

1-1 By: Keffer of Eastland (Senate Sponsor - Duncan) H.B. No. 2233
1-2 (In the Senate - Received from the House May 13, 2005;
1-3 May 16, 2005, read first time and referred to Committee on Finance;
1-4 May 23, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 14, Nays 0; May 23, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2233 By: Duncan

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

1-10 relating to state and certain local fiscal matters; providing a
1-11 penalty.

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

1-13 SECTION 1. Section 103.051, Civil Practice and Remedies
1-14 Code, is amended by amending Subsection (a) and adding Subsection
1-15 (b-1) to read as follows:

1-16 (a) To apply for compensation under this subchapter, the
1-17 claimant must file with the comptroller's judiciary section:

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

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

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

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

1-28 (b-1) The comptroller's duty on receipt of an application is
1-29 limited to the ministerial function of determining the completeness
1-30 of the application. If the comptroller determines that the
1-31 claimant's application does not provide all of the documentation
1-32 required by Subsection (a), the comptroller shall deny the claim
1-33 without prejudice.

1-34 SECTION 2. Article 103.002, Code of Criminal Procedure, is
1-35 amended to read as follows:

1-36 Art. 103.002. CERTAIN COSTS BARRED. (a) An officer may not
1-37 impose a cost or fee for a service not performed or for a service or
1-38 purpose for which a cost or fee is not expressly provided by law.

1-39 (b) All moneys collected as costs or fees that are not
1-40 expressly provided by law shall be remitted to the comptroller for
1-41 deposit into the general revenue fund to be administered under
1-42 Chapters 101 and 111, Tax Code.

1-43 SECTION 3. Article 103.0031(e), Code of Criminal Procedure,
1-44 is amended to read as follows:

1-45 (e) If a county or municipality has entered into a contract
1-46 under Subsection (a) and a person pays an amount that is less than
1-47 the aggregate total to be collected under Subsections (a) and (b),
1-48 ~~[the allocation to the comptroller, the county or municipality,~~
1-49 ~~and] the private attorney or vendor shall receive 30 percent of the~~
1-50 total amount collected, not to exceed the amount added as the
1-51 collection fee, and the remainder of the amount collected shall be
1-52 allocated in accordance with this chapter and Chapter 133, Local
1-53 Government Code [be reduced proportionately].

1-54 SECTION 4. Section 43.002(a), Education Code, is amended to
1-55 read as follows:

1-56 (a) On the first working day of each month in a state fiscal
1-57 year, the agency [comptroller] shall transfer from the permanent
1-58 school fund to the available school fund an amount equal to
1-59 one-twelfth of the annual distribution from the permanent school
1-60 fund to the available school fund as provided by Section 5(a),
1-61 Article VII, Texas Constitution, for the fiscal year.

1-62 SECTION 5. Section 51.009(c), Education Code, is amended to
1-63 read as follows:

(c) Each of the following shall be accounted for as educational and general funds: net tuition, special course fees charged under Sections 54.051(e) and (l), Education Code, lab fees, student teaching fees, hospital and clinic fees, organized activity fees, and proceeds from the sale of educational and general equipment~~[, and indirect cost recovery fees]~~.

SECTION 6. Section 63.202, Education Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Except as provided by Subsections (c), ~~[and]~~ (d), and (h), money in the fund established under this subchapter may not be used for any purpose.

(h) Expenses of managing and administering the assets of the fund shall be paid from the fund.

SECTION 7. Section 63.302, Education Code, is amended by amending Subsection (b) and adding Subsection (h) to read as follows:

(b) Except as provided by Subsections (c), ~~[and]~~ (e), and (h), money in the fund established under this subchapter may not be used for any purpose.

(h) Expenses of managing and administering the assets of the fund shall be paid from the fund.

SECTION 8. Sections 25.0015(b) and (c), Government Code, are amended to read as follows:

(b) For a county that participates under Section 51.702(f) under a resolution adopted and filed with the comptroller before September 1, 2003, the amount shall be paid to the county's salary fund in equal quarterly ~~[monthly]~~ installments, and of each \$35,000 paid a county, \$30,000 shall be paid from funds appropriated from the judicial fund, and \$5,000 shall be paid from funds appropriated from the general revenue fund.

(c) For a county that participates under Section 51.702(f) under a resolution adopted or filed with the comptroller on or after September 1, 2003, the amount shall be paid to the county's salary fund in equal quarterly ~~[monthly]~~ installments from funds appropriated from the judicial fund.

SECTION 9. Section 25.00211(b), Government Code, is amended to read as follows:

(b) The amount shall be paid to the county treasury for deposit in the contributions fund created under Section 25.00213 in equal quarterly ~~[monthly]~~ installments from funds appropriated from the judicial fund.

SECTION 10. Section 26.007(b), Government Code, is amended to read as follows:

(b) The amount shall be paid to the county's salary fund in equal quarterly ~~[monthly]~~ installments from funds appropriated from the judicial fund.

SECTION 11. Sections 74.061(c) and (h), Government Code, are amended to read as follows:

(c) ~~[The salary of a retired judge or justice while assigned under this chapter shall be paid out of money appropriated from the general revenue fund for that purpose in an amount equal to the compensation received from state and county sources of the judge of the court to which he is assigned.]~~ The salary of a retired judge or justice while assigned shall be determined pro rata for the period of time that the judge or justice actually sits as the assigned judge. The salary of a retired statutory county court judge assigned under this chapter to serve in a district court shall be paid by the state in the same manner as the salary of a retired district judge assigned under this chapter to serve in a district court is paid by the state.

(h) Notwithstanding Subsection (d) ~~[(e)]~~, the salary from the state of a retired judge or justice assigned to a district court is determined pro rata on ~~[the sum of the regular judge's salary from the county plus]~~ the greater of:

(1) the regular judge's salary from the state on August 31, 1997; or

(2) 85 percent of the regular judge's salary from the state, or a greater percentage of that salary, not to exceed 100

3-1 percent, as established by the General Appropriations Act for any
 3-2 fiscal year.

3-3 SECTION 12. Section 403.019(c), Government Code, is amended
 3-4 to read as follows:

3-5 (c) A contract under this section is not valid unless
 3-6 approved by the attorney general. The attorney general shall
 3-7 approve a contract if the attorney general determines that the
 3-8 contract complies with the requirements of this section, that the
 3-9 contract does not conflict with any contract formed under Section
 3-10 2107.003(b), and that the contract [and] is in the best interest of
 3-11 the state. No judicial action by any person on behalf of the state
 3-12 under a contract authorized and approved by this section may be
 3-13 brought unless approved by the attorney general.

3-14 SECTION 13. Section 2107.003, Government Code, is amended
 3-15 to read as follows:

3-16 Sec. 2107.003. COLLECTION BY ATTORNEY GENERAL,
 3-17 COMPTROLLER, OR OUTSIDE AGENT. (a) Except as provided by
 3-18 Subsection (c), a state agency shall report an uncollected and
 3-19 delinquent obligation to [request] the attorney general for
 3-20 collection. The state agency must report the obligation on or
 3-21 before the 120th day after the date the obligation becomes past due
 3-22 or delinquent [to collect an obligation before the agency may
 3-23 employ, retain, or contract with a person other than a full-time
 3-24 employee of the state agency to collect the obligation].

3-25 (b) The attorney general:

3-26 (1) shall provide legal services for collection of the
 3-27 obligation;

3-28 (2) may authorize the requesting state agency to
 3-29 employ, retain, or contract, subject to approval by the attorney
 3-30 general, with a person to collect the obligation; or

3-31 (3) if the attorney general determines it to be
 3-32 economical and in the best interest of the state, may contract with
 3-33 one or more persons [a person other than a full-time employee of the
 3-34 agency] to collect the [an] obligation [that the attorney general
 3-35 cannot collect].

3-36 (c) The comptroller may employ, retain, or contract with a
 3-37 person other than a full-time state employee to collect delinquent
 3-38 obligations that are owed the comptroller in the comptroller's
 3-39 official capacity, are not collected through normal collection
 3-40 procedures, and do not meet the guidelines adopted for collection
 3-41 by the attorney general. A proposed contract under this subsection
 3-42 shall be reviewed by the attorney general and may include a
 3-43 collection fee computed on the amounts collected under the
 3-44 contract.

3-45 (d) The agency contracting under Subsection (b) is entitled
 3-46 to recover from the obligor, in addition to the amount of the
 3-47 obligation, the costs incurred in undertaking the collection,
 3-48 including the costs of a contract under this section. The obligor
 3-49 is liable for costs of recovery under this section in an amount
 3-50 equal to 30 percent of the sum of the amount of the obligation and
 3-51 any interest due on the obligation.

3-52 (e) A contract formed under Subsection (b) must provide for
 3-53 the compensation due to the contractor. The amount of the
 3-54 compensation may not exceed 30 percent of the sum of the collected
 3-55 amount of:

- 3-56 (1) the obligation;
- 3-57 (2) any penalty; and
- 3-58 (3) any interest.

3-59 (f) A contract formed under Subsection (b) or (c) may permit
 3-60 or require the contractor to pursue in the name of this state a
 3-61 judicial action to collect the amount of the obligation in a proper
 3-62 court in or outside of this state.

3-63 (g) In a suit in a Texas state court to collect an obligation
 3-64 under this section, the state is not:

- 3-65 (1) required to post security for costs;
- 3-66 (2) liable for costs; and
- 3-67 (3) liable for fees for:
 - 3-68 (A) service of process;
 - 3-69 (B) attorneys ad litem;

4-1 (C) arbitration; or

4-2 (D) mediation.

4-3 (h) An amount collected under a contract formed under
 4-4 Subsection (b), including the costs of recovery and court costs or
 4-5 other costs, shall be deposited in the fund or account to which the
 4-6 obligation was required to be deposited. The contracting agency
 4-7 shall pay the compensation due under the contract to the contractor
 4-8 and shall pay to the applicable court any court costs collected.

4-9 (i) The contracting agency shall require a person
 4-10 contracting under Subsection (b) to post a bond or other security in
 4-11 an amount the contracting agency determines is sufficient to cover
 4-12 all revenue or other property of the state that is expected to come
 4-13 into the possession or control of the contractor in the course of
 4-14 providing contract services.

4-15 (j) A person who contracts under Subsection (b) is an agent
 4-16 of this state for purposes of determining priority of a claim to be
 4-17 collected under the contract with respect to claims of other
 4-18 creditors. The contractor does not exercise any sovereign power of
 4-19 the state.

4-20 (k) The contracting state agency may provide a person
 4-21 contracting under Subsection (b) any information, including
 4-22 confidential information, that the agency is not prohibited from
 4-23 sharing under an agreement with another state or with the United
 4-24 States and that is:

4-25 (1) in the custody of the agency holding the claim; and

4-26 (2) necessary to the collection of the obligation.

4-27 (l) A person acting under a contract formed under Subsection
 4-28 (b) or (c) and each employee or agent of that person is subject to
 4-29 all prohibitions against the disclosure of confidential
 4-30 information obtained from the contracting agency, the reporting
 4-31 state agency, or their employees. A contractor or the contractor's
 4-32 employee or agent who discloses confidential information in
 4-33 violation of the prohibition is subject to the same penalties for
 4-34 that disclosure as would apply to the contracting agency or its
 4-35 employees.

4-36 (m) The contracting agency shall require a person who
 4-37 contracts under Subsection (b) to obtain and maintain insurance
 4-38 adequate to provide reasonable coverage for damages negligently,
 4-39 recklessly, or intentionally caused by the contractor or the
 4-40 contractor's employee or agent in the course of collecting an
 4-41 obligation under the contract and to protect this state from
 4-42 liability for those damages. The state is not liable for and may
 4-43 not indemnify a person acting under a contract under Subsection (b)
 4-44 for damages negligently, recklessly, or intentionally caused by the
 4-45 contractor or the contractor's employee or agent in the course of
 4-46 collecting an obligation under the contract.

4-47 (n) In addition to grounds for termination provided by the
 4-48 contract terms, the attorney general or the contracting agency, as
 4-49 applicable, may terminate a contract formed under Subsection (b) if
 4-50 the contractor or the contractor's employee or agent:

4-51 (1) violates the federal Fair Debt Collection
 4-52 Practices Act (15 U.S.C. Section 1692 et seq.);

4-53 (2) discloses confidential information to a person not
 4-54 authorized to receive the information; or

4-55 (3) performs any act that results in a final judgment
 4-56 for damages against this state.

4-57 SECTION 14. Section 2254.102(c), Government Code, is
 4-58 amended to read as follows:

4-59 (c) This subchapter does not apply to a contract:

4-60 (1) with an agency to collect an obligation under
 4-61 Section 2107.003(b); or

4-62 (2) for legal services entered into by an institution
 4-63 of higher education under Section 153.006, Education Code.

4-64 SECTION 15. Sections 403.071(g) and (h), Government Code,
 4-65 are amended to read as follows:

4-66 (g) Notwithstanding Subsection (a), the comptroller [~~and a~~
 4-67 state agency] may [~~contract in writing for the comptroller to~~
 4-68 audit claims presented by a [~~the~~] state agency after the
 4-69 comptroller prepares warrants or uses the electronic funds transfer

5-1 system to pay the claims. ~~The [If the comptroller and a state~~
5-2 ~~agency execute a contract, the]~~ comptroller may determine ~~[decide]~~
5-3 the types of claims that will be audited after payment.

5-4 (h) ~~[This subsection applies if the comptroller and a state~~
5-5 ~~agency have contracted in accordance with Subsection (g).]~~ The
5-6 comptroller shall audit claims after payment under Subsection (g)
5-7 in the same manner ~~[way]~~ that the comptroller audits claims before
5-8 payment under Subsection (a). The comptroller may establish
5-9 requirements and adopt rules concerning the time that a state
5-10 agency must retain documentation in its files to enable a
5-11 postpayment audit. If a postpayment audit by the comptroller shows
5-12 that a claim presented by a state agency was invalid, the
5-13 comptroller may:

5-14 (1) implement procedures to ensure that similar
5-15 invalid claims from the state agency are not paid in the future;

5-16 (2) report to the governor, the lieutenant governor,
5-17 the speaker of the house of representatives, the state auditor, and
5-18 the Legislative Budget Board the results of the audit;

5-19 (3) require the state agency to obtain a refund of the
5-20 monies from the payee; and

5-21 (4) ~~[cancel the contract with the state agency, and~~
5-22 ~~[5)]~~ reduce the state agency's remaining
5-23 appropriations by the amount of the claim.

5-24 SECTION 16. Section 403.074(g), Government Code, is amended
5-25 to read as follows:

5-26 (g) The comptroller shall pay under this section any claim
5-27 that satisfies the requirements of:

5-28 (1) Subchapter B, Chapter 103, Civil Practice and
5-29 Remedies Code, as provided by Section 103.151, Civil Practice and
5-30 Remedies Code; or

5-31 (2) Article 26.051, Code of Criminal Procedure.

5-32 SECTION 17. Section 404.024, Government Code, is amended by
5-33 adding Subsection (m) to read as follows:

5-34 (m) In entering into a direct security repurchase agreement
5-35 or a reverse security repurchase agreement, the comptroller may
5-36 agree to accept cash on an overnight basis in lieu of the
5-37 securities, obligations, or participation certificates identified
5-38 in Section 404.001(3). Cash held by the state under this subsection
5-39 is not a deposit of state or public funds for the purposes of any
5-40 law, including this subchapter or Subchapter D, that requires a
5-41 deposit of state or public funds to be collateralized by eligible
5-42 securities.

5-43 SECTION 18. Section 404.124(c), Government Code, is amended
5-44 to read as follows:

5-45 (c) The committee may determine whether the notes will be
5-46 sold on a negotiated or competitive bid basis. If the committee
5-47 determines that competitive bids are appropriate, the underwriter
5-48 of any notes issued under this section shall be selected by the
5-49 method of sale that is most advantageous to the state under the
5-50 circumstances, including a sale using an Internet auction site. An
5-51 [solicitation of sealed bids and an] appropriate bid notice shall
5-52 be published at least one time in one or more recognized financial
5-53 publications of general circulation published within the state and
5-54 one or more recognized financial publications of general
5-55 circulation published outside the state. Unless all bids are
5-56 rejected, the underwriter shall be selected from the bids received.
5-57 The comptroller may not sell the notes in a manner not approved.

5-58 SECTION 19. Subchapter A, Chapter 659, Government Code, is
5-59 amended by adding Section 659.007 to read as follows:

5-60 Sec. 659.007. EARNINGS STATEMENTS. (a) In this section,
5-61 "state agency" has the meaning assigned by Section 403.013.

5-62 (b) A state agency may provide a written or electronic
5-63 earnings statement to an officer or employee of the agency.

5-64 (c) The comptroller may adopt rules and establish
5-65 procedures concerning the earnings statements provided by state
5-66 agencies that under Subchapter C, Chapter 2101, are required to use
5-67 the uniform statewide payroll system.

5-68 SECTION 20. Sections 659.044(a) and (d), Government Code,
5-69 as amended by Sections 32 and 104, Chapter 1158, Acts of the 77th

6-1 Legislature, Regular Session, 2001, are reenacted to read as
6-2 follows:

6-3 (a) Except as provided by Subsection (e), the monthly amount
6-4 of longevity pay is \$20 for every three years of lifetime service
6-5 credit.

6-6 (d) An employee may not receive from the state as longevity
6-7 pay more than the amount determined under Subsection (a) or (e), as
6-8 applicable, regardless of the number of positions the employee
6-9 holds or the number of hours the employee works each week.

6-10 SECTION 21. Section 659.044(e), Government Code, is amended
6-11 to read as follows:

6-12 (e) This subsection applies only to an employee of the Texas
6-13 Youth Commission who is receiving less than the maximum amount of
6-14 hazardous duty pay that the commission may pay to the employee under
6-15 Section 659.303. The employee's monthly amount of longevity pay is
6-16 the sum of:

6-17 (1) \$20 [~~\$4~~] for every three years [~~each year~~] of
6-18 lifetime service credit, which may not include any period served in
6-19 a hazardous duty position; and

6-20 (2) the lesser of:

6-21 (A) \$20 [~~\$4~~] for every three years [~~each year~~]
6-22 served in a hazardous duty position; or

6-23 (B) the difference between:

6-24 (i) \$7 for each year served in a hazardous
6-25 duty position; and

6-26 (ii) the amount paid by the commission for
6-27 each year served in a hazardous duty position.

6-28 SECTION 22. Section 659.255(a)(3), Government Code, is
6-29 amended to read as follows:

6-30 (3) "Merit salary increase" means an increase in
6-31 compensation to:

6-32 (A) a higher step rate in the same classified
6-33 salary group, if the classified employee is compensated under a
6-34 salary group that is divided into steps [~~Salary Schedule A of the~~
6-35 ~~General Appropriations Act~~]; or

6-36 (B) a higher rate within the range of the same
6-37 classified salary group, if the classified employee is compensated
6-38 under a salary group that is not divided into steps [~~Salary Schedule~~
6-39 ~~B of the General Appropriations Act~~].

6-40 SECTION 23. Sections 659.256(c) and (f), Government Code,
6-41 are amended to read as follows:

6-42 (c) When an employee is promoted within [~~to a position in a~~
6-43 ~~higher salary group in~~] Salary Schedule A of the General
6-44 Appropriations Act or from Salary Schedule B or C of the General
6-45 Appropriations Act to Salary Schedule A of the General
6-46 Appropriations Act, the employee shall receive a salary rate that
6-47 is at least 3.4 percent [~~one step~~] higher than the employee's salary
6-48 rate before promotion or the minimum rate of the new salary range,
6-49 whichever is higher, and may, at the discretion of the state agency
6-50 administrator, receive an annual salary rate up to and including
6-51 the maximum rate of the new salary range. [~~When an employee is~~
6-52 ~~promoted from a position in Salary Schedule B or C of the General~~
6-53 ~~Appropriations Act to a position in Salary Schedule A of the General~~
6-54 ~~Appropriations Act, the employee shall receive a step rate that is~~
6-55 ~~at least one step above the rate the employee received before~~
6-56 ~~promotion or the minimum rate of the new salary range, whichever is~~
6-57 ~~higher, and may, at the discretion of the state agency~~
6-58 ~~administrator, receive an annual rate up to and including the~~
6-59 ~~maximum rate of the new salary range.~~]

6-60 (f) Notwithstanding the other provisions of this section,
6-61 an employee whose salary prior to promotion exceeds the maximum
6-62 rate of the employee's assigned salary group may not receive more
6-63 than the maximum rate of the new salary group, even if the increase
6-64 is less than one step in a salary group that is divided into steps
6-65 [~~Salary Schedule A of the General Appropriations Act~~] or 3.4
6-66 percent in a salary group that is not divided into steps [~~Salary~~
6-67 ~~Schedule B of the General Appropriations Act~~].

6-68 SECTION 24. Section 659.257(c), Government Code, is amended
6-69 to read as follows:

7-1 (c) When an employee is demoted within ~~[to a position in a~~
 7-2 ~~lower salary group in]~~ Salary Schedule A of the General
 7-3 Appropriations Act or from Salary Schedule B or C of the General
 7-4 Appropriations Act to Salary Schedule A of the General
 7-5 Appropriations Act, the employee will receive a salary rate of at
 7-6 least 3.4 percent ~~[one step]~~ below the rate the employee received
 7-7 before demotion. ~~[When an employee is demoted from a position in~~
 7-8 ~~Salary Schedule B or C of the General Appropriations Act to a~~
 7-9 ~~position in Salary Schedule A of the General Appropriations Act,~~
 7-10 ~~the employee shall receive a step rate that is at least 3.4 percent~~
 7-11 ~~below the rate the employee received before demotion.]~~

7-12 SECTION 25. Section 660.024(a), Government Code, is amended
 7-13 to read as follows:

7-14 (a) The chief administrator of a state agency must give
 7-15 advance written approval for any travel related to official state
 7-16 business for which a reimbursement for travel expenses is claimed
 7-17 or for which an advance for travel expenses to be incurred is
 7-18 sought. The advance written approval may be communicated
 7-19 electronically. ~~[A copy of the written approval shall be submitted~~
 7-20 ~~with the travel voucher to the comptroller in accordance with~~
 7-21 ~~Section 660.027.]~~

7-22 SECTION 26. Sections 660.027(b), (d), and (e), Government
 7-23 Code, are amended to read as follows:

7-24 (b) A voucher submitted under Subsection (a) is valid only
 7-25 if:

7-26 (1) the state agency submitting the voucher approves
 7-27 it in accordance with Chapter 2103 and, if required by law,
 7-28 certifies the voucher; and

7-29 (2) the state employee who incurred the travel expense
 7-30 or, if the employee is unavailable, another individual acceptable
 7-31 to the comptroller approves the description, information, and
 7-32 documentation required by Subsection (d) ~~[voucher]~~ in writing or
 7-33 electronically, except that the employee's approval is not required
 7-34 if another person is required by law to provide the approval.

7-35 (d) A voucher must be supported by:

7-36 (1) a description of ~~[describe]~~ the official state
 7-37 business performed; and

7-38 (2) ~~[be accompanied by]~~ the information and
 7-39 documentation that the comptroller considers necessary for the
 7-40 comptroller to determine compliance with this chapter, the travel
 7-41 provisions of the General Appropriations Act, and the rules adopted
 7-42 by the comptroller under this chapter.

7-43 (e) The comptroller may require a state agency to provide to
 7-44 the comptroller the description, information, and documentation
 7-45 required under ~~[by]~~ Subsection (d):

7-46 (1) on the form adopted by the comptroller under
 7-47 Subsection (c);

7-48 (2) electronically;

7-49 (3) by submitting receipts or other documents; or

7-50 (4) ~~[3]~~ by any ~~[a]~~ combination of Subdivisions (1),
 7-51 ~~[and]~~ (2), and (3).

7-52 SECTION 27. Section 1431.001(2), Government Code, is
 7-53 amended to read as follows:

7-54 (2) "Eligible countywide district" means:

7-55 (A) a flood control district or a hospital
 7-56 district the boundaries of which are substantially coterminous with
 7-57 the boundaries of a county with a population of three million or
 7-58 more; or

7-59 (B) a hospital district created in a county with
 7-60 a population of more than 800,000 in which no hospital district was
 7-61 located before September 1, 2003.

7-62 SECTION 28. Section 2256.011, Government Code, is amended
 7-63 by amending Subsection (a) and adding Subsection (e) to read as
 7-64 follows:

7-65 (a) A fully collateralized repurchase agreement is an
 7-66 authorized investment under this subchapter if the repurchase
 7-67 agreement:

7-68 (1) has a defined termination date;

7-69 (2) except as provided by Subsection (e), is secured

8-1 by obligations described by Section 2256.009(a)(1); ~~and~~

8-2 (3) requires the securities being purchased by the
8-3 entity to be pledged to the entity, held in the entity's name, and
8-4 deposited at the time the investment is made with the entity or with
8-5 a third party selected and approved by the entity; and

8-6 (4) is placed through a primary government securities
8-7 dealer, as defined by the Federal Reserve, or a financial
8-8 institution doing business in this state.

8-9 (e) An entity may agree to secure the agreement by accepting
8-10 cash on an overnight basis in lieu of the obligations identified in
8-11 Section 2256.009(a)(1). Cash held by an entity under this
8-12 subsection is not a deposit of public funds for purposes of any
8-13 statute, including Chapter 2257, that requires a deposit of public
8-14 funds to be collateralized by eligible securities.

8-15 SECTION 29. (a) Section 103.007, Human Resources Code, is
8-16 amended by amending Subsection (c) and adding Subsection (d) to
8-17 read as follows:

8-18 (c) A person who operates a facility that is licensed under
8-19 this chapter must file an application for a renewal license not
8-20 later than the 45th day before the expiration date of the current
8-21 license on a form prescribed by the department together with a
8-22 renewal fee of \$25.

8-23 (d) An application for license renewal submitted to the
8-24 department later than the 45th day before the expiration date of the
8-25 current license must be accompanied by a late application fee in
8-26 accordance with department rules.

8-27 (b) The change in law made by this section applies only to an
8-28 application for license renewal that is submitted on or after
8-29 September 1, 2005.

8-30 SECTION 30. Chapter 103, Human Resources Code, is amended
8-31 by adding Section 103.0076 to read as follows:

8-32 Sec. 103.0076. FEASIBILITY INSPECTION. (a) The department
8-33 shall adopt a procedure under which a person who is considering
8-34 applying for a license to operate an adult day-care facility may
8-35 request an on-site compliance review by qualified department
8-36 personnel of an existing unlicensed building for conformance with
8-37 the department's licensing standards and the relevant occupancy
8-38 chapters of the Life Safety Code of the National Fire Protection
8-39 Association. In adopting the procedure, the department shall set
8-40 reasonable deadlines by which the department must complete the
8-41 feasibility inspection.

8-42 (b) Not later than the 30th day after the date a person
8-43 requests a feasibility inspection under this section, the
8-44 department shall complete the inspection and inform the person in
8-45 writing of the results of the inspection. If the building complies
8-46 with the department's licensing standards and the relevant Life
8-47 Safety Code occupancy chapters, the department may not subsequently
8-48 change the licensing standards and the relevant Life Safety Code
8-49 occupancy chapters applicable to the project unless:

- 8-50 (1) the change is required by federal law; or
- 8-51 (2) the person fails to complete the project within a
8-52 reasonable time.

8-53 (c) The department may charge a reasonable fee for
8-54 conducting a feasibility inspection under this section.

8-55 (d) A fee collected under this section shall be deposited in
8-56 the general revenue fund and may be appropriated only to the
8-57 department to conduct feasibility inspections under this section.

8-58 (e) The feasibility inspection procedure provided by this
8-59 section does not include inspection of an existing unlicensed
8-60 building for conformance with the Texas Accessibility Standards as
8-61 administered and enforced by the Texas Department of Licensing and
8-62 Regulation.

8-63 SECTION 31. (a) Section 142.0105, Health and Safety Code,
8-64 is amended to read as follows:

8-65 Sec. 142.0105. LICENSE RENEWAL. (a) A person who is
8-66 otherwise eligible to renew a license may renew an unexpired
8-67 license by submitting a completed application for renewal and
8-68 paying the required renewal fee to the department not later than the
8-69 45th day before the expiration date of the license. A person whose

9-1 license has expired may not engage in activities that require a
 9-2 license [~~until the license has been renewed~~].

9-3 (b) An application for license renewal submitted to the
 9-4 department later than the 45th day before the expiration date of a
 9-5 current license is subject to an additional late application fee in
 9-6 accordance with department rules [A person whose license has been
 9-7 expired for 90 days or less may renew the license by paying to the
 9-8 department a renewal fee that is equal to 1-1/2 times the normally
 9-9 required renewal fee].

9-10 (c) [~~A person whose license has been expired for more than~~
 9-11 ~~90 days may obtain a new license by complying with the requirements~~
 9-12 ~~and procedures for obtaining an original license.~~

9-13 [~~(d)~~] Not later than the 120th [60th] day before the date a
 9-14 person's license is scheduled to expire, the department shall send
 9-15 written notice of the impending expiration to the person at the
 9-16 person's last known address according to the records of the
 9-17 department. The written notice must include an application for
 9-18 licensure and instructions for completing the application.

9-19 (b) The change in law made by this section applies only to an
 9-20 application for license renewal that is submitted on or after
 9-21 September 1, 2005.

9-22 SECTION 32. Section 142.017, Health and Safety Code, is
 9-23 amended by amending Subsection (e) and adding Subsection (j) to
 9-24 read as follows:

9-25 (e) Except as provided in Subsection (j), the [The]
 9-26 department by rule shall provide the home and community support
 9-27 services agency with a reasonable period of time following the
 9-28 first day of a violation to correct the violation before assessing
 9-29 an administrative penalty if a plan of correction has been
 9-30 implemented.

9-31 (j) The department is not required to provide the home and
 9-32 support services agency with a reasonable period of time following
 9-33 the first day of a violation to correct the violation before
 9-34 assessing an administrative penalty if the department determines
 9-35 that the violation:

9-36 (1) results in serious harm to or death of a client;
 9-37 (2) constitutes a serious threat to the health or
 9-38 safety of a client;

9-39 (3) substantially limits the agency's capacity to
 9-40 provide care;

9-41 (4) is a violation in which a person:
 9-42 (A) makes a false statement, that the person
 9-43 knows or should know is false, of a material fact:

9-44 (i) on an application for issuance or
 9-45 renewal of a license or in an attachment to the application; or

9-46 (ii) with respect to a matter under
 9-47 investigation by the department;

9-48 (B) refuses to allow a representative of the
 9-49 department to inspect a book, record, or file required to be
 9-50 maintained by an agency;

9-51 (C) wilfully interferes with the work of a
 9-52 representative of the department or the enforcement of this
 9-53 chapter;

9-54 (D) wilfully interferes with a representative of
 9-55 the department preserving evidence of a violation of this chapter
 9-56 or a rule, standard, or order adopted or license issued under this
 9-57 chapter;

9-58 (E) fails to pay a penalty assessed by the
 9-59 department under this chapter not later than the 10th day after the
 9-60 date the assessment of the penalty becomes final; or

9-61 (F) fails to submit:
 9-62 (i) a plan of correction not later than the
 9-63 10th day after the date the person receives a statement of licensing
 9-64 violations; or

9-65 (ii) an acceptable plan of correction not
 9-66 later than the 30th day after the date the person receives
 9-67 notification from the department that the previously submitted plan
 9-68 of correction is not acceptable;

9-69 (5) is a violation of Section 142.0145; or

10-1 (6) involves the rights of the elderly under Chapter
 10-2 102, Human Resources Code.

10-3 SECTION 33. Subchapter A, Chapter 142, Health and Safety
 10-4 Code, is amended by adding Sections 142.0031 and 142.0032 to read as
 10-5 follows:

10-6 Sec. 142.0031. EARLY COMPLIANCE REVIEW. (a) The
 10-7 department by rule shall adopt a procedure under which a person
 10-8 proposing to construct or modify a free-standing hospice may submit
 10-9 building plans to the department for review for compliance with the
 10-10 department's architectural requirements before beginning
 10-11 construction or modification. In adopting the procedure, the
 10-12 department shall set reasonable deadlines by which the department
 10-13 must complete review of submitted plans.

10-14 (b) Not later than the 30th day after the date building
 10-15 plans are submitted under this section, the department shall review
 10-16 the plans for compliance with the department's architectural
 10-17 requirements and inform the person in writing of the results of the
 10-18 review. If the plans comply with the department's architectural
 10-19 requirements, the department may not subsequently change the
 10-20 architectural requirements applicable to the project unless:

10-21 (1) the change is required by federal law; or

10-22 (2) the person fails to complete the project within a
 10-23 reasonable time.

10-24 (c) The department may charge a reasonable fee for
 10-25 conducting a review under this section.

10-26 (d) A fee collected under this section shall be deposited in
 10-27 the general revenue fund and may be appropriated only to the
 10-28 department to conduct reviews under this section.

10-29 (e) The review procedure provided by this section does not
 10-30 include review of building plans for compliance with the Texas
 10-31 Accessibility Standards as administered and enforced by the Texas
 10-32 Department of Licensing and Regulation.

10-33 Sec. 142.0032. FEASIBILITY INSPECTION. (a) The department
 10-34 shall adopt a procedure under which a person who is considering
 10-35 applying for a license to operate a free-standing hospice may
 10-36 request an on-site compliance review by qualified department
 10-37 personnel of an existing unlicensed building for conformance with
 10-38 the department's licensing standards and the relevant occupancy
 10-39 chapters of the Life Safety Code of the National Fire Protection
 10-40 Association. In adopting the procedure, the department shall set
 10-41 reasonable deadlines by which the department must complete the
 10-42 feasibility inspection.

10-43 (b) Not later than the 30th day after the date a person
 10-44 requests a feasibility inspection under this section, the
 10-45 department shall complete the inspection and inform the person in
 10-46 writing of the results of the inspection. If the building complies
 10-47 with the department's licensing standards and the relevant Life
 10-48 Safety Code occupancy chapters, the department may not subsequently
 10-49 change the licensing standards and the relevant Life Safety Code
 10-50 occupancy chapters applicable to the project unless:

10-51 (1) the change is required by federal law; or

10-52 (2) the person fails to complete the project within a
 10-53 reasonable time.

10-54 (c) The department may charge a reasonable fee for
 10-55 conducting a feasibility inspection under this section.

10-56 (d) A fee collected under this section shall be deposited in
 10-57 the general revenue fund and may be appropriated only to the
 10-58 department to conduct feasibility inspections under this section.

10-59 (e) The feasibility inspection procedure provided by this
 10-60 section does not include inspection of an existing unlicensed
 10-61 building for conformance with the Texas Accessibility Standards as
 10-62 administered and enforced by the Texas Department of Licensing and
 10-63 Regulation.

10-64 SECTION 34. Section 242.034, Health and Safety Code, is
 10-65 amended by adding Subsection (i) to read as follows:

10-66 (i) An application for license renewal that is submitted to
 10-67 the department later than the 45th day before the expiration date of
 10-68 a current license is subject to an additional late application fee
 10-69 in accordance with department rules.

SECTION 35. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.0386 to read as follows:

Sec. 242.0386. FEASIBILITY INSPECTION. (a) The department shall adopt a procedure under which a person who is considering applying for a license to operate an institution may request an on-site compliance review by qualified department personnel of an existing unlicensed building for conformance with the department's licensing standards and the relevant occupancy chapters of the Life Safety Code of the National Fire Protection Association. In adopting the procedure, the department shall set reasonable deadlines by which the department must complete the feasibility inspection.

(b) Not later than the 30th day after the date a person requests a feasibility inspection under this section, the department shall complete the inspection and inform the person in writing of the results of the inspection. If the building complies with the department's licensing standards and the relevant Life Safety Code occupancy chapters, the department may not subsequently change the licensing standards and the relevant Life Safety Code occupancy chapters applicable to the project unless:

- (1) the change is required by federal law; or
- (2) the person fails to complete the project within a reasonable time.

(c) The department may charge a reasonable fee for conducting a feasibility inspection under this section.

(d) A fee collected under this section shall be deposited in the general revenue fund and may be appropriated only to the department to conduct feasibility inspections under this section.

(e) The feasibility inspection procedure provided by this section does not include inspection of an existing unlicensed building for conformance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

SECTION 36. (a) Section 242.097, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) A fee charged under Subsection (a) or (b) that is not paid by a nursing or convalescent home on or before the due date is late and the home must pay an additional fee in accordance with department rules.

(b) The change in law made by this section applies only to a fee that first becomes due on or after September 1, 2005.

SECTION 37. (a) Section 242.0975, Health and Safety Code, is amended by adding Subsection (d) to read as follows:

(d) A fee charged under Subsection (a) or (b) that is not paid by a facility on or before the due date is late and the facility must pay an additional fee in accordance with department rules.

(b) The change in law made by this section applies only to a fee that first becomes due on or after September 1, 2005.

SECTION 38. (a) Section 247.024, Health and Safety Code, is amended by adding Subsection (e) to read as follows:

(e) An application for license renewal that is submitted to the department later than the 45th day before the expiration date of a current license is subject to a late application fee in accordance with department rules.

(b) The change in law made by this section applies only to an application for license renewal that is submitted on or after September 1, 2005.

SECTION 39. Subchapter B, Chapter 247, Health and Safety Code, is amended by adding Section 247.0262 to read as follows:

Sec. 247.0262. FEASIBILITY INSPECTION. (a) The department shall adopt a procedure under which a person who is considering applying for a license to operate an assisted living facility may request an on-site compliance review by qualified department personnel of:

- (1) an existing unlicensed building for conformance with the department's licensing standards and the relevant occupancy chapters of the Life Safety Code of the National Fire Protection Association; or
- (2) an existing licensed facility that wants to change

12-1 its capacity or licensure type.

12-2 (b) In adopting the procedure under Subsection (a), the
 12-3 department shall set reasonable deadlines by which the department
 12-4 must complete a feasibility inspection.

12-5 (c) Not later than the 30th day after the date a person
 12-6 requests a feasibility inspection under this section, the
 12-7 department shall complete the inspection and inform the person in
 12-8 writing of the results of the inspection. If the building complies
 12-9 with the department's licensing standards and the relevant Life
 12-10 Safety Code occupancy chapters, the department may not subsequently
 12-11 change the licensing standards and the relevant Life Safety Code
 12-12 occupancy chapters applicable to the project unless:

12-13 (1) the change is required by federal law; or
 12-14 (2) the person fails to complete the project within a
 12-15 reasonable time.

12-16 (d) The department may charge a reasonable fee for
 12-17 conducting a feasibility inspection under this section.

12-18 (e) A fee collected under this section shall be deposited in
 12-19 the general revenue fund and may be appropriated only to the
 12-20 department to conduct reviews under this section.

12-21 (f) The feasibility inspection procedure provided by this
 12-22 section does not include inspection of an existing unlicensed
 12-23 building for conformance with the Texas Accessibility Standards as
 12-24 administered and enforced by the Texas Department of Licensing and
 12-25 Regulation.

12-26 SECTION 40. (a) Section 252.034, Health and Safety Code, is
 12-27 amended by adding Subsection (f) to read as follows:

12-28 (f) An application for license renewal that is submitted to
 12-29 the department later than the 45th day before the expiration date of
 12-30 a current license is subject to a late application fee in accordance
 12-31 with department rules.

12-32 (b) The change in law made by this section applies only to an
 12-33 application for license renewal that is submitted on or after
 12-34 September 1, 2005.

12-35 SECTION 41. Subchapter B, Chapter 252, Health and Safety
 12-36 Code, is amended by adding Section 252.0376 to read as follows:

12-37 Sec. 252.0376. FEASIBILITY INSPECTION. (a) The department
 12-38 shall adopt a procedure under which a person who is considering
 12-39 applying for a license to operate a facility may request an on-site
 12-40 compliance review by qualified department personnel of an existing
 12-41 unlicensed building for conformance with the department's
 12-42 licensing standards and the relevant occupancy chapters of the Life
 12-43 Safety Code of the National Fire Protection Association. In
 12-44 adopting the procedure, the department shall set reasonable
 12-45 deadlines by which the department must complete the feasibility
 12-46 inspection.

12-47 (b) Not later than the 30th day after the date a person
 12-48 requests a feasibility inspection under this section, the
 12-49 department shall complete the inspection and inform the person in
 12-50 writing of the results of the inspection. If the building complies
 12-51 with the department's licensing standards and the relevant Life
 12-52 Safety Code occupancy chapters, the department may not subsequently
 12-53 change the licensing standards and the relevant Life Safety Code
 12-54 occupancy chapters applicable to the project unless:

12-55 (1) the change is required by federal law; or
 12-56 (2) the person fails to complete the project within a
 12-57 reasonable time.

12-58 (c) The department may charge a reasonable fee for
 12-59 conducting a feasibility inspection under this section.

12-60 (d) A fee collected under this section shall be deposited in
 12-61 the general revenue fund and may be appropriated only to the
 12-62 department to conduct feasibility inspections under this section.

12-63 (e) The feasibility inspection procedure provided by this
 12-64 section does not include inspection of an existing unlicensed
 12-65 building for conformance with the Texas Accessibility Standards as
 12-66 administered and enforced by the Texas Department of Licensing and
 12-67 Regulation.

12-68 SECTION 42. (a) Section 252.095, Health and Safety Code, is
 12-69 amended by adding Subsection (e) to read as follows:

13-1 (e) A fee charged under Subsection (a) that is not paid on or
 13-2 before the due date is late and the facility must pay an additional
 13-3 fee in accordance with department rules.

13-4 (b) The change in law made by this section applies only to a
 13-5 fee charged under Section 252.095(a), Health and Safety Code, that
 13-6 first becomes due on or after September 1, 2005.

13-7 SECTION 43. (a) Section 103.006(b), Human Resources Code,
 13-8 is amended to read as follows:

13-9 (b) The license expires two years [~~one year~~] from the date
 13-10 of its issuance.

13-11 (b) The change in law made by this section applies only to a
 13-12 license issued under Section 103.006, Human Resources Code, as
 13-13 amended by this section, on or after September 1, 2005. A license
 13-14 issued under Section 103.006, Human Resources Code, before
 13-15 September 1, 2005, expires as provided by the license and the law as
 13-16 it existed immediately before September 1, 2005, and the former law
 13-17 is continued for that purpose.

13-18 SECTION 44. (a) Section 142.006(b), Health and Safety
 13-19 Code, is amended to read as follows:

13-20 (b) A license issued under this chapter expires two years
 13-21 [~~one year~~] after the date of issuance. The department may issue an
 13-22 initial license for a shorter term [~~of less than one year~~]
 13-23 to conform expiration dates for a locality or an applicant. The
 13-24 department, in accordance with department [~~board~~] rules, may issue
 13-25 a temporary license to an applicant for an initial license.

13-26 (b) The change in law made by this section applies only to a
 13-27 license issued under Section 142.006, Health and Safety Code, as
 13-28 amended by this section, on or after September 1, 2005. A license
 13-29 issued under Section 142.006, Health and Safety Code, before
 13-30 September 1, 2005, expires as provided by the license and the law as
 13-31 it existed immediately before September 1, 2005, and the former law
 13-32 is continued for that purpose.

13-33 SECTION 45. (a) Section 142.010(a), Health and Safety
 13-34 Code, is amended to read as follows:

13-35 (a) The department [~~board~~] shall set license fees for home
 13-36 and community support services agencies in amounts that are
 13-37 reasonable to meet the costs of administering this chapter, except
 13-38 that the fees may not be less than \$600 [~~\$300~~] or more than \$2,000
 13-39 [~~\$1,000~~] for a license to provide home health, hospice, or personal
 13-40 assistance services.

13-41 (b) The change in law made by this section applies only to a
 13-42 fee for a license issued under Chapter 142, Health and Safety Code,
 13-43 as amended by this section, for a license issued on or after
 13-44 September 1, 2005. The fee for a license issued before September 1,
 13-45 2005, is the fee as set by rules adopted under that chapter as they
 13-46 existed immediately before September 1, 2005, and the former law is
 13-47 continued for that purpose.

13-48 SECTION 46. (a) Sections 247.023(a) and (b), Health and
 13-49 Safety Code, are amended to read as follows:

13-50 (a) The department shall issue a license if, after
 13-51 inspection and investigation, it finds that the applicant, the
 13-52 assisted living facility, and all controlling persons with respect
 13-53 to the applicant or facility meet the requirements of this chapter
 13-54 and the standards adopted under this chapter. The license expires
 13-55 on the second anniversary of the date of its issuance.

13-56 (b) To renew a license, the license holder must submit to
 13-57 the department the [~~annual~~] license renewal fee.

13-58 (b) The change in law made by this section applies only to a
 13-59 license issued under Section 247.023, Health and Safety Code, as
 13-60 amended by this section, on or after September 1, 2005. A license
 13-61 issued under Section 247.023, Health and Safety Code, before
 13-62 September 1, 2005, expires as provided by the license and the law as
 13-63 it existed immediately before September 1, 2005, and the former law
 13-64 is continued for that purpose.

13-65 SECTION 47. (a) Section 247.024(a), Health and Safety Code,
 13-66 is amended to read as follows:

13-67 (a) The department [~~board~~] shall set license fees imposed by
 13-68 this chapter:

13-69 (1) on the basis of the number of beds in assisted

14-1 living facilities required to pay the fee; and

14-2 (2) in amounts reasonable and necessary to defray the
14-3 cost of administering this chapter, but not to exceed \$1,500
14-4 [~~\$750~~].

14-5 (b) The change in law made by this section applies only to a
14-6 fee for a license issued under Chapter 247, Health and Safety Code,
14-7 as amended by this section, for a license issued on or after
14-8 September 1, 2005. The fee for a license issued before September 1,
14-9 2005, is the fee as set by rules adopted under that chapter as they
14-10 existed immediately before September 1, 2005, and the former law is
14-11 continued for that purpose.

14-12 SECTION 48. Section 101.001(a), Insurance Code, is amended
14-13 to read as follows:

14-14 (a) It is a state concern that many residents of this state
14-15 hold insurance policies issued by persons or insurers who are not
14-16 authorized to do insurance business in this state and who are not
14-17 qualified as eligible surplus lines insurers under Chapter 981
14-18 [~~Article 1.14-2~~]. These residents face often insurmountable
14-19 obstacles in asserting legal rights under the policies in foreign
14-20 forums under unfamiliar laws and rules of practice.

14-21 SECTION 49. Subchapter A, Chapter 101, Insurance Code, is
14-22 amended by adding Section 101.005 to read as follows:

14-23 Sec. 101.005. APPLICABILITY OF CHAPTER TO ELIGIBLE SURPLUS
14-24 LINES INSURERS. Notwithstanding any other provision of this
14-25 chapter, this chapter does not apply to an eligible surplus lines
14-26 insurer.

14-27 SECTION 50. Section 101.053, Insurance Code, is amended by
14-28 amending Subsection (b) and adding Subsection (d) to read as
14-29 follows:

14-30 (b) Sections 101.051 and 101.052 do not apply to:

14-31 (1) the lawful transaction of surplus lines insurance
14-32 [~~under Chapter 981~~];

14-33 (2) the lawful transaction of reinsurance by insurers;

14-34 (3) a transaction in this state that:

14-35 (A) involves a policy that:

14-36 (i) is lawfully solicited, written, and
14-37 delivered outside this state; and

14-38 (ii) covers, at the time the policy is
14-39 issued, only subjects of insurance that are not resident, located,
14-40 or expressly to be performed in this state; and

14-41 (B) takes place after the policy is issued;

14-42 (4) a transaction:

14-43 (A) that involves an insurance contract
14-44 independently procured by the insured from an insurance company not
14-45 authorized to do insurance business in this state through
14-46 negotiations occurring entirely outside this state;

14-47 (B) that is reported; and

14-48 (C) on which premium tax is paid in accordance
14-49 with Chapter 226;

14-50 (5) a transaction in this state that:

14-51 (A) involves group life, health, or accident
14-52 insurance, other than credit insurance, and group annuities in
14-53 which the master policy for the group was lawfully issued and
14-54 delivered in a state in which the insurer or person was authorized
14-55 to do insurance business; and

14-56 (B) is authorized by a statute of this state;

14-57 (6) an activity in this state by or on the sole behalf
14-58 of a nonadmitted captive insurance company that insures solely:

14-59 (A) directors' and officers' liability insurance
14-60 for the directors and officers of the company's parent and
14-61 affiliated companies;

14-62 (B) the risks of the company's parent and
14-63 affiliated companies; or

14-64 (C) both the individuals and entities described
14-65 by Paragraphs (A) and (B);

14-66 (7) the issuance of a qualified charitable gift
14-67 annuity under Chapter 102; or

14-68 (8) a lawful transaction by a servicing company of the
14-69 Texas workers' compensation employers' rejected risk fund under

15-1 Section 4.08, Article 5.76-2, as that article existed before its
15-2 repeal.

15-3 (d) For purposes of Subsection (b)(1), "lawful transaction
15-4 of surplus lines insurance" means an insurance transaction under
15-5 which insurance is procured through an eligible surplus lines
15-6 insurer, as defined by Section 981.002.

15-7 SECTION 51. Section 101.201(b), Insurance Code, is amended
15-8 to read as follows:

15-9 (b) This section does not apply to [~~insurance procured by a~~
15-10 ~~licensed surplus lines agent from an eligible surplus lines insurer~~
15-11 ~~as defined by Chapter 981 and~~] independently procured contracts of
15-12 insurance, as described in Section 101.053(b)(4), that are reported
15-13 and on which premium tax is paid in accordance with Chapter [~~225 or~~]
15-14 226.

15-15 SECTION 52. Section 101.203(c), Insurance Code, is amended
15-16 to read as follows:

15-17 (c) This section does not apply to:

15-18 (1) a transaction in this state that:

15-19 (A) involves a policy that:

15-20 (i) is lawfully solicited, negotiated,
15-21 written, and delivered outside this state; and

15-22 (ii) covers, at the time the policy is
15-23 issued, only subjects of insurance that are not resident, located,
15-24 or expressly to be performed in this state; and

15-25 (B) takes place after the policy is issued; or

15-26 (2) surplus lines insurance procured through an
15-27 eligible surplus lines insurer [~~carriers~~] as defined by Section
15-28 981.002 [~~Article 1.14-2~~].

15-29 SECTION 53. Section 101.301(b), Insurance Code, is amended
15-30 to read as follows:

15-31 (b) This section does not apply to:

15-32 (1) a transaction described by Section 101.053(b)(4);

15-33 or

15-34 (2) surplus lines insurance procured through an
15-35 eligible surplus lines insurer [~~carriers~~] as defined by Section
15-36 981.002 [~~Article 1.14-2~~].

15-37 SECTION 54. Section 225.002, Insurance Code, is amended to
15-38 read as follows:

15-39 Sec. 225.002. APPLICABILITY OF CHAPTER. This chapter
15-40 applies only to a surplus lines agent who collects gross premiums
15-41 for surplus lines insurance.

15-42 SECTION 55. Section 226.001, Insurance Code, is amended to
15-43 read as follows:

15-44 Sec. 226.001. DEFINITION [~~DEFINITIONS~~]. In this
15-45 subchapter, premium [~~+~~

15-46 [~~(1) "Insurer" has the meaning assigned by Section~~
15-47 ~~101.002 and includes:~~

15-48 [~~(A) an insurer that does not hold a certificate~~
15-49 ~~of authority in this state;~~

15-50 [~~(B) an eligible surplus lines insurer; and~~

15-51 [~~(C) an insurer that holds a certificate of~~
15-52 ~~authority in this state.~~

15-53 [~~(2) "Premium"~~] includes any consideration for
15-54 insurance, including:

15-55 (1) [~~(A)~~] a premium;

15-56 (2) [~~(B)~~] a membership fee;

15-57 (3) [~~(C)~~] an assessment; or

15-58 (4) [~~(D)~~] dues.

15-59 SECTION 56. Section 226.002, Insurance Code, is amended to
15-60 read as follows:

15-61 Sec. 226.002. APPLICABILITY OF SUBCHAPTER. This subchapter
15-62 applies only to an unauthorized insurer who charges gross premiums
15-63 for insurance on a subject resident, located, or to be performed in
15-64 this state.

15-65 SECTION 57. Subsections (a), (b), and (g), Section 226.003,
15-66 Insurance Code, are amended to read as follows:

15-67 (a) A tax is imposed on each unauthorized insurer that
15-68 charges gross premiums subject to taxation under this section. The
15-69 rate of the tax is 4.85 percent of the gross premiums charged by the

16-1 unauthorized insurer.

16-2 (b) Except as otherwise provided by this section, in
16-3 determining an unauthorized insurer's taxable gross premiums, the
16-4 insurer shall include any premium for insurance on a subject
16-5 resident, located, or to be performed in this state.

16-6 (g) The following premiums are not subject to the tax
16-7 imposed by this subchapter:

16-8 (1) premiums on insurance procured [~~by a licensed~~
16-9 ~~surplus lines agent~~] from an eligible surplus lines insurer as
16-10 defined by Section 981.002 [~~Chapter 981 on which premium tax is paid~~
16-11 ~~in accordance with Chapter 225~~]; and

16-12 (2) premiums on an independently procured contract of
16-13 insurance on which premium tax is paid in accordance with
16-14 Subchapter B [~~and~~

16-15 [~~(3) premiums on a contract of insurance written by an~~
16-16 ~~insurer that holds a certificate of authority in this state and that~~
16-17 ~~is authorized to write the contract~~].

16-18 SECTION 58. Sections 226.005(b) and (c), Insurance Code,
16-19 are amended to read as follows:

16-20 (b) An unauthorized insurer shall pay the tax imposed by
16-21 this subchapter using a form prescribed by the comptroller. An
16-22 insured or agent may pay the tax in lieu of the unauthorized
16-23 insurer.

16-24 (c) The tax imposed under [~~by~~] this subchapter, if not paid
16-25 when due, is a liability of the unauthorized insurer, the [~~insurer~~]
16-26 agent, and the insured until paid.

16-27 SECTION 59. Section 226.052, Insurance Code, is amended to
16-28 read as follows:

16-29 Sec. 226.052. APPLICABILITY OF SUBCHAPTER. This subchapter
16-30 applies only to an insured who procures an insurance contract in
16-31 accordance with Section 101.053(b)(4).

16-32 SECTION 60. Section 981.002(1), Insurance Code, is amended
16-33 to read as follows:

16-34 (1) "Eligible surplus lines insurer" means an insurer
16-35 that is not an unauthorized [~~authorized~~] insurer, but that is
16-36 eligible under Subchapter B, in which surplus lines insurance is
16-37 placed or may be placed under this chapter.

16-38 SECTION 61. Section 981.004, Insurance Code, is amended by
16-39 adding Subsection (c) to read as follows:

16-40 (c) An eligible surplus lines insurer is not an unauthorized
16-41 insurer and is not subject to Chapter 101.

16-42 SECTION 62. Section 981.005, Insurance Code, is amended to
16-43 read as follows:

16-44 Sec. 981.005. VALIDITY OF CONTRACTS. (a) Unless a
16-45 material and intentional violation of this chapter [~~or Section 12,~~
16-46 ~~Article 1.14-2,~~] exists, an insurance contract obtained from an
16-47 eligible surplus lines insurer is:

16-48 (1) valid and enforceable as to all parties; and

16-49 (2) recognized in the same manner as a comparable
16-50 contract issued by an authorized insurer.

16-51 (b) A material and intentional violation of this chapter [~~or~~
16-52 ~~Section 12, Article 1.14-2,~~] does not preclude the insured from
16-53 enforcing the insured's rights under the contract.

16-54 SECTION 63. Section 981.006, Insurance Code, is amended to
16-55 read as follows:

16-56 Sec. 981.006. SANCTIONS. Chapter 82 applies to a surplus
16-57 lines agent or an eligible surplus lines insurer that violates:

16-58 (1) this chapter;

16-59 (2) Chapter 225 [~~Section 12, Article 1.14-2~~]; or

16-60 (3) a rule or order adopted under Subchapter B or
16-61 Section 981.005.

16-62 SECTION 64. Section 981.008, Insurance Code, is amended to
16-63 read as follows:

16-64 Sec. 981.008. SURPLUS LINES INSURANCE PREMIUM TAX. The
16-65 premiums charged for surplus lines insurance are subject to the
16-66 premium tax imposed under Chapter 225 [~~Section 12, Article 1.14-2~~].

16-67 SECTION 65. Section 981.101, Insurance Code, is amended by
16-68 amending Subsection (b) and adding Subsections (d) and (e) to read
16-69 as follows:

17-1 (b) A surplus lines document must state, in 11-point type,
17-2 the following:

17-3 This insurance contract is with an insurer not licensed to
17-4 transact insurance in this state and is issued and delivered
17-5 as surplus line coverage under the Texas insurance statutes.
17-6 The Texas Department of Insurance does not audit the finances
17-7 or review the solvency of the surplus lines insurer providing
17-8 this coverage, and the insurer is not a member of the property
17-9 and casualty insurance guaranty association created under
17-10 Article 21.28-C, Insurance Code. Chapter 225 [Section 12,
17-11 Article 1.14-2], Insurance Code, requires payment of a
17-12 _____ (insert appropriate tax rate) percent tax on gross
17-13 premium.

17-14 (d) Each eligible surplus lines insurer shall annually file
17-15 with the stamping office a report, in a format prescribed by the
17-16 stamping office, containing the following information regarding
17-17 each surplus lines policy:

17-18 (1) policy number;
17-19 (2) insured's name and address;
17-20 (3) policy effective and expiration dates;
17-21 (4) written premium allocated to Texas; and
17-22 (5) name, address, and agent license number of the
17-23 surplus lines agent who placed the policy, or, in the case of a
17-24 group of insurers that includes individual unincorporated
17-25 insurers, the group or its eligible members shall provide:

17-26 (A) policy information, which may be aggregated
17-27 or summarized as approved by the commissioner; and

17-28 (B) other information as directed by the
17-29 commissioner.

17-30 (e) Information provided under Subsection (d) is
17-31 confidential and may not be made available to the public.

17-32 SECTION 66. Section 981.104(b), Insurance Code, is amended
17-33 to read as follows:

17-34 (b) A change made under Subsection (a) may not result in
17-35 coverage or an insurance contract that would violate this chapter
17-36 or Chapter 225 [Section 12, Article 1.14-2], if originally issued
17-37 on that basis.

17-38 SECTION 67. Section 981.160, Insurance Code, is amended to
17-39 read as follows:

17-40 Sec. 981.160. NO ENFORCEMENT AUTHORITY. This subchapter
17-41 does not give the stamping office authority to enforce this chapter
17-42 or Chapter 225 [Section 12, Article 1.14-2].

17-43 SECTION 68. Section 302.001, Local Government Code, is
17-44 amended by amending Subdivision (1) and adding Subdivision (3) to
17-45 read as follows:

17-46 (1) "Energy savings performance contract" means a
17-47 contract for energy or water conservation or usage measures to
17-48 reduce energy or water consumption or net operating costs or to
17-49 increase energy-related or water-related revenues of local
17-50 government facilities in which the estimated savings in utility
17-51 costs or the estimated increase in revenues resulting from the
17-52 measures is guaranteed to offset the cost of the measures over a
17-53 specified period. The term includes a contract for the
17-54 installation or implementation of:

17-55 (A) insulation of a building structure and
17-56 systems within the building;

17-57 (B) storm windows or doors, caulking or weather
17-58 stripping, multiglazed windows or doors, heat-absorbing or
17-59 heat-reflective glazed and coated window or door systems, or other
17-60 window or door system modifications that reduce energy consumption;

17-61 (C) automatic energy control systems, including
17-62 computer software and technical data licenses;

17-63 (D) heating, ventilating, or air-conditioning
17-64 system modifications or replacements that reduce energy or water
17-65 consumption;

17-66 (E) lighting fixtures that increase energy
17-67 efficiency;

17-68 (F) energy recovery systems;

17-69 (G) electric systems improvements;

18-1 (H) water-conserving fixtures, appliances, and
18-2 equipment or the substitution of non-water-using fixtures,
18-3 appliances, and equipment;

18-4 (I) water-conserving landscape irrigation
18-5 equipment;

18-6 (J) landscaping measures that reduce watering
18-7 demands and capture and hold applied water and rainfall, including:

18-8 (i) landscape contouring, including the use
18-9 of berms, swales, and terraces; and

18-10 (ii) the use of soil amendments that
18-11 increase the water-holding capacity of the soil, including compost;

18-12 (K) rainwater harvesting equipment and equipment
18-13 to make use of water collected as part of a storm-water system
18-14 installed for water quality control;

18-15 (L) equipment for recycling or reuse of water
18-16 originating on the premises or from other sources, including
18-17 treated municipal effluent;

18-18 (M) equipment needed to capture water from
18-19 nonconventional, alternate sources, including air-conditioning
18-20 condensate or graywater, for nonpotable uses;

18-21 (N) metering equipment [~~needed to segregate~~
18-22 ~~water use in order to identify water conservation opportunities or~~
18-23 ~~verify water savings~~]; or

18-24 (O) other energy or water conservation-related
18-25 improvements or equipment, including improvements or equipment
18-26 relating to renewable energy or nonconventional water sources or
18-27 water reuse.

18-28 (3) "Usage measure" means a technology or practice
18-29 related to the use of energy or water.

18-30 SECTION 69. Section 302.002(b), Local Government Code, is
18-31 amended to read as follows:

18-32 (b) Each energy or water conservation or usage measure must
18-33 comply with current local, state, and federal construction,
18-34 plumbing, and environmental codes and regulations.
18-35 Notwithstanding Section 302.001(1), an energy savings performance
18-36 contract may not include improvements or equipment that allow or
18-37 cause water from any condensing, cooling, or industrial process or
18-38 any system of nonpotable usage over which public water supply
18-39 system officials do not have sanitary control to be returned to the
18-40 potable water supply.

18-41 SECTION 70. Section 302.003, Local Government Code, is
18-42 amended to read as follows:

18-43 Sec. 302.003. PAYMENT AND PERFORMANCE BOND.
18-44 Notwithstanding any other law, before entering into an energy
18-45 savings performance contract, the governing body of the local
18-46 government shall require the provider of the energy or water
18-47 conservation or usage measures to file with the governing body a
18-48 payment and performance bond relating to the installation of the
18-49 measures in accordance with Chapter 2253, Government Code. The
18-50 governing body may also require a separate bond to cover the value
18-51 of the guaranteed savings on the contract.

18-52 SECTION 71. Section 302.004, Local Government Code, is
18-53 amended to read as follows:

18-54 Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT. (a)
18-55 An energy savings performance contract may be financed:

18-56 (1) under a lease-purchase contract that has a term
18-57 not to exceed 15 years from the final date of installation and that
18-58 meets federal tax requirements for tax-free municipal leasing or
18-59 long-term financing;

18-60 (2) with the proceeds of bonds; or

18-61 (3) under a contract with the provider of the energy or
18-62 water conservation or usage measures that has a term not to exceed
18-63 15 years from the final date of installation.

18-64 (b) An energy savings performance contract shall contain
18-65 provisions requiring the provider of the energy or water
18-66 conservation or usage measures to guarantee the amount of the
18-67 savings or the increased revenues, or both, to be realized by the
18-68 local government under the contract. If the term of the contract
18-69 exceeds one year, the local government's contractual obligations in

19-1 any one year during the term of the contract beginning after the
 19-2 final date of installation may not exceed the total energy, water,
 19-3 wastewater, and operating cost savings or increased revenues, or
 19-4 both, including electrical, gas, water, wastewater, or other
 19-5 utility cost savings and operating cost savings or increased
 19-6 revenues, or both, resulting from the measures as determined by the
 19-7 local government in this subsection, divided by the number of years
 19-8 in the contract term.

19-9 SECTION 72. Section 302.005(b), Local Government Code, is
 19-10 amended to read as follows:

19-11 (b) Before entering into an energy savings performance
 19-12 contract, the governing body must require that the cost savings or
 19-13 increased revenues, or both, projected by an offeror be reviewed by
 19-14 a licensed engineer who is not an officer or employee of an offeror
 19-15 for the contract under review or otherwise associated with the
 19-16 contract or the offeror. An engineer who reviews a contract shall
 19-17 maintain the confidentiality of any proprietary information the
 19-18 engineer acquires while reviewing the contract. Sections 1001.053
 19-19 and 1001.407, Occupations Code, apply to work performed under the
 19-20 contract.

19-21 SECTION 73. Section 430.003, Local Government Code, is
 19-22 amended to read as follows:

19-23 Sec. 430.003. EXEMPTIONS OF CERTAIN [~~STATE~~] PROPERTY FROM
 19-24 INFRASTRUCTURE FEES. (a) No county, municipality, or utility
 19-25 district may collect from a state agency or public or private
 19-26 institution of higher education, including a public junior college
 19-27 as defined by Section 61.003, Education Code, any fee charged for
 19-28 the development or maintenance of programs of facilities for the
 19-29 control of excess water or storm water.

19-30 (b) This section does not apply to a municipality with a
 19-31 population of less than 25,000.

19-32 SECTION 74. Section 433(a), Probate Code, is amended to
 19-33 read as follows:

19-34 (a) Mode of Recovery. When funds of an estate have been paid
 19-35 to the comptroller, any heir, devisee, or legatee of the estate, or
 19-36 their assigns, or any of them, may recover the portion of such funds
 19-37 to which he, she, or they are entitled. The person claiming such
 19-38 funds shall institute suit on or before the fourth anniversary of
 19-39 the date of the order requiring payment to the comptroller, by
 19-40 petition filed in the district court of Travis County, against the
 19-41 comptroller, setting forth the plaintiff's right to such funds, and
 19-42 the amount claimed by him. Any heir, devisee, legatee, or their
 19-43 assigns of an estate whose funds were paid to the state treasurer
 19-44 under this chapter before September 1, 1991, must initiate suit
 19-45 under this section not later than September 1, 2009.

19-46 SECTION 75. Section 74.101(a), Property Code, is amended to
 19-47 read as follows:

19-48 (a) Each holder who on June 30 holds property that is
 19-49 presumed abandoned under Chapter 72, 73, or 75 of this code or under
 19-50 Chapter 154, Finance Code, shall file a report of that property on
 19-51 or before the following November 1. The comptroller may require the
 19-52 report to be in a particular format, including an electronic [a]
 19-53 format that can be read by a computer if the holder is reporting 10
 19-54 or more items of property.

19-55 SECTION 76. Section 74.401, Property Code, is amended by
 19-56 adding Subsection (f) to read as follows:

19-57 (f) The comptroller may sell as a gift, novelty, or
 19-58 collectible item, but not as an investment, a stock, bond,
 19-59 certificate, or similar instrument that is nonredeemable and
 19-60 nontransferable because it has been canceled or issued by a company
 19-61 that has been dissolved or terminated and the existence of which has
 19-62 not been revived or reinstated. The comptroller may sell an
 19-63 instrument under this subsection at a public sale or in another
 19-64 manner determined to be appropriate by the comptroller, including
 19-65 an online sale. Before selling an instrument under this
 19-66 subsection, the comptroller must stamp the face of the instrument
 19-67 with a prominent mark indicating that the instrument has been
 19-68 canceled. At the time of the sale and of the delivery of the
 19-69 instrument to the purchaser, the comptroller must provide written

notice to the purchaser as required by this subsection. The notice must be printed in a font size that is at least as large as the largest font size on the page of the notice and include statements substantially similar to the following:

"(1) the comptroller is not a registered broker-dealer;

(2) this instrument is not being sold for investment purposes; and

(3) this instrument is nonredeemable and nontransferable because it has been canceled or issued by a company that has been dissolved or terminated and the existence of which has not been revived or reinstated."

SECTION 77. Section 74.507(b), Property Code, is amended to read as follows:

(b) The person who informs a potential claimant and by contract or other written agreement is to receive a percentage of the value of the property may not file or receive a ~~form to~~ claim form on behalf of a claimant.

SECTION 78. Section 74.601, Property Code, is amended by adding Subsection (g) to read as follows:

(g) If an owner does not assert a claim for unclaimed funds reported to the comptroller and the owner is reported to be the state or a state agency, the comptroller may deposit the unclaimed funds to the credit of the general revenue fund. The comptroller may establish procedures and adopt rules as necessary to implement this section.

SECTION 79. (a) Section 6.03, Tax Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Subsection (a) or any change in the method or procedure for appointing directors adopted under Section 6.031 before the date this subsection becomes effective, in an appraisal district established for a county with a population of less than 5,000, one director is appointed by the governing body of the most populous municipality that participates in the district, excluding the population of any portion of a municipality for which another appraisal district appraises property. The governing body of the municipality shall make the appointment by resolution and submit the resolution to the chief appraiser before December 15. If a vacancy occurs on the board of directors in the position held by the member appointed by the governing body, the governing body shall appoint a person to fill the vacancy. The governing body may recall a member appointed by the governing body by submitting a resolution to the chief appraiser stating that the municipality is recalling the member. A change under Section 6.031 made after this subsection becomes effective is not valid if the governing body adopts a resolution opposing the change and files it with the chief appraiser. The municipality is considered to be a taxing unit entitled to vote on the appointment of board members for purposes of Section 6.034. The other directors are appointed in the manner otherwise applicable to the district under this section or Section 6.031 by the other taxing units that participate in the appraisal district. If those directors are appointed as provided by this section, the total dollar amount of taxes imposed in the district by the municipality is excluded from the calculation of the voting entitlements of the other taxing units. The governing body of the municipality may not participate in a vote to fill a vacancy in a position on the board held by a member appointed by the other taxing units or to recall a member of the board appointed by the other taxing units.

(b) The change in law made by this section applies only to the selection of appraisal district directors for terms beginning on or after January 1, 2006. The change in law made by this section does not affect the selection of appraisal district directors for terms beginning before that date.

(c) If the directors of an appraisal district described by Section 6.03(a-1), Tax Code, as added by this Act, serve staggered terms, one of the directors must be appointed by the governing body of the most populous municipality that participates in the district at:

21-1 (1) the first election of directors after the
21-2 effective date of this section, if the board of directors consists
21-3 of an even number of directors; or

21-4 (2) the first election of directors after the
21-5 effective date of this section at which the greater number of
21-6 directors is elected, if the board of directors consists of an odd
21-7 number of directors.

21-8 (d) This section takes effect immediately if this Act
21-9 receives a vote of two-thirds of all the members elected to each
21-10 house, as provided by Section 39, Article III, Texas Constitution.
21-11 If this Act does not receive the vote necessary for immediate
21-12 effect, this section takes effect September 1, 2005.

21-13 SECTION 80. Subchapter C, Chapter 41, Tax Code, is amended
21-14 by adding Section 41.445 to read as follows:

21-15 Sec. 41.445. NOTICE OF FILING OF NOTICE OF PROTEST. (a) On
21-16 request of a taxing unit that participates in the appraisal
21-17 district, the secretary of the appraisal review board shall send by
21-18 regular mail to the presiding officer of the governing body of the
21-19 taxing unit a copy of each notice of protest pertaining to:

21-20 (1) a property that is or may be taxable by the taxing
21-21 unit; or

21-22 (2) a property that is or may be taxable by the taxing
21-23 unit and that is appraised by the chief appraiser at more than a
21-24 certain amount, as specified by the taxing unit.

21-25 (b) The secretary shall mail a copy of a notice of protest as
21-26 required by this section not later than the 10th day after the date
21-27 the notice is filed.

21-28 SECTION 81. Sections 41.47(a) and (d), Tax Code, are
21-29 amended to read as follows:

21-30 (a) Not later than the 30th day after the date the notice of
21-31 a protest is filed or as soon thereafter as practicable, the [The]
21-32 appraisal review board hearing the [a] protest shall determine the
21-33 protest and make its decision by written order.

21-34 (d) The board shall deliver by certified mail a notice of
21-35 issuance of the order and a copy of the order to the property owner
21-36 and the chief appraiser. In addition, the board shall send by
21-37 regular mail a notice of issuance of the order and a copy of the
21-38 order to the presiding officer of the governing body of each taxing
21-39 unit to which a copy of the notice of protest was mailed under
21-40 Section 41.445.

21-41 SECTION 82. Section 43.04, Tax Code, is amended to read as
21-42 follows:

21-43 Sec. 43.04. SUIT TO COMPEL COMPLIANCE WITH DEADLINES. The
21-44 governing body of a taxing unit may sue the chief appraiser or
21-45 members of the appraisal review board, as applicable, for failure
21-46 to comply with the deadlines imposed by Section 25.22(a), 26.01(a),
21-47 ~~[or]~~ 41.12, or 41.47(a). If the court finds that the chief
21-48 appraiser or appraisal review board failed to comply for good cause
21-49 shown, the court shall enter an order fixing a reasonable deadline
21-50 for compliance. If the court finds that the chief appraiser or
21-51 appraisal review board failed to comply without good cause, the
21-52 court shall enter an order requiring the chief appraiser or
21-53 appraisal review board to comply with the deadline not later than
21-54 the 10th day after the date the judgment is signed. In a suit
21-55 brought under this section, the court may enter any other order the
21-56 court considers necessary to ensure compliance with the court's
21-57 deadline or the applicable statutory requirements. Failure to obey
21-58 an order of the court is punishable as contempt.

21-59 SECTION 83. Section 41.445, Tax Code, as added by this Act,
21-60 and Sections 41.47 and 43.04, Tax Code, as amended by this Act,
21-61 apply only to a protest the notice of which is filed on or after
21-62 January 1, 2006.

21-63 SECTION 84. (a) Section 151.304(b), Tax Code, is amended to
21-64 read as follows:

21-65 (b) In this section, "occasional sale" means:

21-66 (1) one or two sales of taxable items, other than an
21-67 amusement service, at retail during a 12-month period by a person
21-68 who does not habitually engage, or hold himself out as engaging, in
21-69 the business of selling taxable items at retail;

22-1 (2) the sale of the entire operating assets of a
 22-2 business or of a separate division, branch, or identifiable segment
 22-3 of a business;

22-4 (3) a transfer of all or substantially all the
 22-5 property used by a person in the course of an activity if after the
 22-6 transfer the real or ultimate ownership of the property is
 22-7 substantially similar to that which existed before the transfer;
 22-8 [~~or~~]

22-9 (4) the sale of not more than 10 admissions for
 22-10 amusement services during a 12-month period by a person who does not
 22-11 hold himself out as engaging, or does not habitually engage, in
 22-12 providing amusement services; or

22-13 (5) the sale of tangible personal property by an
 22-14 individual if:

22-15 (A) the property was originally bought by the
 22-16 individual or a member of the individual's family for the personal
 22-17 use of the individual or the individual's family;

22-18 (B) the individual does not hold a permit issued
 22-19 under this chapter and is not required to obtain a permit as a
 22-20 "seller" or "retailer" as those terms are defined by Section
 22-21 151.008;

22-22 (C) the individual does not employ an auctioneer,
 22-23 broker, or factor, other than an online auction, to sell the
 22-24 property; and

22-25 (D) the total receipts from sales of the
 22-26 individual's tangible personal property in a calendar year does not
 22-27 exceed \$3,000.

22-28 (b) The change in law made by this section does not affect
 22-29 tax liability accruing before the effective date of this section.
 22-30 That liability continues in effect as if this section had not been
 22-31 enacted, and the former law is continued in effect for the
 22-32 collection of taxes due and for civil and criminal enforcement of
 22-33 the liability for those taxes.

22-34 (c) This section takes effect July 1, 2005, if this Act
 22-35 receives a vote of two-thirds of all the members elected to each
 22-36 house, as provided by Section 39, Article III, Texas Constitution.
 22-37 If this Act does not receive the vote necessary for effect on that
 22-38 date, this section takes effect September 1, 2005.

22-39 SECTION 85. (a) Subchapter L, Chapter 151, Tax Code, is
 22-40 amended by adding Section 151.715 to read as follows:

22-41 Sec. 151.715. COLLECTION OF AMOUNTS IN EXCESS OF TAX
 22-42 IMPOSED; CIVIL PENALTY. (a) A person may not collect as a tax
 22-43 imposed by this chapter:

22-44 (1) any amount that exceeds the tax actually imposed
 22-45 by this chapter on the sale of a taxable item; or

22-46 (2) any amount on the sale of an item that is exempt
 22-47 from the tax imposed by this chapter.

22-48 (b) The comptroller shall send a written notice to a person
 22-49 who violates Subsection (a) that directs the person to cease
 22-50 collecting amounts described by that subsection. If, after the
 22-51 person receives two written notices from the comptroller, the
 22-52 person continues collecting an amount described by that subsection,
 22-53 the person shall pay a penalty of \$1,000 for each sale on which the
 22-54 person collects an amount described by that subsection.

22-55 (c) The penalty provided by this section is assessed without
 22-56 regard to whether the person against whom the penalty is assessed
 22-57 remits to the comptroller the excess amounts collected.

22-58 (b) Section 151.715, Tax Code, as added by this section,
 22-59 applies only to the sale of an item that occurs on or after the
 22-60 effective date of this section. The sale of an item that occurs
 22-61 before the effective date of this section is governed by the law in
 22-62 effect on the date the sale occurred, and the former law is
 22-63 continued in effect for that purpose.

22-64 SECTION 86. Sections 162.001(9), (19), (20), (42), and
 22-65 (43), Tax Code, are amended to read as follows:

22-66 (9) "Blending" means the mixing together of one or
 22-67 more [~~petroleum~~] products with other products [~~another product~~],
 22-68 regardless of the original character of the product blended, to
 22-69 produce a product that is offered for sale, sold, or used as a motor

23-1 ~~fuel or [if the product obtained by the blending]~~ is capable of use
23-2 in the generation of power for the propulsion of a motor vehicle.
23-3 The term does not include mixing that occurs in the process of
23-4 refining by the original refiner of crude petroleum or the
23-5 commingling of products during transportation in a pipeline.

23-6 (19) "Diesel fuel" means kerosene or another liquid,
23-7 or a combination of liquids blended together, offered for sale,
23-8 sold, [that is suitable for] or used as a fuel for a [for the
23-9 propulsion of] diesel-powered engine [motor vehicles]. The term
23-10 includes products commonly referred to as kerosene, light cycle
23-11 oil, #1 diesel fuel, #2 diesel fuel, dyed or undyed diesel fuel,
23-12 aviation jet fuel, biodiesel, distillate fuel, cutter stock, or
23-13 heating oil, but does not include gasoline, aviation gasoline, or
23-14 liquefied gas.

23-15 (20) "Distributor" means a person who acquires motor
23-16 fuel from a licensed supplier, permissive supplier, or another
23-17 licensed distributor and who makes sales at wholesale and whose
23-18 activities may also include sales at retail. The term includes a
23-19 person engaged in the tax-free sale of dyed diesel fuel to marine
23-20 vessels.

23-21 (42) "Motor fuel" means gasoline, diesel fuel,
23-22 liquefied gas, and other products that are offered for sale, sold,
23-23 or [can be] used as propellants for [to propel] a motor vehicle.

23-24 (43) "Motor fuel transporter" means a person who
23-25 transports gasoline, diesel fuel, or gasoline blended fuel for hire
23-26 outside the bulk transfer/terminal system by means of a transport
23-27 vehicle, a railroad tank car, or a marine vessel.

23-28 SECTION 87. Section 162.004(b), Tax Code, is amended to
23-29 read as follows:

23-30 (b) The shipping document issued by the terminal operator or
23-31 operator of a bulk plant shall contain the following information
23-32 and any other information required by the comptroller:

23-33 (1) the terminal control number of the terminal or
23-34 physical address of the bulk plant from which the motor fuel was
23-35 received;

23-36 (2) the name ~~[and license number]~~ of the purchaser;

23-37 (3) the date the motor fuel was loaded;

23-38 (4) the net gallons loaded, or the gross gallons
23-39 loaded if the fuel was purchased from a bulk plant;

23-40 (5) the destination state of the motor fuel, as
23-41 represented by the purchaser of the motor fuel or the purchaser's
23-42 agent; and

23-43 (6) a description of the product being transported.

23-44 SECTION 88. Section 162.016(a), Tax Code, is amended to
23-45 read as follows:

23-46 (a) A person may not import motor fuel to a destination in
23-47 this state or export motor fuel to a destination outside this state
23-48 by any means unless the person possesses a shipping document for
23-49 that fuel created by the terminal or bulk plant at which the fuel
23-50 was received. The shipping document must include:

23-51 (1) the name and physical address of the terminal or
23-52 bulk plant from which the motor fuel was received for import or
23-53 export;

23-54 (2) the name ~~[and federal employer identification~~
23-55 ~~number, or the social security number if the employer~~
23-56 ~~identification number is not available,]~~ of the carrier
23-57 transporting the motor fuel;

23-58 (3) the date the motor fuel was loaded;

23-59 (4) the type of motor fuel;

23-60 (5) the number of gallons:

23-61 (A) in temperature-adjusted gallons if purchased
23-62 from a terminal for export or import; or

23-63 (B) in temperature-adjusted gallons or in gross
23-64 gallons if purchased from a bulk plant;

23-65 (6) the destination of the motor fuel as represented
23-66 by the purchaser of the motor fuel and the number of gallons of the
23-67 fuel to be delivered, if delivery is to only one state;

23-68 (7) the name ~~[, federal employer identification~~
23-69 ~~number, license number, and physical address]~~ of the purchaser of

24-1 the motor fuel;

24-2 (8) the name of the person responsible for paying the
24-3 tax imposed by this chapter, as given to the terminal by the
24-4 purchaser if different from the licensed supplier or distributor;
24-5 and

24-6 (9) any other information that, in the opinion of the
24-7 comptroller, is necessary for the proper administration of this
24-8 chapter.

24-9 SECTION 89. Section 162.113(d), Tax Code, is amended to
24-10 read as follows:

24-11 (d) The supplier or permissive supplier shall shall ~~[has the~~
24-12 ~~right]~~, after notifying the comptroller of the licensed
24-13 distributor's or licensed importer's failure to remit taxes under
24-14 this section, ~~[to]~~ terminate the ability of the licensed
24-15 distributor or licensed importer to defer the payment of gasoline
24-16 tax. The supplier or permissive supplier shall reinstate without
24-17 delay the right of the licensed distributor or licensed importer to
24-18 defer the payment of gasoline tax after the comptroller provides to
24-19 the supplier or permissive supplier notice that the licensed
24-20 distributor or licensed importer is in good standing with the
24-21 comptroller for the purposes of the gasoline tax imposed under this
24-22 subchapter.

24-23 SECTION 90. Section 162.115, Tax Code, is amended by adding
24-24 Subsection (m-1) to read as follows:

24-25 (m-1) In addition to the records specifically required by
24-26 this section, a license holder shall keep any other record required
24-27 by the comptroller.

24-28 SECTION 91. Sections 162.116(a) and (d), Tax Code, are
24-29 amended to read as follows:

24-30 (a) The monthly return and supplements of each supplier and
24-31 permissive supplier shall contain for the period covered by the
24-32 return:

24-33 (1) ~~[the number of net gallons of gasoline received by~~
24-34 ~~the supplier or permissive supplier during the month, sorted by~~
24-35 ~~product code, seller, point of origin, destination state, carrier,~~
24-36 ~~and receipt date;~~

24-37 ~~[(2)]~~ the number of net gallons of gasoline removed at
24-38 a terminal rack during the month from the account of the supplier,
24-39 sorted by product code, person receiving the gasoline, terminal
24-40 code, and carrier;

24-41 (2) ~~[(3)]~~ the number of net gallons of gasoline
24-42 removed during the month for export, sorted by product code, person
24-43 receiving the gasoline, terminal code, destination state, and
24-44 carrier;

24-45 (3) ~~[(4)]~~ the number of net gallons of gasoline
24-46 removed during the month from a terminal located in another state
24-47 for conveyance to this state, as indicated on the shipping document
24-48 for the gasoline, sorted by product code, person receiving the
24-49 gasoline, terminal code, and carrier;

24-50 (4) ~~[(5)]~~ the number of net gallons of gasoline the
24-51 supplier or permissive supplier sold during the month in
24-52 transactions exempt under Section 162.104, sorted by ~~[product code,~~
24-53 ~~carrier,~~] purchaser ~~[, and terminal code,~~

24-54 ~~[(6)] the number of net gallons of gasoline sold in the~~
24-55 ~~bulk transfer/terminal system in this state to any person not~~
24-56 ~~holding a supplier's or permissive supplier's license]; and~~

24-57 (5) ~~[(7)]~~ any other information required by the
24-58 comptroller.

24-59 (d) For purposes of Subsection (c), all payments or credits
24-60 in reduction of a customer's account must be applied ratably
24-61 between motor fuels and other goods sold to the customer, and the
24-62 credit allowed will be the tax on the number of gallons represented
24-63 by the motor fuel portion of the credit. The comptroller may not
24-64 require a supplier or permissive supplier to remit from a payment or
24-65 credit in reduction of a customer's account any tax for which the
24-66 supplier or permissive supplier was allowed to take a credit.

24-67 SECTION 92. Section 162.118, Tax Code, is amended to read as
24-68 follows:

24-69 Sec. 162.118. INFORMATION REQUIRED ON DISTRIBUTOR'S

25-1 RETURN. The monthly return and supplements of each distributor
25-2 shall contain for the period covered by the return:

25-3 (1) the number of net gallons of gasoline received by
25-4 the distributor during the month, sorted by product code and[~~7~~]
25-5 seller[~~, point of origin, destination state, carrier, and receipt~~
25-6 ~~date~~];

25-7 (2) the number of net gallons of gasoline removed at a
25-8 terminal rack by the distributor during the month, sorted by
25-9 product code, seller, and terminal code[~~, and carrier~~];

25-10 (3) the number of net gallons of gasoline removed by
25-11 the distributor during the month for export, sorted by product
25-12 code, terminal code, bulk plant address, destination state, and
25-13 carrier;

25-14 (4) the number of net gallons of gasoline removed by
25-15 the distributor during the month from a terminal located in another
25-16 state for conveyance to this state, as indicated on the shipping
25-17 document for the gasoline, sorted by product code, seller, terminal
25-18 code, bulk plant address, and carrier;

25-19 (5) the number of net gallons of gasoline the
25-20 distributor sold during the month in transactions exempt under
25-21 Section 162.104, sorted by product code and purchaser; and

25-22 (6) any other information required by the comptroller.

25-23 SECTION 93. Section 162.123, Tax Code, is amended to read as
25-24 follows:

25-25 Sec. 162.123. INFORMATION REQUIRED ON BLENDER'S RETURN.
25-26 The monthly return and supplements of each blender shall contain
25-27 for the period covered by the return:

25-28 (1) [~~the number of net gallons of gasoline received by~~
25-29 ~~the blender during the month, sorted by product code, seller, point~~
25-30 ~~of origin, carrier, and receipt date,~~

25-31 [~~2~~] the number of net gallons of product blended
25-32 with gasoline during the month, sorted by product code, type of
25-33 blending agent if no product code exists, seller, and carrier;

25-34 [~~3~~] ~~the number of net gallons of blended gasoline~~
25-35 ~~sold during the month and the license number or name and address of~~
25-36 ~~the entity receiving the blended gasoline,~~] and

25-37 (2) [~~4~~] any other information required by the
25-38 comptroller.

25-39 SECTION 94. Section 162.127, Tax Code, is amended by adding
25-40 Subsection (g) to read as follows:

25-41 (g) The comptroller shall issue a refund warrant to a
25-42 distributor not later than the 60th day after the date the
25-43 comptroller receives a valid refund claim from the distributor. If
25-44 the comptroller does not issue the refund warrant by that date, the
25-45 amount of the refund draws interest at the rate provided by Section
25-46 111.060 beginning on the 61st day after the date the comptroller
25-47 receives the valid refund claim and ending on the date the
25-48 comptroller issues the refund warrant.

25-49 SECTION 95. Section 162.206, Tax Code, is amended by
25-50 amending Subsection (c) and adding Subsections (c-1) and (h-1) to
25-51 read as follows:

25-52 (c) A person may not make a tax-free purchase and a licensed
25-53 supplier or distributor may not make a tax-free sale to a purchaser
25-54 of any dyed diesel fuel under this section using a signed statement
25-55 for the first sale or purchase and for any subsequent sale or
25-56 purchase[~~+~~

25-57 [~~1~~] ~~for the purchase or the sale of more than 7,400~~
25-58 ~~gallons of dyed diesel fuel in a single delivery, or~~

25-59 [~~2~~] in a calendar month for [~~in which the person has~~
25-60 ~~previously purchased from all sources or in which the licensed~~
25-61 ~~supplier has previously sold to that purchaser] more than:~~

25-62 (1) [~~A~~] 10,000 gallons of dyed diesel fuel;

25-63 (2) [~~B~~] 25,000 gallons of dyed diesel fuel if the
25-64 purchaser stipulates in the signed statement that all of the fuel
25-65 will be consumed by the purchaser in the original production of, or
25-66 to increase the production of, oil or gas and furnishes the supplier
25-67 with a letter of exception issued by the comptroller; or

25-68 (3) [~~C~~] 25,000 gallons of dyed diesel fuel if the
25-69 purchaser stipulates in the signed statement that all of the fuel

26-1 will be consumed by the purchaser in agricultural off-highway
26-2 equipment.

26-3 (c-1) The monthly limitations prescribed by Subsection (c)
26-4 apply regardless of whether the dyed diesel fuel is purchased in a
26-5 single transaction during that month or in multiple transactions
26-6 during that month.

26-7 (h-1) For purposes of this section, the purchaser is
26-8 considered to have furnished the signed statement to the licensed
26-9 supplier or distributor if the supplier or distributor verifies
26-10 that the purchaser has an end user number issued by the comptroller.
26-11 The licensed supplier or distributor shall use the comptroller's
26-12 Internet website or other materials provided or produced by the
26-13 comptroller to verify this information.

26-14 SECTION 96. Section 162.214(d), Tax Code, is amended to
26-15 read as follows:

26-16 (d) The supplier or permissive supplier shall [~~has the~~
26-17 ~~right~~], after notifying the comptroller of the licensed
26-18 distributor's or licensed importer's failure to remit taxes under
26-19 this section, [~~to~~] terminate the ability of the licensed
26-20 distributor or licensed importer to defer the payment of diesel
26-21 fuel tax. The supplier or permissive supplier shall reinstate
26-22 without delay the right of the licensed distributor or licensed
26-23 importer to defer the payment of diesel fuel tax after the
26-24 comptroller provides to the supplier or permissive supplier notice
26-25 that the licensed distributor or licensed importer is in good
26-26 standing with the comptroller for the purposes of diesel fuel tax
26-27 imposed under this subchapter.

26-28 SECTION 97. Section 162.216, Tax Code, is amended by adding
26-29 Subsection (m-1) to read as follows:

26-30 (m-1) In addition to the records specifically required by
26-31 this section, a license holder shall keep any other record required
26-32 by the comptroller.

26-33 SECTION 98. Sections 162.217(a) and (d), Tax Code, are
26-34 amended to read as follows:

26-35 (a) The monthly return and supplements of each supplier and
26-36 permissive supplier shall contain for the period covered by the
26-37 return:

26-38 (1) [~~the number of net gallons of diesel fuel received~~
26-39 ~~by the supplier or permissive supplier during the month, sorted by~~
26-40 ~~product code, seller, point of origin, destination state, carrier,~~
26-41 ~~and receipt date,~~

26-42 [~~(2)~~] the number of net gallons of diesel fuel removed
26-43 at a terminal rack during the month from the account of the
26-44 supplier, sorted by product code, person receiving the diesel fuel,
26-45 terminal code, and carrier;

26-46 (2) [~~(3)~~] the number of net gallons of diesel fuel
26-47 removed during the month for export, sorted by product code, person
26-48 receiving the diesel fuel, terminal code, destination state, and
26-49 carrier;

26-50 (3) [~~(4)~~] the number of net gallons of diesel fuel
26-51 removed during the month from a terminal located in another state
26-52 for conveyance to this state, as indicated on the shipping document
26-53 for the diesel fuel, sorted by product code, person receiving the
26-54 diesel fuel, terminal code, and carrier;

26-55 (4) [~~(5)~~] the number of net gallons of diesel fuel the
26-56 supplier or permissive supplier sold during the month in
26-57 transactions exempt under Section 162.204, sorted by [~~product code,~~
26-58 ~~carrier,~~] purchaser [~~, and terminal code,~~

26-59 [~~(6)~~] ~~the number of net gallons of diesel fuel sold in~~
26-60 ~~the bulk transfer/terminal system in this state to any person not~~
26-61 ~~holding a supplier's or permissive supplier's license]; and~~

26-62 (5) [~~(7)~~] any other information required by the
26-63 comptroller.

26-64 (d) For the purpose of Subsection (c), all payments or
26-65 credits in reduction of a customer's account must be applied
26-66 ratably between motor fuels and other goods sold to the customer,
26-67 and the credit allowed will be the tax on the number of gallons
26-68 represented by the motor fuel portion of the credit. The
26-69 comptroller may not require a supplier or permissive supplier to

27-1 remit from a payment or credit in reduction of a customer's account
 27-2 any tax for which the supplier or permissive supplier was allowed to
 27-3 take a credit.

27-4 SECTION 99. Section 162.219, Tax Code, is amended to read as
 27-5 follows:

27-6 Sec. 162.219. INFORMATION REQUIRED ON DISTRIBUTOR'S
 27-7 RETURN. The monthly return and supplements of each distributor
 27-8 shall contain for the period covered by the return:

27-9 (1) the number of net gallons of diesel fuel received
 27-10 by the distributor during the month, sorted by product code and[~~7~~]
 27-11 seller [~~7, point of origin, destination state, carrier, and receipt~~
 27-12 ~~date~~];

27-13 (2) the number of net gallons of diesel fuel removed at
 27-14 a terminal rack by the distributor during the month, sorted by
 27-15 product code, seller, and terminal code[~~7, and carrier~~];

27-16 (3) the number of net gallons of diesel fuel removed by
 27-17 the distributor during the month for export, sorted by product
 27-18 code, terminal code, bulk plant address, destination state, and
 27-19 carrier;

27-20 (4) the number of net gallons of diesel fuel removed by
 27-21 the distributor during the month from a terminal located in another
 27-22 state for conveyance to this state, as indicated on the shipping
 27-23 document for the diesel fuel, sorted by product code, seller,
 27-24 terminal code, bulk plant address, and carrier;

27-25 (5) the number of net gallons of diesel fuel the
 27-26 distributor sold during the month in transactions exempt under
 27-27 Section 162.204, sorted by product code and by the entity receiving
 27-28 the diesel fuel;

27-29 (6) the number of net gallons of [~~7~~] dyed diesel fuel
 27-30 sold to a purchaser under a signed statement[~~7~~] or dyed diesel fuel
 27-31 sold to a dyed diesel fuel bonded user, sorted by product code and
 27-32 by the entity receiving the diesel fuel; and

27-33 (7) [~~6~~] any other information required by the
 27-34 comptroller.

27-35 SECTION 100. Section 162.224, Tax Code, is amended to read
 27-36 as follows:

27-37 Sec. 162.224. INFORMATION REQUIRED ON BLENDER'S RETURN.
 27-38 The monthly return and supplements of each blender shall contain
 27-39 for the period covered by the return:

27-40 (1) [~~the number of net gallons of diesel fuel received~~
 27-41 ~~by the blender during the month, sorted by product code, seller,~~
 27-42 ~~point of origin, carrier, and receipt date,~~

27-43 [~~2~~] the number of net gallons of product blended
 27-44 with diesel fuel during the month, sorted by product code, type of
 27-45 blending agent if no product code exists, seller, and carrier;

27-46 [~~3~~] the number of net gallons of blended diesel fuel
 27-47 sold during the month and the license number or name and address of
 27-48 the entity receiving the blended diesel fuel, and

27-49 (2) [~~4~~] any other information required by the
 27-50 comptroller.

27-51 SECTION 101. Section 162.229, Tax Code, is amended by
 27-52 adding Subsection (g) to read as follows:

27-53 (g) The comptroller shall issue a refund warrant to a
 27-54 distributor not later than the 60th day after the date the
 27-55 comptroller receives a valid refund claim from the distributor. If
 27-56 the comptroller does not issue the refund warrant by that date, the
 27-57 amount of the refund draws interest at the rate provided by Section
 27-58 111.060 beginning on the 61st day after the date the comptroller
 27-59 receives the valid refund claim and ending on the date the
 27-60 comptroller issues the refund warrant.

27-61 SECTION 102. Section 162.230(d), Tax Code, is amended to
 27-62 read as follows:

27-63 (d) A supplier, [~~or~~] permissive supplier, or distributor
 27-64 that determines taxes were erroneously reported and remitted or
 27-65 that paid more taxes than were due to this state because of a
 27-66 mistake of fact or law may take a credit on the monthly tax report on
 27-67 which the error has occurred and tax payment made to the
 27-68 comptroller. The credit must be taken before the expiration of the
 27-69 applicable period of limitation as provided by Chapter 111.

28-1 SECTION 103. Sections 162.404(c) and (d), Tax Code, are
 28-2 amended to read as follows:

28-3 (c) The prohibition under Section 162.403(32) does not
 28-4 apply to the tax-free sale or distribution of diesel fuel
 28-5 authorized by Section 162.204(a)(1) [~~162.204(1)~~], (2), or (3).

28-6 (d) The prohibition under Section 162.403(33) does not
 28-7 apply to the tax-free sale or distribution of gasoline under
 28-8 Section 162.104(a)(1) [~~162.104(1)~~], (2), or (3).

28-9 SECTION 104. Section 311.0125, Tax Code, is amended by
 28-10 adding Subsection (f) to read as follows:

28-11 (f) If under this section a municipality has entered into a
 28-12 tax abatement agreement with an owner of real or personal property
 28-13 in a reinvestment zone designated under this chapter, the
 28-14 municipality may not enter into a tax abatement agreement
 28-15 authorized by any other law of this state in connection with the
 28-16 same property of that owner.

28-17 SECTION 105. (a) This section applies only to a homestead
 28-18 preservation reinvestment zone that is designated in the manner
 28-19 provided by statute by an ordinance adopted by the governing body of
 28-20 a municipality and in connection with which the municipality has
 28-21 established an ad valorem tax increment fund.

28-22 (b) A taxing unit, as defined by Section 1.04, Tax Code, may
 28-23 enter into a tax abatement agreement with an owner of real or
 28-24 personal property in a homestead preservation reinvestment zone,
 28-25 regardless of whether the taxing unit deposits or agrees to deposit
 28-26 any portion of its tax increment into the tax increment fund for the
 28-27 zone.

28-28 (c) To be effective, an agreement to abate ad valorem taxes
 28-29 on real property in a homestead preservation reinvestment zone
 28-30 under this section must be approved by:

28-31 (1) the governing body of the reinvestment zone; and
 28-32 (2) the governing body of each taxing unit that
 28-33 imposes ad valorem taxes on real property in the reinvestment zone
 28-34 and deposits or agrees to deposit any of its tax increment into the
 28-35 tax increment fund for the zone.

28-36 (d) In any contract entered into by the governing body of a
 28-37 homestead preservation reinvestment zone in connection with bonds
 28-38 or other obligations, the governing body may covenant that it will
 28-39 not approve an ad valorem tax abatement agreement that applies to
 28-40 real property in that zone.

28-41 (e) If a taxing unit enters into an ad valorem tax abatement
 28-42 agreement authorized by this section, ad valorem taxes that are
 28-43 abated under that agreement are not considered taxes to be imposed
 28-44 or produced by that taxing unit in calculating the amount of:

28-45 (1) the tax increment of that taxing unit; or
 28-46 (2) that taxing unit's deposit to the tax increment
 28-47 fund for the homestead preservation reinvestment zone.

28-48 (f) Notwithstanding any other law:
 28-49 (1) at least 45 percent of the revenue from the tax
 28-50 increment fund expended annually must benefit families that have a
 28-51 yearly income at or below 50 percent of the area median family
 28-52 income, adjusted for family size;

28-53 (2) the municipality must spend at least 70 percent of
 28-54 the revenue from the tax increment fund expended annually for the
 28-55 purchase of real property and the construction or rehabilitation of
 28-56 affordable housing in the zone; and

28-57 (3) not more than 10 percent of the revenue expended
 28-58 annually from the tax increment fund may be spent for
 28-59 infrastructure improvements necessary to support the construction
 28-60 or rehabilitation of affordable housing within the zone.

28-61 SECTION 106. If a provision of this Act relating to the
 28-62 expenditure of revenue from the tax increment fund established for
 28-63 a homestead preservation reinvestment zone conflicts with a
 28-64 provision of any other act of the 79th Legislature, Regular
 28-65 Session, 2005, it is the intent of the legislature that the
 28-66 provision of this Act prevail, regardless of the relative dates of
 28-67 enactment of this Act and the other act or acts.

28-68 SECTION 107. Section 623.052(b), Transportation Code, is
 28-69 amended to read as follows:

29-1 (b) Before a person may operate a vehicle under this
29-2 section, the person must:

29-3 (1) contract with the department to indemnify the
29-4 department for the cost of the maintenance and repair for damage
29-5 caused by a vehicle crossing that part of the highway; and

29-6 (2) execute an adequate surety bond to compensate for
29-7 the cost of maintenance and repair, approved by [~~the comptroller~~
29-8 ~~and~~] the attorney general, with a corporate surety authorized to do
29-9 business in this state, conditioned on the person fulfilling each
29-10 obligation of the agreement.

29-11 SECTION 108. Section 404.024, Government Code, is amended
29-12 by amending Subsections (b) and (l) and adding Subsections (n) and
29-13 (o) to read as follows:

29-14 (b) State funds not deposited in state depositories shall be
29-15 invested by the comptroller in:

29-16 (1) direct security repurchase agreements;
29-17 (2) reverse security repurchase agreements;
29-18 (3) direct obligations of or obligations the principal
29-19 and interest of which are guaranteed by the United States;

29-20 (4) direct obligations of or obligations guaranteed by
29-21 agencies or instrumentalities of the United States government;

29-22 (5) bankers' acceptances that:
29-23 (A) are eligible for purchase by the Federal
29-24 Reserve System;

29-25 (B) do not exceed 270 days to maturity; and
29-26 (C) are issued by a bank whose other comparable
29-27 short-term obligations are rated in [~~that has received~~] the highest
29-28 short-term [~~credit~~] rating category, within which there may be
29-29 subcategories or gradations, including such subcategories or
29-30 gradations as "rating category" or "rated," indicating relative
29-31 standing by a nationally recognized statistical rating
29-32 organization, as defined by Rule 2a-7 (17 C.F.R. Part 270.2a-7),
29-33 promulgated under the Investment Company Act of 1940 by the
29-34 Securities and Exchange Commission [~~investment rating firm~~];

29-35 (6) commercial paper that:
29-36 (A) does not exceed 270 days to maturity; and
29-37 (B) except as provided by Subsection (i), is
29-38 issued by an entity whose other comparable short-term obligations
29-39 are rated in [~~has received~~] the highest short-term [~~credit~~] rating
29-40 category by a nationally recognized statistical rating
29-41 organization [~~investment rating firm~~];

29-42 (7) contracts written by the treasury in which the
29-43 treasury grants the purchaser the right to purchase securities in
29-44 the treasury's marketable securities portfolio at a specified price
29-45 over a specified period and for which the treasury is paid a fee and
29-46 specifically prohibits naked-option or uncovered option trading;

29-47 (8) direct obligations of or obligations guaranteed by
29-48 the Inter-American Development Bank, the International Bank for
29-49 Reconstruction and Development (the World Bank), the African
29-50 Development Bank, the Asian Development Bank, and the International
29-51 Finance Corporation that have received the highest long-term
29-52 [~~credit~~] rating categories for debt obligations by a nationally
29-53 recognized statistical rating organization [~~investment rating~~
29-54 ~~firm~~];

29-55 (9) bonds issued, assumed, or guaranteed by the State
29-56 of Israel;

29-57 (10) obligations of a state or an agency, county,
29-58 city, or other political subdivision of a state;

29-59 (11) mutual funds secured by obligations that are
29-60 described by Subdivisions (1) through (6), including pooled funds:

29-61 (A) established by the Texas Treasury
29-62 Safekeeping Trust Company;

29-63 (B) operated like a mutual fund; and
29-64 (C) with portfolios consisting only of
29-65 dollar-denominated securities; [~~and~~]

29-66 (12) foreign currency for the sole purpose of
29-67 facilitating investment by state agencies that have the authority
29-68 to invest in foreign securities;

29-69 (13) asset-backed securities, as defined by the

30-1 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Part
 30-2 270.2a-7), that are rated at least A or its equivalent by a
 30-3 nationally recognized statistical rating organization and that
 30-4 have a weighted-average maturity of five years or less; and

30-5 (14) corporate debt obligations that are rated at
 30-6 least A or its equivalent by a nationally recognized statistical
 30-7 rating organization and mature in five years or less from the date
 30-8 on which the obligations were "acquired," as defined by the
 30-9 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Part
 30-10 270.2a-7).

30-11 (l) The comptroller may lend securities under procedures
 30-12 established by the comptroller. The procedures must be consistent
 30-13 with industry practice and must include a requirement to fully
 30-14 secure the loan with cash, obligations described by Subsections
 30-15 (b)(1)-(6), or a combination of cash and the described obligations.
 30-16 Notwithstanding any provision to the contrary, cash may be
 30-17 reinvested in the items permitted under Subsection (b) or mutual
 30-18 funds secured by the items permitted under Subsection (b) [In this
 30-19 subsection, "obligation" means an item described by Subsections
 30-20 (b)(1)-(6)].

30-21 (n) In entering into a direct security repurchase agreement
 30-22 or a reverse security repurchase agreement, the comptroller may
 30-23 agree to accept cash on an overnight basis in lieu of the
 30-24 securities, obligations, or participation certificates identified
 30-25 in Section 404.001(3). Cash held by the state under this subsection
 30-26 is not a deposit of state or public funds for purposes of any
 30-27 statute, including this subchapter or Subchapter D, that requires a
 30-28 deposit of state or public funds to be collateralized by eligible
 30-29 securities.

30-30 (o) Notwithstanding any other law to the contrary, any
 30-31 government investment pool created to function as a money market
 30-32 mutual fund and managed by the comptroller or the Texas Treasury
 30-33 Safekeeping Trust Company may invest the funds it receives in
 30-34 investments that are "eligible securities," as defined by the
 30-35 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Part
 30-36 270.2a-7), if it maintains a dollar-weighted average portfolio
 30-37 maturity of 90 days or less, with the maturity of each portfolio
 30-38 security calculated in accordance with Rule 2a-7 (17 C.F.R. Part
 30-39 270.2a-7), and meets the diversification requirements of Rule 2a-7.

30-40 SECTION 109. Section 2256.011, Government Code, is amended
 30-41 by adding Subsection (f) to read as follows:

30-42 (f) For purposes of this section, an entity may agree to
 30-43 accept cash on an overnight basis in lieu of the obligations
 30-44 identified in Section 2256.009(a)(1). Cash held by an entity under
 30-45 this subsection is not a deposit of public funds for purposes of any
 30-46 statute, including Chapter 2257, that requires a deposit of public
 30-47 funds to be collateralized by eligible securities.

30-48 SECTION 110. Section 2256.016, Government Code, is amended
 30-49 by amending Subsections (a) and (f) and adding Subsection (i) to
 30-50 read as follows:

30-51 (a) An entity may invest its funds and funds under its
 30-52 control through an eligible investment pool if the governing body
 30-53 of the entity by rule, order, ordinance, or resolution, as
 30-54 appropriate, authorizes investment in the particular pool. An
 30-55 investment pool created to function as a money market mutual fund
 30-56 may invest the funds it receives from entities in investments that
 30-57 are "eligible securities," as defined by the Securities and
 30-58 Exchange Commission in Rule 2a-7 (17 C.F.R. Part 270.2a-7),
 30-59 promulgated under the Investment Company Act of 1940. Any other
 30-60 [An] investment pool shall invest the funds it receives from
 30-61 entities in authorized investments permitted by this subchapter.

30-62 (f) To be eligible to receive funds from and invest funds on
 30-63 behalf of an entity under this chapter, a public funds investment
 30-64 pool created to function as a money market mutual fund must:

30-65 (1) mark its portfolio to market daily, and, to the
 30-66 extent reasonably possible, stabilize at a \$1 net asset value. If
 30-67 the ratio of the market value of the portfolio divided by the book
 30-68 value of the portfolio is less than 0.995 or greater than 1.005,
 30-69 portfolio holdings shall be sold as necessary to maintain the ratio

31-1 between 0.995 and 1.005;

31-2 (2) maintain a dollar-weighted average portfolio
 31-3 maturity of 90 days or less, with the maturity of each portfolio
 31-4 security calculated in accordance with Rule 2a-7 (17 C.F.R. Part
 31-5 270.2a-7); and

31-6 (3) meet the diversification requirements of Rule 2a-7
 31-7 (17 C.F.R. Part 270.2a-7) promulgated by the Securities and
 31-8 Exchange Commission.

31-9 (i) In this section, "stated maturity date" means the
 31-10 average life of a security with periodic principal payments, the
 31-11 number of days until the next interest rate reset date for variable
 31-12 rate securities, or the final maturity date for all other
 31-13 securities.

31-14 SECTION 111. (a) Section 442.015, Government Code, is
 31-15 amended by adding Subsection (h) to read as follows:

31-16 (h) The comptroller may manage the assets of the Texas
 31-17 preservation trust fund account in the same manner as the
 31-18 comptroller may manage the assets of certain permanent funds under
 31-19 Section 403.1068.

31-20 (b) Section 285.063, Health and Safety Code, is amended by
 31-21 adding Subsection (b-1) to read as follows:

31-22 (b-1) The district shall submit to the comptroller a
 31-23 description of the boundaries of the district and a map of the
 31-24 district clearly showing the district's boundaries at the same time
 31-25 the district submits the results of the election held under this
 31-26 subchapter.

31-27 (c) Section 775.0753, Health and Safety Code, is amended by
 31-28 adding Subsection (d) to read as follows:

31-29 (d) The district shall submit to the comptroller a
 31-30 description of the boundaries of the district and a map of the
 31-31 district clearly showing the district's boundaries at the same time
 31-32 the district submits the results of the election held under this
 31-33 subchapter.

31-34 (d) Section 776.0753, Health and Safety Code, is amended by
 31-35 adding Subsection (d) to read as follows:

31-36 (d) The district shall submit to the comptroller a
 31-37 description of the boundaries of the district and a map of the
 31-38 district clearly showing the district's boundaries at the same time
 31-39 the district submits the results of the election held as provided by
 31-40 this subchapter.

31-41 (e) Article 1.16(b), Insurance Code, is amended to read as
 31-42 follows:

31-43 (b) Assessments for the expenses of such domestic
 31-44 examination which shall be sufficient to meet all the expenses and
 31-45 disbursements necessary to comply with the provisions of the laws
 31-46 of Texas relating to the examination of insurance companies and to
 31-47 comply with the provisions of this Article and Articles 1.17 and
 31-48 1.18 of this Code, shall be made by the State Board of Insurance
 31-49 upon the corporations or associations to be examined taking into
 31-50 consideration annual premium receipts, and/or admitted assets that
 31-51 are not attributable to 90 percent of pension plan contracts as
 31-52 defined in Section 818(a) of the Internal Revenue Code of 1986 (26
 31-53 U.S.C. Section 818(a)), and/or insurance in force; provided such
 31-54 assessments shall be made and collected as follows: (1) expenses
 31-55 attributable directly to a specific examination including
 31-56 employees' salaries and expenses and expenses provided by Section
 31-57 803.007 [Article 1.28] of this Code shall be collected at the time
 31-58 of examination; (2) assessments calculated annually for each
 31-59 corporation or association which take into consideration annual
 31-60 premium receipts, and/or admitted assets that are not attributable
 31-61 to 90 percent of pension plan contracts as defined in Section 818(a)
 31-62 of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)),
 31-63 and/or insurance in force shall be assessed annually for each such
 31-64 corporation or association. In computing the assessments, the
 31-65 board may not consider insurance premiums for insurance contracted
 31-66 for by a state or federal governmental entity to provide welfare
 31-67 benefits to designated welfare recipients or contracted for in
 31-68 accordance with or in furtherance of Title 2, Human Resources Code,
 31-69 or the federal Social Security Act (42 U.S.C. Section 301 et seq.).

32-1 The amount of all examination and evaluation fees paid in each
32-2 taxable year to the State of Texas by an insurance carrier shall be
32-3 allowed as a credit on the amount of premium taxes due [~~under this~~
32-4 ~~article~~]. The limitations provided by Sections 803.007(1) and
32-5 (2)(B) of this code for domestic insurance companies apply to
32-6 foreign insurance companies.

32-7 (f) Section 222.002(b), Insurance Code, is amended to read
32-8 as follows:

32-9 (b) Except as otherwise provided by this section, in
32-10 determining an insurer's taxable gross premiums or a health
32-11 maintenance organization's taxable gross revenues, the insurer or
32-12 health maintenance organization shall include the total gross
32-13 amounts of premiums, membership fees, assessments, dues, revenues,
32-14 and other considerations received by the insurer or health
32-15 maintenance organization in a calendar year from any kind of health
32-16 maintenance organization certificate or contract or insurance
32-17 policy or contract covering risks on individuals or groups [~~a~~
32-18 ~~person~~] located in this state and arising from the business of a
32-19 health maintenance organization or the business of life insurance,
32-20 accident insurance, health insurance, life and accident insurance,
32-21 life and health insurance, health and accident insurance, life,
32-22 health, and accident insurance, including variable life insurance,
32-23 credit life insurance, and credit accident and health insurance for
32-24 profit or otherwise or for mutual benefit or protection.

32-25 (g) Section 223.003(a), Insurance Code, is amended to read
32-26 as follows:

32-27 (a) An annual tax is imposed on all [~~each title insurance~~
32-28 ~~company that receives~~] premiums from the business of title
32-29 insurance. The rate of the tax is 1.35 percent of [~~the~~] title
32-30 insurance [~~company's~~] taxable premiums for a calendar year,
32-31 including any premiums retained by a title insurance agent as
32-32 provided by Section 223.005. For purposes of this chapter, a person
32-33 engages in the business of title insurance if the person engages in
32-34 an activity described by Section 2501.005.

32-35 (h) Section 252.003, Insurance Code, is amended to read as
32-36 follows:

32-37 Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. An insurer
32-38 shall pay maintenance taxes under this chapter on the correctly
32-39 reported gross premiums [~~collected~~] from writing insurance in this
32-40 state against loss or damage by:

- 32-41 (1) bombardment;
- 32-42 (2) civil war or commotion;
- 32-43 (3) cyclone;
- 32-44 (4) earthquake;
- 32-45 (5) excess or deficiency of moisture;
- 32-46 (6) explosion as defined by Article 5.52;
- 32-47 (7) fire;
- 32-48 (8) flood;
- 32-49 (9) frost and freeze;
- 32-50 (10) hail;
- 32-51 (11) insurrection;
- 32-52 (12) invasion;
- 32-53 (13) lightning;
- 32-54 (14) military or usurped power;
- 32-55 (15) an order of a civil authority made to prevent the
32-56 spread of a conflagration, epidemic, or catastrophe;
- 32-57 (16) rain;
- 32-58 (17) riot;
- 32-59 (18) the rising of the waters of the ocean or its
32-60 tributaries;
- 32-61 (19) smoke or smudge;
- 32-62 (20) strike or lockout;
- 32-63 (21) tornado;
- 32-64 (22) vandalism or malicious mischief;
- 32-65 (23) volcanic eruption;
- 32-66 (24) water or other fluid or substance resulting from
32-67 the breakage or leakage of sprinklers, pumps, or other apparatus
32-68 erected for extinguishing fires, water pipes, or other conduits or
32-69 containers;

33-1 (25) weather or climatic conditions; [~~or~~]
 33-2 (26) windstorm;
 33-3 (27) an event covered under a home warranty insurance
 33-4 policy; or
 33-5 (28) an event covered under an inland marine insurance
 33-6 policy.
 33-7 (i) Section 271.002(a), Insurance Code, is amended to read
 33-8 as follows:
 33-9 (a) A maintenance fee is imposed on all [~~each insurer with~~
 33-10 ~~gross~~] premiums subject to assessment under Section 271.006.
 33-11 (j) Section 1502.053, Insurance Code, is amended to read as
 33-12 follows:
 33-13 Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) The
 33-14 issuer of a [A] children's health benefit plan approved under
 33-15 Section 1502.051 [issuer] is not subject to the premium tax or the
 33-16 tax on revenues imposed under Chapter 222 with respect to money
 33-17 received for coverage provided under that plan.
 33-18 (b) The issuer of a children's health benefit plan is not
 33-19 subject to the retaliatory tax imposed under Chapter 281 with
 33-20 respect to money received for coverage provided under that plan.
 33-21 (k) Section 383.101, Local Government Code, is amended by
 33-22 adding Subsection (d) to read as follows:
 33-23 (d) The district shall submit to the comptroller a
 33-24 description of the boundaries of the district and a map of the
 33-25 district clearly showing the district's boundaries at the same time
 33-26 the district submits the results of the election held under this
 33-27 subchapter.
 33-28 (l) Section 387.012, Local Government Code, is amended to
 33-29 read as follows:
 33-30 Sec. 387.012. EFFECTIVE DATE OF TAX. (a) The adoption of
 33-31 the tax, the change of the tax rate, or the repeal of the tax takes
 33-32 effect on the first day of the first calendar quarter occurring
 33-33 after the expiration of the first complete quarter occurring after
 33-34 the date the comptroller receives a notice of the results of the
 33-35 election adopting, changing, or repealing the tax.
 33-36 (b) The district shall submit to the comptroller a
 33-37 description of the boundaries of the district and a map of the
 33-38 district clearly showing the district's boundaries at the same time
 33-39 the district submits the results of the election held under this
 33-40 chapter.
 33-41 (m) Section 21.05(e), Tax Code, is amended to read as
 33-42 follows:
 33-43 (e) For purposes of this subchapter, a commercial aircraft
 33-44 shall mean an instrumentality of air commerce that is:
 33-45 (1) primarily engaged in the transportation of cargo,
 33-46 passengers, or equipment for others for consideration at least 50
 33-47 percent of the time;
 33-48 (2) economically employed when it is moving from point
 33-49 to point as a means of transportation for a fee, flat rate, or
 33-50 expense charge; and
 33-51 (3) operated or managed by a certificated air carrier.
 33-52 A certificated air carrier is one engaged in interstate or
 33-53 intrastate commerce under authority of the Federal Aviation
 33-54 Administration of the U.S. Department of Transportation under 14
 33-55 C.F.R. Part 121 or 135.
 33-56 (n) Subchapter B, Chapter 111, Tax Code, is amended by
 33-57 adding Section 111.0515 to read as follows:
 33-58 Sec. 111.0515. RESTRICTED OR CONDITIONAL PAYMENTS OF TAXES,
 33-59 PENALTIES, AND INTEREST PROHIBITED. Unless the restriction or
 33-60 condition is authorized by this title, a restriction or condition
 33-61 placed on a check in payment of taxes by the maker of the check that
 33-62 purports to limit the amount of taxes owed to an amount less than
 33-63 that stated in the comptroller's records, or a restriction or
 33-64 condition placed on a check in payment of penalties and interest on
 33-65 delinquent taxes by the maker that purports to limit the amount of
 33-66 the penalties and interest to an amount less than the amount of
 33-67 penalties and interest accrued on the delinquent taxes, is void.
 33-68 (o) Subchapter B, Chapter 111, Tax Code, is amended by
 33-69 adding Section 111.065 to read as follows:

Sec. 111.065. EXPEDITIOUS ASSISTANCE FOR TAXPAYERS. (a)

As expeditiously as possible, the comptroller shall:

(1) refund or credit any amount of tax overpaid by a person; and

(2) correct any erroneous assessment.

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

(p) Section 111.107, Tax Code, is amended to read as follows:

Sec. 111.107. WHEN REFUND OR CREDIT IS PERMITTED. (a) Except as otherwise expressly provided, a person may request a refund or a credit or the comptroller may make a refund or issue a credit for the overpayment of a tax imposed by this title at any time before the expiration of the period during which the comptroller may assess a deficiency for the tax and not thereafter unless the refund or credit is requested:

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

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

(3) under Chapter 162 [153], except Section 162.126(f), 162.128(d), 162.228(f), or 162.230(d) [153.1195(e), 153.121(d), 153.2225(e), or 153.224(d)].

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

(q) Sections 151.011(a) and (c), Tax Code, are amended to read as follows:

(a) Except as provided by Subsection (c) [~~of this section~~], "use" means the exercise of a right or power incidental to the ownership of tangible personal property over tangible personal property, including tangible personal property other than printing [~~printed~~] material that has been processed, fabricated, or manufactured into other property or attached to or incorporated into other property transported into this state, and, except as provided by Section 151.056(b) [~~of this code~~], includes the incorporation of tangible personal property into real estate or into improvements of real estate whether or not the real estate is subsequently sold.

(c) "Use" does not include the sale of tangible personal property or a taxable service in the regular course of business, the transfer of a taxable service as an integral part of the transfer of tangible personal property in the regular course of business, or the transfer of tangible personal property as an integral part of the transfer of a taxable service in the regular course of business. "Use" also does not include the sale outside this state of raw materials that are processed, fabricated, or manufactured into printed materials outside this state if the printed materials are subsequently brought or delivered into this state.

(r) Section 151.3111(b), Tax Code, is amended to read as follows:

(b) Subsection (a) does not apply to the performance of a service on:

(1) tangible personal property that would be exempted solely because of the exempt status of the seller of the property;

(2) tangible personal property that is exempted solely because of the application of Section 151.303, 151.304, or 151.306;

(3) motor vehicles, trailers, or semitrailers as defined, taxed, or exempted by Chapter 152; [~~or~~]

(4) a taxable boat or motor as defined by Section 160.001; [~~or~~]

(5) tangible [~~(6) Tangible~~] personal property exempt under Section 151.326; or

(6) through December 31, 2007, tangible personal property that is exempted solely because of the application of Section 151.3162.

(s) Sections 151.3162(d) and (e), Tax Code, are amended to

35-1 read as follows:

35-2 (d) The exemption provided by Subsection (b) takes effect
 35-3 January 1, 2008. Until that date, a person is entitled to an
 35-4 exemption [~~a credit or refund~~] of a portion of the taxes paid under
 35-5 this chapter on an item that after January 1, 2008, will be exempted
 35-6 from the taxes imposed by this chapter under Subsection (b). The
 35-7 amount of the exemption [~~credit or refund~~] is determined as
 35-8 follows:

35-9 (1) for an item for which the taxable event occurs on
 35-10 or after October 1, 2001, and before January 1, 2004, the taxpayer
 35-11 is entitled to an exemption [~~a refund or credit~~] in an amount equal
 35-12 to 33 percent of the tax paid on the item;

35-13 (2) for an item for which the taxable event occurs on
 35-14 or after January 1, 2004, and before January 1, 2006, the taxpayer
 35-15 is entitled to an exemption [~~a refund or credit~~] in an amount equal
 35-16 to 50 percent of the tax paid on the item; and

35-17 (3) for an item for which the taxable event occurs on
 35-18 or after January 1, 2006, and before January 1, 2008, the taxpayer
 35-19 is entitled to an exemption [~~a refund or credit~~] in an amount equal
 35-20 to 75 percent of the tax paid on the item.

35-21 (e) A taxpayer entitled to a credit or refund under
 35-22 Subsection (d), as that subsection existed on September 30, 2005,
 35-23 may elect to receive either a credit or a refund. A taxpayer who
 35-24 elects to receive a credit must claim the credit on the return for a
 35-25 period that ends not later than the first anniversary of the date on
 35-26 which the taxable event occurred. A taxpayer who elects to receive
 35-27 a refund must apply to the comptroller for the refund before or
 35-28 during the calendar year following the year in which the tax on the
 35-29 item was paid.

35-30 (t) Section 171.110, Tax Code, is amended by adding
 35-31 Subsection (m) to read as follows:

35-32 (m) Except as otherwise provided by this section, in
 35-33 computing taxable earned surplus, a corporation is considered to
 35-34 have made an election to use the same methods used in filing its
 35-35 federal income tax return.

35-36 (u) Section 171.1121(b), Tax Code, is amended to read as
 35-37 follows:

35-38 (b) Except as otherwise provided by this section, a
 35-39 corporation shall use the same accounting methods to apportion
 35-40 taxable earned surplus as the corporation used to compute taxable
 35-41 earned surplus [~~in computing reportable federal taxable income~~].

35-42 (v) Section 171.801(2), Tax Code, is amended to read as
 35-43 follows:

35-44 (2) "Qualified capital investment" means tangible
 35-45 personal property, as defined by 26 C.F.R. Section 1.1245-3(b)(1),
 35-46 that is first placed in service in a strategic investment area, or
 35-47 first placed in service in a county with a population of less than
 35-48 50,000 by a corporation primarily engaged in agricultural
 35-49 processing, and that is described as Section 1245 property by [~~in~~]
 35-50 Section 1245(a), Internal Revenue Code, such as engines, machinery,
 35-51 tools, and implements used in a trade or business or held for
 35-52 investment and subject to an allowance for depreciation, cost
 35-53 recovery under the accelerated cost recovery system, or
 35-54 amortization. The term does not include land [~~real property~~] or
 35-55 buildings and their structural components. Property that is leased
 35-56 under a capitalized lease is considered a "qualified capital
 35-57 investment," but property that is leased under an operating lease
 35-58 is not considered a "qualified capital investment." Property
 35-59 expensed under Section 179, Internal Revenue Code, is not
 35-60 considered a "qualified capital investment."

35-61 (w) Section 183.053(b), Tax Code, is amended to read as
 35-62 follows:

35-63 (b) The total of bonds, certificates of deposit, letters of
 35-64 credit, or other security determined to be sufficient by the
 35-65 comptroller of a permittee subject to the tax imposed by this
 35-66 chapter shall be in an amount that the comptroller determines to be
 35-67 sufficient to protect the fiscal interests of the state. The
 35-68 comptroller may not set the amount of security at less than \$1,000
 35-69 or more than the greater of \$100,000 or four times the amount of the

36-1 permittee's average monthly tax liability [\$50,000].

36-2 (x) Section 201.102, Tax Code, is amended to read as
36-3 follows:

36-4 Sec. 201.102. CASH SALES. If gas is sold for cash only, the
36-5 tax shall be computed on the producer's gross cash receipts.
36-6 Payments from a purchaser of gas to a producer for the purpose of
36-7 reimbursing the producer for taxes due under this chapter are not
36-8 part of the gross cash receipts [~~unless the reimbursement amount~~
36-9 ~~for taxes due under this chapter is separately stated in the sales~~
36-10 ~~contract~~].

36-11 (y) Sections 313.021(1) and (2), Tax Code, are amended to
36-12 read as follows:

36-13 (1) "Qualified investment" means:

36-14 (A) tangible personal property, as defined by 26
36-15 C.F.R. Section 1.1245-3(b)(1), that is first placed in service in
36-16 this state during the applicable qualifying time period that begins
36-17 on or after January 1, 2002, and is described as Section 1245
36-18 property by Section 1245(a), Internal Revenue Code of 1986;

36-19 (B) tangible personal property that is first
36-20 placed in service in this state during the applicable qualifying
36-21 time period that begins on or after January 1, 2002, without regard
36-22 to whether the property is affixed to or incorporated into real
36-23 property, and that is used in connection with the manufacturing,
36-24 processing, or fabrication in a cleanroom environment of a
36-25 semiconductor product, without regard to whether the property is
36-26 actually located in the cleanroom environment, including:

36-27 (i) integrated systems, fixtures, and
36-28 piping;

36-29 (ii) all property necessary or adapted to
36-30 reduce contamination or to control airflow, temperature, humidity,
36-31 chemical purity, or other environmental conditions or
36-32 manufacturing tolerances; and

36-33 (iii) production equipment and machinery,
36-34 moveable cleanroom partitions, and cleanroom lighting; or

36-35 (C) a building or a permanent, nonremovable
36-36 component of a building that is built or constructed during the
36-37 applicable qualifying time period that begins on or after January
36-38 1, 2002, and that houses tangible personal property described by
36-39 Paragraph (A) or (B).

36-40 (2) "Qualified property" means:

36-41 (A) land:

36-42 (i) that is located in an area designated as
36-43 a reinvestment zone under Chapter 311 or 312 or as an enterprise
36-44 zone under Chapter 2303, Government Code;

36-45 (ii) on which a person proposes to
36-46 construct a new building or erect or affix a new improvement that
36-47 does not exist before the date the owner applies for a limitation on
36-48 appraised value under this subchapter;

36-49 (iii) that is not subject to a tax abatement
36-50 agreement entered into by a school district under Chapter 312; and

36-51 (iv) on which, in connection with the new
36-52 building or new improvement described by Subparagraph (ii), the
36-53 owner of the land, or the owner of a leasehold interest in the land,
36-54 proposes to:

36-55 (a) make a qualified investment in an
36-56 amount equal to at least the minimum amount required by Section
36-57 313.023; and

36-58 (b) create at least 25 new jobs;

36-59 (B) the new building or other new improvement
36-60 described by Paragraph (A)(ii); and

36-61 (C) tangible personal property that:

36-62 (i) is not subject to a tax abatement
36-63 agreement entered into by a school district under Chapter 312; and

36-64 (ii) except for new equipment described in
36-65 Section 151.318(q) or (q-1), is first placed in service in the new
36-66 building or in or on the new improvement described by Paragraph
36-67 (A)(ii), or on the land on which that new building or new
36-68 improvement is located, if the personal property is ancillary and
36-69 necessary to the business conducted in that new building or in or on

37-1 that new improvement.

37-2 (z) Section 321.203, Tax Code, is amended by amending
37-3 Subsections (b)-(e) and adding Subsection (n) to read as follows:

37-4 (b) If a retailer has only one place of business in this
37-5 state, all of the retailer's retail sales of taxable items
37-6 [~~tangible personal property~~] are consummated at that place of
37-7 business except as provided by Subsection (e).

37-8 (c) If a retailer has more than one place of business in this
37-9 state, a sale of a taxable item [~~tangible personal property~~] by the
37-10 retailer is consummated at the retailer's place of business:

37-11 (1) from which the retailer ships or delivers the item
37-12 [~~property~~], if the retailer ships or delivers the item [~~property~~]
37-13 to a point designated by the purchaser or lessee; or

37-14 (2) where the purchaser or lessee takes possession of
37-15 and removes the item [~~property~~], if the purchaser or lessee takes
37-16 possession of and removes the item [~~property~~] from a place of
37-17 business of the retailer.

37-18 (d) If neither the possession of a taxable item [~~tangible~~
37-19 ~~personal property~~] is taken at nor shipment or delivery of the item
37-20 [~~property~~] is made from the retailer's place of business in this
37-21 state, the sale is consummated at:

37-22 (1) the retailer's place of business in this state
37-23 where the order is received; or

37-24 (2) if the order is not received at a place of business
37-25 of the retailer, the place of business from which the retailer's
37-26 salesman who took the order operates.

37-27 (e) A sale of a taxable item [~~tangible personal property~~] is
37-28 consummated at the location in this state to which the item
37-29 [~~property~~] is shipped or delivered or at which possession is taken
37-30 by the customer if transfer of possession of the item [~~property~~]
37-31 occurs at, or shipment or delivery of the item [~~property~~]
37-32 originates from, a location in this state other than a place of
37-33 business of the retailer and if:

37-34 (1) the retailer is an itinerant vendor who has no
37-35 place of business;

37-36 (2) the retailer's place of business where the
37-37 purchase order is initially received or from which the retailer's
37-38 salesman who took the order operates is outside this state; or

37-39 (3) the purchaser places the order directly with the
37-40 retailer's supplier and the item [~~property~~] is shipped or delivered
37-41 directly to the purchaser by the supplier.

37-42 (n) A sale of a service described by Section 151.0047 to
37-43 remodel, repair, or restore nonresidential real property is
37-44 consummated at the location of the job site. However, if the job
37-45 site includes areas in multiple municipalities, the sale is
37-46 consummated at:

37-47 (1) the retailer's place of business in this state
37-48 where the order is received; or

37-49 (2) if the order is not received at a place of business
37-50 of the retailer, the place of business from which the retailer's
37-51 agent who took the order operates.

37-52 (aa) Section 321.302, Tax Code, is amended by adding
37-53 Subsection (c-1) to read as follows:

37-54 (c-1) For purposes of Subsection (c)(3), "full amount of the
37-55 tax due" means the amount of municipal tax to be allocated that can
37-56 be determined without a comptroller's audit of the person's
37-57 records.

37-58 (bb) Section 321.503, Tax Code, is amended to read as
37-59 follows:

37-60 Sec. 321.503. STATE'S SHARE. Before sending any money to a
37-61 municipality under this subchapter the comptroller shall deduct two
37-62 percent of the amount of the taxes collected within the
37-63 municipality during the period for which a distribution is made as
37-64 the state's charge for its services under this chapter and shall[
37-65 ~~subject to premiums payments under Section 321.501(c),~~] credit the
37-66 money deducted to the general revenue fund.

37-67 (cc) Section 323.102(c), Tax Code, is amended to read as
37-68 follows:

37-69 (c) A tax imposed under Section 323.105 of this code or

Chapter 326 or 383, Local Government Code, takes effect on the first day of the first calendar quarter after the expiration of the first complete calendar quarter occurring after the date on which the comptroller receives a notice of the action as required by Section 323.405(b).

(dd) Section 323.203, Tax Code, is amended by amending Subsections (b)-(e) and adding Subsection (m) to read as follows:

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

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

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

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

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

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

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

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

(1) the retailer is an itinerant vendor who has no place of business;

(2) the retailer's place of business where the purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

(3) the purchaser places the order directly with the retailer's supplier and the item [~~property~~] is shipped or delivered directly to the purchaser by the supplier.

(m) A sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site. However, if the job site includes areas in multiple municipalities, the sale is consummated at:

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

(2) if the order is not received at a place of business of the retailer, the place of business from which the retailer's agent who took the order operates.

(ee) Section 323.503, Tax Code, is amended to read as follows:

Sec. 323.503. STATE'S SHARE. Before sending any money to a county under this subchapter the comptroller shall deduct two percent of the amount of the taxes collected within the county during the period for which a distribution is made as the state's charge for its services under this chapter and shall [~~subject to premiums payments under Section 323.501(c),~~] credit the money deducted to the general revenue fund.

(ff) The heading to Subchapter A, Chapter 16, Utilities Code, is amended to read as follows:

SUBCHAPTER A. ASSESSMENT ON UTILITY GROSS RECEIPTS [PUBLIC UTILITIES]

(gg) The heading to Section 16.001, Utilities Code, is

39-1 amended to read as follows:

39-2 Sec. 16.001. ASSESSMENT ON UTILITY GROSS RECEIPTS [~~PUBLIC~~
39-3 ~~UTILITIES~~].

39-4 (hh) Sections 16.001(a) and (b), Utilities Code, are
39-5 amended to read as follows:

39-6 (a) To defray the expenses incurred in the administration of
39-7 this title, an assessment is imposed on each telecommunications
39-8 utility, electric [~~public~~] utility, retail electric provider, and
39-9 electric cooperative within the jurisdiction of the commission that
39-10 serves the ultimate consumer, including each interexchange
39-11 telecommunications carrier.

39-12 (b) An assessment under this section is equal to one-sixth
39-13 of one percent of the telecommunications utility's, electric
39-14 [~~public~~] utility's, retail electric provider's, or electric
39-15 cooperative's gross receipts from rates charged to the ultimate
39-16 consumer in this state.

39-17 (ii) Section 16.002(b), Utilities Code, is amended to read
39-18 as follows:

39-19 (b) A telecommunications utility, electric [~~public~~]
39-20 utility, retail electric provider, or electric cooperative may
39-21 instead make quarterly payments due August 15, November 15,
39-22 February 15, and May 15.

39-23 (jj) The following sections of the Tax Code are repealed:

39-24 (1) Section 151.103(d);

39-25 (2) Section 151.202(c);

39-26 (3) Section 321.203(1), Tax Code, as added by Chapter
39-27 1310, Acts of the 78th Legislature, Regular Session, 2003; and

39-28 (4) Section 323.203(1).

39-29 (kk) The changes in law made by this Act to Section 201.102,
39-30 Tax Code, apply to a refund claim or determination under Chapter
39-31 111, Tax Code, without regard to whether the taxes that are the
39-32 subject of the refund claim or determination are due before, on, or
39-33 after the effective date of this Act.

39-34 (ll) The changes in law made by this Act to Section 111.009,
39-35 Tax Code, apply only to a petition for redetermination filed on or
39-36 after the effective date of this Act.

39-37 (mm) If a change in law made to Section 16.001 or 16.002,
39-38 Utilities Code, by this Act conflicts with another bill enacted by
39-39 the 79th Legislature, Regular Session, 2005, that amends Section
39-40 16.001 or 16.002, including H.B. No. 1779, that other bill
39-41 controls.

39-42 (nn) This section takes effect October 1, 2005.

39-43 SECTION 112. Section 161.081, Health and Safety Code, is
39-44 amended by adding Subdivision (7) to read as follows:

39-45 (7) "Attempt" means committing an act amounting to
39-46 more than mere preparation that tends but fails to effect the
39-47 commission of the offense intended.

39-48 SECTION 113. Subchapter H, Chapter 161, Health and Safety
39-49 Code, is amended by adding Section 161.0821 to read as follows:

39-50 Sec. 161.0821. PURCHASE OF CIGARETTES OR TOBACCO PRODUCTS
39-51 BY PERSONS YOUNGER THAN 18 YEARS OF AGE PROHIBITED. (a) A person
39-52 who is younger than 18 years of age commits an offense if the person
39-53 purchases or attempts to purchase cigarettes or tobacco products.

39-54 (b) An offense under this section is a Class C misdemeanor.

39-55 SECTION 114. Section 2303.401, Government Code, is amended
39-56 to read as follows:

39-57 Sec. 2303.401. DEFINITIONS. In this subchapter:

39-58 (1) "Certified job" means a new or retained job that:

39-59 (A) has provided at least 1,820 hours of
39-60 employment a year to a qualified employee of a qualified business as
39-61 described by Section 2303.402;

39-62 (B) is intended to exist for at least three years
39-63 after the date on which the comptroller makes the initial
39-64 certification of hiring commitments for the qualified business
39-65 under Section 2303.516(d); and

39-66 (C) has been certified by the comptroller as
39-67 eligible for receipt of a state benefit under this chapter.

39-68 (2) "New permanent job" means a new employment
39-69 position created by a qualified business as described by Section

2303.402 that:

(A) has provided at least 1,820 hours of employment a year to a qualified employee; and

(B) is intended to exist at the qualified business site for at least three years after the date on which a state benefit is received as authorized by this chapter.

(3) ~~(2)~~ "Retained job" means a job that existed with a qualified business before designation of the business's project or activity as an enterprise project that:

(A) has provided employment to a qualified employee of at least 1,820 hours annually; and

(B) is intended to be an employment position for at least three years after the date on which a state benefit is received as authorized by this chapter.

SECTION 115. Section 2303.4072, Government Code, is amended to read as follows:

Sec. 2303.4072. ENTERPRISE PROJECT CLAIM FOR STATE BENEFIT. A person must make a claim to the comptroller for a state benefit as prescribed under this chapter and Chapters 151 and 171, Tax Code, not later than six ~~18~~ months after the date on which the term of the enterprise project designation expires as provided by Section 2303.404.

SECTION 116. Section 2303.504, Government Code, as amended by Section 2.02, Chapter 1134, Acts of the 77th Legislature, Regular Session, 2001, is amended to read as follows:

Sec. 2303.504. STATE TAX REFUNDS AND CREDITS; REPORT. (a) In this section, "triple jumbo enterprise project" has the meaning assigned by Section 2303.407.

(a-1) Subject to Section 2303.516, an enterprise project is entitled to:

(1) a refund of state taxes under Section 151.429, Tax Code; and

(2) a franchise tax credit under Subchapter P or Q, Chapter 171, Tax Code, but only if the enterprise project was designated as an enterprise project on or after September 1, 2003, and approved as a triple jumbo enterprise project on or before September 1, 2004.

(b) At the time of receipt of any tax benefit available as a result of participating in the enterprise zone program, including a state sales and use tax refund or franchise tax credit, three percent of the amount of the tax benefit shall be transferred to the Texas economic development bank fund under Subchapter B, Chapter 489, to defray the cost of administering this chapter.

(c) Not later than the 60th day after the last day of each fiscal year, the comptroller shall report to the bank the statewide total of actual jobs created, actual jobs retained, and the tax refunds and credits made under this section during that fiscal year.

SECTION 117. Sections 2303.516(b) and (d), Government Code, are amended to read as follows:

(b) The comptroller ~~[bank]~~ may determine that the business or project is not entitled to a refund or credit of state taxes under Section 2303.504(a-1) if the comptroller ~~[bank]~~ finds that:

(1) the business or project is not willing to cooperate with the comptroller [bank] in providing the comptroller [bank] with the information the comptroller [bank] needs to determine state benefits [make the determination under Subsection (a)]; or

(2) the business or project has substantially failed to follow through on any commitments made by it or on its behalf under this chapter.

(d) A qualified business may obtain a state benefit, earned through a specific enterprise project designation, on completion of:

(1) a certification of the project or activity for completeness that is conducted [an audit performed] by the comptroller to verify [that will certify] hiring commitments of a qualified business under this chapter;

(2) a certification conducted by the comptroller to

41-1 verify ~~[and eligible]~~ purchases of taxable items made by or on
41-2 behalf of the ~~[a]~~ qualified business under this chapter; and
41-3 (3) a verification of the capital investment for the
41-4 project or activity, conducted by the comptroller, to determine the
41-5 level of benefit achieved by the qualified business.

41-6 SECTION 118. Section 2303.517, Government Code, is amended
41-7 to read as follows:

41-8 Sec. 2303.517. REPORT. Before obtaining a state benefit,
41-9 the qualified business must submit to the comptroller ~~[bank]~~ a
41-10 certified report of the actual number of jobs created or retained
41-11 and the capital investment made at or committed to the qualified
41-12 business site.

41-13 SECTION 119. (a) Sections 151.429(a), (b), (c), (e), and
41-14 (g), Tax Code, are amended to read as follows:

41-15 (a) An enterprise project is eligible for a refund in the
41-16 amount provided by this section of the taxes imposed by this chapter
41-17 on purchases of taxable items [+
41-18

41-19 ~~[(1) equipment or machinery sold to an enterprise
project for use at the qualified business site;~~

41-20 ~~[(2) building materials sold to an enterprise project
41-21 for use in remodeling, rehabilitating, or constructing a structure
41-22 at the qualified business site;~~

41-23 ~~[(3) labor for remodeling, rehabilitating, or
41-24 constructing a structure by an enterprise project at the qualified
41-25 business site; and~~

41-26 ~~[(4) electricity and natural gas purchased and
41-27 consumed in the normal course of business at the qualified business
41-28 site].~~

41-29 (b) Subject to the limitations provided by Subsection (c) of
41-30 this section, an enterprise project qualifies for a refund of taxes
41-31 under this section based on the amount of capital investment made at
41-32 the qualified business site and refund per job with a maximum refund
41-33 to be included in a computation of a tax refund for the project. A
41-34 capital investment at the qualified business site of:

41-35 (1) \$40,000 to \$399,999 will result in a refund of up
41-36 to \$2,500 per job with a maximum refund of \$25,000 for the creation
41-37 or retention of 10 certified jobs;

41-38 (2) \$400,000 to \$999,999 will result in a refund of up
41-39 to \$2,500 per job with a maximum refund of \$62,500 for the creation
41-40 or retention of 25 certified jobs;

41-41 (3) \$1,000,000 to \$4,999,999 will result in a refund
41-42 of up to \$2,500 per job with a maximum refund of \$312,500 for the
41-43 creation or retention of 125 certified jobs;

41-44 (4) \$5,000,000 to \$149,999,999 will result in a refund
41-45 of up to \$2,500 per job with a maximum refund of \$1,250,000 for the
41-46 creation or retention of 500 certified jobs;

41-47 (5) \$150,000,000 to \$249,999,999 will result in a
41-48 refund of up to \$5,000 per job with a maximum refund of \$2,500,000
41-49 for the creation or retention of 500 certified jobs; or

41-50 (6) \$250,000,000 or more will result in a refund of up
41-51 to \$7,500 per job with a maximum refund of \$3,750,000 for the
41-52 creation or retention of 500 certified jobs.

41-53 (c) The total amount of tax refund that an enterprise
41-54 project may apply for in a state fiscal year may not exceed
41-55 \$250,000. If an enterprise project qualifies in a state fiscal year
41-56 for a refund of taxes in an amount in excess of the limitation
41-57 provided by this subsection, it may apply for a refund of those
41-58 taxes in a subsequent year, subject to the \$250,000 limitation for
41-59 each year. The total amount that may be refunded to an enterprise
41-60 project under this section may not exceed the amount determined by
41-61 multiplying \$250,000 by the number of state fiscal years during
41-62 which the enterprise project created one or more certified jobs for
41-63 qualified employees.

41-64 (e) In this section:

41-65 (1) "Enterprise project" means a person designated by
41-66 the Texas Economic Development Bank as an enterprise project under
41-67 Chapter 2303, Government Code.

41-68 (2) "Enterprise zone," "qualified employee," and
41-69 "qualified hotel project" have the meanings assigned to those terms

42-1 by Section 2303.003, Government Code.

42-2 (3) "New permanent job" means a new employment
42-3 position created by a qualified business as described by Section
42-4 2303.402, Government Code, that:

42-5 (A) has provided at least 1,820 hours of
42-6 employment a year to a qualified employee; and

42-7 (B) is intended to exist for at least three years
42-8 after a state benefit is received under Chapter 2303, Government
42-9 Code.

42-10 (4) "Retained job" has the meaning assigned by Section
42-11 2303.401, Government Code.

42-12 (4-a) "Certified job" has the meaning assigned by
42-13 Section 2303.401, Government Code.

42-14 (5) "Double jumbo enterprise project" and "triple
42-15 jumbo enterprise project" have the meanings assigned by Section
42-16 2303.407, Government Code.

42-17 (g) The refund provided by this section is conditioned on
42-18 the enterprise project maintaining for a three-year period at least
42-19 the same number [level] of certified jobs [~~employment of qualified~~
42-20 ~~employees~~] as existed on the date the comptroller initially
42-21 certified the hiring commitments for the project under Section
42-22 2303.516(d), Government Code [~~at the time it qualified for a refund~~
42-23 ~~for a period of three years from that date~~]. The comptroller shall
42-24 annually certify whether that number [level] of certified jobs
42-25 [~~employment of qualified employees~~] has been maintained. On
42-26 certifying that such a number [level] has not been maintained, the
42-27 comptroller shall assess that portion of the refund attributable to
42-28 any such decrease in certified jobs [~~employment~~], including penalty
42-29 and interest from the date of the refund.

42-30 (b) The change in law made by this section to Section
42-31 151.429, Tax Code, applies only to an application for a tax refund
42-32 made on or after the effective date of this Act. An application for
42-33 a tax refund made before the effective date of this Act is governed
42-34 by the law in effect on the date the application was made, and the
42-35 former law is continued in effect for that purpose.

42-36 SECTION 120. (a) Section 151.4291(a), Tax Code, is amended
42-37 to read as follows:

42-38 (a) A defense readjustment project is eligible for a refund
42-39 in the amount provided by this section of the taxes imposed by this
42-40 chapter on purchases of taxable items [+

42-41 [~~(1) equipment or machinery sold to a defense~~
42-42 ~~readjustment project for use in a readjustment zone;~~

42-43 [~~(2) building materials sold to a defense readjustment~~
42-44 ~~project for use in remodeling, rehabilitating, or constructing a~~
42-45 ~~structure in a readjustment zone;~~

42-46 [~~(3) labor for remodeling, rehabilitating, or~~
42-47 ~~constructing a structure by a defense readjustment project in a~~
42-48 ~~readjustment zone; and~~

42-49 [~~(4) electricity and natural gas purchased and~~
42-50 ~~consumed in the normal course of business in the readjustment~~
42-51 ~~zone~~].

42-52 (b) The change in law made by this section to Section
42-53 151.4291, Tax Code, applies only to an application for a tax refund
42-54 made on or after the effective date of this Act. An application for
42-55 a tax refund made before the effective date of this Act is governed
42-56 by the law in effect on the date the application was made, and the
42-57 former law is continued in effect for that purpose.

42-58 SECTION 121. Section 171.721(2), Tax Code, is amended to
42-59 read as follows:

42-60 (2) "Strategic investment area" means an area that is
42-61 determined by the comptroller under Section 171.726 that is:

42-62 (A) a county within this state with above state
42-63 average unemployment and below state average per capita income;

42-64 (B) an area within this state that is:

42-65 (i) an area consisting of a federally
42-66 designated empowerment zone and associated areas that could be
42-67 developed; or

42-68 (ii) a federally designated renewal
42-69 community [~~urban enterprise community or an urban enhanced~~

43-1 ~~enterprise community]; or~~

43-2 (C) a defense economic readjustment zone
43-3 designated under Chapter 2310, Government Code.

43-4 SECTION 122. Section 171.751, Tax Code, is amended by
43-5 adding Subdivision (5-a) and amending Subdivisions (8) and (9) to
43-6 read as follows:

43-7 (5-a) "Enterprise project" means a person designated
43-8 as an enterprise project under Chapter 2303, Government Code.

43-9 (8) "Qualified business" means an establishment:

43-10 (A) primarily engaged in agricultural
43-11 processing, central administrative offices, distribution, data
43-12 processing, manufacturing, research and development, or
43-13 warehousing;

43-14 (B) that was designated as an enterprise project
43-15 under Chapter 2303, Government Code, on or after September 1, 2003,
43-16 and approved as a triple jumbo enterprise project, as defined by
43-17 Section 2303.407, Government Code, on or before September 1, 2004;
43-18 or

43-19 (C) that was designated as a defense readjustment
43-20 project under Chapter 2310, Government Code, on or after September
43-21 1, 2001.

43-22 (9) "Qualifying job" means:

43-23 (A) a new permanent full-time job that:

43-24 (i) ~~[(A)]~~ is located in:

43-25 (a) ~~[(i)]~~ a strategic investment
43-26 area; or

43-27 (b) ~~[(ii)]~~ a county within this state
43-28 with a population of less than 50,000, if the job is created by a
43-29 business primarily engaged in agricultural processing;

43-30 (ii) ~~[(B)]~~ requires at least 1,600 hours of
43-31 work a year;

43-32 (iii) ~~[(C)]~~ pays at least 110 percent of
43-33 the county average weekly wage for the county where the job is
43-34 located;

43-35 (iv) ~~[(D)]~~ is covered by a group health
43-36 benefit plan for which the business pays at least 80 percent of the
43-37 premiums or other charges assessed under the plan for the employee;

43-38 (v) ~~[(E)]~~ is not transferred from one area
43-39 in this state to another area in this state; and

43-40 (vi) ~~[(F)]~~ is not created to replace a
43-41 previous employee;

43-42 (B) a new permanent full-time job created by an
43-43 enterprise project at a qualified business site, as defined by
43-44 Section 2303.003, Government Code, regardless of whether the job
43-45 meets the qualifications prescribed by Paragraph (A)(i)(a); or

43-46 (C) a job created or retained by a qualified
43-47 business described by Subdivision (8)(C).

43-48 SECTION 123. Subchapter P, Chapter 171, Tax Code, is
43-49 amended by adding Section 171.7542 to read as follows:

43-50 Sec. 171.7542. LENGTH OF CREDIT. (a) This section applies
43-51 only to a corporation that was:

43-52 (1) designated as an enterprise project on or after
43-53 September 1, 2003, and approved as a triple jumbo enterprise
43-54 project, as defined by Section 2303.407, Government Code, on or
43-55 before September 1, 2004; or

43-56 (2) designated as a defense readjustment project under
43-57 Chapter 2310, Government Code, on or after September 1, 2001.

43-58 (b) Notwithstanding Section 171.753, a corporation to which
43-59 this section applies may establish a credit equal to 25 percent of
43-60 the total wages and salaries paid or to be paid by the corporation
43-61 for qualifying jobs created during the period beginning on the date
43-62 the project is designated as an enterprise project or as a defense
43-63 readjustment project, as applicable, through December 31, 2008.

43-64 (c) Subject to Sections 171.755 and 171.756, the
43-65 corporation may claim:

43-66 (1) the entire amount of the credit established under
43-67 Subsection (b) on the first report originally due on or after
43-68 September 1, 2005; or

43-69 (2) an equal portion of the total credit established

44-1 under Subsection (b) on each report originally due on or after
44-2 September 1, 2005, and before January 1, 2009.

44-3 (d) A corporation that establishes the credit authorized by
44-4 Subsection (b) shall provide to the comptroller an estimate of the
44-5 total wages and salaries on which the corporation establishes the
44-6 credit. The corporation shall provide the estimate on the first
44-7 report originally due on or after September 1, 2005.

44-8 (e) This section expires January 1, 2009.
44-9 SECTION 124. Section 171.801, Tax Code, is amended by
44-10 amending Subdivision (2) and adding Subdivision (4) to read as
44-11 follows:

44-12 (2) "Qualified capital investment" means tangible
44-13 personal property first placed in service in a strategic investment
44-14 area, ~~[or]~~ first placed in service in a county with a population of
44-15 less than 50,000 by a corporation primarily engaged in agricultural
44-16 processing, first placed in service by an enterprise project,
44-17 regardless of whether the project is located in an enterprise zone,
44-18 as defined by Section 2303.003, Government Code, or first placed in
44-19 service by a defense readjustment project, and that is described in
44-20 Section 1245(a), Internal Revenue Code, such as engines, machinery,
44-21 tools, and implements used in a trade or business or held for
44-22 investment and subject to an allowance for depreciation, cost
44-23 recovery under the accelerated cost recovery system, or
44-24 amortization. The term does not include real property or buildings
44-25 and their structural components. Property that is leased under a
44-26 capitalized lease is considered a "qualified capital investment,"
44-27 but property that is leased under an operating lease is not
44-28 considered a "qualified capital investment." Property expensed
44-29 under Section 179, Internal Revenue Code, is not considered a
44-30 "qualified capital investment."

44-31 (4) "Defense readjustment project" and "enterprise
44-32 project" have the meanings assigned by Section 171.751.

44-33 SECTION 125. Section 171.8015, Tax Code, is amended to read
44-34 as follows:

44-35 Sec. 171.8015. TANGIBLE PERSONAL PROPERTY FIRST PLACED IN
44-36 SERVICE BY ~~[IN]~~ AN ENTERPRISE PROJECT ~~[ZONE]~~. For purposes of
44-37 determining whether an investment is a "qualified capital
44-38 investment" under Section 171.801, "tangible personal property
44-39 first placed in service by ~~[in]~~ an enterprise project ~~[zone]~~"
44-40 includes tangible personal property:

44-41 (1) purchased by an enterprise project ~~[by a qualified~~
44-42 ~~business]~~ for placement in an incomplete improvement that is under
44-43 active construction or other physical preparation;

44-44 (2) identified by a purchase order, invoice, billing,
44-45 sales slip, or contract; and

44-46 (3) physically present at the enterprise project's
44-47 qualified business site, as defined by Section 2303.003, Government
44-48 Code, ~~[zone]~~ and in use by the enterprise project on the original
44-49 due date of the report on which the credit is taken ~~[qualified~~
44-50 ~~business not later than September 30, 2005]~~.

44-51 SECTION 126. Section 171.802, Tax Code, is amended by
44-52 amending Subsection (c) and adding Subsection (d-1) to read as
44-53 follows:

44-54 (c) A corporation may claim a credit or take a carryforward
44-55 credit without regard to whether the strategic investment area or
44-56 enterprise zone in which it made the qualified capital investment
44-57 subsequently loses its designation as a strategic investment area
44-58 or enterprise zone, if applicable.

44-59 (d-1) A corporation that has been designated as an
44-60 enterprise project or as a defense readjustment project and is
44-61 certified by the Texas Economic Development Bank as a qualified
44-62 business under Section 2303.402 or 2310.302, Government Code, may
44-63 qualify for the credit provided by this subchapter, regardless of
44-64 whether the corporation meets the qualifications prescribed by
44-65 Subsection (b).

44-66 SECTION 127. Section 171.803, Tax Code, is amended by
44-67 adding Subsection (b) to read as follows:

44-68 (b) A corporation, that on or after September 1, 2001, has
44-69 been designated as an enterprise project, without regard to whether

45-1 the enterprise project is located in an enterprise zone, or as a
45-2 defense readjustment project, may, beginning on the date the
45-3 project is designated, establish a credit equal to 7.5 percent of
45-4 the qualified capital investment.

45-5 SECTION 128. Section 171.804, Tax Code, is amended to read
45-6 as follows:

45-7 Sec. 171.804. LENGTH OF CREDIT. (a) Except as provided by
45-8 Subsection (b), the [The] credit established shall be claimed in
45-9 five equal installments of one-fifth the credit amount over the
45-10 five consecutive reports beginning with the report based upon the
45-11 period during which the qualified capital investment was made.

45-12 (b) Subject to Section 171.805, a corporation that has been
45-13 designated as an enterprise project or as a defense readjustment
45-14 project may claim the entire credit earned on a report originally
45-15 due on or after September 1, 2003, and before January 1, 2009.

45-16 SECTION 129. The following laws are repealed:

45-17 (1) Section 2303.516(c), Government Code;

45-18 (2) Section 76, Chapter 1310, Acts of the 78th
45-19 Legislature, Regular Session, 2003;

45-20 (3) Section 981.056, Insurance Code; and

45-21 (4) Sections 162.016(h) and 351.102(c), Tax Code.

45-22 SECTION 130. (a) In accordance with Section 311.031(c),
45-23 Government Code, which gives effect to a substantive amendment
45-24 enacted by the same legislature that codifies the amended statute,
45-25 the text of Sections 226.001-226.003 and 226.005, Insurance Code,
45-26 as set out in this Act, gives effect to changes made by Section 76,
45-27 Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003.

45-28 (b) To the extent of any conflict, this Act prevails over
45-29 another Act of the 79th Legislature, Regular Session, 2005,
45-30 relating to nonsubstantive additions and corrections in enacted
45-31 codes.

45-32 SECTION 131. (a) Except as provided by Subsection (b) of
45-33 this section or as otherwise provided by this Act, this Act takes
45-34 effect immediately if it receives a vote of two-thirds of all the
45-35 members elected to each house, as provided by Section 39, Article
45-36 III, Texas Constitution. If this Act does not receive the vote
45-37 necessary for immediate effect:

45-38 (1) the changes, reenactments, and additions in law
45-39 made by this Act to the statutes that are not specifically listed in
45-40 this section take effect on the 91st day after the last day of the
45-41 legislative session, except as otherwise provided by this Act; and

45-42 (2) the changes in law made by this Act to the
45-43 following statutes take effect September 1, 2005:

45-44 (A) Section 103.0031, Code of Criminal
45-45 Procedure;

45-46 (B) Sections 25.0015, 25.00211, 26.007, 74.061,
45-47 403.071, 404.024, 660.024, 660.027, 2256.011, and 2256.016,
45-48 Government Code;

45-49 (C) Section 433, Probate Code;

45-50 (D) Sections 74.101, 74.401, 74.507, and 74.601,
45-51 Property Code; and

45-52 (E) Section 623.052, Transportation Code.

45-53 (b) The changes in law made by this Act by amending the
45-54 following statutes or adding the following statutes take effect
45-55 September 1, 2005:

45-56 (1) Section 43.002, Education Code;

45-57 (2) Sections 659.255, 659.256, 659.257, 2303.401,
45-58 2303.4072, 2303.504, 2303.516, and 2303.517, Government Code;

45-59 (3) Sections 101.001, 101.005, 101.053, 101.201,
45-60 101.203, 101.301, 225.002, 226.001, 226.002, 226.003, 226.005,
45-61 226.052, 981.002, 981.004, 981.005, 981.006, 981.008, 981.101,
45-62 981.104, and 981.160, Insurance Code; and

45-63 (4) Sections 151.429, 151.4291, 151.715, 171.721,
45-64 171.751, 171.7542, 171.801, 171.8015, 171.802, 171.803, and
45-65 171.804, Tax Code.

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