

By: McCall

H.B. No. 2425

A BILL TO BE ENTITLED

1 AN ACT

2 relating to state and certain local fiscal matters; making an
3 appropriation.

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

5 SECTION 1. Section 103.051(a), Civil Practice and Remedies
6 Code, is amended to read as follows:

7 (a) To apply for compensation under this subchapter, the
8 claimant must file with the ~~[judicial section of the]~~ comptroller's
9 judiciary section [office]:

10 (1) an application for compensation provided for that
11 purpose by the comptroller;

12 (2) a verified copy of the pardon or court order
13 justifying the application for compensation; ~~[and]~~

14 (3) a statement provided by the Texas Department of
15 Criminal Justice verifying the length of incarceration; and

16 (4) a certification of the claimant's actual innocence
17 of the crime for which the claimant was sentenced that is signed by
18 the attorney representing the state in the prosecution of felonies
19 in the county in which the sentence was rendered.

20 SECTION 2. Section 14(e), Article 42.12, Code of Criminal
21 Procedure, as added by Chapter 1188, Acts of the 76th Legislature,
22 Regular Session, 1999, is amended to read as follows:

23 (e) The clerk of a court that collects a fee imposed under
24 Subsection (c)(2) shall remit the fee to the comptroller not later

1 than the last day of the month following the end of the calendar
2 quarter in which the fee is collected, and the comptroller shall
3 deposit the fee into the general revenue fund. If the clerk does
4 not collect a fee imposed under Subsection (c)(2), the clerk is not
5 required to file any report required by the comptroller relating to
6 the collection of the fee. In requiring the payment of a fee under
7 Subsection (c)(2), the judge shall consider fines, fees, and other
8 necessary expenses for which the defendant is obligated in
9 establishing the amount of the fee. The judge may not:

10 (1) establish the fee in an amount that is greater than
11 25 percent of the defendant's gross income while the defendant is a
12 participant in residential aftercare; or

13 (2) require the defendant to pay the fee at any time
14 other than a time at which the defendant is both employed and a
15 participant in residential aftercare.

16 SECTION 3. Section 19(f), Article 42.12, Code of Criminal
17 Procedure, is amended to read as follows:

18 (f) A community corrections and supervision department
19 shall remit fees collected under Subsection (e) of this section to
20 the comptroller not later than the last day of the month following
21 the end of the calendar quarter in which the fee is collected. The
22 comptroller shall deposit the fee in the special revenue fund to the
23 credit of the sexual assault program established under Section
24 44.0061, Health and Safety Code. If the department does not collect
25 a fee imposed under Subsection (e), the department is not required
26 to file any report required by the comptroller relating to the
27 collection of the fee.

1 SECTION 4. Section 44.901, Education Code, as amended by
2 Chapter 573, Acts of the 77th Legislature, Regular Session, 2001,
3 is amended to read as follows:

4 Sec. 44.901. ENERGY SAVINGS PERFORMANCE CONTRACTS [~~OR WATER~~
5 ~~CONSERVATION MEASURES~~]. (a) In this section, "energy savings
6 performance contract" means a contract for energy or water
7 conservation measures to reduce energy or water consumption or
8 operating costs of school facilities in which the estimated savings
9 in utility costs resulting from the measures is guaranteed to
10 offset the cost of the measures over a specified period. The term
11 includes a contract for the installation or implementation of:
12 ~~[The board of trustees of a school district may enter into a~~
13 ~~contract for energy or water conservation measures to reduce energy~~
14 ~~or water consumption or operating costs of school facilities in~~
15 ~~accordance with this section.~~

16 ~~[(b) A contract to which this section applies includes a~~
17 ~~contract for the installation of:]~~

18 (1) insulation of a [~~the~~] building structure
19 [~~structures~~] and systems within the building;

20 (2) storm windows or doors, caulking or
21 weatherstripping, multiglazed windows or doors, heat absorbing or
22 heat reflective glazed and coated window or door systems, or other
23 window or door system modifications that reduce energy consumption;

24 (3) automatic energy control systems, including
25 computer software and technical data licenses;

26 (4) heating, ventilating, or air-conditioning system
27 modifications or replacements that reduce energy or water

1 consumption;

2 (5) lighting fixtures that increase energy

3 efficiency;

4 (6) energy recovery systems;

5 (7) electric systems improvements;

6 (8) water-conserving fixtures, appliances, and

7 equipment or the substitution of non-water-using fixtures,

8 appliances, and equipment;

9 (9) water-conserving landscape irrigation equipment;

10 (10) landscaping measures that reduce watering

11 demands and capture and hold applied water and rainfall, including:

12 (A) landscape contouring, including the use of

13 berms, swales, and terraces; and

14 (B) the use of soil amendments that increase the

15 water-holding capacity of the soil, including compost;

16 (11) rainwater harvesting equipment and equipment to

17 make use of water collected as part of a storm-water system

18 installed for water quality control;

19 (12) equipment for recycling or reuse of water

20 originating on the premises or from other sources, including

21 treated municipal effluent;

22 (13) equipment needed to capture water from

23 nonconventional, alternate sources, including air conditioning

24 condensate or graywater, for nonpotable uses;

25 (14) metering equipment needed to segregate water use

26 in order to identify water conservation opportunities or verify

27 water savings; or

1 (15) other energy or water conservation-related
2 improvements or equipment, l [+] including improvements or equipment
3 relating to renewable energy or nonconventional water sources or
4 water reuse [+].

5 (b) The board of trustees of a school district may enter
6 into an energy savings performance contract in accordance with this
7 section.

8 (c) Each ~~All~~ energy or water conservation measure
9 ~~measures~~ must comply with current local, state, and federal
10 construction, plumbing, and environmental codes and regulations.
11 Notwithstanding ~~anything to the contrary in~~ Subsection (a) ~~(b)~~,
12 an energy savings performance ~~a~~ contract may ~~for energy or water~~
13 ~~conservation measures shall~~ not include improvements or equipment
14 that allow or cause water from any condensing, cooling, or
15 industrial process or any system of nonpotable usage over which the
16 public water supply system officials do not have sanitary control,
17 to be returned to the potable water supply.

18 (d) The [person with whom the] board may enter into energy
19 savings performance contracts only with persons who are [must be]
20 experienced in the design, implementation, and installation of the
21 energy or water conservation measures addressed by the contract.

22 (e) Before entering into an energy savings performance [~~a~~]
23 contract [~~for energy or water conservation measures~~], the board
24 shall require the provider of the energy or water conservation
25 measures to file with the board a payment and performance bond
26 relating to the installation of the [~~energy or water conservation~~]
27 measures in accordance with Chapter 2253, Government Code. The

1 [that is in an amount the] board [finds reasonable and necessary to
2 protect the interests of the school district and that] may also
3 require a separate bond to cover the value of the guaranteed savings
4 on the contract [and is conditioned on the faithful execution of the
5 terms of the contract].

6 (f) An energy savings performance contract [Energy or water
7 conservation measures with respect to existing buildings or
8 facilities] may be financed:

9 (1) under a lease/purchase contract that has a term
10 not to exceed 15 years from the final date of installation and that
11 meets federal tax requirements for tax-free municipal leasing or
12 long-term financing;

13 (2) with the proceeds of bonds; or

14 (3) under a contract with the provider of the energy or
15 water conservation measures that has a term not to exceed 15 years
16 from the final date of installation.

17 (g) An energy savings performance [A] contract [for energy
18 or water conservation measures] shall contain provisions requiring
19 [pursuant to which] the provider of the energy or water
20 conservation measures to guarantee [guarantees] the amount of the
21 savings to be realized by the school district under the contract.

22 If the term of an energy savings performance [a] contract [for
23 energy or water conservation measures] exceeds one year, the school
24 district's contractual obligations in any one year during the term
25 of the contract beginning after the final date of installation may
26 not exceed the total energy, water, wastewater, and operating cost
27 savings, including [but not limited to] electrical, gas, water,

1 wastewater, or other utility cost savings and operating cost
2 savings resulting from the measures, ~~[automatic monitoring and~~
3 ~~control]~~ as determined by the school district in this subsection,
4 divided by the number of years in the contract term.

5 (h) An energy savings performance ~~[A]~~ contract shall ~~[under~~
6 ~~this section may]~~ be let according to the procedures established
7 for procuring certain professional services by Section 2254.004,
8 Government Code ~~[under competitive proposal procedures]~~. Notice of
9 the request for qualifications ~~[proposals]~~ shall be published in
10 the manner provided for competitive bidding. ~~[Requests for~~
11 ~~proposals must solicit quotations and must specify the relative~~
12 ~~importance of guaranteed savings, price, return on investment,~~
13 ~~financial performance and stability, quality, technical ability,~~
14 ~~experience, and other evaluation factors. The contract shall be~~
15 ~~awarded to the responsible offeror whose proposal, following~~
16 ~~negotiations, is determined to be the most advantageous to the~~
17 ~~school district considering the guaranteed savings and other~~
18 ~~evaluation factors set forth in the request for proposals.]~~

19 (i) Before ~~[To obtain the best final offers, the school~~
20 ~~district may allow proposal revisions after submissions and before~~
21 ~~the award of the contract.]~~

22 ~~[(j) Prior to]~~ entering into an energy savings performance
23 ~~[a]~~ contract ~~[under this section]~~, the board must require that the
24 cost savings projected by an offeror be reviewed by a licensed
25 professional engineer who is not an officer or employee of an
26 offeror for the contract under review or otherwise associated with
27 the contract or the offeror. An engineer who reviews a contract

1 shall maintain the confidentiality of any proprietary information
2 the engineer acquires while reviewing the contract. Sections
3 1001.053 and 1001.407, Occupations Code, apply [Section 19, The
4 Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil
5 Statutes), applies] to work performed under the contract.

6 SECTION 5. Section 51.927, Education Code, as amended by
7 Chapter 573, Acts of the 77th Legislature, Regular Session, 2001,
8 is amended to read as follows:

9 Sec. 51.927. ENERGY SAVINGS PERFORMANCE CONTRACTS [OR WATER
10 CONSERVATION MEASURES]. (a) In this section, "energy savings
11 performance contract" means a contract for energy or water
12 conservation measures to reduce energy or water consumption or
13 operating costs of institutional facilities in which the estimated
14 savings in utility costs resulting from the measures is guaranteed
15 to offset the cost of the measures over a specified period. The
16 term [The governing board of an institution of higher education may
17 enter into a contract for energy or water conservation measures to
18 reduce energy or water consumption or operating costs of
19 institutional facilities in accordance with this section.

20 [(b) A contract to which this section applies] includes a
21 contract for the installation or implementation of:

22 (1) insulation of a building structure and systems
23 within a building;

24 (2) storm windows or doors, caulking or weather
25 stripping, multiglazed windows or doors, heat-absorbing or
26 heat-reflective glazed and coated window or door systems, or other
27 window or door system modifications that reduce energy consumption;

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(3) automatic energy control systems, including computer software and technical data licenses;

3 (4) heating, ventilating, or air conditioning system
4 modifications or replacements that reduce energy or water
5 consumption;

6 (5) lighting fixtures that increase energy
7 efficiency;

8 (6) energy recovery systems;

9 (7) electric systems improvements;

10 (8) water-conserving fixtures, appliances, and
11 equipment or the substitution of non-water-using fixtures,
12 appliances, and equipment;

13 (9) water-conserving landscape irrigation equipment;

14 (10) landscaping measures that reduce watering
15 demands and capture and hold applied water and rainfall, including:

16 (A) landscape contouring, including the use of
17 berms, swales, and terraces; and

18 (B) the use of soil amendments that increase the
19 water-holding capacity of the soil, including compost;

20 (11) rainwater harvesting equipment and equipment to
21 make use of water collected as part of a storm-water system
22 installed for water quality control;

23 (12) equipment for recycling or reuse of water
24 originating on the premises or from other sources, including
25 treated municipal effluent;

26 (13) equipment needed to capture water from
27 nonconventional, alternate sources, including air conditioning

1 condensate or graywater, for nonpotable uses;

2 (14) metering equipment needed to segregate water use
3 in order to identify water conservation opportunities or verify
4 water savings; or

5 (15) other energy or water conservation-related
6 improvements or equipment, ~~including~~ including improvements or equipment
7 related to renewable energy or nonconventional water sources or
8 water reuse~~plus~~.

9 (b) The governing board of an institution of higher
10 education may enter into an energy savings performance contract in
11 accordance with this section.

12 (c) Each ~~All~~ energy or water conservation measure
13 ~~measures~~ must comply with current local, state, and federal
14 construction, plumbing, and environmental codes and regulations.
15 Notwithstanding ~~anything to the contrary in~~ Subsection (a) ~~(b)~~,
16 an energy savings performance ~~a~~ contract may ~~for energy or water~~
17 ~~conservation measures shall~~ not include improvements or equipment
18 that allow or cause water from any condensing, cooling, or
19 industrial process or any system of nonpotable usage over which the
20 public water supply system officials do not have sanitary control,
21 to be returned to the potable water supply.

22 (d) The ~~entity with whom the~~ board may enter into energy
23 savings performance contracts only with entities that are ~~must be~~
24 experienced in the design, implementation, and installation of the
25 energy or water conservation measures addressed by the contract.

26 (e) Before entering into an energy savings performance ~~a~~
27 contract ~~for energy or water conservation measures~~, the board

1 shall require the provider of the energy or water conservation
2 measures to file with the board a payment and performance bond in
3 accordance with Chapter 2253, Government Code. The [that is in an
4 amount the] board may also require a separate bond to cover the
5 value of the guaranteed savings on [finds reasonable and necessary
6 to protect the interests of the institution and is conditioned on
7 the faithful execution of the terms of] the contract.

8 (f) The board may enter into an energy savings performance
9 [a] contract for a period of more than one year only [for energy or

10 water conservation measures with an entity] if the board finds that
11 the amount the institution would spend on the energy or water
12 conservation measures will not exceed the amount to be saved in
13 energy, water, wastewater, and operating costs over 15 years from
14 the date of installation. If the term of the [a] contract [for
15 energy or water conservation measures] exceeds one year, the
16 institution's [board's] contractual obligation in any year during
17 the term of the contract beginning after the final date of
18 installation may not exceed the total energy, water, wastewater,
19 and operating cost savings, including [but not limited to]
20 electrical, gas, water, wastewater, or other utility cost savings
21 and operating cost savings resulting from the measures [automatic
22 monitoring and control], as determined by the board in this
23 subsection, divided by the number of years in the contract term
24 beginning after the final date of installation. The board shall
25 consider all costs of the energy or water conservation measures,
26 including costs of design, engineering, installation, maintenance,
27 repairs, and debt service.

1 (g) An energy savings performance contract [~~Energy or water~~
2 ~~conservation measures~~] may be financed:

3 (1) under a lease/purchase contract that has a term
4 not to exceed 15 years from the final date of installation and that
5 meets federal tax requirements for tax-free municipal leasing or
6 long-term financing, including a lease/purchase contract under the
7 master equipment lease purchase program administered by the Texas
8 Public Finance Authority under Chapter 1232, Government Code;

9 (2) with the proceeds of bonds; or

10 (3) under a contract with the provider of the energy or
11 water conservation measures that has a term not to exceed 15 years
12 from the final date of installation.

13 (h) An energy savings performance [A] contract [~~for energy~~
14 ~~or water conservation measures~~] shall contain provisions requiring
15 [pursuant to which] the provider of the energy or water
16 conservation measures to guarantee [~~guarantees~~] the amount of the
17 savings to be realized by the institution of higher education under
18 the contract. [~~The Master Equipment Lease Purchase Program~~
19 ~~operated by the Texas Public Finance Authority may be utilized by an~~
20 ~~institution to fund a contract for energy or water conservation~~
21 ~~measures so long as the costs of the energy or water conservation~~
22 ~~measures, including costs of design, engineering, installation,~~
23 ~~maintenance, repairs, and anticipated debt service requirements of~~
24 ~~the Master Equipment Lease Purchase Program, do not exceed the~~
25 ~~total energy and operating cost savings, as described in Subsection~~
26 ~~(f), beginning after the final date of installation.]~~

27 (i) An energy savings performance [A] contract shall [~~under~~

1 ~~this section may~~] be let according to the procedures established
2 for procuring certain professional services by Section 2254.004,
3 Government Code ~~[under competitive sealed proposal procedures]~~.
4 Notice of the request for qualifications ~~[proposals]~~ shall be given
5 in the manner provided by Section 2156.002 ~~[for in Chapter 2156]~~,
6 Government Code. The Texas Higher Education Coordinating Board, in
7 consultation with the State Energy Conservation Office ~~[and the~~
8 ~~Texas Energy Coordination Council]~~ with regard to energy and water
9 conservation measures, shall establish guidelines and an approval
10 process for awarding energy savings performance contracts ~~[awarded~~
11 ~~under this section]~~. The guidelines must require that the cost
12 savings projected by an offeror be reviewed by a licensed
13 professional engineer who is not an officer or employee of an
14 offeror for the contract under review or otherwise associated with
15 the contract. An engineer who reviews a contract shall maintain the
16 confidentiality of any proprietary information the engineer
17 acquires while reviewing the contract. A contract is not required
18 to be reviewed or approved by the State Energy Conservation Office
19 ~~[or Texas Energy Coordination Council]~~. Sections 1001.053 and
20 1001.407, Occupations Code, apply ~~[Section 19, The Texas~~
21 ~~Engineering Practice Act (Article 3271a, Vernon's Texas Civil~~
22 ~~Statutes), applies]~~ to work performed under the contract. ~~[The~~
23 ~~contract shall be awarded to the responsible offeror whose~~
24 ~~proposal, following negotiations, is determined by the institution~~
25 ~~to be the most advantageous to the institution considering the~~
26 ~~guaranteed savings and other evaluation factors set forth in the~~
27 ~~request for proposals, except that if the institution finds that no~~

1 ~~offer is acceptable, it shall refuse all offers.]~~

2 (j) ~~In accordance with regulations adopted by the~~
3 ~~institution, the institution may conduct discussions with offerors~~
4 ~~who submit proposals and who are determined to be reasonably~~
5 ~~qualified for the award of the contract. Offerors shall be treated~~
6 ~~fairly and equally with respect to any opportunity for discussion~~
7 ~~and revision of proposals. To obtain the best final offers, the~~
8 ~~institution may allow proposal revisions after submissions and~~
9 ~~before the award of the contract.~~

10 ~~((k) If provided in a request for proposals under Subsection~~
11 ~~(i), proposals shall be opened in a manner that avoids disclosure of~~
12 ~~the contents to competing offerors and keeps the proposals secret~~
13 ~~during negotiations. All proposals are open for public inspection~~
14 ~~after a contract is awarded unless the information is excepted from~~
15 ~~disclosure under Chapter 552, Government Code.~~

16 [(l)] The legislature shall base an institution's
17 appropriation for energy, water, and wastewater costs during a
18 fiscal year on the sum of:

19 (1) the institution's estimated energy, water, and
20 wastewater costs for that fiscal year; and

21 (2) if an energy savings performance ~~a~~ contract
22 ~~under this section~~ is in effect, the institution's estimated net
23 savings resulting from the contract during the contract term,
24 divided by the number of years in the contract term.

25 SECTION 6. Section 54.619, Education Code, is amended by
26 adding Subsection (j) to read as follows:

27 (j) The board may temporarily suspend new enrollment in the

1 program on the request of the comptroller as the comptroller
2 considers necessary to ensure the actuarial soundness of the fund.

3 SECTION 7. Section 54.624, Education Code, is amended to
4 read as follows:

5 Sec. 54.624. SENIOR COLLEGE PLAN. (a) Through the senior
6 college plan, a prepaid tuition contract shall provide prepaid
7 tuition and required fees for the beneficiary to attend a public
8 senior college or university for a specified number of
9 undergraduate credit hours not to exceed the typical number of
10 hours required for a baccalaureate degree awarded by a public
11 senior college or university.

12 (b) When the beneficiary of a senior college plan prepaid
13 tuition contract enrolls in a public senior college or university,
14 the university shall accept as payment in full of the beneficiary's
15 tuition and required fees the lesser of:

16 (1) the amount of tuition and required fees charged by
17 the institution; or

18 (2) an amount paid by the board under the contract
19 equal to the weighted average amount of tuition and required fees of
20 all public senior colleges and universities for that semester or
21 other academic period as determined by the board.

22 (c) Each public senior college or university shall provide
23 the information requested by the board on or before June 1 each year
24 to assist the board in determining the weighted average amount of
25 tuition and required fees of all public senior colleges and
26 universities for each semester or other academic term of the
27 following academic year for purposes of this section.

1 SECTION 8. Section 403.016(f), Government Code, is amended
2 to read as follows:

3 (f)(1) Except as provided by Subdivisions [Subdivision] (2)
4 and (4) and subject to any limitation in rules adopted by the
5 comptroller, an automated clearinghouse, or the federal
6 government, the comptroller may use the electronic funds transfer
7 system to deposit payments only to one or more accounts of a payee
8 at one or more financial institutions, including credit unions.

9 (2) The comptroller may also use the electronic funds
10 transfer system to deposit a portion of an employee's gross pay into
11 the employee's account at a credit union as prescribed by
12 Subchapter G, Chapter 659.

13 (3) A single electronic funds transfer may contain
14 payments to multiple payees. Individual transfers or warrants are
15 not required for each payee.

16 (4) The comptroller may also use the electronic funds
17 transfer system to deposit a portion of an employee's gross pay into
18 an account of an eligible state employee organization for a
19 membership as prescribed by Subchapter G, Chapter 659.

20 SECTION 9. Section 403.027(g), Government Code, is amended
21 to read as follows:

22 (g) In this section, "digital signature" means an
23 electronic identifier intended by the person using it to have the
24 same force and effect as the use of a manual signature [has the
25 meaning assigned by Section 2.108(d), Business & Commerce Code].

26 SECTION 10. Section 403.054, Government Code, is amended by
27 amending Subsection (b) and adding Subsection (i) to read as

1 follows:

2 (b) The comptroller may not issue a replacement warrant if:

3 (1) the comptroller has paid the original warrant,

4 unless the comptroller:

5 (A) has received [~~obtained~~] a refund of the
6 payment; or

7 (B) is satisfied that the state agency on whose
8 behalf the comptroller issued the original warrant has taken
9 reasonable steps to obtain a refund of the payment;

10 (2) the period during which the comptroller may pay
11 the original warrant has expired under Section 404.046 or other
12 applicable law;

13 (3) the payee of the replacement warrant is not the
14 same as the payee of the original warrant; or

15 (4) the comptroller is prohibited by a payment law
16 [~~Section 403.055 or 481.0841, or by Section 57.48, Education Code,~~]
17 from issuing a warrant to the payee of the replacement warrant.

18 (i) In this section, "payment law" means:

19 (1) Section 403.055;

20 (2) Section 57.48, Education Code;

21 (3) Section 231.007, Family Code; or

22 (4) any similar law that prohibits the comptroller
23 from issuing a warrant or initiating an electronic funds transfer
24 to a person.

25 SECTION 11. Sections 403.092(a) and (b), Government Code,
26 are amended to read as follows:

27 (a) To allow efficient management of the cash flow of the

1 general revenue fund and to avoid a temporary cash deficiency in
2 that fund, the comptroller may transfer available [~~surplus~~] cash,
3 except constitutionally dedicated revenues, between funds that are
4 managed by or in the custody of the comptroller [~~state treasury~~].
5 As soon as practicable the comptroller shall return the available
6 [~~surplus~~] cash to the fund from which it was transferred. The
7 comptroller shall preserve the [~~fund~~] equity of the fund from which
8 the cash was transferred and shall allocate the earned [~~depository~~]
9 interest as if the transfer had not been made.

10 (b) If the comptroller submits a statement under Article
11 III, Section 49a, of the Texas Constitution when available
12 [~~surplus~~] cash transferred under Subsection (a) is in the general
13 revenue fund, the comptroller shall indicate in that statement that
14 the transferred available [~~surplus~~] cash is in the general revenue
15 fund, is a liability of that fund, and is not available for
16 appropriation by the legislature except as necessary to return cash
17 to the fund from which it was transferred as required by Subsection
18 (a).

19 SECTION 12. Sections 403.1042(b), (c), (e), and (f),
20 Government Code, are amended to read as follows:

21 (b) The advisory committee is composed of 11 members
22 appointed [~~by the advisory committee~~] as follows:

23 (1) one member appointed [~~nominated~~] by the
24 comptroller to represent a public hospital or hospital district
25 located in a county with a population of 50,000 or less or a public
26 hospital owned or maintained by a municipality;

27 (2) one member appointed [~~nominated~~] by the political

1 subdivision that, in the year preceding the appointment, received
2 the largest annual distribution paid from the account;

3 (3) one member appointed ~~[nominated]~~ by the political
4 subdivision that, in the year preceding the appointment, received
5 the second largest annual distribution paid from the account;

6 (4) four members appointed ~~[nominated]~~ by political
7 subdivisions that:

8 (A) in the year preceding the appointment,
9 received the 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, or 12th
10 largest annual distribution paid from the account; and

11 (B) do not have an appointee ~~[a nominee]~~ serving
12 on the advisory committee at the time of appointment;

13 (5) one member appointed ~~[nominated]~~ by the County
14 Judges and Commissioners Association of Texas;

15 (6) one member appointed ~~[nominated]~~ by the North and
16 East Texas County Judges and Commissioners Association;

17 (7) one member appointed ~~[nominated]~~ by the South
18 Texas County Judges and Commissioners Association; and

19 (8) one member appointed ~~[nominated]~~ by the West Texas
20 County Judges and Commissioners Association.

21 (c) A commissioners court that sets the tax rate for a
22 hospital district must approve any person appointed ~~[nominated]~~ by
23 the hospital district to serve on the advisory committee.

24 (e) Except as provided by this subsection, members
25 ~~[Members]~~ of the advisory committee serve staggered six-year terms
26 expiring on August 31 of each odd-numbered year. A member of the
27 advisory committee whose term expires or who attempts to resign

1 from the committee remains a member of the committee until the
2 member's successor is appointed.

3 (f) An individual or entity authorized to make an
4 appointment [~~or nominate someone for appointment~~] to the advisory
5 committee created under this section shall attempt to appoint [~~or~~
6 nominate] persons who represent the gender composition, minority
7 populations, and geographic regions of the state.

8 SECTION 13. Section 404.024, Government Code, is amended by
9 amending Subsection (b) and adding Subsection (l) to read as
10 follows:

11 (b) State funds not deposited in state depositories shall be
12 invested by the comptroller in:

13 (1) direct security repurchase agreements;

14 (2) reverse security repurchase agreements;

15 (3) direct obligations of or obligations the principal
16 and interest of which are guaranteed by the United States;

17 (4) direct obligations of or obligations guaranteed by
18 agencies or instrumentalities of the United States government;

19 (5) bankers' acceptances that:

20 (A) are eligible for purchase by the Federal
21 Reserve System;

22 (B) do not exceed 270 days to maturity; and

23 (C) are issued by a bank that has received the
24 highest short-term credit rating by a nationally recognized
25 investment rating firm;

26 (6) commercial paper that:

27 (A) does not exceed 270 days to maturity; and

1 (B) except as provided by Subsection (i), has
2 received the highest short-term credit rating by a nationally
3 recognized investment rating firm;

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

15 (9) bonds issued, assumed, or guaranteed by the State
16 of Israel:

17 (10) obligations of a state or an agency, county,
18 city, or other political subdivision of a state;

19 (11) mutual funds secured by obligations that are
20 described by Subdivisions (1) through (6), including pooled funds:

25 dollar-denominated securities; and
26 (12) foreign currency for the sole purpose of

1 to invest in foreign securities.

2 (1) The comptroller may lend securities under procedures
3 established by the comptroller. The procedures must be consistent
4 with industry practice and must include a requirement to fully
5 secure the loan with cash, obligations, or a combination of cash and
6 obligations. In this subsection, "obligation" means an item
7 described by Subsections (b)(1)-(6).

8 SECTION 14. Section 404.102, Government Code, is amended by
9 amending Subsection (a) and adding Subsection (c) to read as
10 follows:

11 (a) The comptroller may incorporate a special-purpose trust
12 company called the Texas Treasury Safekeeping Trust Company. The
13 purposes of the trust company are to provide a means for the
14 comptroller to obtain direct access to services provided by the
15 Federal Reserve System and to enable the comptroller to manage,
16 disburse, transfer, safekeep, and invest funds and securities more
17 efficiently and economically by using established and reasonable
18 financial practices, including the pooling of funds and the lending
19 of securities to the extent practical or necessary. The
20 comptroller may deposit funds and securities with the trust company
21 to achieve its purpose.

22 (c) The trust company may establish government investment
23 pools consisting of state agency funds not required to be deposited
24 in the state treasury and local government funds that are placed
25 into the pools for investment or reinvestment by the trust company.
26 A state agency or local government may place funds into the pools
27 for investment or reinvestment as authorized by Subsection (a) or

1 other law. In this subsection, "local government" and "state
2 agency" have the meanings assigned by Section 2256.002.

3 SECTION 15. Section 404.107(b), Government Code, is amended
4 to read as follows:

5 (b) A participant that has money or securities on [Agencies
6 ~~and local political subdivisions of the state and nonprofit~~
7 ~~corporations, foundations, and other charitable organizations~~
8 ~~created on behalf of the state or an agency or local political~~
9 ~~subdivision of the state that are authorized or required to]~~
10 ~~deposit [money and securities]~~ with the trust company shall pay the
11 fees provided in [established on] the trust company's fee schedule
12 developed under Section 404.103(f). The trust company may:

13 (1) deduct a fee from the principal or earning of a
14 participant on deposit with the trust company; or

15 (2) require a participant to pay a fee from an amount
16 not on deposit with the trust company.

17 SECTION 16. Section 404.123(b), Government Code, is amended
18 to read as follows:

19 (b) The committee may impose a limit on the sum of the total
20 amount of the notes outstanding and the total outstanding liability
21 of the general revenue fund under Section 403.092 [may not at any
22 ~~time exceed 25 percent of the taxes and revenues to be credited to~~
23 ~~the general revenue fund for the fiscal year as determined by the~~
24 ~~comptroller, based on the certification made by the comptroller in~~
25 ~~the enactment of the General Appropriations Act applicable to that~~
26 ~~fiscal year].~~

27 SECTION 17. Chapter 447, Government Code, as amended by

1 Chapters 573, 1158, and 1398, Acts of the 77th Legislature, Regular
2 Session, 2001, is reenacted to read as follows:

3 CHAPTER 447. STATE ENERGY CONSERVATION OFFICE

4 Sec. 447.001. GOVERNANCE AND GENERAL AUTHORITY. The state
5 energy conservation office:

6 (1) is under the direction and control of the
7 comptroller;

8 (2) shall promote the policies enumerated in this
9 chapter; and

10 (3) may act in any capacity authorized by state or
11 federal law.

12 Sec. 447.002. INFORMATION; PROCEDURES AND RULES; MEASURES
13 AND PROGRAMS. (a) The state energy conservation office shall
14 develop and provide energy and water conservation information for
15 the state.

16 (b) The state energy conservation office may establish
17 procedures and adopt rules relating to the development and
18 implementation of energy and water conservation measures and
19 programs applicable to state buildings and facilities.

20 (c) A procedure established or a rule adopted under
21 Subsection (b) may include provisions relating to:

22 (1) the retrofitting of existing state buildings and
23 facilities with energy-saving or water-saving devices; and

24 (2) the energy-related or water-related renovation of
25 those buildings and facilities.

26 (d) To the extent that the governor receives money
27 appropriated for energy and water efficiency measures and programs,

1 the governor, through the state energy conservation office, shall
2 implement measures and programs that the state energy conservation
3 office identifies as encouraging energy or water conservation by
4 state government.

5 (e) A state agency shall implement an energy or water
6 conservation measure or program in accordance with plans developed
7 under Section 447.009.

8 (f) The state energy conservation office shall coordinate
9 all water conservation-related activities with the Texas Water
10 Development Board. The board shall assist the office in the
11 development of all proposed water conservation and reuse
12 requirements and provide training and expertise to the office
13 regarding water conservation issues.

14 Sec. 447.003. LIAISON TO FEDERAL GOVERNMENT. The state
15 energy conservation office is the state liaison to the federal
16 government for the implementation and administration of federal
17 programs relating to state agency energy matters. The office shall
18 administer state programs established under:

19 (1) Part D, Title III, Energy Policy and Conservation
20 Act (42 U.S.C. Section 6321 et seq.), and its subsequent
21 amendments;

22 (2) Part G, Title III, Energy Policy and Conservation
23 Act (42 U.S.C. Section 6371 et seq.), and its subsequent
24 amendments; and

25 (3) other federal energy conservation programs as
26 assigned to the office by the governor or the legislature.

27 Sec. 447.004. DESIGN STANDARDS. (a) The state energy

1 conservation office shall establish and publish mandatory energy
2 and water conservation design standards for each new state building
3 or major renovation project, including a new building or major
4 renovation project of a state-supported institution of higher
5 education. The office shall define "major renovation project" for
6 purposes of this section and shall review and update the standards
7 biennially.

8 (b) The standards established under Subsection (a) must:

9 (1) include performance and procedural standards for
10 the maximum energy and water conservation allowed by the latest and
11 most cost-effective technology that is consistent with the
12 requirements of public health, safety, and economic resources;

13 (2) be stated in terms of energy and water consumption
14 levels;

15 (3) consider the various types of building uses; and

16 (4) allow for design flexibility.

17 (c) Any procedural standard established under this section
18 must be directed toward specific design and building practices that
19 produce good thermal resistance and low infiltration and toward
20 requiring practices in the design of mechanical and electrical
21 systems that maximize energy and water efficiency. The procedural
22 standards must address, as applicable:

23 (1) insulation;

24 (2) lighting;

25 (3) ventilation;

26 (4) climate control;

27 (5) water-conserving fixtures, appliances, and

1 equipment or the substitution of non-water-using fixtures,
2 appliances, and equipment;

3 (6) water-conserving landscape irrigation equipment;

4 (7) landscaping measures that reduce watering demands
5 and capture and hold applied water and rainfall, including:

6 (A) landscape contouring, including the use of
7 berms, swales, and terraces; and

8 (B) the use of soil amendments that increase the
9 water-holding capacity of the soil, including compost;

10 (8) rainwater harvesting equipment and equipment to
11 make use of water collected as part of a storm-water system
12 installed for water quality control;

13 (9) equipment for recycling or reusing water
14 originating on the premises or from other sources, including
15 treated municipal effluent;

16 (10) equipment needed to capture water from
17 nonconventional, alternate sources, including air conditioning
18 condensate or graywater, for nonpotable uses;

19 (11) metering equipment needed to segregate water use
20 in order to identify water conservation opportunities or verify
21 water savings;

22 (12) special energy requirements of health-related
23 facilities of higher education and state agencies; and

24 (13) any other item that the state energy conservation
25 office considers appropriate.

26 (d) A state agency or an institution of higher education
27 shall submit a copy of its design and construction manuals to the

1 state energy conservation office as the office considers necessary
2 to demonstrate compliance by the agency or institution with the
3 standards established under this section.

4 (e) A state agency or an institution of higher education may
5 not begin construction of a new state building or a major renovation
6 project before the design architect or engineer for the
7 construction or renovation has:

8 (1) certified to the agency or institution that the
9 construction or renovation complies with the standards established
10 under this section; and

11 (2) provided a copy of that certification to the state
12 energy conservation office.

13 Sec. 447.005. ENERGY AND WATER EFFICIENCY PROJECTS.
14 Subject to applicable state and federal laws or guidelines, the
15 state energy conservation office may:

16 (1) implement an energy or water efficiency project at
17 a state agency; or

18 (2) assist the agency in implementing the project
19 through an energy or water efficiency program.

20 Sec. 447.006. ADDITIONAL ENERGY AND WATER SERVICES. (a)
21 The state energy conservation office may provide additional energy
22 and water services, including:

23 (1) training of designated state employees in energy
24 and water management, energy-accounting techniques,
25 water-accounting techniques, and energy efficient and water
26 efficient design and construction;

27 (2) technical assistance regarding energy efficient

1 and water efficient capital improvements, energy efficient and
2 water efficient building design, and cogeneration and thermal
3 storage investments;

4 (3) technical assistance to the state auditor or a
5 state agency regarding energy and water management performance
6 audits and the monitoring of utility bills to detect billing
7 errors;

8 (4) technical assistance to a state agency regarding
9 third-party financing of an energy efficient and water efficient
10 capital improvement project; and

11 (5) other energy-related and water-related assistance
12 that the office considers appropriate, if the assistance is
13 requested by a state agency, an institution of higher education, a
14 consortium of institutions of higher education, or another
15 governmental entity created by state law.

16 (b) Using available state, federal, or oil overcharge
17 funds, the state energy conservation office may provide technical
18 assistance to a state agency or an institution of higher education
19 in analyzing or negotiating rates for electricity or natural gas
20 supplies from a locally certificated electric supplier, a natural
21 gas supplier, or a state-owned energy resource, including a
22 transportation charge for natural gas.

23 (c) A state agency or an institution of higher education may
24 request the assistance of the state energy conservation office
25 before negotiating or contracting for the supply or transportation
26 of natural gas or electricity.

27 (d) A state agency or an institution of higher education

1 with expertise in rate analysis, negotiation, or any other matter
2 related to the procurement of electricity and natural gas supplies
3 from a locally certificated electric supplier, a natural gas
4 supplier, or a state-owned energy resource may assist the state
5 energy conservation office whenever practicable. The attorney
6 general on request shall assist the office and other state agencies
7 and institutions of higher education in negotiating rates for
8 electricity and other terms of electric utility service.

9 (e) Using available funds from any source, the state energy
10 conservation office may assist a state agency, an institution of
11 higher education, a consortium of institutions of higher education,
12 or another governmental entity created by state law to further the
13 goals and pursue the policies of the state in energy research as may
14 be determined by the governor or the legislature. The office may
15 assist a state agency in implementing current federal energy
16 policy.

17 (f) The state energy conservation office on request may
18 negotiate rates for electricity and other terms of electric utility
19 service for a state agency or an institution of higher education.
20 The office also may negotiate the rates and the other terms of
21 service for a group of agencies or institutions in a single
22 contract.

23 (g) The state energy conservation office may analyze the
24 rates for electricity charged to and the amount of electricity used
25 by state agencies and institutions of higher education to determine
26 ways the state could obtain lower rates and use less electricity.
27 Each state agency, including the Public Utility Commission of

1 Texas, and institution of higher education shall assist the office
2 in obtaining the information the office needs to perform its
3 analysis.

4 Sec. 447.007. ENERGY AND WATER AUDITS. (a) The state
5 energy conservation office may audit a state-owned building used by
6 a state agency to assist the agency in reducing energy and water
7 consumption and costs through improved energy and water efficiency.

8 (b) Based on any audit performed under Subsection (a), the
9 state energy conservation office may recommend changes to improve
10 energy and water efficiency.

11 (c) Each state agency or institution of higher education
12 shall review and audit utility billings and contracts to detect
13 billing errors. Any contract with a private person to conduct the
14 review or audit must comply with all applicable provisions of
15 Subchapter A, Chapter 2254, regarding professional services
16 contracts. The contract may not be awarded on a contingent fee
17 basis unless the governor determines that the contract is
18 necessary, reasonable, and prudent.

19 Sec. 447.008. ENERGY-SAVING AND WATER-SAVING DEVICES OR
20 MEASURES. (a) On approval by the state energy conservation office,
21 a state agency that reduces its energy or water expenses may use any
22 funds saved by the agency from appropriated utility funds for the
23 purchase of an energy-saving or water-saving device or measure.
24 For purposes of this section, "energy-saving or water-saving device
25 or measure" means a device or measure that directly reduces:

26 (1) energy or water costs; or
27 (2) the energy or water consumption of equipment,

1 including a lighting, heating, ventilation, air-conditioning
2 system, or other water-using system, without materially altering
3 the quality of the equipment.

4 (b) A state agency, in accordance with the recommendations
5 of an energy or water audit, may purchase energy-saving and
6 water-saving devices or measures from appropriated utility funds if
7 the savings in utility funds projected by the audit will offset the
8 purchase. The agency shall retain in its files a copy of the
9 recommendation and repayment schedule as evidence of the projected
10 savings.

11 Sec. 447.009. ENERGY AND WATER MANAGEMENT PLANNING. (a)
12 The state energy conservation office shall provide energy and water
13 management planning assistance to a state agency or an institution
14 of higher education, including:

15 (1) preparation by the agency or institution of a
16 long-range plan for the delivery of reliable, cost-effective
17 utility services for the state agency or institution;

18 (2) assistance to the Department of Public Safety for
19 energy emergency contingency planning, using state or federal funds
20 when available;

21 (3) assistance to each state agency or institution of
22 higher education in preparing comprehensive energy and water
23 management plans; and

24 (4) assistance to state agencies other than
25 institutions of higher education in meeting the requirements of
26 Section 447.002, including assistance in scheduling and assigning
27 priorities to implementation plans to ensure that state agencies

1 adopt qualified cost-effective efficiency measures and programs
2 for all state facilities not later than September 1, 2006.

3 (b) A state agency or an institution of higher education
4 shall develop the plan described in Subsection (a)(1) and submit
5 the plan to the state energy conservation office upon request. The
6 agency or institution shall use the plan in preparing its five-year
7 construction and major renovation plans. After other energy-saving
8 or water-saving alternatives are considered, district heating and
9 cooling or on-site generation of electricity may be considered in
10 planning for reliable, efficient, and cost-effective utility
11 services.

12 (c) The state energy conservation office shall prepare
13 guidelines for preparation of the plan described in Subsection
14 (a)(3). A state agency or an institution of higher education that
15 occupies a state-owned building shall prepare and implement a
16 five-year energy and water management plan and shall submit that
17 plan to the office upon request. The agency or institution shall
18 update its plan biennially. A state agency or an institution of
19 higher education that occupies a building not owned by the state
20 shall cooperate with the office in addressing the energy or water
21 management of that building.

22 (d) The comprehensive energy and water management plan
23 described in Subsection (a)(3) shall be included in the five-year
24 construction and major repair and rehabilitation plans for
25 institutions of higher education as required by Section 61.0651,
26 Education Code.

27 SECTION 18. Subchapter G, Chapter 659, Government Code, is

1 amended by adding Section 659.1031 to read as follows:

2 Sec. 659.1031. DEDUCTION OF MEMBERSHIP FEES FOR ELIGIBLE
3 STATE EMPLOYEE ORGANIZATIONS. (a) An employee of a state agency
4 may authorize in writing a deduction each pay period from the
5 employee's salary or wage payment for payment to an eligible state
6 employee organization of a membership fee in the organization.

7 (b) In this section, "eligible state employee organization"
8 means a state employee organization with a membership of at least
9 2,000 active or retired state employees who hold or who have held
10 certification from the Commission on Law Enforcement Officer
11 Standards and Education.

12 SECTION 19. Section 659.104(a), Government Code, is amended
13 to read as follows:

14 (a) An authorization for a deduction under this subchapter
15 must direct the comptroller or, if applicable, the appropriate
16 financial officer of an institution of higher education to transfer
17 the withheld funds to the program, eligible state employee
18 organization, or credit union designated by the employee.

19 SECTION 20. Section 659.110, Government Code, is amended to
20 read as follows:

21 Sec. 659.110. RULES. The comptroller may establish
22 procedures and adopt rules to administer the credit union and the
23 eligible state employee organization membership fee deduction
24 programs [program] authorized by this subchapter.

25 SECTION 21. Section 659.253, Government Code, is amended to
26 read as follows:

27 Sec. 659.253. TRANSFER WITHIN AGENCY FROM EXEMPT TO

1 CLASSIFIED POSITION. (a) Except as provided by Subsection (b), a
2 [A] state employee who transfers [moves] within a state agency from
3 an exempt [a] position [exempt from the state's position
4 classification plan] to a classified position is entitled to [will]
5 receive an annual salary in the [proper] salary group to which the
6 classified position is allocated.

7 (b) During the fiscal biennium in which a state employee
8 transfers within a state agency from an exempt position to a
9 classified position, the employee's annual salary rate after the
10 transfer may not [to] exceed:

11 (1) the rate for the salary step equal to the rate
12 received by the employee when holding the [employee's current]
13 exempt position [salary] or the rate for the next higher salary
14 step, if the classified position is allocated [moving] to a
15 [position in a] salary group that is divided into steps; or

16 (2) the rate received by the employee when holding the
17 [employee's current] exempt position [salary] or the maximum rate
18 of the [new] salary group to which the classified position is
19 allocated, whichever is lower, if the classified position is
20 allocated to [moving to a position in] a salary group that is not
21 divided into steps.

22 [(b) Except as provided by this section, a state agency that
23 at any time during a state fiscal biennium pays a state employee an
24 exempt salary specifically established in the General
25 Appropriations Act may not subsequently during the state fiscal
26 biennium pay the employee a greater salary under Salary Schedule A,
27 B, or C of the General Appropriations Act.]

1 (c) A merit salary increase for ~~[state agency that pays]~~ a
2 state employee who transfers to a classified position from an
3 exempt position for which the ~~[an exempt]~~ salary is specifically
4 established in the General Appropriations Act ~~[and that then~~
5 ~~transfers the employee to a position in which the employee is paid~~
6 ~~under Salary Schedule A, B, or C of the General Appropriations Act]~~
7 may not take effect if:

8 (1) the employee has spent less than ~~[grant a merit~~
9 ~~salary increase to the employee until at least]~~ six months in the
10 classified position; or

11 (2) the increase would cause the salary limitation
12 prescribed by Subsection (b) to be exceeded ~~[after the date that the~~
13 ~~agency begins to pay the employee under Salary Schedule A, B, or C~~
14 ~~of the General Appropriations Act]~~.

15 (d) The Legislative Budget Board and the governor together
16 may approve an exception to the salary limitations prescribed by
17 Subsection (b) ~~[this section]~~ for a state employee:

18 (1) on receiving the employing state agency's
19 application for the exception; and

20 (2) if the employee's job responsibilities with the
21 state agency have changed substantially during the ~~[state fiscal]~~
22 biennium.

23 (e) In this section:

24 (1) "Classified position" means a position classified
25 under the state's position classification plan.

26 (2) "Exempt position" means a position exempt from the
27 state's position classification plan.

1 SECTION 22. Subchapter K, Chapter 659, Government Code, is
2 amended by adding Section 659.2531 to read as follows:

3 Sec. 659.2531. TRANSFER WITHIN AGENCY BETWEEN CLASSIFIED
4 POSITIONS ALLOCATED TO SAME SALARY GROUP. (a) In this section:

5 (1) "Classified position" means a position classified
6 under the state's position classification plan.

7 (2) "Transfer" means the transfer of a state employee
8 within a state agency between two classified positions that:

9 (A) are allocated to the same salary group; and
10 (B) have different position titles as listed in
11 the General Appropriations Act.

12 (b) Except as provided by Subsection (c), a state employee's
13 annual salary rate immediately after a transfer may not exceed:

14 (1) the rate for the salary step that is one step
15 higher than the salary step at which the employee was paid
16 immediately before the transfer, if the classified position to
17 which the employee transfers is allocated to a salary group that is
18 divided into steps; or

19 (2) 103.4 percent of the employee's annual salary rate
20 immediately before the transfer, if the classified position to
21 which the employee transfers is allocated to a salary group that is
22 not divided into steps.

23 (c) A state employee's annual salary rate immediately after
24 a transfer may not exceed the maximum rate for the appropriate
25 salary group.

26 SECTION 23. Section 659.255, Government Code, is amended to
27 read as follows:

1 Sec. 659.255. MERIT SALARY INCREASES; ONE-TIME MERIT
2 PAYMENTS. (a) In this [This] section:

3 (1) "Classified employee" means a state employee who
4 holds a classified position.

5 (2) "Classified position" means a position [applies
6 only to positions] classified under the state's position
7 classification plan.

8 (3) "Merit salary increase" means an increase in
9 compensation to:

10 (A) a higher step rate in the same classified
11 salary group, if the classified employee is compensated under
12 Salary Schedule A of the General Appropriations Act; or

13 (B) a higher rate within the range of the same
14 classified salary group, if the classified employee is compensated
15 under Salary Schedule B of the General Appropriations Act.

16 (b) [A state agency administrator may grant merit salary
17 increases including one-time merit payments to employees
18 compensated under Salary Schedules A and B of the General
19 Appropriations Act whose job performance and productivity are
20 consistently above that normally expected or required. For
21 classified employees compensated under Salary Schedule A of the
22 General Appropriations Act, a merit increase involves an increase
23 in an employee's salary to a higher step rate in the same salary
24 group. For classified employees compensated under Salary Schedule
25 B of the General Appropriations Act, a merit increase involves an
26 increase in an employee's salary to a higher rate within the range
27 of the same salary group. Merit increases including one-time merit

1 ~~payments are subject to the restrictions prescribed by Subsections~~
2 ~~(c)-(e).~~

3 ~~(c)]~~ The comptroller shall prescribe accounting and
4 reporting procedures as necessary to ensure the availability of
5 information reflecting each state agency's use of merit salary
6 increases, including one-time merit payments.

7 (c) Each state agency shall establish:

8 (1) a procedure for determining the eligibility of a
9 classified employee to receive a merit salary increase or a
10 one-time merit payment from the agency; and

11 (2) requirements for substantiating the eligibility
12 of a classified employee who receives a merit salary increase or a
13 one-time merit payment from the agency.

14 (d) Merit salary increases and ~~[including]~~ one-time merit
15 payments shall be applied throughout the range of classified salary
16 groups used by each state agency.

17 (e) A state agency may award a merit salary increase to a
18 classified employee in relation to the employee's performance in
19 the current classified position held by the employee if [For an
20 employee to be eligible for a merit salary increase or a one-time
21 merit payment, the following additional criteria must be met]:

22 (1) the employee has ~~[must have]~~ been employed by the
23 ~~[state]~~ agency in that position for at least six continuous months
24 before ~~[prior to]~~ the effective date ~~[award]~~ of the increase ~~[or~~
25 payment];

26 (2) the effective date of the increase is at least six
27 months after the effective date of the employee's ~~[must have~~

1 ~~elapsed since the employee's~~] last:

2 (A) ~~promotion; [~~ ~~enhanced compensation award~~
3 ~~authorized by the General Appropriations Act, one-time merit~~
4 ~~payment,~~] or

5 (B) ~~merit salary increase for performance in that~~
6 ~~position [at the agency]; [and]~~

7 (3) the agency has complied with Subsection (c);

8 (4) the employee's job performance and productivity in
9 that position are consistently above that normally expected or
10 required; and

11 (5) the effective date of the increase is at least six
12 months after the effective date of the agency's last:

13 (A) payment to the employee of an enhanced
14 compensation award authorized by the General Appropriations Act; or

15 (B) one-time merit payment for performance in
16 that position.

17 (f) A state agency may make a one-time merit payment to a
18 classified employee in relation to the employee's performance in
19 the current classified position held by the employee if:

20 (1) the employee has been employed by the agency in
21 that position for at least six continuous months before the
22 effective date of the payment;

23 (2) the effective date of the payment is at least six
24 months after the effective date of the employee's last:

25 (A) promotion; or

26 (B) merit salary increase for performance in that
27 position;

(3) the agency has complied with Subsection (c);
(4) the employee's job performance and productivity in
that position are consistently above that normally expected or
required; and

(5) the effective date of the payment is at least six months after the effective date of the agency's last:

14 SECTION 24. Subchapter K, Chapter 659, Government Code, is
15 amended by adding Section 659.262 to read as follows:

18 SECTION 25. Section 661.152(d), Government Code, is amended
19 to read as follows:

20 (d) An employee accrues vacation leave and may carry
21 vacation leave forward from one fiscal year to the next in
22 accordance with the following schedule:

1	State Employment of:	Employment	Employee
2	less than 2 years	<u>8</u> [7]	<u>180</u> [168]
3	at least 2 but less than 5 years	<u>9</u> [8]	<u>244</u> [232]
4	at least 5 but less than 10 years	<u>10</u> [9]	<u>268</u> [256]
5	at least 10 but less than 15 years	<u>11</u> [10]	<u>292</u> [280]
6	at least 15 but less than 20 years	<u>13</u> [12]	<u>340</u> [328]
7	at least 20 but less than 25 years	<u>15</u> [14]	<u>388</u> [376]
8	at least 25 but less than 30 years	<u>17</u> [16]	<u>436</u> [424]
9	at least 30 but less than 35 years	<u>19</u> [18]	<u>484</u> [472]
10	at least 35 years or more	<u>21</u> [20]	<u>532</u> [520]

11 SECTION 26. Section 832.002, Government Code, is amended to
 12 read as follows:

13 Sec. 832.002. MEMBERSHIP FEE. (a) Each member of the
 14 retirement system annually shall pay the system a membership fee of
 15 \$10. A contributing member shall pay the fee with the member's
16 first contribution to the retirement system in each fiscal year in
17 the manner provided by Section 835.101 for payment of the member's
18 contribution to the retirement system.

19 (b) If the membership fee is not paid with the member's
20 first contribution of the fiscal year to the retirement system, the
21 board of trustees may deduct the amount of the fee from that
22 contribution or from any benefit to which the member becomes
23 entitled.

24 SECTION 27. Sections 2101.0115(a) and (b), Government Code,
 25 are amended to read as follows:

26 (a) A state agency shall submit an annual report to:

27 (1) the governor;

(2) [the comptroller;
[~~(3)~~] the Legislative Reference Library;
(3) [~~(4)~~] the state auditor; and
(4) [~~(5)~~] the Legislative Budget Board.

9 SECTION 28. Section 2113.205(b), Government Code, is
10 amended to read as follows:

18 SECTION 29. Section 2162.001, Government Code, is amended
19 to read as follows:

20 Sec. 2162.001. DEFINITIONS [DEFINITION]. In this chapter:

26 SECTION 30. Section 2162.102, Government Code, is amended
27 by adding Subsection (d) to read as follows:

1 (d) To the extent the council determines is feasible, a
2 local government may voluntarily participate in a contract awarded
3 by the council or a state agency under this chapter. A local
4 government that purchases a good or a service under a contract
5 awarded under this chapter is considered to have satisfied any
6 state law requiring the local government to follow a competitive
7 purchasing procedure for the purchase.

8 SECTION 31. Section 2166.406, Government Code, as amended
9 by Chapter 573, Acts of the 77th Legislature, Regular Session,
10 2001, is amended to read as follows:

11 Sec. 2166.406. ENERGY SAVINGS PERFORMANCE CONTRACTS [OR
12 ~~WATER CONSERVATION MEASURES~~]. (a) In this section, "energy
13 savings performance contract" means a contract for energy or water
14 conservation measures to reduce energy or water consumption or
15 operating costs of governmental facilities in which the estimated
16 savings in utility costs resulting from the measures is guaranteed
17 to offset the cost of the measures over a specified period. The term
18 [Notwithstanding any other provisions of this chapter, the
19 governing body of a state agency, without the consent of the
20 commission, may enter into a contract for energy conservation
21 measures to reduce energy or water consumption or operating costs
22 of governmental facilities in accordance with this section.]

23 [(b) A contract authorized under this section] includes a
24 contract for the installation of:

25 (1) insulation of a [the] building structure and
26 systems within the building;

27 (2) storm windows or doors, caulking or weather

1 stripping, multiglazed windows or doors, heat absorbing or heat
2 reflective glazed and coated window or door systems, or other
3 window or door system modifications that reduce energy consumption;

4 (3) automatic energy control systems, including
5 computer software and technical data licenses;

6 (4) heating, ventilating, or air-conditioning system
7 modifications or replacements that reduce energy or water
8 consumption;

9 (5) lighting fixtures that increase energy
10 efficiency;

11 (6) energy recovery systems;

12 (7) electric systems improvements;

13 (8) water-conserving fixtures, appliances, and
14 equipment or the substitution of non-water-using fixtures,
15 appliances, and equipment;

16 (9) water-conserving landscape irrigation equipment;

17 (10) landscaping measures that reduce watering
18 demands and capture and hold applied water and rainfall, including:

19 (A) landscape contouring, including the use of
20 berms, swales, and terraces; and

21 (B) the use of soil amendments that increase the
22 water-holding capacity of the soil, including compost;

23 (11) rainwater harvesting equipment and equipment to
24 make use of water collected as part of a storm-water system
25 installed for water quality control;

26 (12) equipment for recycling or reuse of water
27 originating on the premises or from other sources, including

1 treated municipal effluent;

2 (13) equipment needed to capture water from
3 nonconventional, alternate sources, including air conditioning
4 condensate or graywater, for nonpotable uses;

5 (14) metering equipment needed to segregate water use
6 in order to identify water conservation opportunities or verify
7 water savings; or

8 (15) other energy or water conservation-related
9 improvements or equipment including improvements or equipment
10 related to renewable energy or nonconventional water sources or
11 water reuse.

12 (b) Notwithstanding any other provision of this chapter, a
13 state agency, without the consent of the commission, may enter into
14 an energy savings performance contract in accordance with this
15 section.

16 (c) Each ~~All~~ energy or water conservation measure
17 ~~measures~~ must comply with current local, state, and federal
18 construction, plumbing, and environmental codes and regulations.
19 Notwithstanding ~~anything to the contrary in~~ Subsection (a) ~~(b)~~,
20 an energy savings performance ~~a~~ contract may ~~for energy or water~~
21 ~~conservation measures shall~~ not include improvements or equipment
22 that allow or cause water from any condensing, cooling, or
23 industrial process or any system of nonpotable usage over which the
24 public water supply system officials do not have sanitary control
25 to be returned to the potable water supply.

26 (d) A state agency may enter into energy savings performance
27 ~~[The entity with whom the board]~~ contracts only with a person who is

1 [must be] experienced in the design, implementation, and
2 installation of the energy or water conservation measures addressed
3 by the contract.

4 (e) Before entering into an energy savings performance [a]
5 contract [~~for energy or water conservation measures~~], a [~~the~~
6 ~~governing body of the~~] state agency shall require the provider of
7 the energy or water conservation measures to file with the agency
8 [~~governing body~~] a payment and performance bond relating to the
9 installation of the measures in accordance with Chapter 2253. The
10 agency may also require a separate bond to cover the value of the
11 guaranteed savings on the contract [~~that is in an amount the~~
12 ~~governing body finds reasonable and necessary to protect the~~
13 ~~interests of the state agency and that is conditioned on the~~
14 ~~faithful execution of the terms of the contract~~].

15 (f) The state agency may enter into an energy savings
16 performance [a] contract for a period of more than one year only
17 [~~for energy or water conservation measures with an entity~~] if the
18 state agency finds that the amount the state agency would spend on
19 the energy or water conservation measures will not exceed the
20 amount to be saved in energy, water, wastewater, and operating
21 costs over 15 years from the date of installation.

22 (g) An energy savings performance contract [~~Energy or water~~
23 ~~conservation measures~~] with respect to existing buildings or
24 facilities may be financed:

25 (1) under a lease/purchase contract that has a term
26 not to exceed 15 years from the final date of installation and that
27 meets federal tax requirements for tax-free municipal leasing or

1 long-term financing, including a lease/purchase contract under the
2 master equipment lease purchase program administered by the Texas
3 Public Finance Authority under Chapter 1232;

4 (2) with the proceeds of bonds; or

5 (3) under a contract with the provider of the energy or
6 water conservation measures that has a term not to exceed 15 years
7 from the final date of installation.

8 (h) An energy savings performance [A] contract [for energy
9 or water conservation measures] shall contain provisions requiring
10 [pursuant to which] the provider of the energy or water
11 conservation measures to guarantee [guarantees] the amount of the
12 savings to be realized by the state agency under the contract. If
13 the term of the [a] contract [for energy or water conservation
14 measures] exceeds one year, the agency's contractual obligation,
15 including costs of design, engineering, installation, and
16 anticipated debt service, in any one year during the term of the
17 contract beginning after the final date of installation may not
18 exceed the total energy, water, wastewater, and operating cost
19 savings, including [but not limited to] electrical, gas, water,
20 wastewater, or other utility cost savings and operating cost
21 savings resulting from the measures [automatic monitoring and
22 control], as determined by the state agency in this subsection,
23 divided by the number of years in the contract term.

24 (i) An energy savings performance [A] contract shall [under
25 this section may] be let according to the procedures established
26 for procuring certain professional services by Section 2254.004
27 [under competitive sealed proposal procedures]. Notice of the

1 request for qualifications [proposals] shall be given in the manner
2 provided by Section 2156.002 [~~for in Chapter 2156~~]. The State
3 Energy Conservation Office shall establish guidelines and an
4 approval process for awarding energy savings performance contracts
5 [~~awarded under this section~~]. The guidelines adopted under this
6 subsection must require that the cost savings projected by an
7 offeror be reviewed by a licensed professional engineer who is not
8 an officer or employee of an offeror for the contract under review
9 or otherwise associated with the contract. An engineer who reviews
10 a contract shall maintain the confidentiality of any proprietary
11 information the engineer acquires while reviewing the contract. An
12 energy savings performance contract may not be entered into unless
13 the contract has been approved by the State Energy Conservation
14 Office. Sections 1001.053 and 1001.407, Occupations Code, apply
15 [~~Section 19, The Texas Engineering Practice Act (Article 3271a,~~
16 ~~Vernon's Texas Civil Statutes), applies~~] to work performed under
17 the contract. [~~The contract shall be awarded to the responsible~~
18 ~~offeror whose proposal, following negotiations, is determined to be~~
19 ~~the most advantageous to the state agency considering the savings~~
20 ~~and other evaluation factors set forth in the request for proposals~~
21 ~~except that if the state agency finds that no offer is acceptable,~~
22 ~~it shall refuse all offers.~~]

23 (j) [~~In accordance with regulations adopted by the state~~
24 ~~agency, the state agency may conduct discussions with offerors who~~
25 ~~submit proposals and who are determined to be reasonably qualified~~
26 ~~for the award of the contract. Offerors shall be treated fairly and~~
27 ~~equally with respect to any opportunity for discussion and revision~~

1 ~~of proposals.~~

2 ~~[(k) If provided in a request for proposals, proposals shall~~
3 ~~be opened in a manner that avoids disclosure of the contents to~~
4 ~~competing offerors and keeps the proposals secret during~~
5 ~~negotiations. All proposals are open for public inspection after a~~
6 ~~contract is awarded unless the information is excepted from~~
7 ~~disclosure under Chapter 552.~~

8 ~~[(1) To obtain the best final offers, the state agency may~~
9 ~~allow proposal revisions after submissions and before the award of~~
10 ~~a contract for energy or water conservation measures. Final review~~
11 ~~and approval of the contract will be provided by the State Energy~~
12 ~~Conservation Office.~~

13 ~~[(m)] The legislature shall base an agency's appropriation~~
14 ~~for energy, water, and wastewater costs during a fiscal year on the~~
15 ~~sum of:~~

16 (1) the agency's estimated energy, water, and
17 wastewater costs for that fiscal year; and

18 (2) if an energy savings performance ~~[a]~~ contract
19 ~~under this section~~ is in effect, the agency's estimated net
20 savings resulting from the contract during the contract term,
21 divided by the number of years in the contract term.

22 SECTION 32. Section 2251.025(b), Government Code, is
23 amended to read as follows:

24 (b) The rate of interest that ~~[Interest]~~ accrues on an
25 overdue payment ~~is~~ ~~[at]~~ the rate in effect on September 1 of the
26 fiscal year in which the payment becomes overdue. The rate in
27 effect on September 1 is equal to the sum of:

1 (1) one percent; and
2 (2) the prime rate as published in the Wall Street
3 Journal on the first day of July of the preceding fiscal year that
4 does not fall on a Saturday or Sunday [each month].

5 SECTION 33. Section 2252.903(e), Government Code, is
6 amended by adding Subdivision (4) to read as follows:

7 (4) "Written contract" does not include a contract the
8 payments for which must be made through the comptroller's issuance
9 of warrants or initiation of electronic funds transfers under
10 Section 404.046, 404.069, or 2103.003.

11 SECTION 34. Section 2305.012, Government Code, is amended
12 to read as follows:

13 Sec. 2305.012. ADMINISTRATION [STAFF]; ASSISTANCE. (a)
14 The energy office shall [provide staff to] implement and administer
15 this chapter.

16 (b) The energy office or the governor through the energy
17 office may [also] enlist the assistance of a private entity or a
18 state agency, department, commission, or other entity to:

19 (1) evaluate or review a proposal;
20 (2) audit a program participant or a supervising state
21 agency;
22 (3) perform administrative duties under this chapter;
23 or
24 (4) develop eligibility or evaluation criteria.

25 SECTION 35. Section 2305.032(a), Government Code, is
26 amended to read as follows:

27 (a) The energy office under the loanstar revolving loan

1 program may [approve and finance projects that] provide loans to
2 finance energy and water efficiency measures for public facilities
3 [eligible applicants for energy-saving capital improvements].
4 Projects approved by the energy office should benefit:

5 [←1) a state agency or institution of higher
6 education;
7 [←2) a public school;
8 [←3) a political subdivision of the state;
9 [←4) a small to medium-sized business; and
10 [←5) a public or nonprofit hospital or health care
11 facility].

12 SECTION 36. Sections 2305.033(b) and (d), Government Code,
13 are amended to read as follows:

14 (b) In accordance with Part D, Title III [B], Energy Policy
15 and Conservation Act (42 U.S.C. Sec. 6321 et seq.), and its
16 subsequent amendments, the energy office, under the program, shall
17 distribute funds for projects that save measurable quantities of
18 energy.

19 (d) A proposal under Subsection (b) must:

20 (1) promote the conservation of energy; or [and]
21 (2) improve the efficient use of energy through
22 activities that result in quantifiable energy savings, including:

23 (A) energy audits of buildings;
24 (B) technical assistance in reducing energy
25 bills;
26 (C) training to building operators and fiscal
27 officers on various energy issues such as utility bill analysis and

1 energy management techniques; or [and]
2 (D) other technical assistance to programs for
3 which funds are appropriated.

4 SECTION 37. Section 2305.034, Government Code, is amended
5 to read as follows:

6 Sec. 2305.034. STATE AGENCIES PROGRAM. The energy office
7 is the supervising agency for the state agencies program that may
8 distribute funds through Chapter 447. Projects funded under this
9 section may include:

10 (1) energy manager training;
11 (2) energy savings performance contracting services,
12 including:

13 (A) education and training;
14 (B) contract review and approval;
15 (C) third-party contract review;
16 (D) development and dissemination of guidelines;

17 and

18 (E) identification of contract financing sources
19 [~~described by Section 51.927, Education Code~~];

20 (3) energy-efficient design assistance for new
21 facilities, including major renovation;

22 (4) projects for state building design standards
23 compliance;

24 (5) projects to create awareness of model energy codes
25 at the local and state levels;

26 (6) projects to develop and maintain the state's
27 utility database; and

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1 (7) other appropriate energy and information
2 applications.

3 SECTION 38. Section 2305.039(b), Government Code, is
4 amended to read as follows:

5 (b) A project may:

6 (1) assist a service provider in providing services
7 such as:

8 (A) ~~traffic light synchronization;~~

9 [(B) ~~fleet management;~~

10 [←←] computerized transit routing that is
11 energy efficient;

12 (B) commuting solutions

13 [(D) ~~car-care clinics;~~

14 [(E) ~~vanpooling or ridesharing efforts~~] ; and

15 (C) [~~F~~] public education related to mass
16 transit;

17 [(G) ~~driver training in energy conservation~~
18 ~~awareness; and~~

19 [(H) transportation services for the elderly or
20 persons with a disability;] and

21 (2) include studies to improve existing systems and
22 plan for future transportation systems in this state.

23 SECTION 39. Section 2306.783(a), Government Code, as added
24 by Chapter 432, Acts of the 77th Legislature, Regular Session,
25 2001, is amended to read as follows:

26 (a) The Texas Interagency Council for the Homeless is
27 composed of:

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3 (A) the Texas Department of Health;
4 (B) the Texas Department of Human Services;
5 (C) the Texas Department of Mental Health and
6 Mental Retardation;

7 (D) the Texas Department of Criminal Justice;
8 (E) the Texas Department on Aging;
9 (F) the Texas Rehabilitation Commission;
10 (G) the Texas Education Agency;
11 (H) the Texas Commission on Alcohol and Drug
12 Abuse;

13 (I) the Department of Protective and Regulatory
14 Services:

- 15 (J) the Health and Human Services Commission;
- 16 (K) the Texas Workforce Commission;
- 17 (L) the Texas Youth Commission; and
- 18 (M) the Texas Veterans Commission.

19 (2) [one representative from the office of the
20 ~~comptroller appointed by the comptroller.~~

21 [(3)] two representatives from the department, one
22 each from the community affairs division and the housing finance
23 division, appointed by the director; and

24 (3) [4] three members representing service
25 providers to the homeless, one each appointed by the governor, the
26 lieutenant governor, and the speaker of the house of
27 representatives.

1 SECTION 40. Articles 4.51(2) and (13), Insurance Code, are
2 amended to read as follows:

3 (2) "Allocation date" means the date on which the
4 certified investors of a certified capital company are allocated
5 premium tax credits [~~certified capital~~] by the comptroller under
6 this subchapter.

7 (13) "State premium tax liability" means:

8 (A) any liability incurred by any person under
9 Subchapter A of this chapter; or

10 (B) if the tax liability imposed under Subchapter
11 A of this chapter on January 1, 2003 [~~2001~~], is eliminated or
12 reduced, any tax liability imposed on an insurance company or other
13 person that had premium tax liability under Subchapter A of this
14 chapter on that date.

15 SECTION 41. Article 4.52, Insurance Code, is amended to
16 read as follows:

17 Art. 4.52. DUTIES OF COMPTROLLER; RULES; IMPLEMENTATION.

18 The comptroller shall administer this subchapter and shall [~~may~~]
19 adopt rules and forms as necessary to implement this subchapter.

20 The rules must provide that:

21 (1) the comptroller shall begin accepting
22 applications for certification as a certified capital company not
23 later than the 30th day after the date the rules are adopted; and

24 (2) the comptroller shall accept premium tax credit
25 allocation claims on behalf of certified investors on a date not
26 later than the 120th day after the date the rules are adopted.

27 SECTION 42. Article 4.65(a), Insurance Code, is amended to

1 read as follows:

2 (a) A certified investor who makes an investment of
3 certified capital shall in the year of investment earn a vested
4 credit against state premium tax liability equal to 100 percent of
5 the certified investor's investment of certified capital, subject
6 to the limits imposed by this subchapter. Beginning with the tax
7 report due March 1, 2009, for the 2008 tax year, a [A] certified
8 investor may take up to 25 [10] percent of the vested premium tax
9 credit in any taxable year of the certified investor. The credit
10 may not be applied to estimated payments due in 2008.

11 SECTION 43. Article 4.66(a), Insurance Code, is amended to
12 read as follows:

13 (a) A premium tax credit allocation claim must be prepared
14 and executed by a certified investor on a form provided by the
15 comptroller. The certified capital company must file the claim with
16 the comptroller on the date on which the comptroller accepts
17 premium tax credit allocation claims on behalf of certified
18 investors under rules adopted under Article 4.52(2) of this code
19 [not later than February 15, 2002]. The premium tax credit
20 allocation claim form must include an affidavit of the certified
21 investor under which the certified investor becomes legally bound
22 and irrevocably committed to make an investment of certified
23 capital in a certified capital company in the amount allocated even
24 if the amount allocated is less than the amount of the claim,
25 subject only to the receipt of an allocation under Article 4.68 of
26 this code.

27 SECTION 44. Article 4.67(b), Insurance Code, is amended to

1 read as follows:

2 (b) The total amount of certified capital for which premium
3 tax credits may be allowed for all certified investors under this
4 subchapter may not exceed the amount that would entitle all
5 certified investors in certified capital companies to take total
6 credits of \$50 [~~\$20~~] million in a year.

7 SECTION 45. Article 4.68(c), Insurance Code, is amended to
8 read as follows:

9 (c) Not later than the 15th day after the date on which the
10 comptroller accepts premium tax credit allocation claims on behalf
11 of certified investors under rules adopted under Article 4.52(2) of
12 this code [March 1, 2002], the comptroller shall notify each
13 certified capital company of the amount of tax credits allocated to
14 each certified investor. Each certified capital company shall
15 notify each certified investor of their premium tax credit
16 allocation.

17 SECTION 46. Article 4.73(a), Insurance Code, is amended to
18 read as follows:

19 (a) The comptroller shall prepare a biennial report with
20 respect to results of the implementation of this subchapter. The
21 report must include:

22 (1) the number of certified capital companies holding
23 certified capital;

24 (2) the amount of certified capital invested in each
25 certified capital company;

26 (3) the amount of certified capital the certified
27 capital company has invested in qualified businesses as of January

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9 (A) the classification of the qualified
10 businesses according to the industrial sector and the size of the
11 business;

12 (B) the total number of jobs created by the
13 investment and the average wages paid for the jobs; and

14 (C) the total number of jobs retained as a result
15 of the investment and the average wages paid for the jobs; and

16 (7) the certified capital companies that have been
17 decertified or that have failed to renew the certification and the
18 reason for any decertification.

19 SECTION 47. The heading to Chapter 302, Local Government
20 Code, is amended to read as follows:

21 CHAPTER 302. ENERGY SAVINGS PERFORMANCE CONTRACTS [OR WATER
22 CONSERVATION MEASURES] FOR LOCAL GOVERNMENTS

23 SECTION 48. Section 302.001, Local Government Code, is
24 amended to read as follows:

25 Sec. 302.001. DEFINITIONS [DEFINITION]. In this chapter:

26 (1) "Energy savings performance contract" means a
27 contract for energy or water conservation measures to reduce energy

1 or water consumption or operating costs of local government
2 facilities in which the estimated savings in utility costs
3 resulting from the measures is guaranteed to offset the cost of the
4 measures over a specified period. The term includes a contract for
5 the installation or implementation of:

6 (A) insulation of a building structure and
7 systems within the building;

8 (B) storm windows or doors, caulking or weather
9 stripping, multiglazed windows or doors, heat-absorbing or
10 heat-reflective glazed and coated window or door systems, or other
11 window or door system modifications that reduce energy consumption;

12 (C) automatic energy control systems, including
13 computer software and technical data licenses;

14 (D) heating, ventilating, or air-conditioning
15 system modifications or replacements that reduce energy or water
16 consumption;

17 (E) lighting fixtures that increase energy
18 efficiency;

19 (F) energy recovery systems;

20 (G) electric systems improvements;

21 (H) water-conserving fixtures, appliances, and
22 equipment or the substitution of non-water-using fixtures,
23 appliances, and equipment;

24 (I) water-conserving landscape irrigation
25 equipment;

26 (J) landscaping measures that reduce watering
27 demands and capture and hold applied water and rainfall, including:

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(i) landscape contouring, including the use of berms, swales, and terraces; and

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

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

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

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

(N) metering equipment needed to segregate water use in order to identify water conservation opportunities or verify water savings; or

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

(2) "Local [, "local] government" means a county, municipality, or other political subdivision of this state. The term [local government] does not include a school district authorized to enter into an energy savings performance [a] contract [for energy or water conservation measures] under Section 44.901, Education Code.

27 SECTION 49. Section 302.002, Local Government Code, is

1 amended to read as follows:

2 Sec. 302.002. ENERGY SAVINGS PERFORMANCE CONTRACTS [OR
3 ~~WATER CONSERVATION MEASURES~~]. (a) The governing body of a local
4 government may enter into an energy savings performance [a]
5 contract [for energy or water conservation measures to reduce
6 energy or water consumption or operating costs of governmental
7 facilities] in accordance with this chapter.

8 (b) Each [A contract authorized under this chapter includes
9 a contract for the installation or implementation of:

10 [(1) insulation of the building structure and systems
11 within the building;

12 [(2) storm windows or doors, caulking or weather
13 stripping, multiglazed windows or doors, heat-absorbing or
14 heat-reflective glazed and coated window or door systems, or other
15 window or door system modifications that reduce energy consumption;

16 [(3) automatic energy control systems, including
17 computer software and technical data licenses;

18 [(4) heating, ventilating, or air conditioning system
19 modifications or replacements that reduce energy or water
20 consumption;

21 [(5) lighting fixtures that increase energy
22 efficiency;

23 [(6) energy recovery systems;

24 [(7) electric systems improvements;

25 [(8) water-conserving fixtures, appliances, and
26 equipment or the substitution of non-water-using fixtures,
27 appliances, and equipment;

1 [~~(9) water-conserving landscape irrigation equipment,~~
2 [~~(10) landscaping measures that reduce watering~~
3 demands and capture and hold applied water and rainfall, including:

4 [~~(A) landscape contouring, including the use of~~
5 berms, swales, and terraces; and

6 [~~(B) the use of soil amendments that increase the~~
7 water-holding capacity of the soil, including compost;

8 [~~(11) rainwater harvesting equipment and equipment to~~
9 make use of water collected as part of a storm-water system
10 installed for water quality control;

11 [~~(12) equipment for recycling or reuse of water~~
12 originating on the premises or from other sources, including
13 treated municipal effluent;

14 [~~(13) equipment needed to capture water from~~
15 nonconventional, alternate sources, including air conditioning
16 condensate or graywater, for nonpotable uses;

17 [~~(14) metering equipment needed to segregate water use~~
18 in order to identify water conservation opportunities or verify
19 water savings; or

20 [~~(15) other energy or water conservation-related~~
21 improvements or equipment, including improvements or equipment
22 related to renewable energy or nonconventional water sources or
23 water reuse.

24 [(c) ~~All~~ energy or water conservation measure [~~measures~~]
25 must comply with current local, state, and federal construction,
26 plumbing, and environmental codes and regulations.

27 Notwithstanding Section 302.001(1) [~~anything to the contrary in~~

1 ~~Subsection (b)], an energy savings performance [a] contract may~~
2 ~~[for energy or water conservation measures shall]~~ not include
3 improvements or equipment that allow or cause water from any
4 condensing, cooling, or industrial process or any system of
5 nonpotable usage over which public water supply system officials do
6 not have sanitary control to be returned to the potable water
7 supply.

8 SECTION 50. Section 302.003, Local Government Code, as
9 amended by Chapter 1319, Acts of the 77th Legislature, Regular
10 Session, 2001, is amended to read as follows:

11 Sec. 302.003. PAYMENT AND PERFORMANCE BOND.
12 Notwithstanding any other law ~~[to the contrary]~~, before entering
13 into an energy savings performance ~~[a]~~ contract ~~[for energy~~
~~conservation measures]~~, the governing body of the local government
15 shall require the provider of the energy or water conservation
16 measures to file with the governing body a payment and performance
17 bond relating to the installation of the ~~[energy conservation]~~
18 measures in accordance with Chapter 2253, Government Code. The
19 governing body may also require a separate bond to cover the value
20 of the guaranteed savings on the contract.

21 SECTION 51. Section 302.004, Local Government Code, is
22 amended to read as follows:

23 Sec. 302.004. METHOD OF FINANCING; TERMS OF CONTRACT. (a)
24 An energy savings performance contract ~~[Energy or water~~
~~conservation measures with respect to buildings or facilities]~~ may
26 be financed:

27 (1) under a lease-purchase contract that has a term

1 not to exceed 15 years from the final date of installation and that
2 meets federal tax requirements for tax-free municipal leasing or
3 long-term financing;

4 (2) with the proceeds of bonds; or

5 (3) under a contract with the provider of the energy or
6 water conservation measures that has a term not to exceed 15 years
7 from the final date of installation.

8 (b) An energy savings performance [The] contract shall
9 contain provisions requiring [~~pursuant to which~~] the provider of
10 the energy or water conservation measures to guarantee [~~guarantees~~]
11 the amount of the savings to be realized by the local government
12 under the contract. If the term of the [~~a~~] contract [~~for energy or~~
13 ~~water conservation measures~~] exceeds one year, the local
14 government's contractual obligations in any one year during the
15 term of the contract beginning after the final date of installation
16 may not exceed the total energy, water, wastewater, and operating
17 cost savings, including [~~but not limited to~~] electrical, gas,
18 water, wastewater, or other utility cost savings and operating cost
19 savings resulting from the measures as determined by the local
20 government in this subsection, divided by the number of years in the
21 contract term.

22 SECTION 52. Section 302.005, Local Government Code, as
23 amended by Chapters 573 and 1319, Acts of the 77th Legislature,
24 Regular Session, 2001, is reenacted and amended to read as follows:

25 Sec. 302.005. BIDDING PROCEDURES; AWARD OF CONTRACT. (a)
26 An energy savings performance [~~A~~] contract under this chapter may
27 be let in accordance with the procedures established for procuring

1 certain professional services by Section 2254.004, Government
2 Code. Notice of the request for qualifications shall be published
3 in the manner provided for competitive bidding.

4 (b) Before [~~(d) Prior to~~] entering into an energy savings
5 performance [~~a~~] contract [~~under this section~~], the governing body
6 must require that the cost savings projected by an offeror be
7 reviewed by a licensed [~~professional~~] engineer who is not an
8 officer or employee of an offeror for the contract under review or
9 otherwise associated with the contract or the offeror. An engineer
10 who reviews a contract shall maintain the confidentiality of any
11 proprietary information the engineer acquires while reviewing the
12 contract. Sections 1001.053 and 1001.407, Occupations Code, apply
13 [~~Section 19, The Texas Engineering Practice Act (Article 3271a,~~
14 ~~Vernon's Texas Civil Statutes), applies~~] to work performed under
15 the contract.

16 SECTION 53. Section 74.103, Property Code, is amended by
17 adding Subsection (d) to read as follows:

18 (d) The comptroller may determine the liability of a holder
19 required to file a property report under Section 74.101 using the
20 best information available to the comptroller if the records of the
21 holder are unavailable or incomplete for any portion of the
22 required retention period.

23 SECTION 54. Section 74.501, Property Code, is amended by
24 adding Subsections (d) and (e) to read as follows:

25 (d) On receipt of a claim form and all necessary
26 documentation and as may be appropriate under the circumstances,
27 the comptroller may approve the claim of:

- 1 (1) the reported owner of the property;
- 2 (2) if the reported owner died testate:
 - 3 (A) the appropriate legal beneficiaries of the
 - 4 owner as provided by the last will and testament of the owner that
 - 5 has been accepted into probate or filed as a muniment of title; or
 - 6 (B) the executor of the owner's last will and
 - 7 testament who holds current letters testamentary;
- 8 (3) if the reported owner died intestate:
 - 9 (A) the legal heirs of the owner as provided by
 - 10 Section 38, Probate Code; or
 - 11 (B) the court-appointed administrator of the
 - 12 owner's estate;
- 13 (4) the legal heirs of the reported owner as
- 14 established by an affidavit of heirship order signed by a judge of
- 15 the county probate court or by a county judge;
- 16 (5) if the reported owner is a minor child or an adult
- 17 who has been adjudged incompetent by a court of law, the parent or
- 18 legal guardian of the child or adult;
- 19 (6) if the reported owner is a corporation:
 - 20 (A) the president or chair of the board of
 - 21 directors of the corporation, on behalf of the corporation; or
 - 22 (B) any person who has legal authority to act on
 - 23 behalf of the corporation;
- 24 (7) if the reported owner is a corporation that has
- 25 been dissolved or liquidated:
 - 26 (A) the sole surviving shareholder of the
 - 27 corporation, if there is only one surviving shareholder;

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(B) the surviving shareholders of the corporation in proportion to their ownership of the corporation, if there is more than one surviving shareholder;

(C) the corporation's bankruptcy trustee; or

5 (D) the court-ordered receiver for the
6 corporation; or

(8) any other person that is entitled to receive the property under other law or comptroller policy.

15 SECTION 55. Subchapter H, Chapter 74, Property Code, is
16 amended by adding Section 74.7085 to read as follows:

17 Sec. 74.7085. HEARING. (a) If, after an examination of
18 records under Section 74.702, the comptroller determines that a
19 person holds unclaimed property that should have been delivered to
20 the comptroller as provided by this chapter, the person may
21 petition the comptroller for a hearing on that determination and on
22 the imposition of any interest or penalty resulting from that
23 determination.

24 (b) A person must file a petition for a hearing with the
25 comptroller under this section not later than the 30th day after the
26 date the determination is made. If a petition for a hearing is not
27 filed before the expiration of the period provided by this

1 subsection, the determination is final on the expiration of that
2 period.

3 SECTION 56. Section 112.058(a), Tax Code, is amended to
4 read as follows:

5 (a) Payments [Except as provided in Subsections (b) and (c)
6 of this section, payments] made under protest are to be handled as
7 follows:

8 (1) An officer who receives payments made under
9 protest as required by Section 112.051 [of this code] shall each day
10 send to the comptroller the payments, a list of the persons making
11 the payments, and a written statement that the payments were made
12 under protest.

13 (2) The comptroller shall, immediately on receipt,
14 credit the payments to each fund to which the tax or fee paid under
15 protest is allocated by law.

16 (3) The comptroller shall maintain detailed records of
17 payments made under protest.

18 (4) A payment under protest bears pro rata interest.
19 The pro rata interest is the amount of interest earned by the
20 protested funds [that would be due if the amount had been placed in
21 the suspense account of the comptroller].

22 SECTION 57. Section 151.011(a), Tax Code, is amended to
23 read as follows:

24 (a) Except as provided by Subsection (c) of this section,
25 "use" means the exercise of a right or power incidental to the
26 ownership of tangible personal property over tangible personal
27 property, including tangible personal property that has been

1 processed, fabricated, or manufactured into other property or
2 attached to or incorporated into other property transported into
3 this state, and, except as provided by Section 151.056(b) of this
4 code, includes the incorporation of tangible personal property into
5 real estate or into improvements of real estate whether or not the
6 real estate is subsequently sold.

7 SECTION 58. Section 151.027, Tax Code, is amended by
8 amending Subsection (c) and adding Subsections (d) and (e) to read
9 as follows:

10 (c) This section does not prohibit:

11 (1) the examination of information, if authorized by
12 the comptroller, by another state officer or law enforcement
13 officer, by a tax official of another state, by a tax official of
14 the United Mexican States, or by an official of the United States if
15 a reciprocal agreement exists;

16 (2) the delivery to a taxpayer, or a taxpayer's
17 authorized representative, of a copy of a report or other paper
18 filed by the taxpayer under this chapter;

19 (3) the publication of statistics classified to
20 prevent the identification of a particular report or items in a
21 particular report;

22 (4) the use of records, reports, or information
23 secured, derived, or obtained by the attorney general or the
24 comptroller in an action under this chapter against the same
25 taxpayer who furnished the information;

26 (5) the delivery to a successor, receiver, executor,
27 administrator, assignee, or guarantor of a taxpayer of information

1 about items included in the measure and amounts of an unpaid tax or
2 amounts of tax, penalties, and interest required to be collected;

3 (6) the delivery of information to an eligible
4 municipality in accordance with Section 321.3022 or 321.3023; or

5 (7) the release of information in or derived from a
6 record, report, or other instrument required to be furnished under
7 this chapter by a governmental body, as that term is defined in
8 Section 552.003, Government Code.

9 (d) Unless otherwise authorized by law, an officer or
10 employee of an eligible municipality, or an agent acting on behalf
11 of that municipality, who obtains access to information relating to
12 a seller under Section 321.3023 may not:

13 (1) reveal the information or any part of the
14 information, such as a seller's business affairs, operations,
15 profits, losses, or expenditures, to an unauthorized person;

16 (2) permit the information or any abstract or part of
17 the information to be seen or examined by an unauthorized person; or

18 (3) retain the information after the person's service
19 as an officer or employee of the municipality ends or the person's
20 contract with the municipality expires.

21 (e) A person who violates Subsection (d) commits an offense.
22 An offense under this subsection is a Class A misdemeanor.

23 SECTION 59. Section 151.318, Tax Code, is amended by
24 amending Subsections (b) and (s) and adding Subsection (q-1) to
25 read as follows:

26 (b) The exemption includes:

27 (1) chemicals, catalysts, and other materials that are

1 used during a manufacturing, processing, or fabrication operation
2 to produce or induce a chemical or physical change, to remove
3 impurities, or to make the product more marketable; [and]

4 (2) semiconductor fabrication cleanrooms and
5 equipment; and

6 (3) pharmaceutical biotechnology cleanrooms and
7 equipment.

8 (q-1) For purposes of Subsection (b), "pharmaceutical
9 biotechnology cleanrooms and equipment" means all tangible
10 personal property, without regard to whether the property is
11 affixed to or incorporated into realty, used in connection with the
12 manufacturing, processing, or fabrication in a cleanroom
13 environment of a pharmaceutical biotechnology product, without
14 regard to whether the property is actually contained in the
15 cleanroom environment. The term includes integrated systems,
16 fixtures, and piping, all property necessary or adapted to reduce
17 contamination or to control airflow, temperature, humidity,
18 chemical purity, or other environmental conditions or
19 manufacturing tolerances, and production equipment and machinery.
20 The term does not include the building or a permanent, nonremovable
21 component of the building that houses the cleanroom environment.
22 The term includes moveable cleanroom partitions and cleanroom
23 lighting. "Pharmaceutical biotechnology cleanrooms and equipment"
24 are not "intraplant transportation equipment" as that term is used
25 in Subsection (c)(1).

26 (s) The following do not apply to the semiconductor
27 fabrication cleanrooms and equipment in Subsection (q) or the

1 pharmaceutical biotechnology cleanrooms and equipment in
2 Subsection (q-1):

3 (1) limitations in Subsection (a)(2) that refer to
4 tangible personal property directly causing chemical and physical
5 changes to the product being manufactured, processed, or fabricated
6 for ultimate sale;

7 (2) Subsection (c)(1); and
8 (3) Subsection (c)(4).

9 SECTION 60. Section 151.3181, Tax Code, is amended by
10 adding Subsection (h) to read as follows:

11 (h) The use of "pharmaceutical biotechnology cleanrooms and
12 equipment," as that term is defined by Section 151.318(q-1), to
13 manufacture, process, or fabricate a pharmaceutical biotechnology
14 product that is not sold is not a divergent use if the use occurs
15 during the certification process by the United States Food and Drug
16 Administration.

17 SECTION 61. (a) Subchapter L, Chapter 151, Tax Code, is
18 amended by adding Section 151.715 to read as follows:

19 Sec. 151.715. COLLECTION ON EXEMPT ITEMS OR OVERCHARGING.
20 (a) A person is subject to a civil penalty of \$1,000 if the person
21 continues to collect tax on an exempt item or to overcharge tax on a
22 taxable item after receiving two written notices from the
23 comptroller in relation to those actions. The person is subject to
24 the civil penalty regardless of whether the person remits the
25 collected tax to the comptroller.

26 (b) Each violation of Subsection (a) is subject to a
27 separate civil penalty.

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8 SECTION 62. Section 153.119(d), Tax Code, is amended to
9 read as follows:

23 SECTION 63. Section 153.222(d), Tax Code, is amended to
24 read as follows:

25 (d) If the quantity of diesel fuel used in Texas by
26 auxiliary power units or power take-off equipment on any motor
27 vehicle can be accurately measured while the motor vehicle is

1 stationary by any metering or other measuring device or method
2 designed to measure the fuel separately from fuel used to propel the
3 motor vehicle, the comptroller may approve and adopt the use of any
4 device as a basis for determining the quantity of diesel fuel
5 consumed in those operations for tax credit or tax refund. If no
6 separate metering device or other approved measuring method is
7 provided, the following credit or refund procedures are authorized.
8 A permitted supplier, a dyed diesel fuel bonded user, or an
9 agricultural bonded user who operates diesel-powered motor
10 vehicles equipped with a power take-off or a diesel-powered
11 auxiliary power unit mounted on the motor vehicle and using the fuel
12 supply tank of the motor vehicle may be allowed a deduction from the
13 taxable gallons used in this state in each motor vehicle so
14 equipped. The comptroller shall determine the percentage of the
15 deduction. A user who is required to pay the tax on diesel fuel used
16 in motor vehicles so equipped may file a claim for a refund not to
17 exceed the percentage allowed by the comptroller of the total
18 taxable fuel used in this state in each motor vehicle so equipped.
19 The climate-control air conditioning or heating system of a motor
20 vehicle that has a primary purpose of providing for the convenience
21 or comfort of the operator or passengers is not a power take-off
22 system, and a refund may not be allowed for the tax paid on any
23 portion of the diesel fuel that is used for that purpose.

24 SECTION 64. Section 201.057, Tax Code, is amended by
25 amending Subsections (e) and (f) and adding Subsection (k) to read
26 as follows:

27 (e) The operator of a proposed or existing gas well,

1 including a gas well that has not been completed, or the operator of
2 any proposed or existing oil or gas well within a commission
3 approved co-production project, may apply to the commission for
4 certification that the well produces or will produce high-cost gas.
5 Such application, if seeking certification as high-cost gas
6 according to Subsection (a)(2)(A), must be in writing and must be
7 made not later than the first anniversary of ~~[may be made at any~~
8 ~~time after~~] the first day of production. The application may be
9 made but is not required to be made concurrently with a request for
10 a determination that gas produced from the well is high-cost
11 natural gas for purposes of the Natural Gas Policy Act of 1978 (15
12 U.S.C. Section 3301 et seq.) or with a request for commission
13 approval of a co-production project. The commission may require an
14 applicant to provide the commission with any relevant information
15 required to administer this section. For purposes of this section,
16 a determination that gas is high-cost natural gas according to
17 Subsection (a)(2)(A) or a determination that gas is produced from
18 within a commission approved co-production project is a
19 certification that the gas is high-cost gas for purposes of this
20 section, and in that event additional certification is not required
21 to qualify for the exemption or tax reduction provided by this
22 section.

23 (f) To qualify for the exemption or tax reduction provided
24 by this section, the person responsible for paying the tax must
25 apply to the comptroller. The application must contain the
26 certification of the commission that the well produces high-cost
27 gas and, if the application is for a well spudded or completed after

1 September 1, 1995, must contain a report of drilling and completion
2 costs incurred for each well on a form and in the detail as
3 determined by the comptroller. Drilling and completion costs for a
4 recompletion shall only include current and contemporaneous costs
5 associated with the recompletion. Notwithstanding any other
6 provision of this section, to obtain the maximum tax exemption or
7 tax deduction, an application to the comptroller for certification
8 according to Subsection (a)(2)(A) must be filed with the
9 comptroller not later than the first anniversary of the first day of
10 production [at the later of the 180th day after the date of first
11 production or the 45th day after the date of approval by the
12 commission. If the application is not filed by the applicable
13 deadline, the tax exemption or tax deduction is reduced by 10
14 percent for the period beginning on the 180th day after the first
15 day of production and ending on the date on which the application is
16 filed with the comptroller. An application to the comptroller for
17 certification according to Subsection (a)(2)(B) may not be filed
18 before January 1, 1990, or after December 31, 1998]. The
19 comptroller shall approve the application of a person who
20 demonstrates that the gas is eligible for the exemption or tax
21 reduction. The comptroller may require a person applying for the
22 exemption or tax reduction to provide any relevant information in
23 the person's monthly report that the comptroller considers
24 necessary to administer this section. The commission shall notify
25 the comptroller in writing immediately if it determines that an oil
26 or gas well previously certified as producing high-cost gas does
27 not produce high-cost gas or if it takes any action or discovers any

1 information that affects the eligibility of gas for an exemption or
2 tax reduction under this section.

3 (k) A person who, on September 1, 2003, otherwise meets the
4 requirements necessary to file an application with the commission
5 and the comptroller for certification, except for the requirement
6 that the application be made not later than the first anniversary of
7 the first day of production, must submit the application for
8 certification before March 1, 2004, to be eligible for the tax
9 exemption or tax deduction provided by this section. This
10 subsection expires March 1, 2004.

11 SECTION 65. Section 201.101, Tax Code, is amended to read as
12 follows:

13 Sec. 201.101. MARKET VALUE. (a) In this section:

14 (1) "Allowable marketing costs" means direct costs
15 for:

16 (A) compressing the gas sold;
17 (B) dehydrating the gas sold;
18 (C) sweetening the gas sold; and
19 (D) delivering the gas to the purchaser.

20 (2) "Direct costs" means the cost of equipment that
21 physically performs the activity and the direct labor associated
22 with the activity.

23 (b) The market value of gas is its value at the mouth of the
24 well from which it is produced. The value of the gas is computed by
25 taking the producer's gross receipts for the gas and deducting
26 allowable marketing costs incurred by the producer to transport the
27 gas from the outlet of a lease separator to the market.

1 SECTION 66. Section 201.102, Tax Code, is amended to read as
2 follows:

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

11 SECTION 67. Section 313.021(2), Tax Code, is amended to
12 read as follows:

13 (2) "Qualified property" means:

14 (A) land:

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

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

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

24 (iv) on which, in connection with the new
25 building or new improvement described by Subparagraph (ii), the
26 owner of the land proposes to:

27 (a) make a qualified investment in an

1 amount equal to at least the minimum amount required by Section
2 313.023; and

3 (b) create at least 25 new jobs;

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

6 (C) tangible personal property that:

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

9 (ii) except for new equipment described in
10 Section 151.318(q) or (q-1), is first placed in service in the new
11 building or in or on the new improvement described by Paragraph
12 (A)(ii), or on the land on which that new building or new
13 improvement is located, if the personal property is ancillary and
14 necessary to the business conducted in that new building or in or on
15 that new improvement.

16 SECTION 68. Section 321.3022, Tax Code, is amended by
17 amending Subsection (a) and adding Subsection (i) to read as
18 follows:

19 (a) The comptroller on request shall provide to a
20 municipality that has adopted a tax under this chapter and that has
21 a population of not more than 275,000 information relating to the
22 amount of tax paid to the municipality under this chapter during the
23 preceding or current calendar year by each person doing business in
24 the municipality who annually remits to the comptroller state and
25 local sales tax payments of more than \$25,000 [~~\$100,000~~].

26 (i) Notwithstanding Chapter 551, Government Code, the
27 governing body of a municipality is not required to confer with one

1 or more employees or a third party in an open meeting to receive
2 information or question the employees or third party regarding the
3 information received by the municipality under this section.

4 SECTION 69. Section 321.3022(f), Tax Code, is amended to
5 read as follows:

6 (f) Information received by a municipality under this
7 section is confidential, is not open to public inspection, and may
8 be used only for the purpose of economic forecasting, for internal
9 auditing of a tax paid to the municipality under this chapter, or
10 for the purpose described in Subsection (g).

11 SECTION 70. Subchapter D, Chapter 321, Tax Code, is amended
12 by adding Section 321.3023 to read as follows:

13 Sec. 321.3023. INFORMATION ON CERTAIN TAXPAYERS. (a) A
14 municipality that has imposed a tax under this chapter may provide
15 to the comptroller information relating to:

16 (1) a seller that the municipality, in good faith,
17 believes has not collected or reported to the comptroller as
18 required by law revenue from a tax imposed by the municipality under
19 this chapter; or

20 (2) tax revenue that the municipality, in good faith,
21 believes has been paid by a seller but that was not properly
22 reported by the seller as being revenue from a tax imposed by the
23 municipality under this chapter.

24 (b) After investigating the information provided under
25 Subsection (a), the comptroller may provide to the municipality
26 information relating to whether the seller failed to:

27 (1) collect or report to the comptroller as required

1 by law revenue from a tax imposed by the municipality under this
2 chapter and, if so:

3 (A) the name and taxpayer identification number
4 of the seller; and

5 (B) the amount of municipal tax revenue that was
6 not collected or reported; or

7 (2) report collected tax revenue as being revenue from
8 a tax imposed by the municipality under this chapter and, if so:

9 (A) the name and taxpayer identification number
10 of the seller; and

11 (B) the amount of revenue that should have been
12 reported as being revenue from a tax imposed by the municipality
13 under this chapter.

14 (c) The municipality may request, and the comptroller may
15 provide, information described by Subsection (b) for any tax
16 reporting period that ended during the four-year period preceding
17 the date on which the municipality requested the information.

18 (d) Sections 151.027(d) and (e) apply to an officer or
19 employee of the municipality or agent acting on behalf of the
20 municipality who is authorized to examine information provided by
21 the comptroller under this section.

22 (e) To receive information under Subsection (b), the
23 governing body of a municipality requesting the information must
24 certify to the comptroller by resolution:

25 (1) the name of each officer or employee of the
26 municipality or agent acting on behalf of the municipality who will
27 be authorized to examine the information; and

1 (2) that each agent named in the resolution as
2 authorized to examine the information:

3 (A) has a contract with the municipality to
4 perform that service on the date the resolution is adopted;

5 (B) is prohibited under that contract from
6 disclosing any part of the information or any information derived
7 from that information to any person other than a municipal officer
8 or employee named in the resolution as authorized to examine the
9 information;

10 (C) is prohibited under that contract from
11 performing consulting services for a seller, other than another
12 political subdivision, during the term of the contract;

13 (D) has received notice that the information is
14 confidential by law and that Sections 151.027(d) and (e) apply to
15 the agent; and

16 (E) is prohibited under that contract from
17 retaining the information or any information derived from that
18 information after the contract expires.

19 (f) If the comptroller believes that information obtained
20 by a municipality under Subsection (b) has been disclosed to a
21 person not named in the municipality's resolution as authorized to
22 examine the information or has been used for a purpose that does not
23 comply with law, the comptroller may:

24 (1) refuse to provide additional information to the
25 municipality;

26 (2) require the municipality to return information the
27 comptroller previously provided; or

1 (3) place conditions on the eligibility of the
2 municipality to receive information in the future.

3 SECTION 71. Section 256.009, Transportation Code, is
4 amended to read as follows:

5 Sec. 256.009. REPORT TO COMPTROLLER. (a) Not later than
6 January 30 of each year, the county auditor or, if the county does
7 not have a county auditor, the official having the duties of the
8 county auditor shall file a report with the comptroller that
9 includes:

10 (1) an account of how the money allocated to a county
11 under Section 256.002 during the preceding year was spent;

12 (2) a description, including location, of any new
13 roads constructed in whole or in part with the money allocated to a
14 county under Section 256.002 during the preceding year;

15 (3) any other information related to the
16 administration of Sections 256.002 and 256.003 that the comptroller
17 requires; and

18 (4) [stating] the total amount of expenditures for
19 county road and bridge construction, maintenance, rehabilitation,
20 right-of-way acquisition, and utility construction and other
21 appropriate road expenditures of county funds in the preceding
22 county fiscal year that are required by the constitution or other
23 law to be spent on public roads or highways.

24 (b) The report must be in a form prescribed by the
25 comptroller.

26 (c) [b) The comptroller may distribute money under
27 Section 256.002(a) to a county only if the most recent report

1 required by Subsection (a) has been filed.

2 (d) A county official or employee shall provide to the
3 comptroller on request any information necessary to determine the
4 legality of the use of money allocated under Section 256.002.

5 SECTION 72. The following are repealed:

6 (1) Section 44.901, Education Code, as amended by
7 Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001;

8 (2) Section 51.927, Education Code, as amended by
9 Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001;

10 (3) Section 395.103, Finance Code;

11 (4) Subchapters O and P, Chapter 403, Government Code;

12 (5) Section 2166.406, Government Code, as amended by
13 Chapter 1319, Acts of the 77th Legislature, Regular Session, 2001;

14 (6) Section 2305.025, Government Code;

15 (7) Section 2305.073, Government Code;

16 (8) Section 2305.074, Government Code;

17 (9) Section 2305.076, Government Code;

18 (10) Section 2305.032(c), Government Code;

19 (11) Section 2305.033(c), Government Code;

20 (12) Article 4.74, Insurance Code;

21 (13) Section 302.003, Local Government Code, as
22 amended by Chapter 573, Acts of the 77th Legislature, Regular
23 Session, 2001;

24 (14) Sections 112.058(b) and (c), Tax Code;

25 (15) Sections 256.003(b) and (c), Transportation
26 Code; and

27 (16) Sections 1.02(b)-(i), Chapter 753, Acts of the

1 76th Legislature, Regular Session, 1999.

2 SECTION 73. (a) For the fiscal biennium beginning
3 September 1, 2003, the comptroller is appropriated from the general
4 revenue fund the amount needed to return any available cash that was
5 transferred to that fund from a fund outside the state treasury and
6 to maintain the equity of the fund from which the transfer was made,
7 as required by Section 403.092, Government Code, as amended by this
8 Act.

9 (b) The changes in law made by this Act to Sections 54.619,
10 54.622, and 54.624, Education Code, apply to each academic term or
11 semester that begins after the effective date of this Act, other
12 than a term or semester before the 2003 fall semester.

13 (c) The changes in law made by this Act to Section 403.1042,
14 Government Code, do not affect the entitlement of a member serving
15 on the tobacco settlement permanent trust account advisory
16 committee immediately before the effective date of this Act to
17 serve the remainder of the member's current term. As the terms of
18 the members of the tobacco settlement permanent trust account
19 investment advisory committee first expire after the effective date
20 of this Act, the entities authorized to appoint the committee
21 members under Section 403.1042(b), Government Code, as amended by
22 this Act, shall appoint their successors.

23 (d) Section 659.2531, Government Code, as added by this Act,
24 applies only to a transfer that takes effect on or after September
25 1, 2003. A transfer that takes effect before September 1, 2003, is
26 governed by the law in effect on the effective date of the transfer,
27 and the former law is continued in effect for that purpose. In this

1 subsection, "transfer" has the meaning assigned by Section
2 659.2531, Government Code, as added by this Act.

3 (e) The changes in law made by this Act to Section 659.255,
4 Government Code, apply only to a merit salary increase or a one-time
5 merit payment that takes effect or is made on or after September 1,
6 2003. A merit salary increase or a one-time merit payment that
7 takes effect or is made before September 1, 2003, is governed by the
8 law in effect on the date the increase takes effect or the payment
9 is made, and the former law is continued in effect for that purpose.

10 (f) The rate of interest that accrues on a payment that
11 becomes overdue on or after September 1, 2004, is the rate
12 determined under Section 2251.025(b), Government Code, as amended
13 by this Act. The rate of interest that accrues on a payment that
14 becomes overdue before September 1, 2004, is the rate determined
15 under the law in effect before July 1, 2004, and the former law is
16 continued in effect for that purpose.

17 (g) The changes in law made by this Act to Section 2252.903,
18 Government Code, apply only to a written contract that is entered
19 into on or after September 1, 2003. A written contract that is
20 entered into before September 1, 2003, is governed by the law in
21 effect on the date the contract is entered into, and the former law
22 is continued in effect for that purpose.

23 (h) The changes in law made by this Act to Section 74.103,
24 Property Code, apply only to an examination begun on or after
25 September 1, 2003. An examination begun before September 1, 2003,
26 is governed by the law in effect on the date the examination begins,
27 and the former law is continued in effect for that purpose.

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7 SECTION 74. The comptroller shall adopt rules and forms as
8 necessary to implement Subchapter B, Chapter 4, Insurance Code, as
9 amended by this Act, not later than the 90th day after the effective
10 date of this Act.

11 SECTION 75. (a) Except as provided by this section, this
12 Act takes effect immediately if it receives a vote of two-thirds of
13 all the members elected to each house, as provided by Section 39,
14 Article III, Texas Constitution. If this Act does not receive the
15 vote necessary for immediate effect, this Act takes effect
16 September 1, 2003.

17 (b) The amendments by this Act to the following sections
18 take effect September 1, 2003:

22 (2) Section 19(f), Article 42.12, Code of Criminal
23 Procedure;

24 (3) Section 659.253, Government Code;

25 (4) Section 659.255, Government Code;

26 (5) Sections 2101.0115(a) and (b), Government Code;

27 (6) Section 2113.205(b), Government Code;

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11 (c) The amendment by this Act to Section 2251.025(b),
12 Government Code, takes effect July 1, 2004.

13 (d) The repeal by this Act of Section 395.103, Finance Code,
14 and Sections 112.058(b) and (c), Tax Code, takes effect September
15 1, 2003.

16 (e) Sections 659.2531 and 659.262, Government Code, as
17 added by this Act, take effect September 1, 2003.

18 (f) The amendment by this Act to Section 151.011(a), Tax
19 Code, takes effect October 1, 2003.