

By: Pitts

H.B. No. 3540

A BILL TO BE ENTITLED

AN ACT

relating to certain fiscal matters affecting governmental entities; providing penalties.

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

ARTICLE 1. DELAYED ELIGIBILITY FOR MEMBERSHIP IN EMPLOYEES

RETIREMENT SYSTEM OF TEXAS

SECTION 1.01. Section 812.003(e), Government Code, is amended to read as follows:

(e) Membership [~~For persons whose employment or office holding begins before September 1, 2005, membership~~] in the employee class begins on the 91st day after the first day a person is employed or holds office.

SECTION 1.02. Sections 812.003(d) and (h), Government Code, are repealed.

ARTICLE 2. WAIVER OF AND SUPPLEMENTAL HEALTH COVERAGE

FOR STATE EMPLOYEES

SECTION 2.01. Section 1551.104(a), Insurance Code, is amended to read as follows:

(a) Subject to Sections 1551.101 and 1551.102, each full-time employee is covered automatically by the basic coverage plan for employees and each annuitant is covered by the basic coverage plan for annuitants unless:

(1) participation is specifically waived as provided by Section 1551.1045;

1 (2) the employee or annuitant is expelled from the
2 program under Section 1551.351; or

3 (3) eligibility is otherwise limited by this chapter.

4 SECTION 2.02. Subchapter C, Chapter 1551, Insurance Code,
5 is amended by adding Section 1551.1045 to read as follows:

6 Sec. 1551.1045. WAIVER. (a) Subject to Subsections (b) and
7 (c), an employee or annuitant may waive in writing any coverage
8 provided under this chapter.

9 (b) To waive coverage under the basic coverage plan for
10 employees, a full-time employee must demonstrate, in the manner
11 required by the board of trustees, that the employee is:

12 (1) covered by another health benefit plan that
13 provides substantially equivalent coverage, as determined by the
14 board of trustees, to the coverage provided to employees by the
15 basic coverage plan; or

16 (2) eligible for benefits under the TRICARE Military
17 Health System.

18 (c) To waive coverage under the basic coverage plan for
19 annuitants for the purpose of eligibility for an incentive payment
20 under Section 1551.222, an annuitant must demonstrate, in the
21 manner required by the board of trustees, that the annuitant is:

22 (1) covered by another health benefit plan that
23 provides substantially equivalent coverage, as determined by the
24 board of trustees, to the coverage provided to annuitants by the
25 basic coverage plan; or

26 (2) eligible for benefits under the TRICARE Military
27 Health System.

1 SECTION 2.03. Subchapter E, Chapter 1551, Insurance Code,
2 is amended by adding Sections 1551.221 and 1551.222 to read as
3 follows:

4 Sec. 1551.221. OPTIONAL SUPPLEMENTAL HEALTH COVERAGE FOR
5 INDIVIDUALS ELIGIBLE UNDER TRICARE MILITARY HEALTH SYSTEM. (a)
6 The board of trustees shall offer, as an optional coverage under the
7 group benefits program, a supplemental health coverage program.

8 (b) Under the supplemental health coverage program, an
9 employee or annuitant who is eligible to participate in the group
10 benefits program and who is also eligible for benefits under the
11 TRICARE Military Health System may elect to receive primary
12 coverage under the TRICARE Military Health System. An employee or
13 annuitant participating in the supplemental health coverage
14 program must waive basic coverage through the group benefits
15 program, but receives supplemental health coverage under this
16 section.

17 (c) The cost of supplemental health coverage provided under
18 this section may be paid in the same manner as the cost of other
19 optional coverage is paid under Subchapter G.

20 (d) The board of trustees shall contract to purchase the
21 supplemental health coverage in accordance with Sections
22 1551.213-1551.216.

23 (e) The board of trustees may adopt rules to implement this
24 section.

25 Sec. 1551.222. INCENTIVE PAYMENTS. (a) The board of
26 trustees may allow an incentive payment under this section to an
27 employee or annuitant who elects to waive coverage under the basic

1 coverage plan for employees or annuitants as provided by Section
2 1551.1045(b) or (c).

3 (b) The incentive payment authorized by this section is in
4 the amount authorized by the General Appropriations Act and may be
5 used by the employee or annuitant, in the manner prescribed by the
6 board of trustees, only to pay for other group coverage plans
7 provided under the group benefits program, including the
8 supplemental health coverage offered under Section 1551.221.

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

14 SECTION 2.04. Subchapter G, Chapter 1551, Insurance Code,
15 is amended by adding Section 1551.324 to read as follows:

16 Sec. 1551.324. REDUCTION IN CONTRIBUTION FOR CERTAIN ACTIVE
17 EMPLOYEES AND ANNUITANTS; INCENTIVE PAYMENTS. (a) Notwithstanding
18 any other provision of this subchapter, the state contribution for
19 an employee's coverage or an annuitant's coverage under this
20 chapter may be reduced, as provided in the General Appropriations
21 Act, to reflect the reduced cost of coverage for an employee or
22 annuitant who elects to waive basic coverage as provided by Section
23 1551.1045(b) or (c).

24 (b) Instead of the full state contribution for an employee
25 or annuitant who makes an election described by Subsection (a), the
26 state may contribute, as specified by the General Appropriations
27 Act, an amount for the incentive payment authorized by Section

1 1551.222.

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

4 SECTION 3.01. Section 659.042, Government Code, is amended
5 to read as follows:

6 Sec. 659.042. EXCLUSIONS. The following are not entitled
7 to longevity pay under this subchapter:

8 (1) a member of the legislature;

9 (2) an individual who holds a statewide office that is
10 normally filled by vote of the people;

11 (3) an independent contractor or an employee of an
12 independent contractor;

13 (4) a temporary employee;

14 (5) an officer or employee of a public junior college;

15 [~~or~~]

16 (6) an academic employee of a state institution of
17 higher education; or

18 (7) a state employee who receives an annuity based
19 wholly or partly on service as a state officer or state employee in
20 a public retirement system, as defined by Section 802.001, that was
21 credited to the state employee.

22 SECTION 3.02. Section 659.126, Government Code, is amended
23 to read as follows:

24 Sec. 659.126. LOSS OF ELIGIBILITY TO RECEIVE BENEFIT
25 REPLACEMENT PAY. (a) An eligible state employee who leaves state
26 employment after August 31, 1995, for at least 30 consecutive days
27 [~~12 consecutive months~~], on returning to state employment or on

1 assuming a state office, is ineligible to receive benefit
2 replacement pay.

3 (b) An eligible state-paid judge who leaves office after
4 August 31, 1995, for at least 30 consecutive days [~~12 consecutive~~
5 ~~months~~], on return to state office or on accepting a state
6 employment, is ineligible to receive benefit replacement pay.

7 (c) For purposes of Subsection (a), a state employee is not
8 considered to have left state employment:

9 (1) while the state employee is on an unpaid leave of
10 absence as provided by Section 661.909; or

11 (2) during a period of time the employee is not working
12 for the state because the employee's employment with the state
13 customarily does not include that period of time, such as a teacher
14 whose employment does not invariably include the summer months.

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

20 SECTION 3.03. Section 661.152, Government Code, is amended
21 by adding Subsection (l) to read as follows:

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

1 state employee retired.

2 SECTION 3.04. This article takes effect September 1, 2005.

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

5 SECTION 4.01. Section 26.351(f), Water Code, is amended to
6 read as follows:

7 (f) The person performing corrective action under this
8 section, if the release was reported to the commission on or before
9 December 22, 1998, shall meet the following deadlines:

10 (1) a complete site assessment and risk assessment
11 (including, but not limited to, risk-based criteria for
12 establishing target concentrations), as determined by the
13 executive director, must be received by the agency no later than
14 September 1, 2002;

15 (2) a complete corrective action plan, as determined
16 by the executive director and including, but not limited to,
17 completion of pilot studies and recommendation of a cost-effective
18 and technically appropriate remediation methodology, must be
19 received by the agency no later than September 1, 2003. The person
20 may, in lieu of this requirement, submit by this same deadline a
21 demonstration that a corrective action plan is not required for the
22 site in question under commission rules. Such demonstration must
23 be to the executive director's satisfaction;

24 (3) for those sites found under Subdivision (2) to
25 require a corrective action plan, that plan must be initiated and
26 proceeding according to the requirements and deadlines in the
27 approved plan no later than March 1, 2004;

1 (4) for sites which require either a corrective action
2 plan or groundwater monitoring, a comprehensive and accurate annual
3 status report concerning those activities must be submitted to the
4 agency;

5 (5) for sites which require either a corrective action
6 plan or groundwater monitoring, all deadlines set by the executive
7 director concerning the corrective action plan or approved
8 groundwater monitoring plan shall be met; and

9 (6) for sites that require either a corrective action
10 plan or groundwater monitoring, have met all other deadlines under
11 this subsection, and have submitted annual progress reports that
12 demonstrate progress toward meeting closure requirements, a site
13 closure request must be submitted to [~~requests for all sites where~~]
14 the executive director [~~agreed in writing that no corrective action~~
15 ~~plan was required must be received by the agency~~] no later than
16 September 1, 2007 [~~2005~~]. The request must be complete, as judged
17 by the executive director.

18 SECTION 4.02. Section 26.355(b), Water Code, is amended to
19 read as follows:

20 (b) An owner or operator of an underground or aboveground
21 storage tank from which a regulated substance is released is liable
22 to the state unless:

23 (1) the release was caused by:

24 (A) [~~(1)~~] an act of God;

25 (B) [~~(2)~~] an act of war;

26 (C) [~~(3)~~] the negligence of the State of
27 Texas or the United States; or

1 (D) [~~(4)~~] an act or omission of a third
2 party; or

3 (2) the site at which the release occurred has been
4 admitted into the petroleum storage tank state-lead program under
5 Section 26.3573(r-1).

6 SECTION 4.03. Section 26.35731(b), Water Code, is amended
7 to read as follows:

8 (b) The commission has discretion whether to postpone
9 considering, processing, or paying [~~may not consider, process, or~~
10 ~~pay~~] a claim for reimbursement from the petroleum storage tank
11 remediation account for corrective action work begun without prior
12 commission approval after September 1, 1993, and filed with the
13 commission prior to January 1, 2005 [~~without prior commission~~
14 ~~approval until all claims for reimbursement for corrective action~~
15 ~~work preapproved by the commission have been considered, processed,~~
16 ~~and paid~~].

17 SECTION 4.04. Section 26.3573, Water Code, is amended by
18 amending Subsections (d), (r), and (s) and adding Subsection (r-1)
19 to read as follows:

20 (d) The commission may use the money in the petroleum
21 storage tank remediation account to pay:

22 (1) necessary expenses associated with the
23 administration of the petroleum storage tank remediation account
24 and the groundwater protection cleanup program[~~, not to exceed an~~
25 ~~amount equal to: 11.8 percent of the gross receipts of that account~~
26 ~~for FY02/03, 16.40 percent of the gross receipts of that account for~~
27 ~~FY04/05, and 21.1 percent of the gross receipts of that account for~~

1 ~~FY06/07~~];

2 (2) expenses associated with investigation, cleanup,
3 or corrective action measures performed in response to a release or
4 threatened release from a petroleum storage tank, whether those
5 expenses are incurred by the commission or pursuant to a contract
6 between a contractor and an eligible owner or operator as
7 authorized by this subchapter; and

8 (3) subject to the conditions of Subsection (e) [~~of~~
9 ~~this section~~], expenses associated with investigation, cleanup, or
10 corrective action measures performed in response to a release or
11 threatened release of hydraulic fluid or spent oil from hydraulic
12 lift systems or tanks located at a vehicle service and fueling
13 facility and used as part of the operations of that facility.

14 (r) Except as provided by Subsection (r-1), the [~~The~~]
15 petroleum storage tank remediation account may not be used to
16 reimburse any person for corrective action performed after
17 September 1, 2005.

18 (r-1) In this subsection, "state-lead program" means the
19 petroleum storage tank state-lead program administered by the
20 commission. The executive director shall grant an extension for
21 corrective action reimbursement to a person who is an eligible
22 owner or operator under Section 26.3571. The petroleum storage
23 tank remediation account may be used to reimburse an eligible owner
24 or operator for corrective action performed under an extension
25 before August 31, 2007. Not later than July 1, 2007, an eligible
26 owner or operator who is granted an extension under this subsection
27 may apply to the commission in writing using a form provided by the

1 commission to have the site subject to corrective action placed in
2 the state-lead program. The eligible owner or operator must agree
3 in the application to allow site access to state personnel and state
4 contractors as a condition of placement in the state-lead program
5 under this subsection. On receiving the application for placement
6 in the state-lead program under this subsection, the executive
7 director by order shall place the site in the state-lead program
8 until the corrective action is completed to the satisfaction of the
9 commission. An eligible owner or operator of a site that is placed
10 in the state-lead program under this subsection is not liable to the
11 commission for any costs related to the corrective action.

12 (s) The petroleum storage tank remediation account may not
13 be used to reimburse any person for corrective action contained in a
14 reimbursement claim filed with the commission after March 1, 2008
15 [~~2006~~].

16 SECTION 4.05. Section 26.3574(b), Water Code, is amended to
17 read as follows:

18 (b) A fee is imposed on the delivery of a petroleum product
19 on withdrawal from bulk of that product as provided by this
20 subsection. Each operator of a bulk facility on withdrawal from
21 bulk of a petroleum product shall collect from the person who orders
22 the withdrawal a fee in an amount determined as follows:

23 (1) \$12.50 for each delivery into a cargo tank having a
24 capacity of less than 2,500 gallons for the state fiscal year
25 beginning September 1, 2001, and the state fiscal year beginning
26 September 1, 2002 [~~FY 02 and FY 03~~]; and \$10.00 for each delivery
27 into a cargo tank having a capacity of less than 2,500 gallons for

1 the state fiscal year beginning September 1, 2003, through the
2 state fiscal year ending August 31, 2007 [~~FY 04 and FY 05, \$5.00 for~~
3 ~~each delivery into a cargo tank having a capacity of less than 2,500~~
4 ~~gallons for FY 06, and \$2.00 for each delivery into a cargo tank~~
5 ~~having a capacity of less than 2,500 gallons for FY 07];~~

6 (2) \$25.00 for each delivery into a cargo tank having a
7 capacity of 2,500 gallons or more but less than 5,000 gallons for
8 the state fiscal year beginning September 1, 2001, and the state
9 fiscal year beginning September 1, 2002 [~~FY 02 and FY 03]; and~~
10 \$20.00 for each delivery into a cargo tank having a capacity of
11 2,500 gallons or more but less than 5,000 gallons for the state
12 fiscal year beginning September 1, 2003, through the state fiscal
13 year ending August 31, 2007 [~~FY 04 and FY 05, \$10.00 for each~~
14 ~~delivery into a cargo tank having a capacity of 2,500 gallons or~~
15 ~~more but less than 5,000 gallons for FY 06, and \$4.00 for each~~
16 ~~delivery into a cargo tank having a capacity of 2,500 gallons or~~
17 ~~more but less than 5,000 gallons for FY 07];~~

18 (3) \$37.50 for each delivery into a cargo tank having a
19 capacity of 5,000 gallons or more but less than 8,000 gallons for
20 the state fiscal year beginning September 1, 2001, and the state
21 fiscal year beginning September 1, 2002 [~~FY 02 and FY 03]; and~~
22 \$30.00 for each delivery into a cargo tank having a capacity of
23 5,000 gallons or more but less than 8,000 gallons for the state
24 fiscal year beginning September 1, 2003, through the state fiscal
25 year ending August 31, 2007 [~~FY 04 and FY 05, \$15.00 for each~~
26 ~~delivery into a cargo tank having a capacity of 5,000 gallons or~~
27 ~~more but less than 8,000 gallons for FY 06, and \$6.00 for each~~

1 ~~delivery into a cargo tank having a capacity of 5,000 gallons or~~
2 ~~more but less than 8,000 gallons for FY 07];~~

3 (4) \$50.00 for each delivery into a cargo tank having a
4 capacity of 8,000 gallons or more but less than 10,000 gallons for
5 the state fiscal year beginning September 1, 2001, and the state
6 fiscal year beginning September 1, 2002 [FY 02 and FY 03]; and
7 \$40.00 for each delivery into a cargo tank having a capacity of
8 8,000 gallons or more but less than 10,000 gallons for the state
9 fiscal year beginning September 1, 2003, through the state fiscal
10 year ending August 31, 2007 [FY 04 and FY 05, \$20.00 for each
11 delivery into a cargo tank having a capacity of 8,000 gallons or
12 more but less than 10,000 gallons for FY 06, and \$8.00 for each
13 delivery into a cargo tank having a capacity of 8,000 gallons or
14 more but less than 10,000 gallons for FY 07]; and

15 (5) a \$25.00 fee for each increment of 5,000 gallons or
16 any part thereof delivered into a cargo tank having a capacity of
17 10,000 gallons or more for the state fiscal year beginning
18 September 1, 2001, and the state fiscal year beginning September 1,
19 2002 [FY 02 and FY 03]; and \$20.00 for each increment of 5,000
20 gallons or any part thereof delivered into a cargo tank having a
21 capacity of 10,000 gallons or more for the state fiscal year
22 beginning September 1, 2003, through the state fiscal year ending
23 August 31, 2007 [FY 04 and FY 05, \$10.00 for each increment of 5,000
24 gallons or any part thereof delivered into a cargo tank having a
25 capacity of 10,000 gallons or more for FY 06, and \$4.00 for each
26 increment of 5,000 gallons or any part thereof delivered into a
27 cargo tank having a capacity of 10,000 gallons or more for FY 07].

1 SECTION 4.06. Section 26.361, Water Code, is amended to
2 read as follows:

3 Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM.
4 Notwithstanding any other provision of this subchapter, the
5 reimbursement program established under this subchapter expires
6 September 1, 2008 [~~2006~~]. On or after September 1, 2008 [~~2006~~], the
7 commission may not use money from the petroleum storage tank
8 remediation account to reimburse an eligible owner or operator for
9 any expenses of corrective action or to pay the claim of a person
10 who has contracted with an eligible owner or operator to perform
11 corrective action.

12 SECTION 4.07. This article takes effect September 1, 2005.

13 ARTICLE 5. SCHOOL PROPERTY

14 VALUATION AND INSPECTIONS

15 SECTION 5.01. Section 46.008, Education Code, is amended to
16 read as follows:

17 Sec. 46.008. STANDARDS. (a) The commissioner shall
18 establish standards for adequacy of school facilities. The
19 standards must include requirements related to space, educational
20 adequacy, and construction quality. All new facilities constructed
21 after September 1, 1998, must meet the standards to be eligible to
22 be financed with state or local tax funds.

23 (b) To be eligible to be financed with state or local tax
24 funds, all industrialized buildings, as defined by Section
25 1202.003, Occupations Code, that are purchased or leased after
26 September 1, 2005, for use as school facilities must be inspected as
27 provided by Subchapter E, Chapter 1202, Occupations Code, to ensure

1 compliance with the mandatory building codes or approved designs,
 2 plans, and specifications. The cost of the inspections shall be
 3 paid by the manufacturers or builders of the industrialized
 4 buildings as follows. The Texas Commission of Licensing and
 5 Regulation shall set the amount of registration fees for the
 6 manufacturers or builders of industrialized buildings under
 7 Chapter 1202, Occupations Code, and the amount of inspection fees
 8 under this section, in an amount sufficient to pay for the direct
 9 and indirect costs of inspections under this section.

10 SECTION 5.02. Section 403.302(h), Government Code, is
 11 amended to read as follows:

12 (h) On request of the commissioner of education or a school
 13 district, the comptroller may audit the total taxable value of
 14 property in a school district and may revise the annual study
 15 findings. The request for audit is limited to corrections and
 16 changes in a school district's appraisal roll that occurred after
 17 preliminary certification of the annual study findings by the
 18 comptroller. Except as otherwise provided by this subsection, the
 19 request for audit must be filed with the comptroller not later than
 20 the second [~~third~~] anniversary of the date of the final
 21 certification of the annual study findings. The request for audit
 22 may be filed not later than the first anniversary of the date the
 23 chief appraiser certifies a change to the appraisal roll if the
 24 chief appraiser corrects the appraisal roll under Section 25.25 or
 25 42.41, Tax Code [~~, and the change results in a material reduction in~~
 26 ~~the total taxable value of property in the school district~~]. The
 27 comptroller shall certify the findings of the audit to the

1 commissioner of education.

2 ARTICLE 6. LOTTERY ADVERTISING

3 SECTION 6.01. The Texas Lottery Commission shall study and
4 report to the legislature on the return on investment for
5 advertising dollars spent by the Texas Lottery Commission during
6 state fiscal year 2003 and fiscal year 2004.

7 ARTICLE 7. DRUG PURCHASING FOR STATE AGENCIES

8 SECTION 7.01. Section 531.070(h), Government Code, is
9 amended to read as follows:

10 (h) Subject to Subsection (i), the commission shall
11 negotiate with manufacturers and labelers, and may negotiate with
12 ~~[including]~~ generic manufacturers and labelers, to obtain
13 supplemental rebates for prescription drugs provided under:

14 (1) the Medicaid vendor drug program in excess of the
15 Medicaid rebates required by 42 U.S.C. Section 1396r-8 and its
16 subsequent amendments;

17 (2) the child health plan program; and

18 (3) any other state program administered by the
19 commission or a health and human services agency, including
20 community mental health centers and state mental health hospitals.

21 SECTION 7.02. Subchapter B, Chapter 531, Government Code,
22 is amended by adding Section 531.080 to read as follows:

23 Sec. 531.080. JOINT PURCHASING OF PRESCRIPTION DRUGS AND
24 OTHER MEDICATIONS. (a) Subject to Subsection (b), the commission
25 and each health and human services agency authorized by the
26 executive commissioner may enter into an agreement with one or more
27 other states for the joint bulk purchasing of prescription drugs

1 and other medications to be used in the Medicaid program, the state
2 child health plan, or another program under the authority of the
3 commission.

4 (b) An agreement under this section may not be entered into
5 until:

6 (1) the commission determines that entering into the
7 agreement would be feasible and cost-effective; and

8 (2) if appropriated money would be spent under the
9 proposed agreement, the governor and the Legislative Budget Board
10 grant prior approval to expend appropriated money under the
11 proposed agreement.

12 (c) If an agreement is entered into, the commission shall
13 adopt procedures applicable to an agreement and joint purchase
14 required by this section. The procedures must ensure that this
15 state receives:

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

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

20 (d) In determining the feasibility and cost-effectiveness
21 of entering into an agreement under this section, the commission
22 shall identify:

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

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

1 (e) The executive commissioner shall adopt rules relating
2 to reimbursing providers that dispense drugs purchased under this
3 section. The rules must ensure that:

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

8 (2) participating pharmacies are reimbursed; and

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

13 SECTION 7.03. Not later than January 15, 2006, the Health
14 and Human Services Commission shall determine the feasibility and
15 cost-effectiveness of entering into an agreement under Section
16 531.080, Government Code, as added by this article. If the
17 commission determines that such action is feasible and
18 cost-effective, the commission shall take action to enter into an
19 agreement that takes effect March 1, 2006.

20 SECTION 7.04. If before implementing any provision of this
21 article a state agency determines that a waiver or authorization
22 from a federal agency is necessary for implementation of that
23 provision, the agency affected by the provision shall request the
24 waiver or authorization and may delay implementing that provision
25 until the waiver or authorization is granted.

26 ARTICLE 8. QUALITY ASSURANCE FEES

27 SECTION 8.01. Chapter 242, Health and Safety Code, is

1 amended by adding Subchapter P to read as follows:

2 SUBCHAPTER P. QUALITY ASSURANCE FEE

3 Sec. 242.801. DEFINITIONS. In this subchapter:

4 (1) "Commission" means the Health and Human Services
5 Commission.

6 (2) "Department" means the Department of Aging and
7 Disability Services.

8 (3) "Executive commissioner" means the executive
9 commissioner of the Health and Human Services Commission.

10 (4) "Gross receipts" means money paid as compensation
11 for services provided to residents, including client
12 participation. The term does not include charitable contributions
13 to an institution.

14 Sec. 242.802. APPLICABILITY. This subchapter does not
15 apply to:

16 (1) a state-owned veterans' nursing facility; or

17 (2) an entity that provides on a single campus a
18 continuum of services, including independent living services,
19 licensed assisted living services, and licensed nursing facility
20 care services, and that:

21 (A) operates under a continuing care retirement
22 community certificate of authority issued by the Texas Department
23 of Insurance; or

24 (B) over a 12-month period, provides a greater
25 number of combined patient days of service to independent living
26 and assisted living residents, not including services provided to
27 persons in licensed nursing facility beds, than the patient days of

1 service provided to nursing facility residents.

2 Sec. 242.803. COMPUTING QUALITY ASSURANCE FEE. (a) A
3 quality assurance fee is imposed on each institution subject to
4 this subchapter for which a license fee must be paid under Section
5 242.034. The quality assurance fee payment:

6 (1) is an amount established under Subsection (b)
7 multiplied by the number of patient days as determined in
8 accordance with Section 242.804;

9 (2) is payable monthly; and

10 (3) is in addition to other fees imposed under this
11 chapter.

12 (b) The commission shall establish a quality assurance fee
13 for each patient day so that the fee does not produce annual
14 revenues greater than six percent of the total annual gross
15 receipts in this state. The fee is subject to adjustment as
16 necessary. The amount of the quality assurance fee may vary
17 according to the number of patient days provided by an institution
18 as necessary to obtain a waiver under federal regulations at 42
19 C.F.R. Section 433.68(e).

20 (c) The amount of the quality assurance fee must be
21 determined using patient days and gross receipts:

22 (1) reported to the commission or to the department at
23 the direction of the commission; and

24 (2) covering a period of at least six months.

25 (d) The quality assurance fee is an allowable cost for
26 reimbursement under the state Medicaid program.

27 (e) A nursing facility may not list the quality assurance

1 fee as a separate charge on a patient's or resident's billing
2 statement or otherwise directly or indirectly attempt to charge the
3 quality assurance fee to a patient or resident.

4 Sec. 242.804. PATIENT DAYS. For each calendar day, an
5 institution shall determine the number of patient days by adding
6 the following:

7 (1) the number of patients occupying an institution
8 bed immediately before midnight of that day plus the number of
9 patients admitted that day less the number of patients discharged
10 that day, except that a patient is included in the count under this
11 subdivision if:

12 (A) the patient is admitted and discharged on the
13 same day; or

14 (B) the patient is discharged that day because of
15 the patient's death; and

16 (2) the number of beds that are on hold that day and
17 that have been placed on hold for a period not to exceed three
18 consecutive calendar days during which a patient is:

19 (A) in the hospital; or

20 (B) on therapeutic home leave.

21 Sec. 242.805. REPORTING AND COLLECTION. (a) The
22 commission or the department as directed by the executive
23 commissioner shall collect the quality assurance fee.

24 (b) Each institution shall, not later than the 25th day
25 after the last day of a month:

26 (1) file with the commission a report stating the
27 total patient days for the month; and

1 (2) pay the quality assurance fee.

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

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

11 (c) An administrative penalty assessed under this
12 subchapter in accordance with Section 242.066 may not exceed
13 one-half of the amount of the outstanding quality assurance fee or
14 \$20,000, whichever is greater.

15 Sec. 242.807. NURSING HOME QUALITY ASSURANCE FEE ACCOUNT.

16 (a) The nursing home quality assurance fee account is a dedicated
17 account in the general revenue fund. Interest earned on money in
18 the account shall be credited to the account.

19 (b) The comptroller shall deposit money collected under
20 this subchapter to the credit of the account.

21 (c) Subject to legislative appropriation and this
22 subchapter, money in the account together with federal matching
23 money shall be used to support or maintain an increase in Medicaid
24 reimbursement for institutions.

25 Sec. 242.808. REIMBURSEMENT OF INSTITUTIONS. (a) Subject
26 to legislative appropriation, the commission may use money in the
27 nursing home quality assurance fee account, together with any

1 federal money available to match that money, to:

2 (1) offset allowable expenses under the state Medicaid
3 program; or

4 (2) increase reimbursement rates paid under the
5 Medicaid program to institutions.

6 (b) The commission shall devise the formula by which amounts
7 received under this subchapter increase the reimbursement rates
8 paid to institutions under the state Medicaid program.

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

21 Sec. 242.810. REVISION IN CASE OF DISAPPROVAL. If the
22 Centers for Medicare and Medicaid Services disapproves the quality
23 assurance fee plan established under this subchapter, the
24 commission shall revise the associated state plan amendments and
25 waiver requests as necessary to comply with federal regulations
26 provided by 42 C.F.R. Section 433.68(e). The revisions must be
27 completed as soon as practicable after the date the commission

1 receives notice of the disapproval.

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

8 SECTION 8.02. Subchapter B, Chapter 531, Government Code,
9 is amended by adding Sections 531.078-531.081 to read as follows:

10 Sec. 531.078. QUALITY ASSURANCE FEES ON CERTAIN WAIVER
11 PROGRAM SERVICES. (a) In this section, "gross receipts" means
12 money received as compensation for services under a home and
13 community services waiver or a community living assistance and
14 support services waiver. The term does not include a charitable
15 contribution, revenues received for services or goods other than
16 waivers, or any money received from consumers or their families as
17 reimbursement for services or goods normally not covered by the
18 waivers.

19 (b) The executive commissioner by rule shall establish a
20 quality assurance fee program as provided by this section and
21 impose a quality assurance fee on persons providing services under
22 a home and community services waiver or a community living
23 assistance and support services waiver.

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

1 (d) The executive commissioner shall adopt rules governing:

2 (1) the reporting required to compute and collect the
3 fee and the manner and times of collecting the fee; and

4 (2) the administration of the fee, including the
5 imposition of penalties for a violation of the rules.

6 (e) Fees collected under this section shall be deposited in
7 the waiver program quality assurance fee account.

8 Sec. 531.079. WAIVER PROGRAM QUALITY ASSURANCE FEE ACCOUNT.

9 (a) The waiver program quality assurance fee account is a dedicated
10 account in the general revenue fund. The account is exempt from the
11 application of Section 403.095. Interest earned on money in the
12 account shall be credited to the account.

13 (b) The account consists of fees collected under Section
14 531.078 and interest earned on money in the account.

15 (c) Subject to legislative appropriation and state and
16 federal law, money in the account may be appropriated only to the
17 commission to increase reimbursement rates paid under the home and
18 community services waiver program or the community living
19 assistance and support services waiver program or to offset
20 allowable expenses under the state Medicaid program.

21 Sec. 531.080. REIMBURSEMENT OF WAIVER PROGRAMS. Subject to
22 legislative appropriation and state and federal law, the commission
23 shall use money from the waiver program quality assurance fee
24 account, together with any federal money available to match money
25 from the account, to increase reimbursement rates paid under the
26 home and community services waiver program or the community living
27 assistance and support services waiver program.

1 Sec. 531.081. INVALIDITY; FEDERAL FUNDS. If any portion of
2 Sections 531.078-531.080 is held invalid by a final order of a court
3 that is not subject to appeal, or if the commission determines that
4 the imposition of the quality assurance fee and the expenditure of
5 the money collected as provided by those sections will not entitle
6 this state to receive additional federal money under the Medicaid
7 program, the commission shall:

- 8 (1) stop collection of the quality assurance fee; and
9 (2) not later than the 30th day after the date the
10 collection of the quality assurance fee is stopped, return any
11 money collected under Section 531.078, but not spent under Section
12 531.080, to the persons who paid the fees in proportion to the total
13 amount paid by those persons.

14 SECTION 8.03. Section 252.202(b), Health and Safety Code,
15 is amended to read as follows:

16 (b) The Health and Human Services Commission or the
17 department at the direction of the commission shall set the quality
18 assurance fee for each day in an [the] amount that will produce
19 [necessary to produce] annual revenues of [equal to an amount that
20 is] not more than six percent of the [facility's] total annual gross
21 receipts in this state. The fee is subject to a prospective
22 adjustment as necessary.

23 SECTION 8.04. Section 252.209, Health and Safety Code, is
24 repealed.

25 SECTION 8.05. (a) Notwithstanding Section 242.803, Health
26 and Safety Code, as added by this article, the executive
27 commissioner of the Health and Human Services Commission shall

1 establish the initial quality assurance fee imposed under
2 Subchapter P, Chapter 242, Health and Safety Code, as added by this
3 article, based on available revenue and patient day information.
4 The initial quality assurance fee established under this section
5 remains in effect until the Health and Human Services Commission
6 obtains the information necessary to set the fee under Section
7 242.803, Health and Safety Code, as added by this article.

8 (b) As soon as practicable after the effective date of this
9 Act, the executive commissioner of the Health and Human Services
10 Commission shall adopt rules as necessary to implement Subchapter
11 P, Chapter 242, Health and Safety Code, and Section 531.078,
12 Government Code, as added by this article.

13 (c) If before implementing any provision of this article a
14 state agency determines a waiver or authorization from a federal
15 agency is necessary for implementation of that provision, the
16 agency affected by the provision shall request the waiver or
17 authorization and may delay implementing that provision until the
18 waiver or authorization is granted.

19 ARTICLE 9. REDUCTION IN NUMBER OF LICENSE PLATES ISSUED

20 SECTION 9.01. Subchapter A, Chapter 502, Transportation
21 Code, is amended by adding Section 502.010 to read as follows:

22 Sec. 502.010. ISSUANCE AND DISPLAY OF LICENSE PLATE. (a)
23 Notwithstanding anything in this code to the contrary, including
24 Section 502.180, the department shall issue only one license plate
25 for attachment at the rear of the vehicle for which the plate is
26 issued.

27 (b) Notwithstanding anything in this code to the contrary,

1 including Section 502.404(a), a person is entitled to operate on a
2 public highway a vehicle that displays only one license plate if the
3 plate is attached at the rear of the vehicle. A person may operate
4 on a public highway a vehicle that displays two license plates if
5 both plates were assigned by the department for the registration
6 period as a set of plates.

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

10 SECTION 9.02. The change in law made by this article
11 regarding the issuance of license plates by the Texas Department of
12 Transportation applies only to the issuance of license plates by
13 the department for a registration period beginning on or after the
14 effective date of this article. For a registration period that
15 begins before the effective date of this article, the department
16 shall issue license plates as required by the law in effect
17 immediately before the effective date of this article, and the
18 former law is continued in effect for that purpose.

19 SECTION 9.03. This article takes effect November 1, 2005.

20 ARTICLE 10. TRANSPORTATION FEES AND FISCAL MATTERS

21 SECTION 10.01. Subchapter A, Chapter 222, Transportation
22 Code, is amended by adding Section 222.0021 to read as follows:

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

1 SECTION 10.02. Section 502.161(a), Transportation Code, is
 2 amended to read as follows:

3 (a) The fee for a registration year for registration of a
 4 passenger car, a municipal bus, or a private bus that weighs 6,000
 5 pounds or less is:

6 (1) \$43 [~~\$40.50~~] for a vehicle the model year of which
 7 is more than six years before the year in which the registration
 8 year begins; or

9 (2) [~~\$50.50 for a vehicle the model year of which is~~
 10 ~~more than three years but is six years or less before the year in~~
 11 ~~which the registration year begins; or~~

12 [~~(3)~~] \$58.50 for a vehicle the model year of which is
 13 six [~~three~~] years or less before the year in which the registration
 14 year begins.

15 SECTION 10.03. Section 502.162(a), Transportation Code, is
 16 amended to read as follows:

17 (a) The fee for a registration year for registration of a
 18 commercial motor vehicle or truck-tractor that weighs 6,000 pounds
 19 or less is \$58.50. The fee for a registration year for registration
 20 of all other commercial motor vehicles or truck-tractors is \$25
 21 plus an amount determined according to the vehicle's total gross
 22 weight and tire equipment, as follows:

Gross weight	Fee for each 100 pounds or	
in pounds	fraction of 100 pounds	
	Equipped with	Equipped with
	pneumatic tires	solid tires
[1-6,000]	[\$0.44]	[\$0.55]

1	6,001-8,000	<u>\$0.56</u> [0.495]	<u>\$0.66</u>
2	8,001-10,000	0.605	0.77
3	10,001-17,000	0.715	0.88
4	17,001-24,000	0.77	0.99
5	24,001-31,000	0.88	1.10
6	31,001 and over	0.99	1.32

7 SECTION 10.04. Section 502.168, Transportation Code, is
 8 amended to read as follows:

9 Sec. 502.168. FEE: MOTOR BUS. The fee for a registration
 10 year for registration of a motor bus that weighs 6,000 pounds or
 11 less is \$58.50. The fee for a registration year for registration of
 12 all other motor buses is \$25 plus an amount determined according to
 13 the vehicle's total gross weight, as follows:

14	Gross weight	Fee for each 100 pounds or
15	in pounds	fraction of 100 pounds
16	[1-6,000]	[\$0.44]
17	6,001-8,000	<u>\$0.56</u> [0.495]
18	8,001-10,000	0.605
19	10,001-17,000	0.715
20	17,001-24,000	0.77
21	24,001-31,000	0.88
22	31,001 and over	0.99

23 SECTION 10.05. Section 522.021(a), Transportation Code, is
 24 amended to read as follows:

25 (a) An application for a commercial driver's license or
 26 commercial driver learner's permit must include:

- 27 (1) the full name and current residence and mailing

1 address of the applicant;

2 (2) a physical description of the applicant, including
3 sex, height, and eye color;

4 (3) the applicant's date of birth;

5 (4) the applicant's social security number, unless the
6 application is for a nonresident commercial driver's license and
7 the applicant is a resident of a foreign jurisdiction;

8 (5) certifications, including those required by 49
9 C.F.R. Section 383.71(a); ~~and~~

10 (6) if the application is for a nonresident commercial
11 driver's license and the applicant is a resident of a foreign
12 jurisdiction, a copy of:

13 (A) a social security card; or

14 (B) a passport issued to the applicant by the
15 country of which the applicant is a resident and a visa, each
16 containing an identification number and an expiration date; and

17 (7) any other information required by the department.

18 SECTION 10.06. Section 522.029, Transportation Code, is
19 amended by amending Subsection (a) and adding Subsection (j) to
20 read as follows:

21 (a) The fee for a commercial driver's license or commercial
22 driver learner's permit issued by the department is \$60, except as
23 provided by Subsections (f), ~~and~~ (h), and (j).

24 (j) The fee for a nonresident commercial driver's license is
25 \$100.

26 SECTION 10.07. Section 522.051, Transportation Code, is
27 amended by amending Subsection (a) and adding Subsection (f) to

1 read as follows:

2 (a) Except as provided by Subsection (f) and Section
3 522.033, an original commercial driver's license or commercial
4 driver learner's permit expires six years after the applicant's
5 next birthday.

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

9 ARTICLE 11. NONSETTLING MANUFACTURER FEES

10 SECTION 11.01. Chapter 161, Health and Safety Code, is
11 amended by adding Subchapter U to read as follows:

12 SUBCHAPTER U. FEE ON CIGARETTES AND CIGARETTE TOBACCO PRODUCTS

13 MANUFACTURED BY CERTAIN COMPANIES

14 Sec. 161.601. PURPOSE. The purpose of this subchapter is
15 to:

16 (1) prevent nonsettling manufacturers from
17 undermining this state's policy of discouraging underage smoking by
18 offering cigarettes and cigarette tobacco products at prices that
19 are substantially below the prices of cigarettes and cigarette
20 tobacco products of other manufacturers;

21 (2) protect the tobacco settlement agreement and
22 funding, which has been reduced because of the growth of sales of
23 nonsettling manufacturer cigarettes and cigarette tobacco
24 products, for programs that are funded wholly or partly by payments
25 to this state under the tobacco settlement agreement and recoup for
26 this state settlement payment revenue lost because of sales of
27 nonsettling manufacturer cigarettes and cigarette tobacco

1 products;

2 (3) provide funding to enforce and administer this
3 subchapter and any legislation relating to nonsettling
4 manufacturers; and

5 (4) provide funding for any other purpose the
6 legislature determines.

7 Sec. 161.602. DEFINITIONS. In this subchapter:

8 (1) "Brand family" means each style of cigarettes or
9 cigarette tobacco products sold under the same trademark and
10 differentiated from one another by means of additional modifiers,
11 including "menthol," "lights," "kings," and "100s." The term
12 includes any style of cigarettes or cigarette tobacco products that
13 have a brand name, trademark, logo, symbol, motto, selling message,
14 recognizable pattern of colors, or other indication of product
15 identification that is identical to, similar to, or identifiable
16 with a previously known brand of cigarettes or cigarette tobacco
17 products.

18 (2) "Cigarette" means any product that contains
19 nicotine and is intended to be burned or heated under ordinary
20 conditions of use. The term includes:

21 (A) a roll of tobacco wrapped in paper or another
22 substance that does not contain tobacco;

23 (B) tobacco, in any form, that is functional in a
24 product that, because of the product's appearance, the type of
25 tobacco used in the filler, or the product's packaging and
26 labeling, is likely to be offered to or purchased by a consumer as a
27 cigarette; or

1 (C) a roll of tobacco wrapped in any substance
2 containing tobacco that, because of the product's appearance, the
3 type of tobacco used in the filler, or the product's packaging and
4 labeling, is likely to be offered to or purchased by a consumer as a
5 cigarette.

6 (3) "Cigarette tobacco product" means roll-your-own
7 tobacco or tobacco that, because of the tobacco's appearance, type,
8 packaging, or labeling, is suitable for use in making cigarettes
9 and is likely to be offered to or purchased by a consumer for that
10 purpose.

11 (4) "Manufacturer" means a person that manufactures,
12 fabricates, or assembles cigarettes for sale or distribution. For
13 purposes of this subchapter, the term includes a person that is the
14 first importer into the United States of cigarettes and cigarette
15 tobacco products manufactured outside the United States.

16 (5) "Nonsettling manufacturer" means a manufacturer
17 of cigarettes that did not sign the tobacco settlement agreement.

18 (6) "Nonsettling manufacturer cigarettes" means
19 cigarettes manufactured, fabricated, assembled, or imported by a
20 nonsettling manufacturer.

21 (7) "Nonsettling manufacturer cigarette tobacco
22 products" means cigarette tobacco products manufactured,
23 fabricated, assembled, or imported by a nonsettling manufacturer.

24 (8) "Tobacco settlement agreement" means the
25 Agreement Regarding Disposition of Settlement Proceeds filed on
26 July 24, 1998, in the United States District Court, Eastern
27 District of Texas, in the case styled The State of Texas v. The

1 American Tobacco Co., et al., No. 5-96CV-91. The term includes the
2 subsequent Clarification of Agreement Regarding Disposition of
3 Settlement Proceeds filed on July 24, 1998, in that litigation.

4 Sec. 161.603. FEE IMPOSED. (a) A fee is imposed on the
5 sale, use, consumption, or distribution in this state of:

6 (1) nonsettling manufacturer cigarettes if a stamp is
7 required to be affixed to a package of those cigarettes under
8 Chapter 154, Tax Code;

9 (2) nonsettling manufacturer cigarettes that are
10 sold, purchased, or distributed in this state but that are not
11 required to have a stamp affixed to a package of those cigarettes
12 under Chapter 154, Tax Code; and

13 (3) nonsettling manufacturer cigarette tobacco
14 products that are subject to the tax imposed by Section 155.0211,
15 Tax Code.

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

20 (c) The fee imposed by this subchapter is in addition to any
21 other privilege, license, fee, or tax required or imposed by state
22 law.

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

1 Sec. 161.604. RATE OF FEE. (a) Except as provided by
2 Subsection (b), the fee is imposed at the rate of two cents for:

- 3 (1) each nonsettling manufacturer cigarette; and
4 (2) each 0.09 ounce of nonsettling manufacturer
5 cigarette tobacco product.

6 (b) On January 1 of each year, the comptroller shall
7 increase the rate of the tax prescribed by Subsection (a) by the
8 greater of:

- 9 (1) three percent; or
10 (2) the percentage increase in the most recent annual
11 revised Consumer Price Index for all Urban Consumers, as published
12 by the Federal Bureau of Labor Statistics of the United States
13 Department of Labor.

14 Sec. 161.605. DISTRIBUTOR'S REPORT. (a) A distributor
15 required to file a report under Section 154.210 or 155.111, Tax
16 Code, shall, in addition to the information required by those
17 sections, include in that required report, as appropriate:

18 (1) the number and denominations of stamps affixed to
19 individual packages of nonsettling manufacturer cigarettes during
20 the preceding month;

21 (2) the number of individual packages of nonsettling
22 manufacturer cigarettes sold or purchased in this state or
23 otherwise distributed in this state for sale in the United States;
24 and

25 (3) any other information the comptroller considers
26 necessary or appropriate to determine the amount of the fee imposed
27 by this subchapter or to enforce this subchapter.

1 (b) The information required by Subsections (a)(1) and (2)
2 must be itemized for each place of business and by manufacturer and
3 brand family.

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

8 Sec. 161.606. NOTICE AND PAYMENT OF FEE. (a) Each month,
9 not later than the 10th day after the date the comptroller receives
10 the information required by Section 161.605, the comptroller shall:

11 (1) compute the amount of the fee imposed by this
12 subchapter that each nonsettling manufacturer owes for that
13 reporting period based on that information and any other
14 information available to the comptroller; and

15 (2) mail to each nonsettling manufacturer a notice of
16 the amount of fee the manufacturer owes.

17 (b) Not later than the 15th day of the month after the month
18 in which the comptroller mails a nonsettling manufacturer a notice
19 under Subsection (a), the nonsettling manufacturer shall send to
20 the comptroller the amount of the fee due according to the notice.

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

27 (b) The attorney general shall develop, maintain, and

1 publish on the attorney general's Internet website a directory
2 listing of all nonsettling manufacturers that have provided
3 current, accurate, and complete certifications.

4 (c) The attorney general shall provide the list described by
5 Subsection (b) to any person on request.

6 Sec. 161.608. PREPAYMENT BEFORE OFFERING NONSETTLING
7 MANUFACTURER CIGARETTES OR CIGARETTE TOBACCO PRODUCTS FOR SALE OR
8 DISTRIBUTION IN THIS STATE. (a) If cigarettes or cigarette tobacco
9 products of a nonsettling manufacturer are not offered for sale or
10 distribution in this state on September 1, 2005, the nonsettling
11 manufacturer may not offer those cigarettes or cigarette tobacco
12 products for sale or distribution in this state after that date
13 unless the manufacturer first prepays the fee imposed by this
14 subchapter for sales of cigarettes and cigarette tobacco products
15 that will occur in the first calendar month in which they are sold
16 or distributed in this state.

17 (b) The amount a nonsettling manufacturer is required to
18 prepay under this section is equal to the greater of:

19 (1) the rate prescribed by Section 161.604 in effect
20 on that date multiplied by:

21 (A) the number of cigarettes the comptroller
22 reasonably projects that the nonsettling manufacturer will sell or
23 distribute in this state during that calendar month; and

24 (B) each 0.09 ounce of nonsettling manufacturer
25 cigarette tobacco products the comptroller reasonably projects
26 that the nonsettling manufacturer will sell or distribute in this
27 state during that calendar month; or

1 (2) \$50,000.

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

6 (d) The comptroller may require a nonsettling manufacturer
7 to provide any information reasonably necessary to determine the
8 prepayment amount.

9 (e) The comptroller shall establish procedures to:

10 (1) reimburse a nonsettling manufacturer if the actual
11 sales or distributions in the first calendar month are less than the
12 projected sales or distributions; and

13 (2) require additional payments if the actual sales or
14 distributions in the first calendar month are greater than the
15 projected sales or distributions.

16 (f) A nonsettling manufacturer shall pay the fee imposed by
17 this subchapter in the manner provided by Section 161.606 beginning
18 in the second calendar month in which the manufacturer offers the
19 cigarettes or cigarette tobacco products for sale or distribution
20 in this state.

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

1 form prescribed by the attorney general:

2 (1) the nonsettling manufacturer's complete name,
3 address, and telephone number;

4 (2) the date that the nonsettling manufacturer will
5 begin offering cigarettes or cigarette tobacco products for sale or
6 distribution in this state;

7 (3) the names of the brand families of the cigarettes
8 or cigarette tobacco products that the nonsettling manufacturer
9 will offer for sale or distribution in this state;

10 (4) a statement that the nonsettling manufacturer
11 intends to comply with this subchapter; and

12 (5) the name, address, telephone number, and signature
13 of an officer of the nonsettling manufacturer attesting to all of
14 the included information.

15 (b) The attorney general shall make the information
16 provided under this section available to the comptroller.

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

25 (b) The comptroller shall provide to a nonsettling
26 manufacturer a notice of noncompliance with this subchapter if the
27 manufacturer:

1 (1) does not pay in full the fee imposed by this
2 subchapter; or

3 (2) is not included on the list described by Section
4 161.607(b).

5 (c) On receipt of the notice of noncompliance, the
6 nonsettling manufacturer may not:

7 (1) pay the tax imposed by Chapter 154 or 155, Tax
8 Code, as appropriate;

9 (2) affix to a package of cigarettes the stamp
10 required by Section 154.041, Tax Code; or

11 (3) otherwise purchase, sell, or distribute
12 cigarettes in this state.

13 Sec. 161.611. APPLICATION OF SUBCHAPTER. This subchapter
14 applies without regard to Section 154.022, Tax Code, or any other
15 law that might be read to create an exemption for interstate sales.

16 SECTION 11.02. (a) Not later than September 30, 2005, a
17 nonsettling manufacturer, as that term is defined by Section
18 161.602, Health and Safety Code, as added by this Act, that is
19 offering cigarettes or cigarette tobacco products for sale or
20 distribution in this state on September 1, 2005, shall provide to
21 the attorney general on a form prescribed by the attorney general:

22 (1) the nonsettling manufacturer's complete name,
23 address, and telephone number;

24 (2) the date that the nonsettling manufacturer began
25 offering cigarettes or cigarette tobacco products for sale or
26 distribution in this state;

27 (3) the names of the brand families of the cigarettes

1 or cigarette tobacco products that the nonsettling manufacturer
2 offers for sale or distribution in this state;

3 (4) a statement that the nonsettling manufacturer
4 intends to comply with Subchapter U, Chapter 161, Health and Safety
5 Code, as added by this Act; and

6 (5) the name, address, telephone number, and signature
7 of an officer of the nonsettling manufacturer attesting to all of
8 the included information.

9 (b) The attorney general shall make the information
10 provided under Subsection (a) of this section available to the
11 comptroller.

12 SECTION 11.03. Sections 11.01 and 11.02 take effect
13 September 1, 2005.

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

20 ARTICLE 12. SALE OF CIGARETTES AND TOBACCO PRODUCTS

21 SECTION 12.01. Subchapter H, Chapter 161, Health and Safety
22 Code, is amended by adding Section 161.0821 to read as follows:

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

27 (b) For purposes of this section, a person attempts to

1 purchase cigarettes or tobacco products if the person commits an
2 act amounting to more than mere preparation that tends, but fails,
3 to effect the purchase.

4 (c) An offense under this section is a Class C misdemeanor.

5 SECTION 12.02. (a) Chapter 161, Health and Safety Code, is
6 amended by adding Subchapter V to read as follows:

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

9 Sec. 161.651. DEFINITIONS. (a) In this subchapter:

10 (1) "Cigarette" has the meaning assigned by Section
11 154.001, Tax Code.

12 (2) "Tobacco product" has the meaning assigned by
13 Sections 155.001(15)(C)-(E), Tax Code.

14 (b) In this subchapter, "common carrier," "consumer,"
15 "distributor," "importer," "manufacturer," "permit holder,"
16 "retailer," and "wholesaler" have the meanings assigned by Section
17 154.001 or 155.001, Tax Code, as applicable.

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

26 Sec. 161.653. CERTAIN DELIVERIES OF CIGARETTES AND TOBACCO
27 PRODUCTS PROHIBITED. (a) A distributor, importer, manufacturer,

1 retailer, wholesaler, or other person engaged in the business of
2 manufacturing, distributing, or selling cigarettes or tobacco
3 products, including selling cigarettes or tobacco products over the
4 Internet or through mail-order sales, may not sell, offer for sale,
5 deliver, or cause to be delivered any cigarettes or tobacco
6 products to a person in this state except in a face-to-face
7 transaction at the time of purchase unless the cigarettes or
8 tobacco products are in a container or wrapping plainly and visibly
9 marked on the exterior with the words "cigarettes" or "tobacco
10 products" and the sale or delivery is made to one of the following
11 persons for purposes other than personal consumption by the
12 recipient:

13 (1) a permit holder;

14 (2) a manufacturer or importer of tobacco products or
15 an export warehouse proprietor with a federal permit under 26
16 U.S.C. Section 5712 or an operator of a federally designated
17 customs bonded warehouse under 19 U.S.C. Section 1311 or 1555; or

18 (3) a person who is an officer, employee, or agent of
19 the United States government, this state, or a department, agency,
20 instrumentality, or political subdivision of the United States or
21 this state acting within the scope of the person's official duties.

22 (b) A person within the jurisdiction of this state's laws,
23 including a common carrier or commercial delivery service, may not
24 knowingly transport cigarettes or tobacco products on behalf of
25 another person for commercial or business purposes for delivery to
26 a person in this state other than a person described by Subsection
27 (a)(1), (2), or (3).

1 (c) Except as specifically provided by Subsection (b), this
2 section does not apply to a common carrier or other delivery service
3 operating within the scope of its business as a common carrier or
4 delivery service.

5 Sec. 161.654. PERMIT HOLDER LIST. The comptroller shall
6 compile and make available on the comptroller's Internet website
7 and by other means a list of all persons who hold a permit under
8 Subchapter D, Chapter 154, or Subchapter C, Chapter 155, Tax Code.
9 The comptroller shall periodically update the list of persons
10 holding a permit under those subchapters.

11 Sec. 161.655. VIOLATOR'S LIST. (a) The department shall
12 maintain a list of persons the department determines have violated
13 Section 161.653(a) or are violating or offering to violate that
14 subsection.

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

22 (c) Before adding a person to the list maintained under
23 Subsection (a), the department shall provide 10 days' written
24 notice and an opportunity to be heard to that person. The notice
25 must include the text of this subchapter. The notice may be made by
26 an electronic communication.

27 (d) The list maintained under Subsection (a) is

1 confidential and not subject to disclosure under Chapter 552,
2 Government Code. The department and each person who receives a copy
3 of the list from the department under this section must maintain the
4 list as confidential and may use the list only to comply with this
5 subchapter.

6 Sec. 161.656. CARRIER AND DELIVERY SERVICE
7 RESPONSIBILITIES. (a) A person who is a common carrier or
8 commercial delivery service within the jurisdiction of this state's
9 laws who receives a copy of a list maintained under Section 161.655
10 may not make any deliveries in this state on behalf of a person
11 identified in the list unless:

12 (1) the person making the delivery knows or
13 affirmatively believes in good faith that the package does not
14 contain cigarettes or tobacco products; or

15 (2) the delivery is made to a person described by
16 Section 161.653(a)(1), (2), or (3).

17 (b) A person who delivers cigarettes or tobacco products and
18 receives a copy of a list maintained under Section 161.155:

19 (1) is not required to:

20 (A) inspect a package being delivered to
21 determine whether the package contains cigarettes or tobacco
22 products;

23 (B) determine whether the list is complete,
24 accurate, and up to date; or

25 (C) determine whether any person ordering or
26 requesting a delivery is in compliance with this subchapter;

27 (2) is not subject to any penalty for:

1 (A) failing to make a specific delivery on behalf
2 of a person on the list; or

3 (B) establishing and following a policy of not
4 making deliveries:

5 (i) in this state on behalf of a person on
6 the list;

7 (ii) of cigarettes or tobacco products in
8 this state; or

9 (iii) of cigarettes or tobacco products in
10 this state for any person that is not a distributor, manufacturer,
11 retailer, or wholesaler;

12 (3) is not subject to criminal penalties for a
13 violation of this subchapter unless the person knowingly violates
14 this subchapter for the specific purpose of:

15 (A) assisting a person engaged in the business of
16 manufacturing, distributing, or selling cigarettes or tobacco
17 products to violate this subchapter; or

18 (B) profiting from the violation of this
19 subchapter by another person; and

20 (4) may collect an additional fee from the person's
21 customers who order deliveries of cigarettes or tobacco products to
22 recover any costs incurred by the person related to complying with
23 this subchapter.

24 (c) An employee of a common carrier or commercial delivery
25 service or of any other person making deliveries for a carrier or
26 delivery service is not subject to criminal or civil penalties for
27 violating this subchapter unless the employee knowingly violates

1 this subchapter for the specific purpose of assisting a person
2 engaged in the business of manufacturing, distributing, or selling
3 cigarettes or tobacco products in violation of this subchapter.

4 Sec. 161.657. CIVIL PENALTIES. (a) Except as provided in
5 Section 161.656(c), a person who violates this subchapter is
6 subject to a civil penalty for each violation in an amount:

7 (1) of at least \$500 and not more than the greater of
8 \$5,000 or five times the value of the cigarettes or tobacco products
9 at issue; and

10 (2) equal to any profits, gain, gross receipts, or
11 other benefits received from the violation.

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

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

26 Sec. 161.659. COSTS. (a) The comptroller shall deposit an
27 amount equal to 50 percent of the civil penalties recovered by this

1 state under this subchapter to be appropriated only to the
2 comptroller, department, attorney general, and other state
3 agencies to enforce this subchapter or make related investigations
4 or to enforce other state laws relating to contraband cigarettes
5 and tobacco products, the collection of taxes on cigarettes and
6 tobacco products, and the prohibition of cigarette and tobacco
7 product sales to minors.

8 (b) In a civil action brought to enforce this subchapter,
9 the state is entitled to recover the costs of investigation, costs
10 of the action, and reasonable attorney's fees, plus interest.

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

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

24 (c) On providing at least 15 days' notice to the attorney
25 general, a person who holds a valid permit under 26 U.S.C. Section
26 5712 may bring an action in the appropriate court in this state, or
27 join an action being brought by the attorney general, to prevent or

1 restrain actions by a person or a person controlling the person that
2 violate this subchapter or assist or encourage a violation of this
3 subchapter.

4 (d) On receiving notice from another person of the person's
5 intent to bring an action under this subchapter in the appropriate
6 court in this state, the attorney general may choose to join in the
7 other person's action or bring an action by this state in its stead
8 and shall inform the person providing notice of how the attorney
9 general will proceed not later than the 15th day after receiving the
10 notice.

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

20 (b) Effective September 1, 2006, Subchapter R, Chapter 161,
21 Health and Safety Code, as added by Chapter 730, Acts of the 78th
22 Legislature, Regular Session, 2003, is repealed.

23 (c) Not later than January 1, 2006, the comptroller of
24 public accounts shall post the list of persons who hold permits
25 under Subchapter D, Chapter 154, Tax Code, or Subchapter C, Chapter
26 155, Tax Code, as required by Section 161.654, Health and Safety
27 Code, as added by this section.

1 (d) Not later than June 1, 2006, the Department of State
2 Health Services shall create and distribute the list as required by
3 Section 161.655, Health and Safety Code, as added by this section.

4 (e) Notwithstanding Subchapter V, Chapter 161, Health and
5 Safety Code, as added by this section, a person is not subject to a
6 penalty for a violation of that subchapter before September 1,
7 2006.

8 (f) The change in law made by this section applies only to an
9 offense committed on or after September 1, 2006. An offense
10 committed before September 1, 2006, is covered by the law in effect
11 when the offense was committed, and the former law is continued in
12 effect for that purpose. For purposes of this subsection, an
13 offense was committed before September 1, 2006, if any element of
14 the offense was committed before that date.

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

18 SECTION 12.03. (a) Article 59.01(2), Code of Criminal
19 Procedure, as amended by Section 2.141, Chapter 198, Section 17,
20 Chapter 257, and Section 3, Chapter 649, Acts of the 78th
21 Legislature, Regular Session, 2003, is reenacted and amended to
22 read as follows:

23 (2) "Contraband" means property of any nature,
24 including real, personal, tangible, or intangible, that is:

25 (A) used in the commission of:

26 (i) any first or second degree felony under
27 the Penal Code;

1 (ii) any felony under Section 15.031(b),
2 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32,
3 33, 33A, or 35, Penal Code; or

4 (iii) any felony under The Securities Act
5 (Article 581-1 et seq., Vernon's Texas Civil Statutes);

6 (B) used or intended to be used in the commission
7 of:

8 (i) any felony under Chapter 481, Health
9 and Safety Code (Texas Controlled Substances Act);

10 (ii) any felony under Chapter 483, Health
11 and Safety Code;

12 (iii) a felony under Chapter 153, Finance
13 Code;

14 (iv) any felony under Chapter 34, Penal
15 Code;

16 (v) a Class A misdemeanor under Subchapter
17 B, Chapter 365, Health and Safety Code, if the defendant has been
18 previously convicted twice of an offense under that subchapter;

19 (vi) any felony under Chapter 152, Finance
20 Code; ~~or~~

21 (vii) any felony under Chapter 31, 32, or
22 37, Penal Code, that involves the state Medicaid program, or any
23 felony under Chapter 36, Human Resources Code;

24 (viii) a Class A misdemeanor or state jail
25 felony under Subchapter U, Chapter 161, Health and Safety Code; or

26 (ix) [~~(vii)~~] a Class B misdemeanor under
27 Section 35.58, Business & Commerce Code;

1 (C) the proceeds gained from the commission of a
2 felony listed in Paragraph (A) or (B) of this subdivision, a
3 misdemeanor listed in Paragraph (B)(ix) [~~(B)(vii)~~] of this
4 subdivision, or a crime of violence; or

5 (D) acquired with proceeds gained from the
6 commission of a felony listed in Paragraph (A) or (B) of this
7 subdivision, a misdemeanor listed in Paragraph (B)(ix) [~~(B)(vii)~~]
8 of this subdivision, or a crime of violence.

9 (b) The change in law made by this section applies only to an
10 offense committed on or after September 1, 2006. An offense
11 committed before September 1, 2006, is covered by the law in effect
12 when the offense was committed, and the former law is continued in
13 effect for that purpose. For purposes of this subsection, an
14 offense was committed before September 1, 2006, if any element of
15 the offense was committed before that date.

16 (c) This section takes effect September 1, 2006.

17 ARTICLE 13. POWERS AND DUTIES OF COMPTROLLER AND PROVISIONS

18 RELATED TO TAXES COLLECTED BY THE COMPTROLLER OR LOCAL ENTITIES

19 SECTION 13.01. Section 442.015, Government Code, is amended
20 by adding Subsection (h) to read as follows:

21 (h) The comptroller may manage the assets of the Texas
22 preservation trust fund account in the same manner as the
23 comptroller may manage the assets of certain permanent funds under
24 Section 403.1068.

25 SECTION 13.02. Section 552.025(c), Government Code, is
26 amended to read as follows:

27 (c) Subchapter C does not authorize withholding from the

1 public or limiting the availability to the public of a written
2 determination letter, technical advice memorandum, or ruling that
3 concerns a tax matter and that is issued by a governmental body with
4 taxing authority, provided that, to preserve taxpayer
5 confidentiality, a governmental body with taxing authority shall
6 remove any information that identifies a taxpayer from the letter,
7 memorandum, or ruling.

8 SECTION 13.03. Section 285.063, Health and Safety Code, is
9 amended by adding Subsection (b-1) to read as follows:

10 (b-1) The district shall submit to the comptroller a
11 description of the boundaries of the district and a map of the
12 district clearly showing the district's boundaries at the same time
13 the district submits the results of the election held under this
14 subchapter.

15 SECTION 13.04. Section 775.0753, Health and Safety Code, is
16 amended by adding Subsection (d) to read as follows:

17 (d) The district shall submit to the comptroller a
18 description of the boundaries of the district and a map of the
19 district clearly showing the district's boundaries at the same time
20 the district submits the results of the election held under this
21 subchapter.

22 SECTION 13.05. Section 776.0753, Health and Safety Code, is
23 amended by adding Subsection (d) to read as follows:

24 (d) The district shall submit to the comptroller a
25 description of the boundaries of the district and a map of the
26 district clearly showing the district's boundaries at the same time
27 the district submits the results of the election held as provided by

1 this subchapter.

2 SECTION 13.06. Article 1.16(b), Insurance Code, is amended
3 to read as follows:

4 (b) Assessments for the expenses of such domestic
5 examination which shall be sufficient to meet all the expenses and
6 disbursements necessary to comply with the provisions of the laws
7 of Texas relating to the examination of insurance companies and to
8 comply with the provisions of this Article and Articles 1.17 and
9 1.18 of this Code, shall be made by the State Board of Insurance
10 upon the corporations or associations to be examined taking into
11 consideration annual premium receipts, and/or admitted assets that
12 are not attributable to 90 percent of pension plan contracts as
13 defined in Section 818(a) of the Internal Revenue Code of 1986 (26
14 U.S.C. Section 818(a)), and/or insurance in force; provided such
15 assessments shall be made and collected as follows: (1) expenses
16 attributable directly to a specific examination including
17 employees' salaries and expenses and expenses provided by Section
18 803.007 [~~Article 1.28~~] of this Code shall be collected at the time
19 of examination; (2) assessments calculated annually for each
20 corporation or association which take into consideration annual
21 premium receipts, and/or admitted assets that are not attributable
22 to 90 percent of pension plan contracts as defined in Section 818(a)
23 of the Internal Revenue Code of 1986 (26 U.S.C. Section 818(a)),
24 and/or insurance in force shall be assessed annually for each such
25 corporation or association. In computing the assessments, the
26 board may not consider insurance premiums for insurance contracted
27 for by a state or federal governmental entity to provide welfare

1 benefits to designated welfare recipients or contracted for in
2 accordance with or in furtherance of Title 2, Human Resources Code,
3 or the federal Social Security Act (42 U.S.C. Section 301 et seq.).
4 The amount of all examination and evaluation fees paid in each
5 taxable year to the State of Texas by an insurance carrier shall be
6 allowed as a credit on the amount of premium taxes due [~~under this~~
7 ~~article~~]. The limitations provided by Sections 803.007(1) and
8 (2)(B) of this code for domestic insurance companies apply to
9 foreign insurance companies.

10 SECTION 13.07. Section 222.002(b), Insurance Code, is
11 amended to read as follows:

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

1 SECTION 13.08. Section 223.003(a), Insurance Code, is
2 amended to read as follows:

3 (a) An annual tax is imposed on all [~~each title insurance~~
4 ~~company that receives~~] premiums from the business of title
5 insurance. The rate of the tax is 1.35 percent of [~~the~~] title
6 insurance [~~company's~~] taxable premiums for a calendar year,
7 including any premiums retained by a title insurance agent as
8 provided by Section 223.005. For purposes of this chapter, a person
9 engages in the business of title insurance if the person engages in
10 an activity described by Section 2501.005.

11 SECTION 13.09. Section 252.003, Insurance Code, is amended
12 to read as follows:

13 Sec. 252.003. PREMIUMS SUBJECT TO TAXATION. An insurer
14 shall pay maintenance taxes under this chapter on the correctly
15 reported gross premiums [~~collected~~] from writing insurance in this
16 state against loss or damage by:

- 17 (1) bombardment;
- 18 (2) civil war or commotion;
- 19 (3) cyclone;
- 20 (4) earthquake;
- 21 (5) excess or deficiency of moisture;
- 22 (6) explosion as defined by Article 5.52;
- 23 (7) fire;
- 24 (8) flood;
- 25 (9) frost and freeze;
- 26 (10) hail;
- 27 (11) insurrection;

- 1 (12) invasion;
- 2 (13) lightning;
- 3 (14) military or usurped power;
- 4 (15) an order of a civil authority made to prevent the
- 5 spread of a conflagration, epidemic, or catastrophe;
- 6 (16) rain;
- 7 (17) riot;
- 8 (18) the rising of the waters of the ocean or its
- 9 tributaries;
- 10 (19) smoke or smudge;
- 11 (20) strike or lockout;
- 12 (21) tornado;
- 13 (22) vandalism or malicious mischief;
- 14 (23) volcanic eruption;
- 15 (24) water or other fluid or substance resulting from
- 16 the breakage or leakage of sprinklers, pumps, or other apparatus
- 17 erected for extinguishing fires, water pipes, or other conduits or
- 18 containers;
- 19 (25) weather or climatic conditions; [~~ex~~]
- 20 (26) windstorm;
- 21 (27) an event covered under a home warranty insurance
- 22 policy; or
- 23 (28) an event covered under an inland marine insurance
- 24 policy.

25 SECTION 13.10. Section 271.002(a), Insurance Code, is

26 amended to read as follows:

27 (a) A maintenance fee is imposed on all [~~each insurer with~~

1 ~~gross~~] premiums subject to assessment under Section 271.006.

2 SECTION 13.11. Section 1502.053, Insurance Code, is amended
3 to read as follows:

4 Sec. 1502.053. EXEMPTION FROM CERTAIN TAXES. (a) The
5 issuer of a [A] children's health benefit plan approved under
6 Section 1502.051 [issuer] is not subject to the premium tax or the
7 tax on revenues imposed under Chapter 222 with respect to money
8 received for coverage provided under that plan.

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

12 SECTION 13.12. Section 383.101, Local Government Code, is
13 amended by adding Subsection (d) to read as follows:

14 (d) The district shall submit to the comptroller a
15 description of the boundaries of the district and a map of the
16 district clearly showing the district's boundaries at the same time
17 the district submits the results of the election held under this
18 subchapter.

19 SECTION 13.13. Section 387.012, Local Government Code, is
20 amended to read as follows:

21 Sec. 387.012. EFFECTIVE DATE OF TAX. (a) The adoption of
22 the tax, the change of the tax rate, or the repeal of the tax takes
23 effect on the first day of the first calendar quarter occurring
24 after the expiration of the first complete quarter occurring after
25 the date the comptroller receives a notice of the results of the
26 election adopting, changing, or repealing the tax.

27 (b) The district shall submit to the comptroller a

1 description of the boundaries of the district and a map of the
2 district clearly showing the district's boundaries at the same time
3 the district submits the results of the election held under this
4 chapter.

5 SECTION 13.131. Section 21.05(e), Tax Code, is amended to
6 read as follows:

7 (e) For purposes of this subchapter, a commercial aircraft
8 shall mean an instrumentality of air commerce that is:

9 (1) primarily engaged in the transportation of cargo,
10 passengers, ~~or~~ equipment, for others for consideration, at least
11 50 percent of the time;

12 (2) economically employed when it is moving from point
13 to point as a means of transportation for a fee, flat rate, or
14 expense charge; and

15 (3) operated or managed by a certificated air carrier.
16 A certificated air carrier is one engaged in interstate or
17 intrastate commerce under Part 121 or 135 authority of the U.S.
18 Department of Transportation or Federal Aviation Administration.

19 SECTION 13.14. Section 111.009, Tax Code, is amended by
20 amending Subsection (a) and adding Subsections (e) and (f) to read
21 as follows:

22 (a) A person having a direct interest in a determination may
23 petition the comptroller for a redetermination and may assert legal
24 and factual grounds to challenge the assessment.

25 (e) The person filing the petition may assert credits or
26 claim a refund for the same tax type and same period. The assertion
27 for the credits or the claim for the refund must be included in the

1 petition or must be filed within the applicable limitations period,
2 except as otherwise provided by this section. The comptroller
3 shall adopt procedural rules that ensure that redetermination
4 proceedings are expeditiously finalized and that provide that all
5 parties receive equal time to prepare and submit their positions
6 before the hearing.

7 (f) A credit or refund for the same tax type and same period
8 may be asserted or claimed in the redetermination proceeding for
9 all issues if the credit is asserted or the refund is claimed not
10 later than the first anniversary of the date the petition for
11 redetermination is filed. This subsection does not authorize a
12 filing for a separate credit or refund that is not authorized under
13 Section 111.107(b).

14 SECTION 13.15. Section 111.016, Tax Code, is amended by
15 adding Subsections (e) and (f) to read as follows:

16 (e) The comptroller may assess the responsible individual
17 liable under Subsection (b) at any time before the first
18 anniversary of the later of:

19 (1) the date the tax liability of the corporation,
20 association, limited liability company, limited partnership, or
21 other legal entity becomes final; or

22 (2) the date the bankruptcy proceeding is closed or
23 dismissed.

24 (f) An individual that the comptroller asserts is liable for
25 the payment of tax or other money under this section as a
26 responsible individual is entitled to:

27 (1) reasonable notice from the comptroller that

1 specifies the basis for that assertion and the amount of tax or
2 money for which the comptroller asserts the individual is liable;
3 and

4 (2) contest that assertion in a manner consistent with
5 the remedies available to taxpayers under this title.

6 SECTION 13.16. Subchapter B, Chapter 111, Tax Code, is
7 amended by adding Section 111.0515 to read as follows:

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

18 SECTION 13.17. Subchapter B, Chapter 111, Tax Code, is
19 amended by adding Section 111.065 to read as follows:

20 Sec. 111.065. EXPEDITIOUS ASSISTANCE FOR TAXPAYERS. (a)
21 As expeditiously as possible, the comptroller shall:

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

24 (2) correct any erroneous assessment.

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

1 SECTION 13.18. Section 111.107, Tax Code, is amended to
2 read as follows:

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

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

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

15 (3) under Chapter 162 [~~153~~], except Section
16 162.126(f), 162.128(d), 162.228(f), or 162.230(d) [~~153.1195(e),~~
17 ~~153.121(d), 153.2225(e), or 153.224(d)~~].

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

21 SECTION 13.19. Section 151.006, Tax Code, is amended to
22 read as follows:

23 Sec. 151.006. "SALE FOR RESALE". "Sale for resale" means a
24 sale of:

25 (1) tangible personal property or a taxable service to
26 a purchaser who acquires the property or service for the purpose of
27 reselling it in the United States of America or a possession or

1 territory of the United States of America or in the United Mexican
2 States in the normal course of business in the form or condition in
3 which it is acquired or as an attachment to or integral part of
4 other tangible personal property or taxable service;

5 (2) tangible personal property to a purchaser for the
6 sole purpose of the purchaser's leasing or renting it in the United
7 States of America or a possession or territory of the United States
8 of America or in the United Mexican States in the normal course of
9 business to another person, but not if incidental to the leasing or
10 renting of real estate;

11 (3) tangible personal property to a purchaser who
12 acquires the property for the purpose of transferring it in the
13 United States of America or a possession or territory of the United
14 States of America or in the United Mexican States as an integral
15 part of a taxable service; or

16 (4) a taxable service performed on tangible personal
17 property that is held for sale by the purchaser of the taxable
18 service.

19 SECTION 13.20. Section 151.011(a), Tax Code, is amended to
20 read as follows:

21 (a) Except as provided by Subsection (c) [~~of this section~~],
22 "use" means the exercise of a right or power incidental to the
23 ownership of tangible personal property over tangible personal
24 property, including tangible personal property other than printing
25 [~~printed~~] material that has been processed, fabricated, or
26 manufactured into other property or attached to or incorporated
27 into other property transported into this state, and, except as

1 provided by Section 151.056(b) [~~of this code~~], includes the
2 incorporation of tangible personal property into real estate or
3 into improvements of real estate whether or not the real estate is
4 subsequently sold.

5 SECTION 13.21. Section 151.3111(b), Tax Code, is amended to
6 read as follows:

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

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

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

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

15 (4) a taxable boat or motor as defined by Section
16 160.001; [~~-~~]

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

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

22 SECTION 13.22. Sections 151.3162(d) and (e), Tax Code, are
23 amended to read as follows:

24 (d) The exemption provided by Subsection (b) takes effect
25 January 1, 2008. Until that date, a person is entitled to an
26 exemption [~~a credit or refund~~] of a portion of the taxes paid under
27 this chapter on an item that after January 1, 2008, will be exempted

1 from the taxes imposed by this chapter under Subsection (b). The
2 amount of the exemption [~~credit or refund~~] is determined as
3 follows:

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

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

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

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

25 SECTION 13.23. Section 151.419(b), Tax Code, is amended to
26 read as follows:

27 (b) The application must be accompanied with:

1 (1) an agreement that is signed by the applicant or a
2 responsible officer of an applicant corporation, that is in a form
3 prescribed by the comptroller, and that provides that the applicant
4 agrees to:

5 (A) accrue and pay all taxes imposed by
6 Subchapter D [~~of this chapter~~] on the storage and use of all taxable
7 items sold to or leased or rented by the permit holder unless the
8 items are exempted from the taxes imposed by this chapter; and

9 (B) pay the imposed taxes monthly on or before
10 the 20th day of the month following the end of each calendar month;
11 [~~and~~

12 [~~(C) waive the discount permitted by Section~~
13 ~~151.423 of this code on the payment of all taxes under the direct~~
14 ~~payment permit only;~~]

15 (2) a description, in the amount of detail that the
16 comptroller requires, of the accounting method by which the
17 applicant proposes to differentiate between taxable and exempt
18 transactions; and

19 (3) records establishing that the applicant is a
20 responsible person who annually purchases taxable items that have a
21 value when purchased of \$800,000 or more excluding the value of
22 taxable items for which resale certificates were or could have been
23 given.

24 SECTION 13.24. Sections 151.424(a) and (c), Tax Code, are
25 amended to read as follows:

26 (a) A taxpayer who prepays the taxpayer's tax liability on
27 the basis of a reasonable estimate of the tax liability for a

1 quarter in which a prepayment is made or for a month in which a
2 prepayment is made may deduct and withhold 1.25 percent of the
3 amount of the prepayment [~~in addition to the amount permitted to be~~
4 ~~deducted and withheld under Section 151.423 of this code~~]. A
5 reasonable estimate of the tax liability must be at least 90 percent
6 of the tax ultimately due or the amount of tax paid in the same
7 quarter, or month, if a monthly prepayer, in the last preceding
8 year. Failure to prepay a reasonable estimate of the tax will
9 result in the loss of the entire prepayment discount.

10 (c) A taxpayer who prepays the tax liability as permitted by
11 this section must file a report when due as provided by this
12 chapter. The amount of a prepayment made by a taxpayer under this
13 section shall be credited against the amount of actual tax
14 liability of the taxpayer as shown on the tax report of the
15 taxpayer. If there is a tax liability owed by the taxpayer in
16 excess of the prepayment credit, the taxpayer shall send to the
17 comptroller the remaining tax liability at the time of filing the
18 quarterly or monthly report. [~~The taxpayer is entitled to the~~
19 ~~deduction permitted under Section 151.423 of this code on the~~
20 ~~amount of the remaining tax liability.~~]

21 SECTION 13.25. Section 151.425, Tax Code, is amended to
22 read as follows:

23 Sec. 151.425. FORFEITURE OF DISCOUNT OR REIMBURSEMENT. If
24 a taxpayer fails to file a report required by this chapter when due
25 or to pay the tax when due, the taxpayer forfeits any claim to a
26 [~~deduction or~~] discount allowed under [~~Section 151.423 or~~] Section
27 151.424 [~~of this code~~].

1 SECTION 13.26. Section 151.428(c), Tax Code, is amended to
2 read as follows:

3 (c) The reporting, collection, refund, and penalty
4 provisions of this chapter and Subtitle B [~~of this title~~] apply to
5 the payments required by this section, except that Section
6 [~~Sections 151.423 and~~] 151.424 does [~~of this code do~~] not apply to
7 this section.

8 SECTION 13.27. Section 152.047(a), Tax Code, is amended to
9 read as follows:

10 (a) Except as inconsistent with this chapter and rules
11 adopted under this chapter, the seller of a motor vehicle shall
12 report and pay the tax imposed on a seller-financed sale to the
13 comptroller on the seller's receipts from seller-financed sales in
14 the same manner as the sales tax is reported and paid by a retailer
15 under Sections 151.401, 151.402, 151.405, 151.406, 151.409,
16 [~~151.423,~~] 151.424, and 151.425.

17 SECTION 13.28. Section 152.123(b), Tax Code, is amended to
18 read as follows:

19 (b) The county shall retain the following percentage of the
20 amounts calculated under Subsection (a) during each of the
21 following fiscal years:

- 22 (1) [~~in fiscal year 2006, 10 percent,~~
23 [~~(2) in fiscal year 2007, 20 percent,~~
24 [~~(3)~~] in fiscal year 2008, 30 percent;
25 (2) [~~(4)~~] in fiscal year 2009, 40 percent;
26 (3) [~~(5)~~] in fiscal year 2010, 50 percent;
27 (4) [~~(6)~~] in fiscal year 2011, 60 percent;

1 (5) [~~(7)~~] in fiscal year 2012, 70 percent;
2 (6) [~~(8)~~] in fiscal year 2013, 80 percent;
3 (7) [~~(9)~~] in fiscal year 2014, 90 percent; and
4 (8) [~~(10)~~] in fiscal year 2015 and succeeding years,
5 100 percent.

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

8 (c-1) A license holder may take a credit on a return for the
9 period in which the purchase occurred, and a person who does not
10 hold a license may file a refund claim with the comptroller, if the
11 license holder or person paid tax on diesel fuel and the diesel fuel
12 is used in this state:

13 (1) as a feedstock or other component in the further
14 manufacturing of tangible personal property for resale not as a
15 motor fuel; or

16 (2) in the original production of oil or gas or to
17 increase the production of oil or gas.

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

23 (d-1) A license holder may take a credit on a return for the
24 period in which the purchase occurred, and a person who does not
25 hold a license may file a refund claim with the comptroller, if the
26 license holder or person paid tax on diesel fuel and the diesel fuel
27 is used in this state by auxiliary power units or power take-off

1 equipment on any motor vehicle. If the quantity of that diesel
2 fuel can be accurately measured while the motor vehicle is
3 stationary by any metering or other measuring device or method
4 designed to measure the fuel separately from fuel used to propel the
5 motor vehicle, the comptroller may approve and adopt the use of the
6 device as a basis for determining the quantity of diesel fuel
7 consumed in those operations for a tax credit or tax refund. If
8 there is no separate metering device or other approved measuring
9 method, the license holder may take the credit and the person who
10 does not hold a license may claim the refund on a percentage of the
11 diesel fuel consumed by each motor vehicle equipped with an
12 auxiliary power unit or power take-off equipment. The comptroller
13 shall determine the percentage of the credit or refund. The
14 climate-control air conditioning or heating system of a motor
15 vehicle that has a primary purpose of providing for the convenience
16 or comfort of the operator or passengers is not a power take-off
17 system, and a credit or refund may not be allowed for the tax paid on
18 any portion of the diesel fuel that is used for that purpose. A
19 credit or refund may not be allowed for the diesel fuel tax paid on
20 that portion of the diesel fuel that is used for idling.

21 SECTION 13.30. Section 171.109(g), Tax Code, as amended by
22 Chapters 801 and 1198, Acts of the 71st Legislature, Regular
23 Session, 1989, is reenacted and amended to read as follows:

24 (g) All oil and gas exploration and production activities by
25 a corporation which is required to or elects to use generally
26 accepted accounting principles to compute surplus must be reported
27 according to the successful efforts or the full cost method of

1 accounting. Notwithstanding the method of accounting, the
2 corporation may elect to depreciate the corporation's oil and gas
3 properties using any alternative method of depreciation recognized
4 under generally accepted accounting principles. The useful lives
5 of intangible assets shall be similar to the useful lives of
6 tangible assets.

7 SECTION 13.31. Section 171.110, Tax Code, is amended by
8 adding Subsection (m) to read as follows:

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

13 SECTION 13.32. Section 171.1121(b), Tax Code, is amended to
14 read as follows:

15 (b) Except as otherwise provided by this section, a
16 corporation shall use the same accounting methods to apportion
17 taxable earned surplus as the corporation used to compute taxable
18 earned surplus [~~in computing reportable federal taxable income~~].

19 SECTION 13.33. Section 171.801(2), Tax Code, is amended to
20 read as follows:

21 (2) "Qualified capital investment" means tangible
22 personal property, as defined by 26 C.F.R. Section 1.1245-3(b)(1),
23 that is first placed in service in a strategic investment area, or
24 first placed in service in a county with a population of less than
25 50,000 by a corporation primarily engaged in agricultural
26 processing, and that is described as Section 1245 property by [~~in~~]
27 Section 1245(a), Internal Revenue Code, such as engines, machinery,

1 tools, and implements used in a trade or business or held for
2 investment and subject to an allowance for depreciation, cost
3 recovery under the accelerated cost recovery system, or
4 amortization. The term does not include land [~~real property~~] or
5 buildings and their structural components. Property that is leased
6 under a capitalized lease is considered a "qualified capital
7 investment," but property that is leased under an operating lease
8 is not considered a "qualified capital investment." Property
9 expensed under Section 179, Internal Revenue Code, is not
10 considered a "qualified capital investment."

11 SECTION 13.34. Section 183.053(b), Tax Code, is amended to
12 read as follows:

13 (b) The total of bonds, certificates of deposit, letters of
14 credit, or other security determined to be sufficient by the
15 comptroller of a permittee subject to the tax imposed by this
16 chapter shall be in an amount that the comptroller determines to be
17 sufficient to protect the fiscal interests of the state. The
18 comptroller may not set the amount of security at less than \$1,000
19 or more than the greater of \$100,000 or four times the amount of the
20 permittee's average monthly tax liability [~~\$50,000~~].

21 SECTION 13.35. Section 201.058(b), Tax Code, is amended to
22 read as follows:

23 (b) Operators increasing production by marketing gas from a
24 well [~~an oil well or lease~~] that has been released into the air for
25 six [~~12~~] months or more pursuant to the rules of the Railroad
26 Commission of Texas [~~commission~~] shall be entitled to an exemption
27 from the tax imposed by this chapter on the production resulting

1 from the marketing of such gas for the life of the well [~~or lease~~].

2 SECTION 13.36. Section 201.102, Tax Code, is amended to
3 read as follows:

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

11 SECTION 13.37. Subchapter B, Chapter 202, Tax Code, is
12 amended by adding Section 202.060 to read as follows:

13 Sec. 202.060. TAX CREDIT FOR ENHANCED EFFICIENCY EQUIPMENT.

14 (a) In this section, "enhanced efficiency equipment" means
15 equipment used in the production of oil that reduces the energy used
16 to produce a barrel of fluid by 10 percent or more when compared to
17 commonly available alternative equipment. The term does not
18 include a motor or downhole pump. Equipment does not qualify as
19 enhanced efficiency equipment unless an institution of higher
20 education approved by the comptroller that is located in this state
21 and that has an accredited petroleum engineering program evaluated
22 the equipment and determined that the equipment does produce the
23 required energy reduction.

24 (b) The taxpayer responsible for the payment of severance
25 taxes on the production from a well in this state on which enhanced
26 efficiency equipment is installed and used is entitled to a credit
27 in an amount equal to 20 percent of the cost of the equipment,

1 provided that:

2 (1) the cumulative total of all severance tax credits
3 authorized by this section may not exceed \$2,000 for any well;

4 (2) the enhanced efficiency equipment installed in a
5 qualifying well must have been purchased and installed not earlier
6 than September 1, 2005, or later than September 1, 2009;

7 (3) the taxpayer must file an application with the
8 comptroller for the credit and must demonstrate to the comptroller
9 that the enhanced efficiency equipment has been purchased and
10 installed in the well within the period prescribed by Subdivision
11 (2);

12 (4) the number of applications the comptroller may
13 approve each state fiscal year may not exceed a number equal to two
14 percent of the producing wells in this state on September 1 of that
15 state fiscal year, as determined by the comptroller; and

16 (5) the manufacturer of the enhanced efficiency
17 equipment must obtain an evaluation of the product under Subsection
18 (a).

19 (c) The taxpayer may carry any unused credit forward until
20 the credit is used.

21 SECTION 13.38. Sections 313.021(1) and (2), Tax Code, are
22 amended to read as follows:

23 (1) "Qualified investment" means:

24 (A) tangible personal property, as defined by 26
25 C.F.R. Section 1.1245-3(b)(1), that is first placed in service in
26 this state during the applicable qualifying time period that begins
27 on or after January 1, 2002, and is described as Section 1245

1 property by Section 1245(a), Internal Revenue Code of 1986;

2 (B) tangible personal property that is first
3 placed in service in this state during the applicable qualifying
4 time period that begins on or after January 1, 2002, without regard
5 to whether the property is affixed to or incorporated into real
6 property, and that is used in connection with the manufacturing,
7 processing, or fabrication in a cleanroom environment of a
8 semiconductor product, without regard to whether the property is
9 actually located in the cleanroom environment, including:

10 (i) integrated systems, fixtures, and
11 piping;

12 (ii) all property necessary or adapted to
13 reduce contamination or to control airflow, temperature, humidity,
14 chemical purity, or other environmental conditions or
15 manufacturing tolerances; and

16 (iii) production equipment and machinery,
17 moveable cleanroom partitions, and cleanroom lighting; or

18 (C) a building or a permanent, nonremovable
19 component of a building that is built or constructed during the
20 applicable qualifying time period that begins on or after January
21 1, 2002, and that houses tangible personal property described by
22 Paragraph (A) or (B).

23 (2) "Qualified property" means:

24 (A) land:

25 (i) that is located in an area designated as
26 a reinvestment zone under Chapter 311 or 312 or as an enterprise
27 zone under Chapter 2303, Government Code;

1 (ii) on which a person proposes to
2 construct a new building or erect or affix a new improvement that
3 does not exist before the date the owner applies for a limitation on
4 appraised value under this subchapter;

5 (iii) that is not subject to a tax abatement
6 agreement entered into by a school district under Chapter 312; and

7 (iv) on which, in connection with the new
8 building or new improvement described by Subparagraph (ii), the
9 owner of the land, or the owner of a leasehold interest in the land,
10 proposes to:

11 (a) make a qualified investment in an
12 amount equal to at least the minimum amount required by Section
13 313.023; and

14 (b) create at least 25 new jobs;

15 (B) the new building or other new improvement
16 described by Paragraph (A)(ii); and

17 (C) tangible personal property that:

18 (i) is not subject to a tax abatement
19 agreement entered into by a school district under Chapter 312; and

20 (ii) except for new equipment described in
21 Section 151.318(q) or (q-1), is first placed in service in the new
22 building or in or on the new improvement described by Paragraph
23 (A)(ii), or on the land on which that new building or new
24 improvement is located, if the personal property is ancillary and
25 necessary to the business conducted in that new building or in or on
26 that new improvement.

27 SECTION 13.39. Section 321.203, Tax Code, is amended by

1 amending Subsections (b)-(e) and adding Subsection (n) to read as
2 follows:

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

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

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

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

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

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

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

26 (e) A sale of a taxable item [~~tangible personal property~~] is
27 consummated at the location in this state to which the item

1 ~~[property]~~ is shipped or delivered or at which possession is taken
2 by the customer if transfer of possession of the item ~~[property]~~
3 occurs at, or shipment or delivery of the item ~~[property]~~
4 originates from, a location in this state other than a place of
5 business of the retailer and if:

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

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

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

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

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

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

24 SECTION 13.40. Section 321.302, Tax Code, is amended by
25 adding Subsection (c-1) to read as follows:

26 (c-1) For purposes of Subsection (c)(3), "full amount of the
27 tax due" means the amount of municipal tax to be allocated that can

1 be determined without a comptroller's audit of the person's
2 records.

3 SECTION 13.41. Section 321.503, Tax Code, is amended to
4 read as follows:

5 Sec. 321.503. STATE'S SHARE. Before sending any money to a
6 municipality under this subchapter the comptroller shall deduct two
7 percent of the amount of the taxes collected within the
8 municipality during the period for which a distribution is made as
9 the state's charge for its services under this chapter and shall[
10 ~~subject to premiums payments under Section 321.501(c),~~] credit the
11 money deducted to the general revenue fund.

12 SECTION 13.42. Section 323.102(c), Tax Code, is amended to
13 read as follows:

14 (c) A tax imposed under Section 323.105 of this code or
15 Chapter 326 or 383, Local Government Code, takes effect on the first
16 day of the first calendar quarter after the expiration of the first
17 complete calendar quarter occurring after the date on which the
18 comptroller receives a notice of the action as required by Section
19 323.405(b).

20 SECTION 13.43. Section 323.203, Tax Code, is amended by
21 amending Subsections (b)-(e) and adding Subsection (m) to read as
22 follows:

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

27 (c) If a retailer has more than one place of business in this

1 state, a sale of a taxable item [~~tangible personal property~~] by the
2 retailer is consummated at the retailer's place of business:

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

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

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

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

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

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

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

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

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

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

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

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

17 SECTION 13.44. Section 323.503, Tax Code, is amended to
18 read as follows:

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

26 SECTION 13.45. Section 502.1025(b), Transportation Code,
27 is amended to read as follows:

1 (b) A county tax assessor-collector shall retain under
2 Section 502.102(b) fees based on the following percentage of the
3 amounts calculated under Subsection [~~subsection~~] (a) during each of
4 the following fiscal years:

- 5 (1) in fiscal year 2006, 100 [~~90~~] percent;
6 (2) in fiscal year 2007, 100 [~~80~~] percent;
7 (3) in fiscal year 2008, 70 percent;
8 (4) in fiscal year 2009, 60 percent;
9 (5) in fiscal year 2010, 50 percent;
10 (6) in fiscal year 2011, 40 percent;
11 (7) in fiscal year 2012, 30 percent;
12 (8) in fiscal year 2013, 20 percent;
13 (9) in fiscal year 2014, 10 percent; and
14 (10) in fiscal year 2015 and succeeding years, 0
15 percent.

16 SECTION 13.46. The heading to Subchapter A, Chapter 16,
17 Utilities Code, is amended to read as follows:

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

20 SECTION 13.47. The heading to Section 16.001, Utilities
21 Code, is amended to read as follows:

22 Sec. 16.001. ASSESSMENT ON UTILITY GROSS RECEIPTS [~~PUBLIC~~
23 ~~UTILITIES~~].

24 SECTION 13.48. Sections 16.001(a) and (b), Utilities Code,
25 are amended to read as follows:

26 (a) To defray the expenses incurred in the administration of
27 this title, an assessment is imposed on each telecommunications

1 utility, electric [~~public~~] utility, retail electric provider, and
2 electric cooperative within the jurisdiction of the commission that
3 serves the ultimate consumer, including each interexchange
4 telecommunications carrier.

5 (b) An assessment under this section is equal to one-sixth
6 of one percent of the telecommunications utility's, electric
7 [~~public~~] utility's, retail electric provider's, or electric
8 cooperative's gross receipts from rates charged to the ultimate
9 consumer in this state.

10 SECTION 13.49. Section 16.002(b), Utilities Code, is
11 amended to read as follows:

12 (b) A telecommunications utility, electric [~~public~~]
13 utility, retail electric provider, or electric cooperative may
14 instead make quarterly payments due August 15, November 15,
15 February 15, and May 15.

16 SECTION 13.50. The following sections of the Tax Code are
17 repealed:

- 18 (1) Section 151.103(d);
19 (2) Section 151.202(c);
20 (3) Section 151.423;
21 (4) Section 321.203(1), Tax Code, as added by Chapter
22 1310, Acts of the 78th Legislature, Regular Session, 2003; and
23 (5) Section 323.203(1).

24 SECTION 13.51. The changes in law made by this article to
25 Section 201.102, Tax Code, apply to a refund claim or determination
26 under Chapter 111, Tax Code, made in relation to a tax that is due on
27 or after the effective date of this article. A refund claim or

1 determination that is made in relation to a tax that is due before
2 the effective date of this article is governed by the law in effect
3 on the date the tax is due, and that law is continued in effect for
4 that purpose.

5 SECTION 13.52. The changes in law made by this article to
6 Section 111.009, Tax Code, apply only to a petition for
7 redetermination filed on or after the effective date of this
8 article.

9 SECTION 13.53. The changes in law made by this article to
10 Section 151.006, Tax Code, do not affect any matter that is the
11 subject of litigation pending on the effective date of this
12 article.

13 SECTION 13.54. The change in law made to Section
14 171.109(g), Tax Code, by this article is a clarification of
15 existing law and does not imply that existing law may be construed
16 as inconsistent with the law as amended by this article.

17 SECTION 13.55. If a change in law made to Section 16.001 or
18 16.002, Utilities Code, by this article conflicts with another bill
19 enacted by the 79th Legislature, Regular Session, 2005, that amends
20 Section 16.001 or 16.002, including H.B. No. 1779, that other bill
21 controls.

22 SECTION 13.56. This article takes effect October 1, 2005.

23 ARTICLE 14. INTEREST ON CERTAIN TAX REFUNDS

24 SECTION 14.01. Section 111.064, Tax Code, is amended by
25 amending Subsections (a), (c), and (f) and adding Subsection (c-1)
26 to read as follows:

27 (a) Except as otherwise provided by this section

1 ~~[Subsections (b) and (c)]~~, in a comptroller's final decision on a
2 claim for refund or in an audit, interest is at the rate set in
3 Section 111.060 on the amount found to be erroneously paid for a
4 period:

- 5 (1) beginning on the latest ~~[later]~~ of:
6 (A) 60 days after the date of payment;
7 (B) ~~[or]~~ the due date of the tax report; or
8 (C) the date the claim for the refund is filed;

9 and

10 (2) ending on, as determined by the comptroller,
11 either the date of allowance of credit on account of the
12 comptroller's final decision or audit or a date not more than 10
13 days before the date of the refund warrant.

14 (c) For a refund claimed before September 1, 2005, and
15 granted for a report period due on or after January 1, 2000, the
16 rate of interest is the rate set in Section 111.060. For a refund
17 claimed on or after September 1, 2005, and granted for a report
18 period due on or after January 1, 2000, the rate of interest is the
19 lesser of:

20 (1) the average rate of interest earned on deposits in
21 the state treasury during the period for which interest is paid on
22 the refund, as determined by the comptroller; or

23 (2) the rate set in Section 111.060.

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

26 (f) A local revenue fund is not subject to Subsections
27 (a)-(c-1) ~~[(a)-(c)]~~. In this subsection, "local revenue fund"

1 includes a court cost, a fee, a fine, or a similar charge collected
2 by a municipality, a county, or a court of this state and remitted
3 to the comptroller.

4 SECTION 14.02. This article takes effect September 1, 2005.

5 ARTICLE 15. LOCAL GASOLINE TAX

6 SECTION 15.01. Chapter 370, Transportation Code, is amended
7 by adding Subchapter I to read as follows:

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

10 Sec. 370.351. DEFINITIONS. In this subchapter:

11 (1) "Dealer" has the meaning assigned by Section
12 162.001, Tax Code.

13 (2) "Gasoline" has the meaning assigned by Section
14 162.001, Tax Code.

15 (3) "Jobber" means a person who:

16 (A) purchases tax-paid gasoline from a person who
17 holds a license under Chapter 162, Tax Code; and

18 (B) makes a sale with the tax included to a person
19 who maintains storage facilities for gasoline and uses all or part
20 of the stored gasoline to operate a motor vehicle.

21 (4) "Motor vehicle" has the meaning assigned by
22 Section 162.001, Tax Code.

23 (5) "Net gallon" has the meaning assigned by Section
24 162.001, Tax Code.

25 (6) "Public highway" has the meaning assigned by
26 Section 162.001, Tax Code.

27 (7) "Sale" has the meaning assigned by Section

1 162.001, Tax Code.

2 Sec. 370.352. TAX ON SALE OF GASOLINE AUTHORIZED. (a) A
3 county, by order of the commissioners court, may impose a tax on the
4 sale of gasoline sold in the county to propel a motor vehicle on the
5 public highways of this state if:

6 (1) the county is included in an authority or is
7 adjacent to such a county, provided that a county not included in
8 the authority must be located in the same metropolitan planning
9 organization as the county in the authority to which it is adjacent;

10 (2) the county is located in the boundaries of a
11 metropolitan planning area that is served by a metropolitan
12 planning organization; and

13 (3) imposition of the tax is approved at an election
14 called for that purpose and held in each county located in that
15 metropolitan planning area.

16 (a-1) This subchapter, including Subsection (a), does not
17 apply to a county with a population of more than two million.

18 (b) The counties located in a metropolitan planning area
19 described by Subsection (a)(2) may hold the election to authorize
20 the imposition of the tax on the same uniform election dates or on
21 different uniform election dates. If the counties hold the
22 elections on different uniform election dates, a county included in
23 that metropolitan planning area may not impose the tax until the
24 imposition of the tax has been approved in each county.

25 Sec. 370.353. RATE OF TAX. (a) The tax authorized by this
26 subchapter may be imposed in increments of one cent for each net
27 gallon of gasoline sold in the county to propel a motor vehicle on

1 the public highways of this state, with a minimum rate of three
2 cents for each net gallon and a maximum rate of 10 cents for each net
3 gallon.

4 (b) If the voters of the counties located in a metropolitan
5 planning area described by Section 370.352(a)(3) authorize the
6 imposition of the tax at different rates, each county shall impose
7 the tax at the lowest authorized rate.

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

11 (b) At an election to adopt the tax, the ballot shall be
12 prepared to permit voting for or against the proposition: "The
13 adoption of a local tax on the sale of gasoline in (insert name of
14 county) at the maximum rate of (insert proposed rate) cents per
15 gallon."

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

22 (b) The seller shall add the amount of the tax authorized by
23 this subchapter to the selling price of gasoline, and the tax is a
24 part of the gasoline price, is a debt owed to the seller, and is
25 recoverable at law in the same manner as the gasoline fuel charge.

26 (c) The tax authorized by this subchapter is in addition to
27 the tax imposed by Chapter 162, Tax Code.

1 Sec. 370.356. EXEMPTIONS APPLICABLE. The exemptions
2 provided by Section 162.104, Tax Code, apply to the tax authorized
3 by this subchapter.

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

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

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

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

23 (d) The county attorney may bring suit against a person who
24 violates this subchapter.

25 Sec. 370.359. REFUND. (a) A person who has paid the tax
26 authorized by this subchapter on gasoline used by the person for a
27 purpose other than to propel a motor vehicle on the public highways

1 of this state or for a use exempted under Section 370.356 may file a
2 claim for a refund.

3 (b) The county shall prescribe the procedures a person must
4 use to obtain a refund under this section.

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

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

14 (b) Net tax revenue received by an authority under this
15 subchapter shall be accounted for separately and may not be
16 commingled with other authority revenue.

17 Sec. 370.362. USE OF TAX PROCEEDS. An authority must use
18 net tax revenue received under this subchapter only to:

19 (1) reduce the number of lane miles included in a
20 proposed transportation project or a part or section of a proposed
21 transportation project for which the authority intends to impose a
22 toll for use according to the authority's most recently adopted
23 toll plan;

24 (2) reduce the amount of the toll charged for use of a
25 transportation project or a part or section of a transportation
26 project in use at the time the tax is imposed under this subchapter;
27 and

1 (B) is created by statute; and

2 (C) does not have statutory geographical
3 boundaries limited to a part of the state.

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

10 (b) A contract under this section:

11 (1) may provide for reasonable compensation for
12 services provided under the contract, including compensation
13 determined by the application of a specified percentage of the
14 total amount recovered because of the consultant's audit activities
15 or recommendations as a fee for services;

16 (2) may permit or require the consultant to pursue a
17 judicial action in a court inside or outside this state to recover
18 an overpaid amount; and

19 (3) to allow time for the performance of existing
20 state payment auditing procedures, may not allow a recovery audit
21 of a payment during the 180-day period after the date the payment
22 was made.

23 (c) The comptroller or a state agency whose payments are
24 being audited may provide a person acting under a contract
25 authorized by this section with any confidential information in the
26 custody of the comptroller or state agency that is necessary for the
27 performance of the audit or the recovery of an overpayment, to the

1 extent the comptroller and state agency are not prohibited from
2 sharing the information under an agreement with another state or
3 the federal government. A person acting under a contract
4 authorized by this section, and each employee or agent of the
5 person, is subject to all prohibitions against the disclosure of
6 confidential information obtained from the state in connection with
7 the contract that apply to the comptroller or applicable state
8 agency or an employee of the comptroller or applicable state
9 agency. A person acting under a contract authorized by this section
10 or an employee or agent of the person who discloses confidential
11 information in violation of a prohibition made applicable to the
12 person under this subsection is subject to the same sanctions and
13 penalties that would apply to the comptroller or applicable state
14 agency or an employee of the comptroller or applicable state agency
15 for that disclosure.

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

23 (b) The comptroller may exempt from the mandatory recovery
24 audit process a state agency that has a low proportion of its
25 expenditures made to vendors, according to criteria the comptroller
26 adopts by rule after consideration of the likely costs and benefits
27 of performing recovery audits for agencies that make relatively few

1 or small payments to vendors.

2 Sec. 2115.004. PAYMENT TO CONTRACTORS. (a) A state agency
3 shall pay, from recovered money appropriated for the purpose, the
4 recovery audit consultant responsible for obtaining for the agency
5 a reimbursement from a vendor.

6 (b) A state agency shall expend or return to the federal
7 government any federal money that is recovered through a recovery
8 audit conducted under this chapter. The state agency shall expend
9 or return the federal money in accordance with the rules of the
10 federal program through which the agency received the federal
11 money.

12 Sec. 2115.005. FORWARDING REPORTS. (a) The comptroller
13 shall provide copies, including electronic form copies, of any
14 reports received from a consultant contracting under Section
15 2115.002 to:

- 16 (1) the governor;
17 (2) the state auditor's office; and
18 (3) the Legislative Budget Board.

19 (b) The comptroller shall provide the copies required by
20 Subsection (a) not later than the seventh day after the date the
21 comptroller receives the consultant's report.

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

26 SECTION 16.02. The comptroller shall adopt rules under
27 Chapter 2115, Government Code, as added by this article, in a timely

1 manner so that the comptroller may begin contracting with a
2 consultant under that chapter not later than January 1, 2006.

3 ARTICLE 17. MARKETING AND SALE OF CERTAIN LICENSE PLATES

4 SECTION 17.01. Section 504.851, Transportation Code, is
5 amended by amending Subsections (a), (b), (c), (e), (f), (g), and
6 (h) and adding Subsections (g-1) and (k) to read as follows:

7 (a) The [~~commission may authorize the~~] department shall
8 [~~to~~] enter into a contract with the private vendor whose proposal is
9 most advantageous to the state, as determined from competitive
10 sealed proposals that satisfy the requirements of this section, for
11 the marketing and sale of:

12 (1) personalized [~~prestige~~] license plates authorized
13 by Section 504.101; or

14 (2) with the agreement of the private vendor, other
15 specialty [~~specialized~~] license plates authorized by this
16 subchapter.

17 (b) Instead of the fees established by Section 504.101(c),
18 [~~if the commission authorizes the department to contract with a~~
19 ~~private vendor under Subsection (a)(1) for the marketing and sale~~
20 ~~of personalized prestige license plates,~~] the commission by rule
21 shall establish fees for the issuance or renewal of personalized
22 [~~prestige~~] license plates that are marketed and sold by the private
23 vendor. Fees must be reasonable and not less than the greater of:

24 (1) the amounts necessary to allow the department to
25 recover all reasonable costs to the department associated with the
26 evaluation of the competitive sealed proposals received by the
27 department and with the implementation and enforcement of the

1 contract, including direct, indirect, and administrative costs; or

2 (2) the amount established by Section 504.101(c).

3 (c) The [~~If the commission authorizes the department to~~
4 ~~contract with a private vendor under Subsection (a)(2) for the~~
5 ~~marketing and sale of other specialized license plates authorized~~
6 ~~by this subchapter, including specialized license plates that may~~
7 ~~be personalized, the]~~ commission by rule shall establish the fees
8 for the issuance or renewal of souvenir license plates, specialty
9 [specialized] license plates, or souvenir or specialty license
10 plates that are personalized that are marketed and sold by the
11 private vendor. Fees must be reasonable and not less than the
12 amounts necessary to allow the department to recover all reasonable
13 costs to the department associated with the evaluation of the
14 competitive sealed proposals received by the department and with
15 the implementation and enforcement of the contract, including
16 direct, indirect, and administrative costs. A fee established
17 under this subsection is in addition to:

18 (1) the registration fee and any optional registration
19 fee prescribed by this chapter for the vehicle for which specialty
20 ~~[the specialized]~~ license plates are issued;

21 (2) any additional fee prescribed by this subchapter
22 for the issuance of specialty ~~[the specialized]~~ license plates for
23 that vehicle; and

24 (3) any additional fee prescribed by this subchapter
25 for the issuance of personalized license plates for that vehicle.

26 (e) The portion of a [A] contract with a private vendor
27 regarding the marketing and sale of personalized license plates

1 ~~[under Subsection (a)(1)]~~ is payable only from amounts derived from
2 the collection of the fee established under Subsection (b). The
3 portion of a [A] contract with a private vendor regarding the
4 marketing and sale of souvenir license plates, specialty license
5 plates, or souvenir or specialty license plates that are
6 personalized under Section 504.102 ~~[under Subsection (a)(2)]~~ is
7 payable only from amounts derived from the collection of the fee
8 established under Subsection (c).

9 (f) The department may approve ~~[create]~~ new design and color
10 combinations for personalized ~~[prestige]~~ license plates that are
11 marketed and ~~[or]~~ sold by a private vendor under a contract entered
12 into with the private vendor ~~[under Subsection (a)(1)]~~. Each
13 approved license plate design and color combination remains the
14 property of the department.

15 (g) The department may approve ~~[create]~~ new design and color
16 combinations for specialty ~~[specialized]~~ license plates authorized
17 by this chapter, including specialty ~~[specialized]~~ license plates
18 that may be personalized, that are marketed and ~~[or]~~ sold by a
19 private vendor under a contract entered into with the private
20 vendor ~~[under Subsection (a)(2)]~~. Each approved license plate
21 design and color combination remains the property of the
22 department. Except as otherwise provided by this chapter, this
23 ~~[This]~~ subsection does not authorize:

24 (1) the department to approve a design or color
25 combination for a specialty ~~[specialized]~~ license plate that is
26 inconsistent with the design or color combination specified for the
27 license plate by the section of this chapter ~~[subchapter]~~ that

1 authorizes the issuance of the specialty [~~specialized~~] license
2 plate; or

3 (2) the private vendor to market and [~~or~~] sell a
4 specialty [~~specialized~~] license plate with a design or color
5 combination that is inconsistent with the design or color
6 combination specified by that section.

7 (g-1) The department may not:

8 (1) publish a proposed design or color combination for
9 a specialty license plate for public comment in the Texas Register
10 or otherwise, except on the department's website for a period not to
11 exceed 10 days; or

12 (2) restrict the background color, color
13 combinations, or color alphanumeric license plate numbers of a
14 specialty license plate, except as determined by the Department of
15 Public Safety as necessary for law enforcement purposes.

16 (h) Subject to the limitations provided by Subsections (g)
17 and (g-1) [~~In connection with a license plate that is marketed or~~
18 ~~sold by a private vendor under contract~~], the department may cancel
19 a license plate or require the discontinuation of a license plate
20 design or color combination that is marketed and sold by a private
21 vendor under contract at any time if the department determines that
22 the cancellation or discontinuation is in the best interest of this
23 state or the motoring public.

24 (k) The department shall certify to the comptroller the
25 estimate, with a detailed explanation of the basis on which the
26 estimate is calculated, of all reasonable costs to the department
27 associated with the evaluation of competitive sealed proposals

1 received by the department under this section and associated with
2 the implementation and enforcement of a contract entered into under
3 this section, including direct, indirect, and administrative costs
4 for the issuance or renewal of personalized license plates or
5 specialty license plates.

6 SECTION 17.02. Subchapter J, Chapter 504, Transportation
7 Code, is amended by adding Section 504.852 to read as follows:

8 Sec. 504.852. CONTRACT LIMITATIONS. (a) In a contract
9 under Section 504.851, the department may not:

10 (1) require a private vendor to meet a minimum sales
11 volume or pay a security or other deposit in an amount greater than
12 \$100,000 to secure the performance of the vendor;

13 (2) unreasonably disapprove or limit any aspect of a
14 private vendor's marketing and sales plan;

15 (3) unreasonably interfere with the selection,
16 assignment, or management by the private vendor of the private
17 vendor's employees, agents, or subcontractors; or

18 (4) require a private vendor to market and sell
19 souvenir license plates, specialty license plates, or souvenir or
20 specialty license plates personalized under Section 504.102.

21 (b) If a private vendor contracts to market and sell
22 souvenir license plates, specialty license plates, or souvenir or
23 specialty license plates personalized under Section 504.102, the
24 initial term of the contract shall be for at least five years from
25 the effective date of the contract. The contract shall contain, at
26 the option of either the department or the private vendor, a second
27 term at least equal in length to the initial term of the contract.

1 (c) Notwithstanding Subsection (b), a private vendor may
2 not market and sell souvenir license plates, specialty license
3 plates, or souvenir or specialty license plates personalized under
4 Section 504.102 that compete directly for sales with another
5 specialty license plate issued under this chapter unless the
6 department and the sponsoring agency or organization of the other
7 license plate approve.

8 ARTICLE 18. TREATMENT OF CERTAIN FEES

9 RECEIVED BY INSTITUTIONS OF HIGHER EDUCATION

10 SECTION 18.01. Section 51.009(c), Education Code, is
11 amended to read as follows:

12 (c) Each of the following shall be accounted for as
13 educational and general funds:

14 (1) net tuition, special course fees charged under
15 Sections 54.051(e) and (l), Education Code, lab fees, student
16 teaching fees, [~~hospital and clinic fees,~~] organized activity fees,
17 proceeds from the sale of educational and general equipment, and
18 indirect cost recovery fees; and

19 (2) hospital and clinic fees received by a state-owned
20 clinical care facility that is operated using general revenue fund
21 appropriations for patient care.

22 SECTION 18.02. Section 51.009(c), Education Code, as
23 amended by this article, applies to fees collected on or after the
24 effective date of this Act. A fee collected before that date is
25 governed by the law in effect when the fee is collected, and that
26 law is continued in effect for that purpose.

27 ARTICLE 19. AUTHORIZATION OF CERTAIN NONPROFIT ORGANIZATIONS TO

CONDUCT BINGO

SECTION 19.01. Section 2001.002(11), Occupations Code, is amended to read as follows:

(11) "Fraternal organization" means:

(A) a nonprofit organization organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of this chapter; ~~or~~

(B) a nonprofit National Historical District Association representing the owners and lessees of a majority of the real property located in a National Historical District designated for not less than five years by the National Register of Historic Places, Heritage Conservation and Recreation Service of the United States Department of the Interior, if the association's net proceeds are used for restoration, construction, maintenance, and security in the district. The term "fraternal organization" does not include an organization whose members are predominantly veterans or dependents of veterans of the armed services of the United States; or

(C) a nonprofit organization that:

(i) is organized under tribal law by a federally recognized Indian tribe that is not subject to the Indian Gaming Regulatory Act (18 U.S.C. Section 1166 et seq. and 25 U.S.C. Section 2701 et seq.) and that exercises tribal authority over a reservation, as defined by 25 U.S.C. Section 1300g, that is located in a county on the international border with Mexico; and

(ii) is organized to perform and is engaged

1 primarily in performing charitable, benevolent, patriotic,
2 employment-related, or educational functions.

3 SECTION 19.02. Subchapter C, Chapter 2001, Occupations
4 Code, is amended by adding Section 2001.1015 to read as follows:

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

14 (b) In accordance with Section 107(b), Ysleta del Sur Pueblo
15 and Alabama and Coshatta Indian Tribes of Texas Restoration Act
16 (25 U.S.C. Section 1300g-6), an organization described by
17 Subsection (a) may conduct bingo activities in accordance with the
18 tribe's rules adopted under Subsection (a) without submitting to
19 the regulatory jurisdiction, including licensing requirements, of
20 this state.

21 (c) A nonprofit organization described by Subsection (b)
22 may not conduct bingo under this section unless the organization
23 transfers to the state on a monthly basis an amount equal to five
24 percent of the gross receipts from bingo in a manner determined by
25 the comptroller.

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

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

6 (b) Except as provided by Subsection (d) of this article, if
7 the commissioner determines that an insurer has charged a rate for
8 personal automobile insurance or residential property insurance
9 that is excessive or unfairly discriminatory, as described by
10 Article 5.13-2 [~~or 5.101~~] of this code, the commissioner may order
11 the insurer to:

12 (1) issue a refund of the excessive or unfairly
13 discriminatory portion of the premium, plus interest on that
14 amount, directly to each affected policyholder if the amount of
15 that portion of the premium is at least 7.5 percent of the total
16 premium charged for the coverage; or

17 (2) if the amount of that portion of the premium is
18 less than 7.5 percent:

19 (A) provide each affected policyholder who
20 renews the policy a future premium discount in the amount of the
21 excessive or unfairly discriminatory portion of the premium, plus
22 interest on that amount; and

23 (B) provide each affected policyholder who does
24 not renew or whose coverage is otherwise terminated a refund in the
25 amount described by Subdivision (1) of this subsection.

26 **(b-1) The rate for interest assessed under Subsection (b) of**
27 **this article is the lesser of 18 percent or the sum of the prime rate**

1 for the calendar year in which the order by the commissioner that
2 the rate is excessive or unfairly discriminatory is issued and six
3 percent. For purposes of this subsection, the prime rate is the
4 prime rate as published in The Wall Street Journal for the first day
5 of the calendar year that is not a Saturday, Sunday, or legal
6 holiday. The interest accrues beginning on the date on which the
7 commissioner enters the order and continues to accrue until the
8 refund is paid. An insurer may not be required to pay any interest
9 penalty if the insurer prevails in an appeal of the commissioner's
10 order under Subchapter D, Chapter 36, of this code.

11 (b-2) An insurer may not claim a premium tax credit to which
12 the insurer is otherwise entitled unless the insurer has complied
13 with this article.

14 ARTICLE 21. EFFECTIVE DATE

15 SECTION 21.01. Except as otherwise provided by this Act,
16 this Act takes effect immediately if it receives a vote of
17 two-thirds of all the members elected to each house, as provided by
18 Section 39, Article III, Texas Constitution. If this Act does not
19 receive the vote necessary for immediate effect, except as
20 otherwise provided by this Act, this Act takes effect on the 91st
21 day after the last day of the legislative session.