) to pay the tax under this chapter. Provides that for the purposes of this chapter and Chapter 171, the business is considered to have elected the tax under this chapter.

(b-1) Authorizes certain businesses described by Subsection (b), notwithstanding Subsection (b), to elect to pay either the tax imposed under this chapter or the tax imposed under Chapter 171.

(c) Prohibits a business that does not have any employees in this state from electing to pay the tax under this chapter.

(d) Requires the comptroller to promulgate a form for a business to use to make an election under this section.

(e) Prohibits the election from being changed until after the third anniversary of the date the election is made.

Sec. 251.006. **TAX IMPOSED.** Provides that if a business elects to pay the tax under this chapter, the tax is imposed on the business for each employee for whom the business pays or is required to pay a contribution for a calendar quarter without regard to whether the employee is full-time or part time and whether the wages paid were for the entire calendar quarter or a portion of the calendar quarter.

Sec. 251.007. **TAX IMPOSED ON EMPLOYERS.** (a) Provides that notwithstanding Section 251.006, if a business elects to pay the tax under this chapter, the tax is imposed on the business for each individual who performs a service for the business for compensation, without regard to whether the business pays a contribution for a calendar quarter for the individual, if the individual is an employee of the business as provided by this section for all or a part of the calendar quarter.

(b) Provides that an individual is an employee of a business for purposes of this section if the business has a right to direct and control how the individual performs the service for which the individual is provided compensation. Sets forth certain factors which indicate whether the business has this right to direct and control.

Sec. 251.008. **BASE AMOUNT OF WAGES.** Defines the base amount of wages for each employee as the total amount of wages paid to the employee during the calendar quarter.

Sec. 251.009. **RATE.** (a) Provides that, except as provided by Subsection (b), the rate of tax for a business that elects to pay the tax under this chapter is equal to 1.15 percent of the base amount of wages for each employee as determined under Section 251.008.

(b) Sets forth the tax rate for a corporation that elects to pay the tax under this chapter and had no employees in this state at any time between January 1, 2004, and January 1, 2005, but currently has employees in this state.

(c) Provides that Subsection (b) expires December 31, 2008.

Sec. 251.010. EXEMPTION FOR GOVERNMENTAL ENTITIES. Provides that the tax imposed under this chapter does not apply to a governmental entity.

Sec. 251.011. EXEMPTION FOR SMALL BUSINESS. Provides that certain small businesses are exempt from taxes imposed under this chapter for years in which the gross receipts are less than or equal to \$150,000.

Sec. 251.012. EXEMPTION FOR CERTAIN CHARITIES. (a) Provides that the tax imposed under this chapter does not apply to an organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) of that code.

(b) Authorizes certain organizations exempt from federal income tax under Section 501(a) of the Internal Revenue code of 1986 by being listed under a provision of Section 501(c), other than Section 501(c)(3), to elect to pay the tax under this chapter or pay the tax under Chapter 171. Authorizes the organization, if it elects to pay the tax under Chapter 171, and Chapter 171 provides that the organization is exempt from taxation under that chapter, to claim or continue to claim that exemption in the manner provided by Chapter 171.

Sec. 251.013. TAX NOT DEDUCTED FROM WAGES. Prohibits a taxable business from deducting the tax imposed under this chapter from any wages of the taxable business's employees.

Sec. 251.014. CRIMINAL PENALTY. Provides that a person who violates Section 251.013 commits an offense, which is a Class A misdemeanor.

Sec. 251.015. CIVIL PENALTY. (a) Provides that a person who violates Section 251.013 is liable to the state for a civil penalty not to exceed \$500 for each violation. Provides that each day a violation continues may be considered a separate violation for purposes of a civil penalty assessment.

(b) Provides for a civil penalty equal to twice the tax owed if a person fails to pay the tax imposed by this chapter on wages of an individual whom the person determines to be not an employee for purposes of this chapter, unless the person can demonstrate that there was a reasonable basis for the determination.

(c) Requires the attorney general, on request of the comptroller, to file suit to collect a penalty under this section.

Sec. 251.016. REPORTS AND PAYMENT. (a) Requires each taxable business, on or before the last day of the month immediately following each calendar quarter, to file a report on wages in a form prescribed by the Texas Workforce Commission.

(b) Sets forth the due dates, manner of collection, and penalties and interest of the tax imposed under this chapter.

(c) Requires the Texas Workforce Commission, to the extent practicable, to combine the reporting and payment contributions and the reporting and payment of the tax imposed under this chapter.

Sec. 251.017. ENFORCEMENT. Authorizes the comptroller to enforce the collection of the tax under this chapter as provided by Subtitles A and B.



Sec. 251.018. DISPOSITION OF PROCEEDS. Requires all proceeds from the collection of taxes imposed under this chapter to be deposited to the credit of the general revenue fund.

Sec. 251.019. CREDITS AGAINST INSURANCE PREMIUM TAXES. (a) Entitles a business that pays insurance premium taxes under Subtitle B (Insurance Premium Taxes), Title 3, Insurance Code, and elects to pay the tax under this chapter to a credit of the entire amount of tax paid under this chapter against any premium tax that the business may owe, subject to Subsection (b).

(b) Prohibits a business from receiving a credit in an amount that exceeds the amount of the tax or assessment due after applying any other credits. Authorizes the business to carry any unused credit forward for not more than five years, and prohibits the business from receiving a credit, at any time, in an amount that exceeds the amount of the tax or assessment due, after applying any other credits.

(c) Prohibits the business from conveying, assigning, or transferring the credit allowed under this section to another entity unless all of the assets of the business are conveyed, assigned, or transferred in the same transaction.

(d) Requires the comptroller to adopt rules to implement this section.

Sec. 251.0195. PROVISIONS APPLICABLE TO CERTAIN BUSINESSES. (a) Provides that, notwithstanding Section 251.019, a business that may owe insurance premium taxes under Subtitle B, Title 3, Insurance Code, is not entitled to a credit of the taxes paid under this chapter against any tax imposed on those gross receipts.

(b) Provides that a tax paid under this chapter by a taxable business that may owe insurance premium taxes is considered a disallowed expense for purposes of Article 5.13-2 (Rates and Forms for Certain Property and Casualty Insurance), Insurance Code, and may not be included by the taxable business in determining insurance rates or premiums.

Sec. 251.020. CREDITS FOR CERTAIN PROVIDERS OF HEALTH CARE SERVICES. (a) Entitles certain taxable health care businesses that participate in either the Medicaid program or the Medicare program as a provider of health care services and that receive not less than 15 percent of the business's revenue during a calendar quarter from payments received under the Medicaid or Medicare program to a credit in the amount provided by Subsection (b) against the taxes imposed under this chapter, except as provided by Subsection (f).

(b) Sets forth the amount of the credit as 40 percent of the total amount of payments the taxable business received from payments under the Medicaid and Medicare programs during the calendar quarter that can be verified, if necessary.

(c) Prohibits a taxable business from receiving a credit in an amount that exceeds the amount of the tax or assessment due after applying any other credits.

(d) Prohibits a taxable business from conveying, assigning, or transferring the credit allowed under this section to another entity unless all of the assets of the business are conveyed, assigned, or transferred in the same transaction.

(e) Requires the comptroller to adopt rules to implement this section. Requires the Health and Human Services Commission to assist the comptroller in the formulation and adoption of the rules.

(f) Prohibits a taxable business that participates in the Medicaid or Medicare program as providers of durable medical equipment or as vendors of pharmaceuticals from counting payments received for those services for purposes of qualifying for the exemption under this section.

Sec. 251.0205. APPLICATION OF HEALTH CARE CREDIT TO OTHER PROVIDERS. (a) Defines "physician."

(b) Applies the credit provided by Section 251.020 to a physician that participates in the Medicaid program, the Medicare program, or the Children's Health Insurance Program as a provider of health care services and that receives not less than 15 percent of the provider's revenues during a calendar quarter from payments received under any of those programs, or any combination of the three programs.

SECTION 2.02. Amends Section 171.001(a), Tax Code, to specify that a franchise tax is imposed on certain entities, subject to Section 171.0012. Makes a nonsubstantive change.

SECTION 2.03. Amends Section 171.001(b)(3), Tax Code, to redefine "corporation."

SECTION 2.04. Amends Section 171.001, Tax Code, by adding Subsection (d), to set forth the criteria for determining, for purposes of Subsection (a), whether a foreign corporation does business in this state.

SECTION 2.05. Amends Subchapter A, Chapter 171, Tax Code, by adding Sections 171.0012 and 171.0013, as follows:

Sec. 171.0012. ELECTION OF TAXES. (a) Authorizes a corporation, except as provided by Subsection (b), to elect to pay the tax imposed under this chapter or the tax imposed under Chapter 251.

(b) Prohibits a business that is in the business of leasing employees from electing to pay the tax imposed under this chapter and requires the business to pay the tax imposed under Chapter 251.

(c) Requires the comptroller to promulgate a form for a corporation to use to make an election under this section. Requires certain corporations to obtain certain signatures on the election form. Sets forth required provisions of the election form.

(d) Prohibits the election from being changed until after the third anniversary of the date the election is made.

Sec. 171.0013. RULES: AVOIDANCE OF DOUBLE TAXATION. Requires the comptroller to adopt rules that shall work in conjunction with the rules adopted under Section 251.0025, so that when a corporation is owned through an ownership chain, whether or not each entity in the chain is subject to taxation under this chapter, the direct and indirect owners of the corporation are not subject to taxation with respect to the same taxable earned surplus.

(b) Provides that the avoidance of double taxation rules adopted under this section shall apply regardless of whether the direct or indirect owner elects to be subject to the tax under Chapter 251, is subject to the tax under this chapter, or is exempt from taxation under Chapter 251 or this chapter.

SECTION 2.06. Amends Section 171.110, Tax Code, by adding Subsections (m)-(o), as follows:

(m) Disallows certain payments to related entities, notwithstanding any other provision of this chapter, in determining net taxable earned surplus, to the extent that those payments exceed arm's-length rates and terms.

(n) Sets forth the powers of the comptroller with respect to Subsection (m).

(o) Defines "arm's-length rates and terms."

SECTION 2.07. Amends Chapter 111, Tax Code, by adding Subchapter H, as follows:

**SUBCHAPTER H. FORFEITURE OF THE RIGHT TO  
TRANSACTION BUSINESS IN THIS STATE**

Sec. 111.401. **APPLICABILITY OF SUBCHAPTER.** Sets forth to which taxpayer business entities and persons this subchapter applies.

Sec. 111.402. **APPLICATION TO NONCORPORATE ENTITIES.** Authorizes the comptroller, for certain reasons and using certain procedures, to forfeit the right to transact business in this state, or forfeit the certificate or registration, of entities to which this subchapter applies and that are subject to a tax imposed by this title. Provides that the provisions of this subchapter that apply to the forfeiture of a corporation's corporate privileges and charter or certificate of authority apply to the forfeiture of another entity's right to transact business in this state and certificate or registration.

Sec. 111.403. **FORFEITURE OF CORPORATE PRIVILEGES.** Requires the comptroller to forfeit the corporate privileges of a corporation on which a tax is imposed under this title if the corporation fails to file a report required by this title in accordance with this title and on or before the 45th day after the date notice of forfeiture is mailed, or fails to pay a tax imposed by this title or a penalty imposed relating to that tax on or before the 45th day after the date notice of forfeiture is mailed.

Sec. 111.404. **EFFECTS OF FORFEITURE.** Provides that if the corporate privileges of a corporation are forfeited under this subchapter the corporation shall be denied the right to sue or defend in a court of this state and each director or officer of the corporation is liable for a debt of the corporation.

Sec. 111.405. **SUIT ON CAUSE OF ACTION ARISING BEFORE FORFEITURE.** Prohibits affirmative relief from being granted to a corporation, in a suit against a corporation arising before the forfeiture of corporate privileges, unless its corporate privileges are revived under this subchapter.

Sec. 111.406. **EXCEPTION TO FORFEITURE.** Provides that the forfeiture of the corporate privileges of a corporation does not apply to the privilege to defend in a suit to forfeit the corporation's charter or certificate of authority.

Sec. 111.407. **LIABILITY OF DIRECTOR AND OFFICERS.** (a) Sets forth the debts for which each director or officer of the corporation is liable, if the corporate privileges of a corporation are forfeited for the failure to file a report or pay a tax or penalty imposed under this title.

(b) Provides that the liability of a director or officer is in the same manner and to the same extent as if the director or officer were a partner and the corporation were a partnership.

(c) Sets forth the circumstances in which a director or officer is not liable for a debt of the corporation.

(d) Provides that, if a corporation's charter or certificate of authority and its corporate privileges are forfeited and revived under this subchapter, the liability under this section of a director or officer of the corporation is not affected by the revival.

Sec. 111.408. **NOTICE OF FORFEITURE.** (a) Requires the comptroller, if the comptroller proposes to forfeit the corporate privileges of a corporation, to notify the corporation that the forfeiture will occur without judicial proceeding unless the corporation files the delinquent report or pays the delinquent tax or penalty within a certain timeframe.

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

(c) Requires the comptroller to mail the notice to the corporation not later than the 45th day before the forfeiture of corporate privileges, and sets forth to which address the notice is required to be sent.

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

Sec. 111.409. JUDICIAL PROCEEDING NOT REQUIRED FOR FORFEITURE. Provides that the forfeiture of the corporate privileges of a corporation is effected by the comptroller without a judicial proceeding.

Sec. 111.410. REVIVAL OF CORPORATE PRIVILEGES. Requires the comptroller to revive the corporate privileges of a corporation if the corporation, before the forfeiture of its charter or certificate of authority, pays any tax, penalty, or interest due under this title.

Sec. 111.411. BANKING CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS. (a) Provides that, except as provided by Subsection (b), this subchapter does not apply to a banking corporation that is organized under the laws of this state or under federal law and has its main office in this state.

(b) Requires the banking commissioner to appoint a conservator under Subtitle A (Banks), Title 3, Finance Code, to pay the tax of a banking corporation that is organized under the laws of this state and that the commissioner certifies as being delinquent in the payment of the corporation's tax.

Sec. 111.412. SAVINGS AND LOAN ASSOCIATION. (a) Provides that, except as provided by Subsection (b), this subchapter does not apply to a savings and loan association that is organized under the laws of this state or under federal law and has its main office in this state.

(b) Requires the savings and loan commissioner to appoint a conservator under Subtitle B (Savings and Loan Associations) or C (Savings Banks), Title 3, Finance Code, to pay the tax of a savings and loan association that is organized under the laws of this state and that the commissioner certifies as being delinquent in the payment of the association's tax.

Sec. 111.413. GROUNDS FOR FORFEITURE OF CHARTER OR CERTIFICATE OF AUTHORITY. Provides that it is a ground for forfeiture of a corporation's charter or certificate of authority if the corporate privileges of the corporation are forfeited under this subchapter and the corporation does not pay, on or before the 120th day after the date the corporate privileges are forfeited, the amount necessary for the corporation to revive under this subchapter its corporate privileges.

Sec. 111.414. CERTIFICATION BY COMPTROLLER. Requires the comptroller, after the 120th day after the date the corporate privileges of a corporation are forfeited under this subchapter, to certify the name of the corporation to the attorney general and the secretary of state.

Sec. 111.415. SUIT FOR JUDICIAL FORFEITURE. Requires the attorney general, on receipt of the comptroller's certification, to bring suit to forfeit the charter or certificate of authority of a corporation if a ground exists for the forfeiture of the charter or certificate.

Sec. 111.416. RECORD OF JUDICIAL FORFEITURE. Requires the clerk of the court to certify certain information or send certified copies of certain documents to the secretary of state, if a district court forfeits a corporation's charter or certificate of authority, if an appeal of the judgment is perfected, or if a final disposition of an appeal is

made. Sets forth the required actions of the secretary of state regarding the corporation's record in response to receipt of any of these documents. Authorizes a court, if the court forfeits a corporation's charter or certificate of authority, to appoint a receiver for the corporation, and to administer the receivership under certain laws.

Sec. 111.417. REVIVAL OF CHARTER OR CERTIFICATE OF AUTHORITY AFTER JUDICIAL FORFEITURE. Sets forth the conditions under which a corporation whose charter or certificate of authority is judicially forfeited is entitled to have its charter or certificate and corporate privileges revived.

Sec. 111.418. SUIT TO SET ASIDE JUDICIAL FORFEITURE. Authorizes certain persons related to the corporation, if a corporation's charter or certificate of authority is judicially forfeited, to bring suit, in the nature of a bill of review, in a district court of Travis County in the name of the corporation to set aside the forfeiture of the charter or certificate, with the secretary of state and attorney general as defendants.

Sec. 111.419. RECORD OF SUIT TO SET ASIDE JUDICIAL FORFEITURE. Requires the secretary of state, if a court sets aside the forfeiture of a corporation's charter or certificate of authority, to add certain information to the corporation's record.

Sec. 111.420. CORPORATE PRIVILEGES AFTER JUDICIAL FORFEITURE IS SET ASIDE. Requires the comptroller, if a court sets aside the forfeiture of a corporation's charter or certificate of authority, to revive the corporate privileges of the corporation and add certain information to the corporation's record.

Sec. 111.421. FORFEITURE BY SECRETARY OF STATE. Sets forth the circumstances under which the secretary of state is authorized to forfeit the charter or certificate of authority of a corporation.

Sec. 111.422. JUDICIAL PROCEEDING NOT REQUIRED FOR FORFEITURE BY SECRETARY OF STATE. Provides that the forfeiture by the secretary of state of a corporation's charter or certificate of authority under this subchapter is effected without a judicial proceeding.

Sec. 111.423. RECORD OF FORFEITURE BY SECRETARY OF STATE. Requires the secretary of state to effect a forfeiture of a corporation's charter or certificate of authority by adding certain information to the corporation's record.

Sec. 111.424. REVIVAL OF CHARTER OR CERTIFICATE OF AUTHORITY AFTER FORFEITURE BY SECRETARY OF STATE. Sets forth the circumstances under which a corporation whose charter or certificate of authority is forfeited by the secretary of state is entitled to have its charter or certificate revived and have its corporate privileges revived.

Sec. 111.425. PROCEEDING TO SET ASIDE FORFEITURE BY SECRETARY OF STATE. (a) Authorizes certain persons related to the corporation, if a corporation's charter or certificate of authority is forfeited by the secretary of state, to request in the name of the corporation that the secretary of state set aside the forfeiture of the charter or certificate.

(b) Requires the secretary of state, if a request is made, to determine if each delinquent report has been filed and any delinquent tax, penalty, or interest has been paid, and if the determination is in the affirmative, to set aside the forfeiture of the corporation's charter or certificate of authority.

Sec. 111.426. CORPORATE PRIVILEGES AFTER FORFEITURE BY SECRETARY OF STATE IS SET ASIDE. Requires the comptroller to revive the corporate privileges of the corporation if the secretary of state sets aside the forfeiture of a corporation's charter or certificate of authority.

Sec. 111.427. USE OF CORPORATE NAME AFTER REVIVAL OF CHARTER OR CERTIFICATE OF AUTHORITY. Requires the corporation, if a corporation's charter or certificate of authority is forfeited by the secretary of state and the corporation requests the secretary to set aside the forfeiture under Section 111.425, to determine from the secretary whether the corporation's name is available for use. Requires the corporation to amend its charter or certificate to change its name if the name is not available.

SECTION 2.08. Amends Subchapter A, Chapter 171, Tax Code, by adding Section 171.006, as follows:

Sec. 171.006. DISALLOWED EXPENSE FOR CERTAIN TAXABLE BUSINESSES. Provides that a tax paid under this chapter by a taxable business that may owe insurance premium taxes under Subtitle B, Title 3, Insurance Code, is considered a disallowed expense for purposes of Article 5.13-2 (Rates and Forms for Certain Property and Casualty Insurance), Insurance Code, and may not be included by the taxable business in determining insurance rates or premiums.

SECTION 2.09. Amends Section 203.001, Insurance Code, as effective April 1, 2005, by adding Subsection (d) to provide that this section does not prohibit the imposition of a tax imposed by Chapter 171 (Franchise Tax) or 251 (Reformed Franchise Tax), Tax Code, unless a specific exemption for insurers or health maintenance organizations is provided in those chapters.

SECTION 2.10. Repealer: Sections 171.052 (Certain Corporations), 171.0525 (Exemption--Certain Insurance Companies), and 171.0527 (Exemption--Title Insurance Companies and Title Insurance Agents), Tax Code; Subchapter U (Tax Credit for Title Insurance Holding Companies), Chapter 171, Tax Code, as added by Chapter 209, Acts of the 78th Legislature, Regular Session, 2003; and Subchapter U (Tax Credit for Certain Premium Taxes), Chapter 171, Tax Code, as added by Chapter 1274, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 2.11. Effective date of this article: January 1, 2006.

### ARTICLE 3. SALES AND USE TAXES

#### PART A. STATE SALES AND USE TAXES

SECTION 3A.01. Amends Section 151.051(b), Tax Code, to provide that the sales tax rate is 7.25 percent, rather than 6 1/4 percent, of the sales price of the taxable item sold.

SECTION 3A.02. Amends Subchapter A, Chapter 151, Tax Code, by adding Section 151.0029, as follows:

Sec. 151.0029. BILLBOARD ADVERTISING SERVICE. Defines "billboard advertising service" and "billboard."

SECTION 3A.03. Amends Chapter 151, Tax Code, by adding Section 151.0037, as follows:

Sec. 151.0037. ELECTIVE COSMETIC PROCEDURES. Defines "elective cosmetic procedures" and "cosmetic medical procedure." Provides that this section does not apply to certain reconstructive surgery or dentistry.

SECTION 3A.04. Amends Subchapter A, Chapter 151, Tax Code, by adding Sections 151.0043 and 151.0044, as follows:

Sec. 151.0043. "MOTOR VEHICLE REPAIR SERVICES." Defines "motor vehicle repair services."

Sec. 151.0044. "MOTOR VEHICLE WASH OR DETAIL SERVICES." Defines "motor vehicle wash or detail services."

SECTION 3A.05. Amends Section 151.008, Tax Code, by adding Subsection (c) to define which individuals do not qualify as a "seller" or "retailer" for purposes of this section.

SECTION 3A.06. Amends Section 151.0101(a), Tax Code, to redefine "taxable services."

SECTION 3A.07. Amends Section 151.304(b), Tax Code, to redefine "occasional sale."

SECTION 3A.08. (a) Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.3131, as follows:

Sec. 151.3131. PARKING AND STORAGE SERVICES. (a) Provides that motor vehicle parking and storage services are exempted under this section from the taxes imposed by this chapter only if the services are provided at a parking facility operated by a health facility, certain nonprofit corporations that have donated land for use by a health facility, or an entity that contracts with the health facility or nonprofit corporation to provide the motor vehicle and parking services and the motor vehicle parking and storage services are primarily used by patients of and visitors to the health facility and people who work at the health facility.

(b) Provides that a person who operates a facility that provides motor vehicle parking and storage services is not exempted under this section until the person submits to the comptroller notice that the person operates a facility eligible for exemption and the comptroller verifies eligibility. Requires the comptroller to maintain a list of facilities in this state that provide motor vehicle parking and storage services that are exempted from the taxes imposed under this chapter.

(c) Requires a facility that provides motor vehicle parking and storage services exempted under this section to prominently display in certain areas a notice that the parking and storage services are exempted from the taxes imposed under this chapter.

(d) Defines "health facility."

(b) Prohibits a facility that provides motor vehicle parking and storage services exempted under Section 151.3131, Tax Code, as added by this section, that is in existence on the effective date of this part and that provides users with a separate statement of the amount charged for services and taxes from collecting taxes imposed under Chapter 151, Tax Code, on or after the date on which the facility is exempted, or increasing the amount charged for motor vehicle parking and storage services before the 180th day after the date on which the facility is exempted.

(c) Requires a facility that provides motor vehicle parking and storage services exempted under Section 151.3131, Tax Code, as added by this section, that is in existence on the effective date of this part, and that charges tax inclusive of rates for motor vehicle parking and storage services, to reduce each rate charged by a certain amount and prohibits such a facility to increase those rates before the 180th day after the date on which the facility is exempted.

(d) Prohibits a facility that provides motor vehicle parking and storage services exempted under Section 151.3131, Tax Code, as added by this section, and that is not in existence on the effective date of this Act, from collecting taxes imposed under Chapter 151, Tax Code, on or after the date on which the facility is exempted.

SECTION 3A.09. Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.3132, as follows:

Sec.151.3132. DIAPERS. (a) Provides that diapers are exempt from the taxes imposed by this chapter.

(b) Sets forth the diaper-related goods and services to which the exemption applies.

SECTION 3A.10. Amends Section 151.315, Tax Code, to provide that water sold in a sealed container is not exempt from the taxes imposed by this chapter.

SECTION 3A.11. Amends Section 151.423, Tax Code, to authorize a taxpayer to deduct and withhold .33 of one percent, rather than one-half of one percent, of the amount of taxes due from the taxpayer on a timely return as reimbursement for the cost of collecting the taxes imposed by this chapter.

SECTION 3A.12. Exempts from the taxes imposed by Chapter 151, Tax Code, the receipts from the sale, use, storage, rental, or other consumption in this state of services that became subject to the taxes because of the terms of this part and that are the subject of a written contract or bid entered into on or before June 1, 2005. Provides that the exemption provided by this section expires July 1, 2007.

SECTION 3A.13. Effective date of this part: July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, or October 1, 2005.

#### PART B. MOTOR VEHICLE SALES AND USE TAX

SECTION 3B.01. Amends Section 152.002, Tax Code, by adding Subsection (f) to provide that the total consideration of a used motor vehicle is the amount on which the tax is computed as provided by Section 152.0412.

SECTION 3B.02. Amends Section 152.021(b), Tax Code, to provide that the tax rate for a retail sale of a motor vehicle is 7.35 percent, rather than 6 1/4 percent, of the total consideration.

SECTION 3B.03. Amends Section 152.022(b), Tax Code, to provide that the tax rate for a retail sale of a motor vehicle purchased outside the state is 7.35 percent, rather than 6 1/4 percent, of the total consideration.

SECTION 3B.04. Amends Section 152.026(b), Tax Code, to provide that the tax rate for the rental of a motor vehicle for longer than 30 days is 7.35 percent, rather than 6 1/4 percent, of the gross rental receipts.

SECTION 3B.05. Amends Section 152.028(b), Tax Code, to provide that the use tax rate for a motor vehicle brought back into the state is 7.35 percent, rather than 6 1/4 percent, of the total consideration.

SECTION 3B.06. Amends Section 152.041(a), Tax Code, to specify that, subject to Section 152.0412, the tax assessor-collector of the county in which an application for registration or for a Texas certificate of title is made shall collect taxes imposed by this chapter.

SECTION 3B.07. Amends Subchapter C, Chapter 152, Tax Code, by adding Section 152.0412, as follows:

Sec. 152.0412. STANDARD PRESUMPTIVE VALUE; USE BY TAX ASSESSOR-COLLECTOR. (a) Defines "standard presumptive value."

(b) Requires a county tax assessor-collector to compute the tax imposed by this chapter on the amount paid for a motor vehicle, if the amount paid is equal to or greater than the standard presumptive value of the vehicle.

(c) Requires a county tax assessor-collector to compute the tax imposed by this chapter on the standard presumptive value of a motor vehicle, if the amount paid is less than the standard presumptive value of the vehicle, unless the purchaser establishes the retail value of the vehicle as provided by Subsection (d).

(d) Requires a county tax assessor-collector to compute the tax imposed by this chapter on the retail value of a motor vehicle, if the retail value is shown on a certified appraisal on a form prescribed by the comptroller and the purchaser of



the vehicle obtains the appraisal not later than the 20th day after the date of purchase.

(e) Requires certain motor vehicle dealers to provide a certified appraisal of the retail value of a motor vehicle on request. Requires the comptroller, by rule, to establish a fee that a dealer may charge for providing the certified appraisal. Requires the county tax assessor-collector to retain a copy of a certified appraisal received under this section for a certain period.

(f) Requires the Texas Department of Transportation (TxDOT) to maintain information on the standard presumptive values of motor vehicles as part of TxDOT's registration and title system. Requires TxDOT to update the information at least quarterly each calendar year.

(g) Sets forth certain transactions to which this section does not apply.

SECTION 3B.08. Requires TxDOT, not later than October 1, 2005, to establish standard presumptive values for motor vehicles, modify TxDOT's registration and title system as needed to include that information and administer that section, and make that information available through the system to all county tax assessor-collectors.

SECTION 3B.09. (a) Effective date of this part, except as provided by Subsection (b): July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, or September 1, 2005.

(b) Effective date of Section 152.0412, Tax Code, as added by this part: October 1, 2005.

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

SECTION 3C.01. Amends Section 160.021(b), Tax Code, to provide that the tax rate for the retail sale of a boat is 7.35 percent, rather than 6 1/4 percent, of the total consideration.

SECTION 3C.02. Amends Section 160.022(b), Tax Code, to provide that the use tax rate for a boat is 7.35 percent, rather than 6 1/4 percent, of the total consideration.

SECTION 3C.03. Effective date of this part: July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, or September 1, 2005.

#### PART D. TAX ON DISCRETIONARY FOOD AND DRINK ITEMS

SECTION 3D.01. Amends Subtitle E, Title 2, Tax Code, by adding Chapter 164, as follows:

##### CHAPTER 164. TAX ON DISCRETIONARY FOOD AND DRINK ITEMS

###### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 164.001. DEFINITIONS. Defines "snack food" and "soft drink."

[Reserves Sections 164.002-164.050 for expansion.]

###### SUBCHAPTER B. IMPOSITION AND COLLECTION OF TAX

Sec. 164.051. TAX IMPOSED. (a) Imposes a tax on each sale at retail of soft drinks or snack food.

(b) Sets forth the tax rate as three percent of the sales price of the soft drinks or snack food.

(c) Provides that the tax imposed under this chapter is in addition to any other tax imposed by state law.

Sec. 164.052. EXCEPTIONS TO APPLICATION OF TAX. Creates an exception for food or beverages sold in certain establishments for consumption on the premises of the business.

Sec. 164.053. RULES. Requires the comptroller, by rule, to prescribe the manner in which the tax imposed under this chapter is administered, imposed, and collected.

[Reserves Sections 164.054-164.100 for expansion.]

#### SUBCHAPTER C. ALLOCATION OF TAX

Sec. 164.101. ALLOCATION OF TAX. Requires the revenue from the tax imposed under this chapter to be deposited to the credit of the general revenue fund.

SECTION 3D.02. Effective date of this part: July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, or September 1, 2005.

### ARTICLE 4. CIGARETTE AND TOBACCO PRODUCTS SALES

#### PART A. RATES

SECTION 4A.01. Amends Section 154.021(b), Tax Code, to provide that the tax rate is \$71.10, rather than \$20.50, per thousand on cigarettes weighing three pounds or less per thousand.

SECTION 4A.02. Amends Section 155.021(b), Tax Code, as follows:

(b)(1) Provides that the tax rate is 3.44 cents, rather than one cent, per 10 or fraction of 10 on cigars weighing three pounds or less per thousand.

(2) Provides that the tax rate is \$25.80, rather than \$7.50, per thousand on cigars that weigh more than three pounds per thousand and sell at factory list price, exclusive of any trade discount, special discount, or deal, for 3.3 cents or less each.

(3) Provides that the tax rate is \$37.84, rather than \$11, per thousand on cigars that weigh more than three pounds per thousand, sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each, and contain no substantial amount of nontobacco product.

(4) Provides that the tax rate is \$51.60, rather than \$15, per thousand on cigars that weigh more than three pounds per thousand, sell at factory list price, exclusive of any trade discount, special discount, or deal, for more than 3.3 cents each, and contain a substantial amount of nontobacco ingredients.

SECTION 4A.03. Amends Section 155.0211(b), Tax Code, to provide that the tax rate for tobacco products other than cigars is 40, rather than 35.213, percent of the manufacturer's list price.

SECTION 4A.04. Effective date of this part: July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, or September 1, 2005.

### ARTICLE 5. TELECOMMUNICATIONS INFRASTRUCTURE FUND

SECTION 5.01. Amends Section 57.048, Utilities Code, by adding Subsections (f)-(i), as follows:

(f) Authorizes a certified telecommunications utility to recover from the utility's customers an assessment imposed on the utility under this subchapter after the total amount deposited to the telecommunications infrastructure fund (fund), excluding interest and loan repayments, is \$1.5 billion, as determined by the comptroller. Authorizes the utility to recover the assessment through a monthly billing process.

(g) Requires the comptroller to publish in the Texas Register the date on which the total amount deposited to the credit of the fund, excluding interest and loan repayments, is equal to \$1.5 billion.

(h) Requires a certified telecommunications utility that wants to recover an assessment under Subsection (f) to file with the Public Utility Commission of Texas, not later than February 15 of each year, an affidavit or affirmation stating the amount that the utility paid to the comptroller under this section during the previous calendar year and the amount the utility recovered from its customers in cumulative payments during that year.

(i) Requires the Public Utility Commission of Texas to maintain the confidentiality of information that it receives under this section that is claimed to be confidential for competitive purposes. Provides that the confidential information is exempt from disclosure under Chapter 552 (Public Information), Government Code.

SECTION 5.02. Amends Section 57.0485, Utilities Code, as follows:

Sec. 57.0485. New heading: ALLOCATION OF REVENUE. Requires the comptroller to deposit the money collected by the comptroller under Section 57.048, to the credit of the general revenue fund. Deletes existing text requiring the comptroller to deposit 50 percent of the money to the public schools account and the remainder to the credit of certain other entities. Deletes existing text relating to interest.

SECTION 5.03. Amends Section 57.051, Utilities Code, to provide that the Telecommunications Infrastructure Fund, rather than the Telecommunications Infrastructure Fund Board, is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that, unless continued in existence, this subchapter expires September 1, 2011, rather than 2005. Makes a conforming change.

SECTION 5.04. Repealer: Sections 57.048(c) and (d) (Assessments and Collections), Utilities Code.

SECTION 5.05. Requires the comptroller, if, on the day before the effective date of this article, the assessment prescribed by Section 57.048, Utilities Code, is imposed at a rate of less than 1.25 percent, to reset the rate of assessment to 1.25 percent on the effective date of this article.

SECTION 5.06. Effective date of this part: July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, or September 1, 2005.

## ARTICLE 6. SUPREME COURT JURISDICTION

SECTION 6.01. (a) Provides that the supreme court has exclusive jurisdiction over a challenge to the constitutionality of this Act or any part of this Act. Authorizes the supreme court to issue injunctive or declaratory relief in connection with the challenge.

(b) Requires the supreme court to rule on a challenge filed under this section on or before the 120th day after the date the challenge is filed.

(c) Provides that this section does not apply to an action pending on the date on which the last legislative vote enacting this Act is taken.

## ARTICLE 7. SEVERABILITY

SECTION 7.01. Severability clause.

## ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. (a) Effective date, except as provided by Subsection (b): July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, or September 1, 2005.

(b) Provides that if a section, part, or article of this bill provides a different effective date than provided by Subsection (a) of this section, that section, part, or article takes effect according to its terms.