

## **BILL ANALYSIS**

Senate Research Center  
79S10239 CBH/DAK/BDH/JD-F

S.B. 3  
By: Ogden  
Finance  
6/30/2005  
As Filed

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

S.B. 3 relates to financing public schools in this state and reducing school property taxes. It decreases the permissible school district maintenance tax rates, provides for restrictions on property valuation and state aid to school districts, reforms the business franchise tax and specifies that the revenue from the tax to be deposited to the credit of the foundation school fund, increases the state sales and use tax, provides for an additional sales tax holiday, and expands the exemption to school supplies.

S.B. 3 also increases the motor vehicle and boat sales and use tax, requires that the sales tax collected on the sales of a used vehicle be calculated according to a standard presumption value, provides for a motor fuel tax transfer delay, removes the hotel occupancy tax exemption for hotel stays of 30 days or more, increases the excise taxes on cigarettes and alcohol, increases the mixed beverage gross receipts tax, transfers certain tobacco settlement proceeds into dedicated general revenue accounts, and allows for electronic pull-tab bingo.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 4.49 (Section 171.904, Tax Code), SECTION 5A.03 (Section 151.327, Tax Code), SECTION 5A.04 (Section 151.433, Tax Code), and SECTION 5B.07 (Section 152.0412, Tax Code) of this bill.

Rulemaking authority previously granted to the comptroller of public accounts is modified in SECTION 4.21 (Section 171.113, Tax Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 5A.04 (Section 151.433, Tax Code) of this bill.

Rulemaking authority is expressly granted to the Texas Lottery Commission in SECTION 8.02 (Section 2001.054, Occupations Code), SECTION 8.06 (Sections 2001.4091 and 2001.4094, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Lottery Commission is modified in SECTION 8.04 (Section 2001.408, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. PUBLIC SCHOOL FINANCE

##### PART A. EDUCATION FUNDING AND SCHOOL PROPERTY TAX RELIEF

SECTION 1A.01. Amends Section 41.002(e), Education Code, to prohibit the wealth per student that a school district may have after exercising an option under Section 41.003(2) (detachment of territory) or (3) (purchase of average daily attendance credit) from being less than the amount needed to maintain state and local revenue in an amount equal to state and local revenue per weighted student for maintenance and operation of the district for the 1992-1993 school year less the district's current year distribution per weighted student from the available school fund, other than amounts distributed under Chapter 31 (Textbooks), if the district imposes an effective tax rate for maintenance and operation of the district equal to the greater of the

district's current tax rate or the maximum maintenance tax rate permitted by Section 45.003 (Bond and Tax Elections), rather than \$1.50 on the \$100 valuation of taxable property.

SECTION 1A.02. Amends Section 41.157(d), Education Code, to authorize the consolidated taxing district to levy, assess, and collect a maintenance tax for the benefit of the component districts at a rate that exceeds the maximum maintenance tax permitted under Section 45.003, rather than \$1.50 per \$100 valuation of taxable property, to the extent necessary to pay contracted obligations on the lease purchase of permanent improvements to the real property entered into on or before May 12, 1993.

SECTION 1A.03. Amends Section 42.252(a), Education Code, to change the value of "TR" from \$0.86 to \$0.76 in the formula  $LFA = TR \times DPV$  used to calculate each school district's share of the Foundation School Program.

SECTION 1A.04. Amends Section 42.253, Education Code, by adding Subsection (e-2) to provide that for the 2005-2006 and 2006-2007 school years, the limit [on the amount of funding from the foundation school fund to which a district is entitled] authorized by Subsection (e) is reduced by a certain amount. Provides that Subsection (e-2) expires September 1, 2007.

SECTION 1A.05. Amends Section 42.303, Education Code, as follows:

Sec. 42.303. New heading: LIMITATION ON TAX RATE. Prohibits the district tax rate, rather than the district enrichment tax rate, under Section 42.302 from exceeding \$0.54, rather than \$0.64, per \$100 of valuation, or a greater amount for any year provided by appropriation.

SECTION 1A.06. Amends Section 45.003, Education Code, by amending Subsection (d) and adding Subsections (e) and (f), as follows:

(d) Requires a proposition submitted to authorize the levy of maintenance taxes to include the question of whether the governing board or commissioners court may levy, assess, and collect annual ad valorem taxes for the further maintenance of public schools, at a rate not to exceed the rate, which may not be more than \$1.30, rather than \$1.50, on the \$100 valuation of taxable property in the district, stated in the proposition.

(e) Prohibits a school district, notwithstanding Subsection (d), from imposing a maintenance tax at a rate that exceeds \$1.20 per \$100 of valuation for the 2006 tax year and \$1.25 per \$100 for the 2007 and 2008 tax years.

(f) Provides that an election held before January 1, 2005, authorizing a maintenance tax of at least \$1.30 on the \$100 valuation of taxable property in the district is sufficient to authorize a rate of \$1.30 or less for the 2005 tax year. Provides that an election held before January 1, 2006, authorizing a maintenance tax at a rate of at least \$1.15 on the \$100 valuation of taxable property in the district is sufficient to authorize a rate of \$1.15 or less for the 2006 tax year. Prohibits a district, beginning with the 2007 tax year and subject to Subsection (e), from exceeding a rate of \$1.15, unless authorized by a majority of the qualified voters of the district voting at an election held for that purpose.

SECTION 1A.07. Amends Sections 45.006(b) and (f), Education Code, as follows:

(b) Authorizes a school district to levy, assess, and collect maintenance taxes at a rate that exceeds the maximum maintenance tax rate permitted under Section 45.003, rather than \$1.50 per \$100 valuation of taxable property, under certain circumstances.

(f) Authorizes a governing body of a school district that adopts a tax rate that exceeds the maximum maintenance tax rate permitted under Section 45.003, rather than \$1.50 per \$100 valuation of taxable property, to set the amount of the exemption from taxation at a certain time.

SECTION 1A.08. (a) Effective date of this part: September 1, 2005.

(b) Makes application of this part prospective to the 2005-2006 school year.

PART B. [RESERVED]

PART C. REPEALER; TRANSITION; EFFECTIVE DATE

SECTION 1C.01. Repealer, effective September 1, 2005: Sections 1-3 and 57 (relating to fiscal matters involving certain governmental educational entities), Chapter 201, Acts of the 78th Legislature, Regular Session, 2003, and Section 42.253(e-1) (Distribution of Foundation School Fund), Education Code.

ARTICLE 2. RESTRICTIONS ON PROPERTY  
VALUATION AND STATE AID TO  
SCHOOL DISTRICTS

SECTION 2.01. Amends Section 11.431(a), Tax Code, to require the chief appraiser to accept and approve or deny an application for a residence homestead exemption after the deadline for filing the application has passed if the application is filed not later than the delinquency date for the taxes on the homestead, rather than one year after the delinquency date for the taxes on the homestead. Makes nonsubstantive changes.

SECTION 2.02. Amends Section 25.25(c), Tax Code, to authorize the appraisal review board to direct, by written order, changes in the appraisal roll for any of the five preceding years if the property is real property and to direct, by written order, changes in the appraisal roll for either or both of the two preceding years, if the property is personal property, to correct certain errors.

SECTION 2.03. Amends Section 42.253(i), Education Code, to create an exception, as provided by Section 42.257(b), to the requirement that the district's entitlement for the next fiscal year be adjusted if the amount of the warrants for the year differs from the amount to which the district is entitled because of variations in the district's tax rate.

SECTION 2.04. Amends Section 42.257(b), Education Code, to require the commissioner of education, if the final determination (relating to increased funding from the foundation school fund) is made after the last day of the state fiscal year corresponding to the tax year for which the determination is made, to add one-fifth of the difference to the September payment to the district of the current year entitlement from the foundation school fund for each of the next five years.

SECTION 2.05. Amends Section 42.259(f), Education Code, to create an exception, as provided by Section 42.257(b) or by Subsection (c)(8) or (d)(3) of this section, to the requirement that any previously unpaid educational funds from prior years owed to a district be paid to the district together with the September payment of the current year entitlement.

SECTION 2.06. Amends Section 403.302(h), Government Code, to require the request for an audit [of the total taxable value of the property in a school district] to be filed with the comptroller of public accounts (comptroller) not later than the first, rather than third, anniversary of the date of the final certification of the annual study findings. Deletes existing text requiring the request to be filed not later than the first anniversary of the date the chief appraiser certifies a change to the appraisal roll.

SECTION 2.07. (a) Makes application of Section 11.431, Tax Code, as amended by this article, prospective to an application for a residence homestead exemption for the 2005 and subsequent tax years.

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

SECTION 2.08. Effective date of this article: September 1, 2005, or November 1, 2005.

[ARTICLE 3. DELETED]

ARTICLE 4. FRANCHISE TAX

SECTION 4.01. Amends Section 171.001(a), Tax Code, to provide that a franchise tax is imposed on a taxable entity, rather than a corporation, that does business in this state or that is chartered or organized in this state. Deletes existing text imposing a franchise tax on a limited liability company that does business in this state or that is organized under the laws of this state. Makes nonsubstantive changes.

SECTION 4.02. Amends Sections 171.001(b)(2), (4), and (5), Tax Code, to redefine "beginning date," "charter," and "Internal Revenue Code."

SECTION 4.03. Amends Section 171.001, Tax Code, by adding Subsection (d), to require the comptroller, on or before November 1 of each even-numbered year, to submit proposed legislation to update the definition of "Internal Revenue Code" to certain public officials.

SECTION 4.04. Amends Subchapter A, Chapter 171, Tax Code, by amending Sections 171.0011 and 171.002, and adding Sections 171.0012, 171.0013, 171.0014, 171.003, and 171.004, as follows:

Sec. 171.0011. New heading: TAXABLE ENTITY. (a) Defines "taxable entity."

(b) Provides that "taxable entity" does not include a sole proprietorship or a passive entity as described by Subsection (c).

(c) Sets forth criteria for determining if an entity is considered a passive entity.

Sec. 171.0012. ELECTION OF RATES. (a) Sets forth the amounts a taxable entity is required to pay on the tax imposed under this chapter, except as otherwise provided by this section.

(b) Provides that the election applies to a reporting period and may be changed from one reporting period to the next.

(c) Sets forth prohibitions and authorizations for a taxable entity that is in the business of leasing employees.

Sec. 171.0013. MINIMUM TAX LIABILITY. Sets forth the minimum tax liability for a taxable entity under this chapter.

Sec. 171.0014. Redesignates existing text from Section 171.0011. (a) Provides that an additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the rate provided by Section 171.002 and during the period in which that election is in effect for any reason becomes no longer subject to the earned surplus component of the tax, without regard to whether the taxable entity remains subject to the taxable capital component of the tax, other than through a valid election to pay the tax imposed under this chapter at the alternate rate provided by Section 171.003. Provides that an additional tax is imposed on a taxable entity that has elected to pay the tax imposed by this chapter at the alternate rate provided by Section 171.003 and during the period in which that election is in effect for any reason becomes no longer subject to the tax imposed under this chapter. Makes a conforming change.

(b) Provides that the additional tax for an entity that has elected to pay the tax under this chapter at the rate provided by Section 171.002 is equal to 2.5, rather than 4.5, percent of the taxable entity's net taxable earned surplus computed on the period beginning on the day after the last day for which the tax imposed on net taxable earned surplus was computed under Section 171.1532 and ending on the date the taxable entity is no longer subject to the earned surplus component of the tax. Provides that the additional tax for an entity that has elected to pay the tax under this chapter at the alternate rate provided by Section 171.003 is computed as provided by that section for the period beginning on the day after the last day for which the tax imposed under this chapter was computed at the alternate rate

provided by Section 171.003 and ending on the date the taxable entity is no longer subject to the tax. Makes conforming changes.

(c) Makes a conforming change.

(d) Makes no changes to this subsection.

Sec. 171.002. RATES; COMPUTATION OF TAX. (a) Sets forth the rates for an entity that elects to pay the franchise tax at the rate provided by this section.

(a-1) Sets forth the rates of the franchise tax for purposes of Subsection (a)(2).

(b) Makes conforming changes.

(c) Makes no changes to this subsection.

Sec. 171.003. ALTERNATE RATE. Sets forth the rate for an entity that elects to pay the franchise tax at the alternate rate provided by this section.

Sec. 171.004. EXEMPTION FOR CERTAIN SMALL BUSINESSES. Redesignated from existing Section 171.002(d). Makes conforming changes.

SECTION 4.05. Amends Subchapter B, Chapter 171, Tax Code, by adding Section 171.088, as follows:

Sec. 171.088. EXEMPTION--NONCORPORATE TAXABLE ENTITY ELIGIBLE FOR CERTAIN EXEMPTIONS. Provides that a taxable entity that is not a corporation but that, because of its activities, would qualify for a specific exemption under this subchapter if it were a corporation, qualifies for the exemption and is exempt from the tax in the same manner and under the same conditions as a corporation.

SECTION 4.06. Amends Subchapter C, Chapter 171, Tax Code, by adding Section 171.1001, as follows:

Sec. 171.1001. DEFINITIONS. Defines "arm's length," "controlling interest," "interest payment," "management fee," "related party," "royalty payment," and "valid business purpose."

SECTION 4.07. Amends Section 171.101, Tax Code, to modify the formula for determining the net taxable capital of a taxable entity, rather than of a corporation. Deletes the exceptions to the computation of the formula, as provided by Subsections (b) and (c) and deletes existing text of Subsections (b) and (c) relating to computing the net taxable capital of a limited liability company and the net taxable capital of a savings and loan association. Makes conforming and nonsubstantive changes.

SECTION 4.08. Amends Section 171.103, Tax Code, to provide that if related parties which are wholly owned subsidiaries of the same ultimate parent have collectively as of May 1, 2005, made an investment of at least \$100 million in a new manufacturing capital improvement project located in this state for which the total capital investment for real and personal property will be in excess of \$400 million and tangible personal property is sold from one related party to another and ultimately resold to an unrelated party in the normal course of business in the form or condition in which it is acquired or as an attachment to other tangible personal property, then the buyer or purchaser for purposes of Subsection (a)(1) is deemed to be the first unrelated purchaser to whom the tangible personal property is resold. Makes conforming changes.

SECTION 4.09. Amends Section 171.1032, Tax Code, to provide that if related parties which are wholly owned subsidiaries of the same ultimate parent have collectively as of May 1, 2005, made an investment of at least \$100 million in a new manufacturing capital improvement project located in this state for which the total capital investment is budgeted to be in excess of \$400 million and tangible personal property is sold from one related party to another and ultimately resold to an unrelated party in the normal course of business in the form or condition in which it

is acquired or as an attachment to other tangible personal property, then the buyer or purchaser for purposes of Subsection (a)(1) is deemed to be the first unrelated purchaser to whom the tangible personal property is resold. Makes conforming changes.

SECTION 4.10. Amends Section 171.104, Tax Code, to make conforming and nonsubstantive changes.

SECTION 4.11. Amends Section 171.105, Tax Code, to make conforming changes.

SECTION 4.12. Amends Section 171.1051, Tax Code, to make conforming changes.

SECTION 4.13. Amends Sections 171.106(a)-(d), Tax Code, to make conforming changes.

SECTION 4.14. Amends Section 171.1061, Tax Code, to make conforming changes.

SECTION 4.15. Amends Sections 171.107(b), (d), and (e), Tax Code, to make conforming and nonsubstantive changes.

SECTION 4.16. Amends Section 171.109, Tax Code, by amending Subsections (a), (b)-(f), (h), (j), (k), (m), and (n), by reenacting and amending Subsection (g), as amended by Chapters 801 and 1198, Acts of the 71st Legislature, Regular Session, 1989, and by adding Subsections (a-2) and (o), as follows:

(a) Redefines "surplus" and "net assets" and defines "taxable capital."

(a-2) Defines "distribution."

(b) Makes a conforming change.

(c) Makes conforming changes.

(d) Makes a conforming change.

(e) Deletes existing text making an exception if the provisions of Section 171.111 (Temporary Credit on Net Taxable Earned Surplus) apply due to an election under that section. Makes a conforming change.

(f) Requires a taxable entity making a distribution to exclude the distribution from its taxable capital, rather than a corporation declaring dividends to exclude those dividends from its taxable capital, and requires a taxable entity receiving a distribution to include the distribution in its gross receipts and taxable capital as of the earlier of certain dates. Makes conforming and nonsubstantive changes.

(g) Makes a conforming change.

(h) Makes conforming changes.

(j) Makes a conforming change.

(k) Makes a conforming change.

(m) Makes a conforming change.

(n) Requires a taxable entity to use the equity method of accounting when reporting an investment in an entity that is not a taxable entity, rather than a partnership or joint venture.

(o) Requires the taxable capital of a parent or investor taxable entity, the direct or indirect investment by that parent or investor, notwithstanding any other subsection in this section, to be excluded from the taxable entity in the capital of one or more other

taxable entities in which that parent or investor taxable entity has a "controlling interest" as that term is defined in Section 171.1001.

SECTION 4.17. Amends Section 171.110, Tax Code, by amending Subsections (a), (d), (e), (f), and (h), and adding Subsections (d-1), (m), and (n), as follows:

(a) Modifies the formula for determining the reportable taxable income for a corporation. Provides that in determining a taxable entity's reportable federal taxable income to make an adjustment by adding 15 percent of compensation as described by Subsection (m). Deletes existing text adding any compensation of certain officers or directors. Adds a formula for determining the adjustments to be made in calculating the taxable earned surplus of certain partnerships. Makes conforming changes.

(d) Redefines a corporation's reportable federal taxable income. Sets forth the reportable federal taxable income for a partnership's income and for the income for an entity other than a corporation or a partnership.

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

(e) Defines a business loss as any negative amount of earned surplus after apportionment and allocation. Makes conforming changes.

(f) Makes conforming changes.

(h) Makes a conforming change.

(m) Sets forth the amount of compensation for a taxable entity and creates exceptions.

(n) Defines "assigned employee," "client company," "license holder," and "staff leasing services company."

SECTION 4.18. Amends Subchapter C, Chapter 171, Tax Code, by adding Sections 171.1101-171.1103, as follows:

Sec. 171.1101. **ADD-BACK OF PAYMENTS TO RELATED PARTY.** (a) Requires a taxable entity to add back to reportable federal taxable income any payments made to a related party that is a passive entity as described by Section 171.0011(c) during the period on which earned surplus is based to the extent deducted in computing reportable federal taxable income. Provides that the safe harbors provided by Section 171.1101 do not apply to payments under this subsection.

(b) Requires a taxable entity, except as provided by Section 171.1102, to add back to reportable federal taxable income any royalty payments, interest payments, and management fees made to a related party that is not a passive entity as described by Section 171.0011(c), during the period on which earned surplus is based to the extent deducted in computing reportable federal taxable income.

Sec. 171.1102. **SAFE HARBORS FOR CERTAIN PAYMENTS AND FEES.** (a) Provides that a taxable entity is not required to add back royalty payments to a related party to a certain extent.

(b) Provides that a taxable entity is not required to add back interest payments to a related party to a certain extent.

(c) Provides that a taxable entity is not required to add back a royalty payment or an interest payment made to a related party, or a management fee paid to a related party, if the combined tax paid to this state, or to this state and one or more other

states each of which has a tax rate equal to or greater than the rate under Section 171.002(a-1)(2), by the taxable entity and the related party exceeds the tax that would have been paid by the taxable entity if the royalty payment or interest payment had not been made.

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

**Sec. 171.1103. ADJUSTMENT TO INCOME AND EXPENSES BY COMPTROLLER.**

(a) Authorizes the comptroller of public accounts (comptroller) to distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among two or more organizations, trades, businesses, whether or not incorporated, whether or not organized in the United States, and whether or not affiliated if certain conditions are present.

(b) Requires the comptroller to apply the administrative and judicial interpretations of Section 482, Internal Revenue Code, in administering this section.

SECTION 4.19. Amends Sections 171.112(b)-(f) and (h), Tax Code, to make conforming changes.

SECTION 4.20. Amends Sections 171.1121(a)-(d), Tax Code, to make conforming changes.

SECTION 4.21. Amends Section 171.113, Tax Code, as follows:

Sec. 171.113. New heading: ALTERNATE METHOD OF DETERMINING TAXABLE CAPITAL AND GROSS RECEIPTS FOR CERTAIN TAXABLE ENTITIES. Provides that this section also applies to a taxable entity other than a corporation that has 35 or fewer owners. Makes conforming and nonsubstantive changes.

SECTION 4.22. Amends Chapter 171, Tax Code, by adding Subchapter C-1, as follows:

**SUBCHAPTER C-1. TAXABLE WAGES**

Sec. 171.131. TAXABLE WAGES. (a) Defines "employee" and "wages."

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

Sec. 171.132. LOCATION OF SERVICE. (a) Provides that wages include wages for a service performed in this state or in and outside this state if certain conditions apply.

(b) Provides that wages include wages for a service performed anywhere in the United States, including service performed entirely outside this state, if certain conditions apply.

(c) Provides that wages include wages for a service performed outside the United States by a citizen of the United States.

(d) Provides that for the purposes of this section, service is localized in a state if the service is performed entirely within the state or the service performed outside the state is incidental to the service performed in the state. Defines "incidental."

Sec. 171.133. FULL-TIME AND PART-TIME EMPLOYEES. (a) Defines "contribution."

(b) Sets forth criteria for determining if an individual is considered an employee, based upon the taxable entity paying or is required to pay a contribution for a reporting period.

Sec. 171.134. DETERMINATION OF WHETHER CERTAIN INDIVIDUALS ARE EMPLOYEES. Provides that an individual is an employee of a taxable entity as provided by this section, without regard to whether the taxable entity pays a contribution, as that term is defined by Section 171.133, for the individual, if the individual provides services in this state to the taxable entity for compensation and the taxable entity has a right to direct and control how the individual performs the services for which the individual is provided compensation, indicated by certain factors.

SECTION 4.23. Amends Section 171.151, Tax Code, to make a conforming change.

SECTION 4.24. Amends Section 171.152(c), Tax Code, to make a conforming change.

SECTION 4.25. Amends Sections 171.153(a) and (c), Tax Code, to make conforming changes.

SECTION 4.26. Amends Section 171.1532, Tax Code, to make conforming changes.

SECTION 4.27. Amends Subchapter D, Chapter 171, Tax Code, by adding Section 171.1533, as follows:

Sec. 171.1533. WAGES ON WHICH TAX ON TAXABLE WAGES IS BASED. (a) Provides that the tax covering the privilege periods included on the initial report, as required by Section 171.153, is based on the taxable wages paid by the taxable entity during a certain period.

(b) Provides that the tax covering the regular annual period, other than a regular annual period included on the initial report, is based on the taxable wages paid by the taxable entity during a certain period.

SECTION 4.28. Amends Section 171.154, Tax Code, to make a conforming change.

SECTION 4.29. Amends Section 171.201, Tax Code, to require a taxable entity on which the franchise tax is imposed to file an initial report with the comptroller containing specific information, except as provided by Section 171.2022. Makes conforming changes.

SECTION 4.30. Amends Sections 171.202(a)-(c), (e), (f), and (i), Tax Code, to require a taxable entity on which the franchise tax is imposed to file an annual report with the comptroller, containing specific information, except as provided by Section 171.2022. Makes conforming changes.

SECTION 4.31. Amends Section 171.202(d), Tax Code, to require the optional payment provided under Subsection (c)(2)(B) or (e)(2)(B), in the case of a taxpayer whose previous return was its initial report, to be equal to the greatest of an amount produced by multiplying taxable wages, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.003 that is effective January 1 of the year in which the report is due.

SECTION 4.32. Amends Section 171.2022, Tax Code, to make conforming changes.

SECTION 4.33. Amends Section 171.204, Tax Code, to make conforming changes.

SECTION 4.34. Amends Section 171.205, Tax Code, to make conforming changes.

SECTION 4.35. Amends Section 171.206, Tax Code, to make conforming changes.

SECTION 4.36. Amends Section 171.208, Tax Code, to make conforming changes.

SECTION 4.37. Amends Section 171.209, Tax Code, as follows:

Sec. 171.209. New heading: RIGHT OF OWNER TO EXAMINE OR RECEIVE REPORTS. Makes conforming changes.

SECTION 4.38. Amends Section 171.211, Tax Code, to make conforming changes.

SECTION 4.39. Amends Subchapter E, Chapter 171, Tax Code, by adding Section 171.213, as follows:

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

SECTION 4.40. Amends the heading to Subchapter F, Chapter 171, Tax Code, to read as follows:

#### SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES

SECTION 4.41. Amends Subchapter F, Chapter 171, Tax Code, by adding Section 171.2515, as follows:

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

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

SECTION 4.42. Amends Section 171.351, Tax Code, to make conforming changes.

SECTION 4.43. Amends Section 171.353, Tax Code, to make conforming changes.

SECTION 4.44. Amends Section 171.354, Tax Code, to make conforming changes.

SECTION 4.45. Amends Sections 171.362(a), (d), and (e), Tax Code, to make conforming changes.

SECTION 4.46. Amends Sections 171.363(a) and (b), Tax Code, to make conforming changes.

SECTION 4.47. Amends Subchapter H, Chapter 171, Tax Code, by adding Sections 171.364-171.366, as follows:

Sec. 171.364. TAX NOT DEDUCTED FROM WAGES. Prohibits a taxable entity from deducting the tax imposed under this chapter from any wages of the taxable entity's employees.

Sec. 171.365. CRIMINAL PENALTY. Provides that a person who violates Section 171.364 commits a Class A misdemeanor.

Sec. 171.366. CIVIL PENALTY. Provides that a person who violates Section 171.364 is liable to the state for a civil penalty not to exceed \$500 for each violation. Authorizes each day a violation continues to be considered a separate violation for purposes of a civil penalty assessment. Requires the attorney general, on request of the comptroller, to file suit to collect a penalty under this section.

SECTION 4.48. Amends Section 171.401, Tax Code, as follows:

Sec. 171.401. New heading: REVENUE DEPOSITED IN FOUNDATION SCHOOL FUND. Requires the revenue from the tax imposed by this chapter to be deposited to the

credit of the foundation school fund, rather than the general revenue fund. Makes conforming changes.

SECTION 4.49. Amends Chapter 171, Tax Code, by adding Subchapter V, as follows:

SUBCHAPTER V. TAX CREDIT FOR CERTAIN PHYSICIANS

Sec. 171.901. DEFINITION. Defines "physician."

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

(b) Sets forth the amount of credit.

Sec. 171.903. LIMITATIONS. Prohibits a physician from receiving a credit in an amount that exceeds the amount of the tax or assessment due after applying any other credits.

Sec. 171.904. RULES. Requires the comptroller to adopt rules to implement this subchapter. Requires the Health and Human Services Commission to assist the comptroller in the formulation and adoption of the rules.

SECTION 4.50. Amends Chapter 171, Tax Code, by adding Subchapter W, as follows:

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

Sec. 171.921. APPLICATION OF REFUNDS AND CREDITS TO NONCORPORATE TAXABLE ENTITIES. Provides that a taxable entity that is not a corporation but that, because of its activities, would qualify for a specific refund or credit under this chapter if it were a corporation qualifies for the refund or credit in the same manner and under the same conditions as a corporation.

SECTION 4.51. Repealer: Sections 171.110(b) (relating to compensation for officers and directors), (c) (relating to an exclusion for a subsidiary corporation), (g) (relating to an Employee Stock Ownership Plan), (i) (relating to the criteria necessary to be considered to be an officer), and (j) (relating to a corporation's right to rebut a person's claim to be an officer), Tax Code.

SECTION 4.52. (a) Makes application of this article prospective.

(b) Provides that certain provisions apply for an entity becoming subject to the franchise tax under this article.

(c) Provides that, for purposes of this article, an existing partnership is considered as continuing if it is not terminated.

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

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

(f) Provides that, for a division of a partnership into two or more partnerships, the resulting partnerships, other than any resulting partnerships the members of which had an

interest of 50 percent or less in the capital and profits of the prior partnership, are, for purposes of this article, considered a continuation of the prior partnership.

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

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

(b) Requires the suit to be brought in a district court in Travis County.

(c) Authorizes the judgment of the district court to be reviewed only by direct appeal to the supreme court filed on or before the 15th day after the date the district court enters its judgment. Requires the district court to try the suit and the supreme court to hear any appeal relating to the suit as expeditiously as possible.

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

SECTION 4.55. Provides that this article takes effect November 1, 2005, and applies to reports originally due on or after that date.

## ARTICLE 5. SALES AND USE TAXES

### PART A. STATE SALES AND USE TAX

SECTION 5A.01. Amends Section 151.051(b), Tax Code, to provide that the sales tax rate is 6.5, rather than 6 1/4, percent of the sales price of the taxable item sold.

SECTION 5A.01A. (a) Amends Section 151.051(b), Tax Code, to provide that the sales tax rate is 6.75, rather than 6 1/4, percent of the sales price of the taxable item sold.

(b) Provides that this section takes effect on the first anniversary of the date Section 5A.01 of this Act takes effect.

SECTION 5A.02. Amends Section 151.326(a), Tax Code, to provide that the sale of an article of clothing or footwear designed to be worn on or about the human body is exempted from the taxes imposed by this chapter, if certain conditions apply.

SECTION 5A.03. Amends Subchapter H, Chapter 151, Tax Code, by adding Section 151.327, as follows:

Sec. 151.327. SCHOOL SUPPLIES BEFORE START OF SCHOOL. (a) Sets forth the conditions under which the sale or storage, use, or other consumption of a school supply is exempted from the taxes imposed under this chapter.

(b) Requires the comptroller to adopt rules specifying the school supplies that are exempt from taxation under this section.

(c) Provides that the exemption provided by this section does not apply to the purchase of a textbook.

SECTION 5A.04. (a) Amends Subchapter I, Chapter 151, Tax Code, by adding Section 151.433, as follows:

Sec. 151.433. TAX REIMBURSEMENT FOR FINANCIAL ASSISTANCE AND FOOD STAMP RECIPIENTS. (a) Provides that this section applies to certain persons receiving financial assistance, receiving nutritional assistance, or eligible to receive financial assistance.

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

(c) Requires the comptroller by rule, not later than August 15 of each year and using available statistical data, to estimate the amount of taxes a person to which this section applies will pay under this chapter during the next fiscal year. Requires the comptroller to consider certain factors in estimating that amount.

(d) Requires the comptroller to develop and adopt a table specifying by income bracket and number of dependents certain amounts based on the estimations made under Subsection (c).

(e) Requires the comptroller to provide the table to the executive commissioner as soon as possible after the date the table is adopted. Requires the executive commissioner, using the table, to provide to each person to which this section applies reimbursement in a certain form.

(f) Requires reimbursement provided under Subsection (e) to be made available to the person using the electronic benefits transfer system through which the person is receiving the financial or nutritional assistance. Provides that, except as provided by Subsection (g), the amount of the monthly reimbursement is equal to one-twelfth of the amount determined under Subsection (d)(2).

(g) Prohibits, notwithstanding any other law, the total amount of reimbursements provided under this section from exceeding \$100 million each state fiscal year. Requires the comptroller and the executive commissioner to take certain necessary actions to ensure that this limit is not exceeded.

(h) Entitles certain persons eligible to receive financial assistance, notwithstanding any other law, to reimbursement provided under this section to the same extent as the person would be entitled to that reimbursement if a sanction were not applied against the person.

(b) Amends Subchapter B, Chapter 31, Human Resources Code, by adding Section 31.0321, as follows:

Sec. 31.0321. EXCLUSION OF CERTAIN TAX REIMBURSEMENTS. Prohibits the HHSC from considering any reimbursement of estimated taxes to which a person may be entitled under Section 151.433, Tax Code, in determining whether the person meets household income and resource requirements for financial assistance under this chapter or the amount of financial assistance granted to the person under this chapter for the support of dependent children.

(c) Amends Chapter 33, Human Resources Code, by adding Section 33.028, as follows:

Sec. 33.028. EXCLUSION OF CERTAIN TAX REIMBURSEMENTS. Prohibits HHSC, to the extent permitted by federal law, from considering any reimbursement of estimated taxes to which a person may be entitled under Section 151.433, Tax Code, in determining whether the person meets the household income and resource requirements for eligibility for food stamps.

(d) Authorizes delay of implementation until any necessary federal waivers or authorizations are obtained.

SECTION 5A.05. Makes application of this part prospective.

SECTION 5A.06. Effective date for this part: September 1, 2005 or November 1, 2005.

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

SECTION 5B.01. Amends Section 152.002, Tax Code, by adding Subsection (f), to provide that the total consideration of a used motor vehicle is the amount on which the tax is computed as provided by Section 152.0412, notwithstanding Subsection (a).

SECTION 5B.02. Amends Section 152.021(b), Tax Code, to provide that the sales tax rate is 6.5, rather than 6 1/4, percent of the total consideration.

SECTION 5B.02A. (a) Amends Section 152.021(b), Tax Code, to provide that the sales tax rate is 6.75, rather than 6 1/4, percent of the total consideration.

(b) Provides that this section takes effect on the first anniversary of the date Section 5B.02 of this Act takes effect.

SECTION 5B.03. Amends Section 152.022(b), Tax Code, to provide that the use tax rate is 6.5, rather than 6 1/4, percent of the total consideration.

SECTION 5B.03A. (a) Amends Section 152.022(b), Tax Code, to provide that the use tax rate is 6.75, rather than 6 1/4, percent of the total consideration.

(b) Provides that this section takes effect on the first anniversary of the date Section 5B.03 of this Act takes effect.

SECTION 5B.04. Amends Section 152.026(b), Tax Code, to provide that the tax rate is 6.75, rather than 6 1/4, percent of the gross rental receipts from the rental of a rented motor vehicle for longer than 30 days.

SECTION 5B.04A. (a) Amends Section 152.026(b), Tax Code, to provide that the tax rate is 6.75, rather than 6 1/4, percent of the gross rental receipts from the rental of a rented motor vehicle for longer than 30 days.

(b) Provides that this section takes effect on the first anniversary of the date Section 5B.04 of this Act takes effect.

SECTION 5B.05. Amends Section 152.028(b), Tax Code, to provide that the use tax rate is 6.5, rather than 6 1/4, percent of the total consideration.

SECTION 5B.05A. (a) Amends Section 152.028(b), Tax Code, to provide that the use tax rate is 6.75, rather than 6 1/4, percent of the total consideration.

(b) Provides that this section takes effect on the first anniversary of the date Section 5B.05 of this Act takes effect.

SECTION 5B.06. Amends Section 152.041(a), Tax Code, to make a conforming change.

SECTION 5B.07. Amends Subchapter C, Chapter 152, Tax Code, by adding Section 152.0412, as follows:

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

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

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

(d) Requires a county tax assessor-collector to compute the tax imposed by this chapter on the retail value of a motor vehicle if certain conditions are present.

(e) Requires, on request, a motor vehicle dealer operating under Subchapter B, Chapter 503 (Dealer's and Manufacturer's Vehicle License Plate), Transportation Code, to provide a certified appraisal of the retail value of a motor vehicle. Requires the comptroller by rule to establish a fee that a dealer may charge for providing the certified appraisal. Requires the county tax assessor-collector to retain a copy of a certified appraisal received under this section for a period described by the comptroller.

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

(g) Provides that this section does not apply to a transaction described by Section 152.024 or 152.025.

SECTION 5B.08. Requires TxDOT, not later than November 1, 2005, to take certain actions relative to this chapter.

SECTION 5B.09. (a) Effective date for this part, except as provided by this part and Subsection (b) of this section: September 1, 2005, or November 1, 2005.

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

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

SECTION 5C.01. Amends Section 160.021(b), Tax Code, to provide that the sales tax rate is 6.5, rather than  $6\frac{1}{4}$ , percent of the total consideration.

SECTION 5C.01A. (a) Amends Section 160.021(b), Tax Code, to provide that the sales tax rate is 6.75, rather than  $6\frac{1}{4}$ , percent of the total consideration.

(b) Provides that this section takes effect on the first anniversary of the date Section 5C.01 of this Act takes effect.

SECTION 5C.02. Amends Section 160.022(b), Tax Code, to provide that the use tax rate is 6.5, rather than  $6\frac{1}{4}$ , percent of the total consideration.

SECTION 5C.02A. (a) Amends Section 160.022(b), Tax Code, to provide that the use tax rate is 6.75, rather than  $6\frac{1}{4}$ , percent of the total consideration.

(b) Provides that this section takes effect on the first anniversary of the date Section 5C.02 of this Act takes effect.

SECTION 5C.03. Effective date for this part: September 1, 2005, or November 1, 2005.

#### PART D. MOTOR FUELS TAX

SECTION 5D.01. Amends Section 162.503, Tax Code, as follows:

Sec. 162.503. ALLOCATION OF GASOLINE TAX. (a) Creates an exception to this subsection as provided by Subsection (b).

(b) Prohibits the comptroller, during the months of June, July, and August of each odd-numbered year, from making the allocations to the state highway fund otherwise required by Subsection (a)(2). Requires the comptroller, after September 5 and before September 11 of that year, to allocate and deposit to the state highway fund the total amount of revenue that would have been otherwise allocated and deposited to that fund during those months.

SECTION 5D.02. Amends Section 162.504, Tax Code, as follows:

Sec. 162.504. ALLOCATION OF DIESEL FUEL TAX. (a) Creates an exception to this subsection as provided by Subsection (b).

(b) Prohibits the comptroller, during the months of June, July, and August of each odd-numbered year, from making the allocation to the state highway fund otherwise required by Subsection (a)(2). Requires the comptroller, after September 5 and before September 11 of that year, to allocate and deposit to the state highway fund the total amount of revenue that would have been otherwise allocated and deposited to that fund during those months.

SECTION 5D.03. Amends Section 162.505, Tax Code, as follows:

Sec. 162.505. ALLOCATION OF LIQUEFIED GAS TAX. (a) Creates an exception to this subsection as provided by Subsection (b).

(b) Prohibits the comptroller, during the months of June, July, and August of each odd-numbered year, from making the allocation to the state highway fund otherwise required by Subsection (a)(2). Requires the comptroller, after September 5 and before September 11 of that year, to allocate and deposit to the state highway fund the total amount of revenue that would have been otherwise allocated and deposited to that fund during those months.

SECTION 5D.04. Effective date for this part: August 1, 2005, or November 1, 2005.

## PART E. HOTEL OCCUPANCY TAXES

SECTION 5E.01. Amends Section 156.001, Tax Code, to redefine "hotel."

SECTION 5E.02. Amends Section 351.002(c), Tax Code, to provide that the tax does not apply to a person who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for that period. Makes a conforming change.

SECTION 5E.03. Amends Section 352.001(1), Tax Code, to redefine "hotel" to make a conforming change.

SECTION 5E.04. Amends Section 352.002(c), Tax Code, to make a conforming change.

SECTION 5E.05. Repealer: Section 156.101 (Exception--Permanent Resident), Tax Code.

SECTION 5E.06. Effective date for this part: October 1, 2005, or January 1, 2006.

## ARTICLE 6. TAX ON TOBACCO PRODUCTS AND ALCOHOL

### PART A. CIGARETTE AND TOBACCO PRODUCTS

SECTION 6A.01. Amends Section 154.021(b), Tax Code, to increase the tax rates on cigarettes.

SECTION 6A.02. Amends Section 155.021(b), Tax Code, to increase the tax rates on cigars.

SECTION 6A.03. Amends Section 155.0211(b), Tax Code, to increase the tax rate for tobacco products other than cigars.

SECTION 6A.04. Effective date for this part: September 1, 2005, or November 1, 2005.

#### PART B. ALCOHOL TAXES

SECTION 6B.01. Amends Section 201.03, Alcoholic Beverage Code, to increase the taxes on distilled spirits addressed in this section.

SECTION 6B.02. Amends Section 201.04, Alcoholic Beverage Code, to increase the taxes on vinous liquor addressed in this section.

SECTION 6B.03. Amends Section 201.42, Alcoholic Beverage Code, to increase the tax on ale and malt liquor addressed in this section.

SECTION 6B.04. Amends Section 203.01, Alcoholic Beverage Code, to increase the tax on beer addressed in this section.

SECTION 6B.05. Amends Section 183.021, Tax Code, to increase the tax on mixed beverages addressed in this section.

SECTION 6B.06. Effective date for this part: September 1, 2005, or November 1, 2005.

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

SECTION 7.01. Amends Subchapter G, Chapter 403, Government Code, by adding Sections 403.109 and 403.1091-403.1093, as follows:

Sec. 403.109. **SECONDARY HEALTH ACCOUNT FOR HIGHER EDUCATION.** (a) Defines "earnings account" and "secondary account."

(b) Provides that the secondary account and the earnings account are dedicated accounts in the general revenue fund.

(c) Sets forth the composition of the secondary account.

(d) Provides that the earnings account consists of the earnings received from investment of the assets in the secondary account. Requires the comptroller to periodically transfer those earnings from the secondary account to the earnings account.

(e) Authorizes money in the secondary account to be used only for a purpose described by Subsection (d) or (f).

(f) Requires the comptroller to manage and invest assets in the secondary account in authorized investments under Section 404.024. Requires any expenses incurred by the comptroller in managing and investing assets in the secondary account to be paid from the account.

(g) Authorizes money in the earnings account to be appropriated only for a purpose specified in and subject to any conditions and reporting requirements prescribed by Subchapter A (Permanent Health Fund for Higher Education), Chapter 63 (Permanent Funds for Health-Related Institutions of Higher Education), Education Code, for the use of money from the permanent health fund for higher education.

(h) Authorizes an institution of higher education that has accepted a gift under former Subchapter I, Chapter 51 (Provisions Generally Applicable to Higher Education), Education Code, that was conditioned on the institution's receipt of

state matching funds from the eminent scholars fund to use money the institution receives under this section to provide the state matching funds and treat the money as if it were a distribution to the institution from the eminent scholars fund for purposes of the former Subchapter I.

(i) Requires an institution of higher education that receives a distribution from the earnings account to include certain information in the report required by Section 63.004 (Reporting Requirement), Education Code.

(j) Provides that Section 404.071 does not apply to the secondary account or the earnings account.

Sec. 403.1091. SECONDARY ACCOUNTS FOR EACH INSTITUTION OF HIGHER EDUCATION. (a) Defines "earnings account" and "secondary account."

(b) Provides that in addition to the permanent endowment funds created by Section 63.101 (Creation of Funds), Education Code, there is a secondary account for the benefit of each institution of higher education or group of related components of an institution of higher education listed in Section 63.101(a) (relating to the establishment of a separate permanent endowment fund), Education Code.

(c) Provides that each secondary account and earnings account is a dedicated account in the general revenue fund.

(d) Sets forth the composition of a secondary account.

(e) Provides that the earnings account for an institution or group of related components of an institution consists of the earnings received from investment of the assets in the corresponding secondary account for the institution or group of components. Requires the comptroller to periodically transfer those earnings from the secondary account to the earnings account.

(f) Authorizes money in the secondary account to be used only for a purpose described by Subsection (e) or (g).

(g) Requires the comptroller to manage and invest assets in a secondary account in authorized investments under Section 404.024 (Authorized Investments). Requires any expenses incurred by the comptroller in managing and investing assets in a secondary account to be paid from the account.

(h) Authorizes money in the earnings account to be appropriated only for a purpose specified in and subject to any conditions and reporting requirements prescribed by Subchapter B, Chapter 63 (Permanent Funds for Health-Related Institutions of Higher Education), Education Code, for the use of money from the corresponding permanent endowment fund established by that subchapter.

(i) Authorizes an institution of higher education that has accepted a gift under former Subchapter I, Chapter 51 (Provisions Generally Applicable to Higher Education), Education Code, that was conditioned on the institution's receipt of state matching funds from the eminent scholars fund to use money the institution receives under this section to provide the state matching funds and treat the money as if it were a distribution to the institution from the eminent scholars fund for purposes of the former Subchapter I.

(j) Requires an institution of higher education that receives an appropriation from an earnings account to include certain information in the report required by Section 63.103 (Reporting Requirement), Education Code.

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

Sec. 403.1092. SECONDARY ACCOUNT FOR HIGHER EDUCATION NURSING, ALLIED HEALTH, AND OTHER HEALTH-RELATED PROGRAMS. (a) Defines "earnings account" and "secondary account."

(b) Provides that the secondary account and the earnings account are dedicated accounts in the general revenue fund.

(c) Sets forth the composition of the secondary account.

(d) Provides that the earnings account consists of the earnings received from investment of the assets in the secondary account for the institution or group of components. Requires the comptroller to periodically transfer those earnings from the secondary account to the earnings account.

(e) Authorizes money in the secondary account to be used only for a purpose described by Subsection (d) or (f).

(f) Requires the comptroller to manage and invest assets in the secondary account in authorized investments under Section 404.024. Requires any expenses incurred by the comptroller in managing and investing assets in the secondary account to be paid from the account.

(g) Authorizes money in the earnings account to be appropriated only for a purpose specified in and subject to any conditions and reporting requirements prescribed by Subchapter C, Chapter 63 (Permanent Funds for Health-Related Institutions of Higher Education), Education Code, for the use of money from the permanent fund for higher education nursing, allied health, and other health-related programs.

(h) Requires the Texas Higher Education Coordinating Board (THECB) to include certain information in the report required by Section 63.203 (Reporting Requirement), Education Code.

(i) Provides that Section 404.071 does not apply to the secondary account or the earnings account.

Sec. 403.1093. SECONDARY ACCOUNT FOR MINORITY HEALTH RESEARCH AND EDUCATION. (a) Defines "earnings account" and "secondary account."

(b) Provides that the secondary account and the earnings account are dedicated accounts in the general revenue fund.

(c) Sets forth the composition of the secondary account.

(d) Provides that the earnings account consists of the earnings received from investment of the assets in the secondary account. Requires the comptroller to periodically transfer those earnings from the secondary account to the earnings account.

(e) Authorizes money in the secondary account to be used only for a purpose described by Subsection (d) or (f).

(f) Requires the comptroller to manage and invest assets in the secondary account in authorized investments under Section 404.024. Requires any expenses incurred by the comptroller in managing and investing assets in the secondary account to be paid from the account.

(g) Authorizes money in the earnings account to be appropriated only to THECB for the purpose of providing grants as specified by Section 63.302(c) (relating to

the appropriation of the investment returns), Education Code, for money from the permanent fund for minority health research education.

(h) Requires THECB to report regarding the money received under this section in the manner required by Section 63.302(f) (relating to THECB's report to the legislature), Education Code, and to include certain information in the report.

(i) Provides that Section 404.071 does not apply to the secondary account or the earnings account.

SECTION 7.02. Amends Section 403.1069, Government Code, as follows:

Sec. 403.1069. **REPORTING REQUIREMENT.** Requires the Department of State Health Services (DSHS) to provide a report to the Legislative Budget Board on the permanent funds established under this subchapter from which DSHS may receive an appropriation of the available earnings no later than November 1 of each year.

SECTION 7.03. (a) Requires all amounts held in certain funds to be transferred, on November 1, 2006, in a certain estimated amount, to the accounts established under Section 403.109, 403.1091, 403.1092, and 403.1093, Government Code, as added by this Act, specified by this section.

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

(c) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - University of Texas Health Science Center at San Antonio to be deposited to the credit of the secondary account established for the benefit of the University of Texas Health Science Center at San Antonio under Section 403.1091, Government Code, as added by this Act.

(d) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - University of Texas M.D Anderson Cancer Center to be deposited to the credit of the secondary account established for the benefit of the University of Texas M.D Anderson Cancer Center under Section 403.1091, Government Code, as added by this Act.

(e) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - University of Texas Southwestern Medical Center at Dallas to be deposited to the credit of the secondary account established for the benefit of the University of Texas Southwestern Medical Center at Dallas under Section 403.1091, Government Code, as added by this Act.

(f) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - University of Texas Medical Branch at Galveston to be deposited to the credit of the secondary account established for the benefit of the University of Texas Medical Branch at Galveston under Section 403.1091, Government Code, as added by this Act.

(g) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - University of Texas Health Science Center at Houston to be deposited to the credit of the secondary account established for the benefit of the University of Texas Health Science Center at Houston under Section 403.1091, Government Code, as added by this Act.

(h) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - University of Texas Health Science Center at Tyler to be deposited to the credit of the secondary account established for the benefit of the University of Texas Health Science Center at Tyler under Section 403.1091, Government Code, as added by this Act.

(i) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - University of Texas at El Paso to be deposited to the credit of the secondary account established for the benefit of the University of Texas at El Paso under Section 403.1091, Government Code, as added by this Act.

(j) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - Texas A&M University Health Science Center to be deposited to the credit of the secondary account established for the benefit of the Texas A&M University Health Science Center under Section 403.1091, Government Code, as added by this Act.

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

(l) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - Components of Texas Tech University Health Science Center in El Paso to be deposited to the credit of the secondary account established for the benefit of the Components of Texas Tech University Health Science Center in El Paso under Section 403.1091, Government Code, as added by this Act.

(m) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - Components of Texas Tech University Health Science Center other than El Paso to be deposited to the credit of the secondary account established for the benefit of the Components of Texas Tech University Health Science Center other than El Paso under Section 403.1091, Government Code, as added by this Act.

(n) Requires amounts transferred from the Permanent Endowment Fund for Health Related Institutions - University of Texas Regional Academic Health Center to be deposited to the credit of the secondary account established for the benefit of the University of Texas Regional Academic Health Center under Section 403.1091, Government Code, as added by this Act.

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

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

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

SECTION 7.04. (a) Prohibits the transfers to accounts in the general revenue fund made by this article from resulting in a reduction in the amount available for distribution from those accounts, and requires the same amount that would have been distributed from the permanent funds but for the transfers made by this article to be appropriated and distributed from the applicable accounts created by this article. Requires the comptroller, if the earnings from the secondary account that are transferred to earnings account are inadequate to make a distribution of the same amount that would have been distributed from the permanent funds, to the extent that the difference is solely the result of an investment policy other than total return, to transfer the difference to the applicable earnings account from the unobligated portion of general revenue.

(b) Requires the comptroller to determine the amount of any loss to the Permanent Health Fund for Higher Education and other funds administered by The University of Texas System as a result of the transfer to general revenue under this article. Requires the comptroller, on August 31, 2007, to transfer from the general revenue to the applicable secondary account created by this Act, an amount equal to the amount of the loss. Requires the comptroller, in determining the amount of the loss, to consider the difference in the rate of return on investment of that secondary account and the rate of return over the preceding three years on investment of the Permanent University Fund.

(c) Prohibits the total distributions under Sections (a) and (b) from the accounts created by this article, plus transfers under Subsection (b) of this section from exceeding \$65 million for any fiscal year, notwithstanding any other provision of this article.

SECTION 7.05. Effective date for this part: November 1, 2005.

## ARTICLE 8. CHARITABLE BINGO

SECTION 8.01. Amends Section 2001.002, Occupations Code, by amending Subdivision (5) to redefine "bingo equipment," and adding Subdivisions (9-a), (9-b), (9-c), (20-a), (20-b), and (26-a), to define "electronic monitoring terminal," "electronic pull-tab bingo," "electronic pull-tab bingo ticket," "player account card," "point-of-sale station," and "site controller."

SECTION 8.02. Amends Section 2001.054, Occupations Code, to provide that the Texas Lottery Commission (TLC) has broad authority to adopt rules to administer and ensure compliance with Sections 2001.409(b), and 2001.4091-2001.4094.

SECTION 8.03. Amends Sections 2001.407(b), (d), and (f), Occupations Code, as follows:

(b) Requires the lease of bingo equipment or supplies authorized by this section to be made on terms requiring immediate payment or payment not later than the 30th day after the date of actual delivery.

(d) Authorizes a licensed authorized organization to lease or purchase bingo equipment or supplies directly from a licensed distributor. Deletes existing text relating to specific types of bingo equipment and supplies.

(f) Authorizes a licensed authorized organization to make an occasional sale of bingo equipment or supplies to another licensed authorized organizations, with prior written consent of TLC.

SECTION 8.04. Amends Section 2001.408, Occupations Code, as follows:

Sec. 2001.408. OTHER METHODS FOR PLAYING BINGO. (a) Authorizes bingo, subject to TLC rules, to be played using a pull-tab bingo ticket or an electronic pull-tab bingo ticket.

(b) Provides that all prize limitations and exemptions applicable to pull-tab bingo under Section 2001.420 are applicable to electronic pull-tab bingo.

SECTION 8.05. Amends Section 2001.409, Occupations Code, by amending Subsection (a) and by adding Subsection (b), as follows:

(a) Sets forth authorized uses for a card-minding device.

(b) Prohibits the display of graphics and animation used to correspond to, display, or represent the outcome of an approved electronic pull-tab bingo ticket or electronic bingo card from being the basis of a requirement that a card-minding device that has previously been approved for the play of electronic pull-tab bingo be retested or reapproved. Deletes existing text relating to prohibited uses of a card-minding device.

SECTION 8.06. Amends Subchapter I, Chapter 2001, Occupations Code, by adding Sections 2001.4091-2001.4094, as follows:

Sec. 2001.4091. SITE CONTROLLERS. (a) Sets forth authorized uses for a site controller.

(b) Prohibits the creation or distribution of electronic pull-tab bingo tickets or electronic bingo cards by or through a site controller or other method from being the basis of a requirement that a preapproved site controller be retested or reapproved.

(c) Provides that a person who sells or supplies a site controller or other equipment used to play electronic pull-tab bingo is not required to hold a system service provider license, and prohibits the functions performed by a site controller or other equipment related to electronic pull-tab bingo from being construed as the provision of automated bingo services governed by Subchapter F.

(d) Requires a site controller used for electronic pull-tab bingo to be manufactured in accordance with the standards provided by this chapter and provides that it is subject to testing by the commission or by an independent testing facility reasonably acceptable to TLC.

(e) Authorizes TLC to inspect a site controller.

(f) Requires the manufacturer of a site controller to maintain a central communications system or facility to provide TLC with the ability to review and audit electronic pull-tab bingo sales data.

(g) Requires a site controller to provide a physical and electronic means, by use of a password or other method specified by TLC rule, to secure electronic pull-tab bingo tickets and accounting system data.

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

Sec. 2001.4092. ELECTRONIC MONITORING TERMINALS. (a) Sets forth authorized uses for an electronic monitoring terminal.

(b) Provides that nothing in this chapter prohibits an electronic monitoring terminal from generating or creating graphics and animation to correspond to, display, or represent, in an entertaining manner, the outcome of an approved electronic pull-tab bingo ticket or electronic bingo cards. Prohibits the generation or creation of the graphics and animation from being the basis of a requirement that a preapproved electronic monitoring terminal be retested or reapproved.

Sec. 2001.4093. USE OF CARD-MINDING DEVICES OR ELECTRONIC MONITORING TERMINALS IN ELECTRONIC BINGO. (a) Sets forth requirements for a card-minding device, site controller, or an electronic monitoring terminal used for electronic pull-tab bingo.

(b) Authorizes TLC to audit data relating to the sale, exchange, inventory, or play of electronic pull-tab bingo tickets.

(c) Authorizes TLC to inspect a card-minding device or electronic monitoring terminal.

Sec. 2001.4094. AUDIT AND COMPLIANCE OF ELECTRONIC PULL-TAB BINGO.

(a) Authorizes TLC to adopt specific rules regarding communications systems, reporting certain information and data.

(b) Authorizes TLC to investigate a violation or alleged violation of this chapter.

SECTION 8.07. Amends Subchapter I, Chapter 2001, Occupations Code, by adding Sections 2001.421 and 2001.422, as follows:

Sec. 2001.421. PRIZE FEE, PAYOUT PERCENTAGE, AND REVENUE DEDICATION FOR ELECTRONIC PULL-TAB BINGO. (a) Requires a licensed authorized organization to collect a fee in the amount of five percent of the amount or value of the prize from a person who wins an electronic pull-tab bingo prize of more than \$5 and to remit a fee in the amount of five percent for all prizes awarded as a result of an electronic pull-tab bingo game.

(b) Prohibits the prize payout percentage for an electronic pull-tab bingo game from being less than the prize payout percentage established for a paper pull-tab bingo game.

(c) Requires the revenue received by the state from the fee imposed by Subsection (a) to be used to finance the public primary and secondary schools of this state or to reduce public school property taxes, or both, as provided by the General Appropriations Act or other law.

Sec. 2001.422. NO EXCLUSIVE VENDOR FOR ELECTRONIC PULL-TAB BINGO. Prohibits TLC from requiring that electronic pull-tab bingo be provided by a single vendor.

SECTION 8.08. Amends Subchapter I, Chapter 2001, Occupations Code, by adding Section 2001.423, as follows:

Sec. 2001.423. Authorizes electronic pull-tab bingo to be allowed under certain circumstances, in addition to the other provisions contained in this chapter.

SECTION 8.09. Sets forth legislative findings relating to the implementation of electronic pull-tab bingo.

SECTION 8.10. Authorizes TLC to expend money from TLC's appropriations for the 2006-2007 biennium for purposes of conducting pre-implementation activities to implement the changes made by this article in Subchapter I, Chapter 2001, Occupations Code, including the development and approval of forms for applications for licensing and testing of electronic pull-tab bingo equipment authorized under Chapter 2001, Occupations Code, as amended by this article.

SECTION 8.11. (a) Requires TLC, not later than December 1, 2005, to adopt rules necessary to implement the changes in law made to Chapter 2001, Occupations Code, by this article.

(b) Sets forth the provisions that apply to the procedures for adoption of the rules required by Subsection (a).

#### ARTICLE 9. EFFECTS OF IMPLEMENTATION; EFFECTIVE DATE

SECTION 9.01. SPECIAL REPORT ON EFFECTS OF CERTAIN TAX POLICIES ON PERSONAL INCOME AND BUSINESSES. (a) Requires the comptroller to prepare a report that provides a comprehensive analysis of the effects of tax policies adopted by the 79th Legislature, 1st Called Session, on the personal income of residents of this state and on business in this state. Requires the comptroller, not later than October 15, 2006, to submit the report to certain public officials.

(b) Sets forth the information that the report required under Subsection (a) must include.

(c) Sets forth the analyses the report must include.

(d) Requires the comptroller, not later than October 15, 2008, to update the information contained in the report submitted under this section and submit the updated report to certain public officials.

SECTION 9.02. Effective date for this part, except as provided by Subsections (b) and (c) of this section: September 1, 2005, or November 1, 2005.

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

(c) Makes application of this Act contingent on the passage of .B., Acts of the 79th Legislature, 1st Called Session, 2005.