

TEXAS CAPITAL BANCSHARES INC/TX

Form S-8

February 03, 2006

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**SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**FORM S-8
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

Texas Capital Bancshares, Inc.
(Exact Name of Registrant as Specified in its Charter)

Delaware **75-2679109**
(State or Other Jurisdiction of *(I.R.S. Employer*
Incorporation or Organization) *Identification Number)*

**2100 McKinney Avenue, Suite 900
Dallas, Texas 75201
(214) 932-6600**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

**Texas Capital Bancshares, Inc. 2006 Employee Stock Purchase Plan
Texas Capital Bancshares, Inc. 2005 Long-Term Incentive Plan**
(Full Name of Plans)

**Joseph M. Grant, Chief Executive Officer
2100 McKinney Avenue, Suite 900
Dallas, Texas 75201
(214) 932-6600**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

**Copy to: Fred S. Stovall, Esq.
Patton Boggs LLP
2001 Ross Avenue, Suite 3000
Dallas, Texas 75201
(214) 758-1515**

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)(4)	Proposed Maximum Offering Price per Share (3)	Proposed Maximum Aggregate Offering Price (3)	Amount of Registration Fee (2)(3)
Common Stock, par value \$.01 per share	400,000	\$ 21.835	\$ 8,734,000	\$ 934.54
2006 Employee Stock Purchase Plan	1,500,000(2)	\$ 21.835	\$ 32,752,500	\$ 3,504.52
2005 Long-Term Incentive Plan				

- (1) This
Registration
Statement
covers
(a) 400,000
shares of
common stock
that may be
issued from
time to time
pursuant to the
2006 Employee
Stock Purchase
Plan and
(b) 1,500,000
shares of
common stock
that may be
issued from
time to time
under the 2005
Long-Term
Incentive Plan.

- (2) Pursuant to
Rule 429 under
the Securities
Act, the
prospectuses
relating to this
Registration
Statement also
relate to the
registration
statement on
Form S-8 (File
Number:
333-125514) for
which a
registration fee
of \$3,336.80
was already
paid. The
payment of such
prior
registration fees
have been used
to offset the
registration fees
relating to this
Registration

Statement.

- (3) Solely for the purpose of calculating the registration fee, the offering price per share and the aggregate offering price have been calculated pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, based upon the average of the high and low prices for a share of common stock as reported by the Nasdaq National Market on January 31, 2006.

- (4) Pursuant to Rule 416 under the Securities Act of 1933, as amended, this Registration Statement also covers an indeterminate number of additional shares that may be offered or issued pursuant to the plans as a result of stock splits, stock dividends or similar transactions.

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EXPLANATORY NOTE

This Registration Statement on Form S-8 (this Registration Statement) registers shares of our common stock underlying options to purchase such common stock that may be issued to certain of our employees under our 2006 Employee Stock Purchase Plan (the 2006 Plan), with the first offering period beginning on February 7, 2006, and registers shares of our common stock underlying stock options, stock appreciation rights, restricted stock, restricted stock units, performance awards, dividend equivalent rights and other awards that have been or may be issued to our employees and directors under the 2005 Long-Term Incentive Plan (the 2005 Plan).

The information specified in Part I of Form S-8 is not being filed with the Securities and Exchange Commission (the Commission) as permitted by the Note in Part I of Form S-8. This information will be sent or given to participating employees as specified in Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act). These document(s) and the documents incorporated by reference herein pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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Consent of Ernst & Young LLP

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PART II
INFORMATION REQUIRED IN THE REGISTRATION STATEMENT
INCORPORATION OF DOCUMENTS BY REFERENCE

Our Annual Report on Form 10-K for the fiscal year ended December 31, 2004, our Quarterly Report on Form 10-Q for the quarters ended March 31, June 30, and September 30, 2005, and our Current Reports on Form 8-K dated February 9, 2005, March 25, 2005, April 21, 2005, May 18, 2005, July 21, 2005, August 10, 2005, October 13, 2005, October 20, 2005, January 19, 2006 and February 2, 2006, filed pursuant to Section 13 of the Securities Exchange Act of 1934, as amended (the Exchange Act), are incorporated by reference herein.

All documents we file pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date hereof and prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part hereof.

The description of the our Common Stock is contained in Pre-Effective Amendment No. 2 to our Registration Statement on Form 10 (File No. 000-30533) filed on August 24, 2000.

INTEREST OF NAMED EXPERTS AND COUNSEL

We have retained Patton Boggs LLP on a regular basis to perform legal services for us, including acting as our counsel in connection with the preparation of this Registration Statement. Larry A. Makel, a member of our board of directors, is a partner in the law firm Patton Boggs LLP. As of January 31, 2006, partners of Patton Boggs LLP beneficially owned, in the aggregate, approximately 168,600 shares, or 0.0065% of our issued and outstanding common stock.

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 145 of the Delaware General Corporation Law permits a corporation, under specified circumstances, to indemnify its directors, officers, employees or agents against expenses (including attorneys' fees), judgments, fines and amounts paid in settlements actually and reasonably incurred by them in connection with any action, suit or proceeding brought by third parties by reason of the fact that they were or are directors, officers, employees or agents of the corporation, if such directors, officers, employees or agents acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reason to believe their conduct was unlawful. In a derivative action, i.e., one by or in the right of the corporation, indemnification may be made only for expenses actually and reasonably incurred by directors, officers, employees or agents in connection with the defense or settlement of an action or suit, and only with respect to a matter as to which they shall have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation, except that no indemnification shall be made if such person shall have been adjudged liable to the corporation, unless and only to the extent that the court in which the action or suit was brought shall determine upon application that the defendant directors, officers, employees or agents are fairly and reasonably entitled to indemnity for such expenses despite such adjudication of liability.

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Section 102(b)(7) of the Delaware General Corporation Law provides that a certificate of incorporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director; provided, that such provision shall not eliminate or limit the liability of a director:

for any breach of the director's duty of loyalty to the corporation or its stockholders;

for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

under Section 174 (relating to liability for unauthorized acquisitions or redemptions of, or dividends on, capital stock) of the Delaware General Corporation Law; or

for any transaction from which the director derived an improper personal benefit.

Our certificate of incorporation provides that we shall, to the fullest extent permitted by the Delaware General Corporation Law, indemnify all persons who we may indemnify under Delaware law and contains provisions permitted by Section 102(b)(7) of the Delaware General Corporation Law.

Our certificate of incorporation and bylaws provide that:

we are required to indemnify our directors and officers, subject to very limited exceptions;

we may indemnify other employees and agents, subject to very limited exceptions;

we are required to advance expenses, as incurred, to our directors and officers in connection with a legal proceeding, subject to very limited exceptions; and

we may advance expenses, as incurred, to our employees and agents in connection with a legal proceeding.

We have obtained an insurance policy providing for indemnification of officers and directors and certain other persons against liabilities and expenses incurred by any of them in certain stated proceedings and conditions.

The indemnification provisions in our certificate of incorporation and bylaws may be sufficiently broad to permit indemnification of our directors and officers for liabilities arising under the Securities Act.

We have entered into indemnification agreements with each of our directors and officers, which may be broader than the specific indemnification provisions contained in our certificate of incorporation, bylaws or under Delaware law. These indemnification agreements may require us, among other things, to indemnify our officers and directors against liabilities that may arise by reason of their status or service as directors or officers. These indemnification agreements also may require us to advance any expenses incurred by our directors or officers as a result of any proceeding against them as to which they could be indemnified. As of the date of this filing, there is no pending litigation or proceeding involving any of our directors, officers, employees or agents in which indemnification by us is sought, nor are we aware of any threatened litigation or proceeding that may result in a claim for indemnification. We have purchased a policy of directors' and officers' liability insurance that insures our directors and officers against the cost of defense, settlement or payment of a judgment in certain circumstances.

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EXHIBITS

The following documents are filed as exhibits to this Registration Statement:

Exhibit

Number Exhibit

- 4.1 Form of Common Stock Certificate, which is incorporated by reference to Exhibit 4.1 to the third amendment to our registration statement on Form S-3 dated July 31, 2003
- 4.2 Texas Capital Bancshares, Inc. 2006 Employee Stock Purchase Plan, incorporated by reference to Exhibit 10.1 to our Form 8-K dated February 2, 2006.
- 4.3 Texas Capital Bancshares, Inc. 2005 Long-Term Incentive Plan, which is incorporated by reference to Exhibit A to our definitive proxy statement on Schedule 14A dated April 15, 2005.
- 5.1 Opinion and Consent of Patton Boggs LLP
- 23.1 Consent of Ernst & Young LLP
- 23.2 Consent of Patton Boggs LLP (included in Exhibit 5.1)
- 24.1 Power of Attorney (included on signature page hereto)

UNDERTAKINGS

The registrant hereby undertakes:

(a)(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;
- (ii) To reflect in the prospectus any facts or events arising after the effective date of the Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement.
Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a twenty percent change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement.
- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement;

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provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if the Registration Statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or 15(d) of the Exchange Act that are incorporated by reference to the Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to the directors, officers and controlling persons of the registrant pursuant to the foregoing provision, or otherwise, the registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by final adjudication of such issue.

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Pursuant to the requirements of the Securities Act, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Dallas, Texas on the 3rd day of February 2006.

Texas Capital Bancshares, Inc.

By: /s/ Joseph M. Grant

Joseph M. Grant
Chief Executive Officer

Each person whose signature appears below appoints Joseph M. Grant, Peter B. Bartholow and George F. Jones, Jr., individually, as true and lawful attorneys-in-fact and agents, with full power of substitution to sign any amendments (including post-effective amendments) to this Registration Statement and to each registration statement amended hereby, and to file the same, with all exhibits and other related documents, with the Commission, with full power and authority to perform any necessary or appropriate act in connection with the amendment(s).

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed below by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ Joseph M. Grant	Chairman of the Board of Directors and Chief Executive Officer	February 3, 2006
Joseph M. Grant	(principal executive officer)	
/s/ George F. Jones, Jr.	President and Chief Executive Officer of Texas Capital Bank, N.A. and Director	February 3, 2006
George F. Jones, Jr.		
/s/ Peter B. Bartholow	Chief Financial Officer and Director (principal financial officer)	February 3, 2006
Peter B. Bartholow		
/s/ Julie Anderson	Controller (principal accounting officer)	February 3, 2006
Julie Anderson		
/s/ Leo Corrigan III	Director	February 3, 2006
Leo Corrigan III		
/s/ Frederick B. Hegi, Jr.	Director	February 3, 2006
Frederick B. Hegi, Jr.		
	Director	February 3, 2006
James R. Holland, Jr.		

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Signature	Title	Date
	Director	February 3, 2006
Larry A. Makel /s/ Walter W. McAllister III	Director	February 3, 2006
Walter W. McAllister III	Director	February 3, 2006
Lee Roy Mitchell /s/ Steven Rosenberg	Director	February 3, 2006
Steven Rosenberg /s/ John C. Snyder	Director	February 3, 2006
John C. Snyder	Director	February 3, 2006
Robert W. Stallings	Director	February 3, 2006
Ian J. Turpin		

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