

FORTY-FIFTH DAY

THURSDAY, MARCH 29, 2001

PROCEEDINGS

The Senate met at 10:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini, Mr. President.

Absent-excused: Haywood.

The President announced that a quorum of the Senate was present.

The Reverend Dr. Daniel Rodriguez, La Trinidad United Methodist Church, San Antonio, offered the invocation as follows:

Our God, we have already acknowledged You as we received this new day. As we awakened to this new day we praised Your holy name and thanked You for Your loving care. Now, we affirm You. We affirm Your presence through prayer. Indeed, You are in our midst, for why would we talk to You in such a familiar way if we did not believe in Your presence. You are real and You are here. So, we thank You for prayer itself, this beautiful way through which we are in communion with You. With this assurance we now ask You to guide us through this day.

You said, "Don't put your trust in human beings, you will be like a bush in the desert. . . . But I will bless the persons who put their trust in Me." Today we put our trust in You. The Senate has special need of You this day. You have entrusted the Senate with time, responsibility, and Your divine will. Grant them Your power, that in all, they may glorify Your name. Amen.

On motion of Senator Truan and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

On motion of Senator Shapiro, Senator Haywood was granted leave of absence for today on account of important business.

CO-AUTHOR OF SENATE BILL 485

On motion of Senator West and by unanimous consent, Senator Armbrister will be shown as Co-author of **SB 485**.

CO-AUTHOR OF SENATE BILL 556

On motion of Senator Duncan and by unanimous consent, Senator Van de Putte will be shown as Co-author of **SB 556**.

CO-AUTHOR OF SENATE BILL 812

On motion of Senator Carona and by unanimous consent, Senator Zaffirini will be shown as Co-author of **SB 812**.

CO-AUTHOR OF SENATE BILL 894

On motion of Senator Moncrief and by unanimous consent, Senator Van de Putte will be shown as Co-author of **SB 894**.

CO-AUTHORS OF SENATE BILL 1052

On motion of Senator Shapleigh and by unanimous consent, Senators Bernsen and Harris will be shown as Co-authors of **SB 1052**.

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CO-AUTHORS OF SENATE BILL 1056

On motion of Senator Shapleigh and by unanimous consent, Senators Bernsen and Harris will be shown as Co-authors of **SB 1056**.

CO-AUTHOR OF SENATE BILL 1202

On motion of Senator Zaffirini and by unanimous consent, Senator Barrientos will be shown as Co-author of **SB 1202**.

CO-AUTHOR OF SENATE BILL 1456

On motion of Senator Lucio and by unanimous consent, Senator Madla will be shown as Co-author of **SB 1456**.

CO-AUTHORS OF SENATE BILL 1596

On motion of Senator Bivins and by unanimous consent, Senators Wentworth and West will be shown as Co-authors of **SB 1596**.

CO-AUTHORS OF SENATE JOINT RESOLUTION 35

On motion of Senator Wentworth and by unanimous consent, Senators Armbrister, Bivins, Brown, Carona, Ellis, Duncan, Lindsay, Lucio, Moncrief, Nelson, Ogden, Shapiro, Sibley, and Van de Putte will be shown as Co-authors of **SJR 35**.

PERMISSION TO INTRODUCE BILLS

Senator Wentworth moved to suspend Senate Rule 7.07(b) and Section 5, Article III of the Texas Constitution to permit the introduction of the following bills: **SB 1782, SB 1783**.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Haywood.

SENATE BILLS ON FIRST READING

The following bills were introduced, read first time, and referred to the committees indicated:

SB 1782 by Shapiro, Nelson

Relating to the creation of the Frisco Square Management District; providing the authority to impose a tax and issue bonds.

To Committee on Intergovernmental Relations.

SB 1783 by Sibley

Relating to the regulation of telecommunications services, fees, and programs.

To Committee on Business and Commerce.

SB 1784 by Bernsen

Relating to the creation, administration, powers, duties, operation, and financing of the East Montgomery County Municipal Utility District No. 3. (Local bill)

To Committee on Intergovernmental Relations.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read first time and referred to the committees indicated:

HB 80 to Committee on Jurisprudence.

HB 186 to Committee on Business and Commerce.

HB 461 to Committee on Education.

HB 594 to Committee on Jurisprudence.

HB 899 to Committee on Jurisprudence.

HB 919 to Committee on Jurisprudence.

HB 1452 to Committee on Jurisprudence.

HB 1600 to Committee on Criminal Justice.

HB 1840 to Committee on Finance.

(Senator Ogden in Chair)

SENATE BILL 1569 REREFERRED

Senator West submitted a Motion In Writing requesting that **SB 1569** be withdrawn from the Committee on State Affairs and rereferred to the Committee on Jurisprudence.

The Motion In Writing prevailed without objection.

SENATE BILL 833 REREFERRED

Senator Moncrief submitted a Motion In Writing requesting that **SB 833** be withdrawn from the Committee on Finance and rereferred to the Committee on Health and Human Services.

The Motion In Writing prevailed without objection.

(Senator Sibley in Chair)

SENATE RESOLUTION 459

Senator Ogden offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Director of Department of Public Safety Services of Sam Houston State University, Charles William Tackett, for his exceptional contributions to the field of law enforcement during his illustrious 50-year career with the City of Corpus Christi and Sam Houston State University; and

WHEREAS, In November, 2000, Charlie Tackett's co-workers, friends, family, and staff held a commemoration celebration at Sam Houston State University to mark this auspicious occasion; and

WHEREAS, Beginning his distinguished career with the Corpus Christi Police Division in 1950, Officer Tackett was a patrol officer, was promoted to Head of Vice and Narcotics in 1960, and was promoted to Commander of Police, bypassing the rank of Captain; and

WHEREAS, Commander Tackett was given a year's leave, with pay, to attend Sam Houston State University and there he earned his bachelor of science degree, cum laude, in 1972; in addition, he completed 33 graduate hours in police and public administration; and

WHEREAS, Chief Tackett was offered the position of Director of Sam Houston State University's Public Safety Services Department in 1973; and

WHEREAS, When Charles Tackett first came to the university, the department had no police cars, and all officers walked foot patrols; Chief Tackett has improved the department immeasurably, making it one of the best in the country; and

WHEREAS, Today Chief Tackett commands 12 full-time, state-certified peace officers whose primary jurisdiction is on any land owned or under control of the university; and

WHEREAS, A man of great achievement, Charlie Tackett has been honored by the Texas State University Board of Regents with a resolution marking his 50 years of service, was designated a Rotary Club's Paul Harris Fellow, was voted the division's Employee of the Year for 1996, and he was presented the Sam Houston State University Award recognizing his dedicated service and his commitment to the Criminal Justice Center; and

WHEREAS, Chief Tackett shares his experience, insights, and energy with his community through his involvement in various charitable and civic organizations,

including the Rotary Club of Huntsville, the Kiwanis of Corpus Christi, and the Corpus Christi Jaycees; and

WHEREAS, Charlie and his lovely wife, Betty Tackett, are the proud parents of two daughters; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby commend Chief Charles W. Tackett for his superb service and congratulate him on his outstanding career; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as an expression of highest regard from the Texas Senate.

OGDEN
TRUAN

The resolution was read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Ogden, the resolution was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Ogden, joined by Senator Truan, was recognized and introduced to the Senate Charles W. Tackett, his wife, Betty, former Huntsville City Councilman Andy Martinez and his wife, Ila.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The Presiding Officer, Senator Sibley in Chair, at 10:14 a.m. announced the conclusion of morning call.

(Senator Ogden in Chair)

MOTION TO PLACE COMMITTEE SUBSTITUTE SENATE BILL 272 ON THIRD READING

Senator Carona asked unanimous consent to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

CSSB 272, Relating to interest charges on certain loans.

There was objection.

Senator Carona then moved to suspend the regular order of business and take up **CSSB 272** for consideration at this time.

The motion was lost by the following vote: Yeas 18, Nays 10, Present-not voting 1. (Not receiving two-thirds vote of Members present)

Yeas: Armbrister, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Ogden, Shapiro, Sibley, Wentworth.

Nays: Barrientos, Bernsen, Nelson, Shapleigh, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Present-not voting: Mr. President.

Absent: Gallegos.

Absent-excused: Haywood.

**COMMITTEE SUBSTITUTE
SENATE BILL 159 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 159, Relating to establishing a competitive grant program for projects that are designed to improve the quality of life for residents of a convalescent or nursing home and that could serve as a model of best practices for the convalescent and nursing home industry.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 159** in SECTION 1 of the bill by inserting the following in Section 242.405(c)(2) between "evaluating the proposals" and the semicolon (senate committee printing, page 1, line 34):

" , which must include as a criterion that institutions with a demonstrated need for improvement will receive priority consideration under the grant program".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSSB 159 as amended was passed to engrossment by the following vote: Yeas 26, Nays 1, Present-not voting 1.

Yeas: Armbrister, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Wentworth.

Present-not voting: Mr. President.

Absent: Barrientos, Lindsay.

Absent-excused: Haywood.

**COMMITTEE SUBSTITUTE
SENATE BILL 159 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 159** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson,

Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Wentworth.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTE

Senator Wentworth asked to be recorded as voting "Nay" on the final passage of **CSSB 159**.

(President in Chair)

PHYSICIAN OF THE DAY

Senator Ogden was recognized and presented Dr. Janice Pruessner of Bryan as the Physician of the Day.

The Senate welcomed Dr. Pruessner and thanked her for her participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate: **HCR 229, HCR 216**.

SENATE RESOLUTION 595

Senator Truan offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in paying tribute to the life of Cesar Chavez on the occasion of Cesar Chavez Day on March 31, 2001; and

WHEREAS, Born March 31, 1927, near Yuma, Arizona, Cesar Chavez grew up in a hardworking family of farmers, living first in Arizona and then moving to California to work in the fields; he learned about injustice at an early age and was subject to discrimination throughout much of his childhood; Cesar and his brother attended 37 schools while traveling with their family from farm to farm, and in 1942, Cesar graduated from the eighth grade and became a migrant farm worker; and

WHEREAS, In 1944, at the age of 17, Cesar joined the United States Navy and served his country with distinction for two years; he married Helen Fabela in 1948, and after living for a while in Delano, the couple settled in San Jose, where Cesar worked in apricot orchards and was influenced by Fred Ross, who was head of the Community Service Organization; and

WHEREAS, Cesar quickly became an active leader in the Community Service Organization; he organized voter registration drives in the Mexican American community and formed new chapters of the organization throughout California and Arizona; he helped the organization to become the most effective Latino civil rights group of its time; and

WHEREAS, After serving as the director of the Community Service Organization, he left the group in 1962, moved with his wife and eight children back

to Delano, and founded the National Farm Workers Association with the goal of improving conditions for migrant workers; and

WHEREAS, In 1965, Cesar's association voted to join a strike against the Delano area grape growers; the strike had been initiated by the AFL-CIO's Agricultural Workers Organizing Committee; the two groups united to form the United Farm Workers of America, and under Cesar's able leadership, the organization sustained a five-year strike and boycott that rallied the support of labor unions, churches, students, and minority groups throughout the country; and

WHEREAS, By 1970, the boycott had forced most table grape producers to sign contracts with the United Farm Workers, but in 1973, most growers tried to undermine the power of the organization by signing new contracts, thus sparking the largest farm labor strike in our country's history; and

WHEREAS, The boycott gained momentum and the support of nearly 17 million Americans, and eventually, California agricultural producers were forced to support the state's historic 1975 collective bargaining law that extended labor union protection to farm workers; and

WHEREAS, The California grape growers continued for years to refuse to honor contract agreements until November, 2000, when the boycott against California table grapes was concluded, bringing a successful end to the boycott begun by Cesar Chavez; and

WHEREAS, The United Farm Workers succeeded in making accomplishments of enormous historical significance; it was responsible for establishing the first comprehensive union health benefits for farm workers and their families, the first functioning credit union for farm workers, and the first union contracts requiring rest periods, clean drinking water, and protective clothing against pesticide exposure; and

WHEREAS, Cesar Chavez used nonviolent tactics in pursuit of his causes and gave tirelessly of his time to the plight of farm workers; his efforts gave rise to La Causa and became a vital part of the national quest for Mexican American equality and justice; through incredible perseverance and sacrifices, including his well-known lengthy fasts, Cesar Chavez accomplished his goals and became not only a champion of the farm worker, but also a champion of the civil rights movement in our country; he inspired the farm workers with his motto "*Si Se Puede!*"; and

WHEREAS, Cesar Chavez was the 1991 recipient of the Aguila Azteca Award, the highest award Mexico can bestow on a person of Mexican heritage; after his death in 1993, his widow, Helen Chavez, accepted the Medal of Freedom, America's highest civilian honor, for her late husband at a White House ceremony in 1994; President Bill Clinton lauded Cesar Chavez for having "faced formidable, often violent opposition with dignity and nonviolence"; and

WHEREAS, A true hero whose courage and determination served as an inspiration to millions of people throughout the world, Cesar Chavez left an indelible imprint on our country and on the lives of its citizens, and the schools of America should continue to educate our children about the life of this great man and his many accomplishments; and

WHEREAS, In 1999 the 76th Legislative adopted **SB 107** creating a State Optional Holiday in Texas in memory and to commemorate the life of a great American, Cesar Chavez; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby celebrate the remarkable life of Cesar Chavez and his invaluable contributions to our

country and encourage all Texans to show appreciation for his achievements on Cesar Chavez Day; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of the birthday of Cesar Chavez and as an expression of esteem from the Texas Senate.

The resolution was again read.

On motion of Senator Brown and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

The resolution was previously adopted on Wednesday, March 28, 2001.

GUESTS PRESENTED

Senator Truan was recognized and introduced to the Senate Juanita Cox, Director of United Farm Workers; Mary Helen Salazar, President of the League of United Latin American Citizens; and Mike Zepeda, President of the Labor Council for Latin American Advancement.

The Senate welcomed its guests.

REMARKS ORDERED PRINTED

On motion of Senator Lucio and by unanimous consent, the following remarks regarding **SR 595** were ordered reduced to writing and printed in the *Senate Journal*:

Senator Truan: Thank you very much Mr. President and Members. I am very proud to present to you **SR 595**, commemorating the life of a great American by the name of Cesar Chavez who passed away at a young age, but not until after he had accomplished what had not been accomplished before in this country, and that was organizing the farm workers in this country into a union. Many times we take it for granted that everybody that wants to join his or her professional organization, that they can do so. The people that toiled in the fields, in the vineyards, and provide us our fruits and vegetables were the last of the working people that were able to get organized. Even organized labor had not worked to organize the farm workers because, I assume, they thought it couldn't be done, but it took a young man from Yuma, Arizona, who started working in the fields at a young age, and he found out how difficult it was for him and his family to make a living. He traveled from farm to farm, attended 37 different schools, graduated from the eighth grade, and became a migrant farm worker. At the age of 17, Cesar Chavez joined the United States Navy to serve our country during World War II. He married and started making his family in San Jose, California, near Delano. He quickly became active in an organization called CSO, Community Service Organization. He organized voter registration drives in California and Arizona. CSO became the most effective Latino civil rights group at its time. After serving that organization, he left it in 1962, moved with his wife and eight children to Delano, California, and founded the National Farm Workers Association with the goal of improving conditions for migrant workers. In 1965, Cesar Chavez's association voted to join a strike for those workers involved in the picking of grapes, and that strike was supported by religious organizations, minority groups, labor organizations. It aroused the conscience of this country like it had never been aroused before. Because of his leadership, Cesar Chavez was able to bring the grape growers to the table and eventually signed a contract. Unbelievable. People that had been involved in organizing workers couldn't believe that anybody could organize the people that

picked our vegetables and fruits in the fields, but he was able to convince this country that those people deserve an opportunity in life, like everybody else. They had no minimum wage, no workers' compensation, no health insurance, and in some cases, they didn't even have the necessities that we take for granted of being able to dispose of their waste without offending their families and fellow workers in the process. It was through Cesar Chavez's nonviolent tactics that he was compared to Gandhi. He was never advocating violence as he helped organize farm workers in this country. He was able to win the respect of leaders in the United States and our neighboring country of Mexico. He was the recipient in 1991 of the Aguila Azteca Award, the highest award that Mexico can bestow on a person of Mexican heritage. After his death in 1993, his widow, Helen Chavez, accepted the Medal of Freedom, America's highest civilian honor, for his work. Last session, Members, you supported me in the legislation that I introduced, creating a state optional holiday in Texas in memory of and commemorating the great life of a great American, Cesar Chavez, the first time that we had had a Hispanic, a Mexican American, honored by the Texas Legislature with a state holiday. Today we are going to have recognition for him on the south steps of the Capitol. I invite all of you, regardless of your political party affiliation, your political persuasion, to honor a great American who happened to be one that identified with the people that had been forgotten in this country, the farm workers. That rally will start as soon as we get through with our session. I ask you to join with me, Members, in supporting this resolution in memory of a great American, Cesar Chavez.

Senator Lucio: Dean Truan, let me commend and congratulate you on behalf of all the migrant families and students that I represent, that you and I represent, and Senator Zaffirini down in the Rio Grande Valley. We represent over or close to 50 percent of migrant families and students in the State of Texas. But as has been discussed, there are so many migrant families and students throughout the State of Texas. Dean, no one, and you are absolutely correct, no one in our country has done more or did more for migrant families and migrant students than did Cesar Chavez. I have family in San Jose, California, so it's special to me, as well, that he settled and he raised a family there. When we discuss our drop-out programs, unfortunately, we talk about our migrant students. Right, Dean? When we talk about trying to move and establish a uniform school start date later in August, we talk about addressing the concerns that we have about migrant students and their families having to come back early, losing their wages, in order that their children can get back to school, which is their number one priority. I think that Cesar Chavez, without a doubt, felt like President Bush feels today that no child should be left behind, especially in our public schools. Cesar Chavez also had a dream, Dean, that all migrant families be treated with dignity and respect and that they should not be subjected to anything that was demeaning or anything less than other working people of our country would have the right to in their work place as well. You have been a champion in this cause and I commend you on **SR 595**. I rise to join with you and others on this floor that have a deep respect and admiration for the life of Cesar Chavez. Thank you.

Senator Barrientos: Senator Truan, how many of the Senators here on the floor today do you think have been migrant workers in their lives?

Senator Truan: I would say there is at least one that I am aware of and he happens to be the Senator from Travis.

Senator Barrientos: Senator Truan, it is altogether fitting that today you come forth with this resolution. You see, too many Americans believe that grapes automatically

wind up in the little package at H-E-B or Albertson's or whatever store. Senator, who picks the spinach and the lettuce?

Senator Truan: The same people.

Senator Barrientos: Who picks the tomatoes and the cucumbers?

Senator Truan: The same farm workers.

Senator Barrientos: The melons, the grapes, the green beans, the potatoes, the strawberries, the cherries, the peaches, the apples, the oranges?

Senator Truan: The same people.

Senator Barrientos: They don't automatically, Senator, wind up on the shelves out of some kind of magic. Do not human beings with their hands, over 8 or 10 or 12 hours a day, pick those for us to eat? Do they not, Senator?

Senator Truan: That's correct, Senator.

Senator Barrientos: Are these the best-paid people in our country?

Senator Truan: The least paid, and I will never forget, Senator, my first trip, would you believe, to the State Capitol, was with the farm workers who wanted a \$1.25 minimum wage. Looking back it seems so ridiculous, but at that time it was a big wage that they were asking for.

Senator Barrientos: Senator, you are to be commended. Let us not forget who does the work and who feeds us. Thank you.

(Senator Armbrister in Chair)

GUESTS PRESENTED

Senator Moncrief, joined by Senator Harris, was recognized and introduced to the Senate students from Tarrant County Junior College and Weatherford College, accompanied by their professors.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate her sister, Josie Pappas, and her sister's friends, Victor Salazar and Elvia Gonzales.

The Senate welcomed its guests.

COMMITTEE SUBSTITUTE SENATE BILL 940 ON SECOND READING

Senator Bivins asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

CSSB 940, Relating to the establishment of the Joint Admission Medical Program to assist certain economically disadvantaged students in preparing for and succeeding in medical school.

There was objection.

Senator Bivins then moved to suspend the regular order of business and take up **CSSB 940** for consideration at this time.

The motion prevailed by the following vote: Yeas 27, Nays 2, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Ogden, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Nelson, Shapiro.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read second time.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 940** (Senate committee printing) as follows:

(1) On page 1, line 54, in proposed Section 51.822(3), Education Code, between "school" and the period, insert ", subject to the conditions under Section 51.827 and under other provisions of this subchapter".

(2) On page 3, line 16, in proposed Section 51.826(5)(C), Education Code, strike "criteria" and substitute "matter".

(3) On page 3, line 27, in proposed Section 51.827(a)(1)(B), Education Code, strike "and".

(4) On page 3, between lines 31 and 32, in proposed Section 51.827(a)(1), Education Code, insert the following:

(D) any other matter the council considers appropriate;

(5) On page 3, line 40, in proposed Section 51.827(a)(2), Education Code, strike the period and substitute "; and".

(6) On page 3, between lines 40 and 41, in proposed Section 51.827(a)(2), Education Code, insert the following:

(3) exhibit intelligence, integrity, and personal and emotional characteristics that are considered necessary for the student to become an effective physician.

The amendment was read and was adopted by a viva voce vote.

Senator Bivins offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 940** (Senate committee printing) as follows:

(1) On page 2, line 65, in proposed Section 51.826, Education Code, between "PROGRAM." and "To", insert "(a)".

(2) On page 3, strike lines 2 and 3 (proposed Section 51.826(2), Education Code) and substitute the following:

(2) be a Texas resident for purposes of tuition under Subchapter B, Chapter 54;

(3) On page 3, between lines 17 and 18, at the end of proposed Section 51.826, Education Code, insert the following:

(b) For purposes of Subsection (a)(2), a student is not a Texas resident as described by that subdivision solely because the student is eligible to pay tuition at the resident tuition rate.

The amendment was read and was adopted by a viva voce vote.

(President in Chair)

Senator Sibley offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 940** (Senate committee printing) as follows:

(1) On page 1, line 23, in proposed Section 51.821 insert the following, and renumber subsequent subsections accordingly:

(3) "Private or independent institution of higher education" means an institution as defined by Section 61.003(15) that grants baccalaureate degrees and offers a program in premedical education.

(2) On page 2, line 30, in proposed Section 51.824(a)(9), Education Code, between "institution" and "as", insert "or private or independent institution of higher education".

(3) On page 2, strike lines 33 through 39 (proposed Section 51.824(b), Education Code) and substitute the following:

(b) From each general academic teaching institution, the council annually shall select for admission to the program at least two eligible undergraduate students who are enrolled as freshmen at that institution. The council shall allocate 10 percent of the total program openings on a rotation basis to private or independent institutions of higher education. The council shall allocate the remaining program openings to general academic teaching institutions in proportion to the average size of each institution's entering freshman class during the four-year period preceding the allocation.

(4) On page 2, line 68, in proposed Section 51.826(1), Education Code, between "institution" and "not", insert "or a private or independent institution of higher education".

(5) On page 3, line 6, in proposed Section 51.826(3), Education Code, between "institution" and the semi-colon (;), insert "or a private or independent institution of higher education".

(6) On page 3, line 9, in proposed Section 51.826(4), Education Code, between "institution" and the semi-colon (;), insert "or a private or independent institution of higher education".

(7) On page 3, line 26, in proposed Section 51.827(a)(1)(A), Education Code, between "institution" and the semi-colon (;), insert "or the private or independent institution of higher education".

(8) On page 4, line 15, in proposed Section 51.829(a)(5), Education Code, between "institutions" and "as", insert "or private or independent institutions of higher education".

(9) On page 4, line 19, in proposed Section 51.829(a)(6), Education Code, between "institutions" and "as", insert "or private or independent institutions of higher education".

(10) On page 4, after the proposed Section 51.830, Education Code, insert a new Section 51.831 to read as follows, and renumber subsequent sections accordingly:

Sec. 51.831. COUNCIL AGREEMENT WITH PRIVATE OR INDEPENDENT INSTITUTION OF HIGHER EDUCATION. Each private or independent institution of higher education must enter into an agreement with the council under which the institution agrees to:

(1) provide academic counseling to a participating student enrolled at that institution;

(2) as soon as practicable, implement or expand appropriate degree programs as necessary to provide participating students with sufficient preparation for enrollment in participating medical schools;

(3) select a faculty director to assist in implementing the program at the institution and in implementing or expanding the institution's degree programs as necessary under Subdivision (2); and

(4) provide a scholarship to a participating student in the amount required for a participating student attending a general academic teaching institution, but not to exceed the amount of tuition and fees that the student is charged.

(11) On page 5, line 9 of proposed Section 51.833(3), Education Code, between "institution" and "or" insert a comma (,) and the following words "a private or independent institution of higher education".

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Bivins and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSSB 940 as amended was passed to engrossment by a viva voce vote.

RECORD OF VOTES

Senators Nelson and Shapiro asked to be recorded as voting "Nay" on the passage of **CSSB 940** to engrossment.

COMMITTEE SUBSTITUTE SENATE BILL 940 ON THIRD READING

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 940** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 3, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Ogden, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Nelson, Shapiro, Wentworth.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 2, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Ogden, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Nelson, Shapiro.

Present-not voting: Mr. President.

Absent-excused: Haywood.

GUESTS PRESENTED

The President introduced to the Senate seventh-grade students from Christian Heritage School in Longview, accompanied by their teachers and parents.

The Senate welcomed its guests.

SENATE RESOLUTION 580

Senator Shapiro offered the following resolution:

WHEREAS, David M. Laney, chairman of the board and president of the law firm Jenkins and Gilchrist, was appointed by Governor George W. Bush to the Texas Transportation Commission in April, 1995, designating him its chairman and Commissioner of Transportation; and

WHEREAS, As Commissioner of Transportation, Mr. Laney championed efforts to increase the Texas share of federal transportation dollars, working with the Texas congressional delegation and the Coalition for a Surface Transportation Equity Program for the 21st Century (the STEP 21 Coalition) to guarantee that every state receive a fairer return on its contributions to the Highway Trust Fund; and

WHEREAS, In addition to a 40 percent increase in federal highway funding, the Transportation Equity Act for the 21st Century (TEA 21), through the efforts of the STEP 21 Coalition, crafted "real world" funding formulas and guarantees states a return of at least 90.5 cents for each dollar paid into the Highway Trust Fund, giving Texas an increase of more than \$700 million annually in federal highway funds; and

WHEREAS, With David Laney at its helm, the Texas Transportation Commission has begun development of Interstate 69, our country's next great north-south trade corridor, almost half of which is in Texas; and

WHEREAS, David Laney has supported increased federal funding for the nation's general aviation and reliever airports, which Congress provided in the historic Wendall H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21); and

WHEREAS, David Laney has been a strong and consistent advocate for our state's small urban and rural transit systems, the most extensive in the nation, working closely with the Texas congressional delegation to provide much-needed federal funding necessary to enable these systems to replace vehicles that have served well beyond their expected life; and

WHEREAS, Recognizing that highways on the United States-Mexico border in Texas are already strained by the demands from international trade and that large increases in that demand are expected, David Laney led the commission to create a \$1.8 billion initiative to increase funding for highways in the area; and

WHEREAS, David Laney encouraged the Texas Department of Transportation to investigate and develop more flexible financing tools to better respond to our state's exploding transportation needs; and

WHEREAS, David Laney worked with the Texas Legislature to create the Texas Department of Transportation's Texas Turnpike Authority Division, bringing with it toll-funding options for the state's major transportation projects; and

WHEREAS, David Laney strongly supported and encouraged the recent successful effort by the Turnpike Division to obtain an \$800 million loan under the federal Transportation Infrastructure Finance and Innovation Act for the Central Texas Turnpike Project; and

WHEREAS, David Laney led efforts in the Texas Legislature to establish the Texas State Infrastructure Bank, as authorized by the National Highway System Designation Act of 1995, and that bank has helped Texas communities to accelerate important transportation improvements; and

WHEREAS, Throughout his tenure on the Texas Transportation Commission, David Laney recognized that the roads and bridges that make up the Texas Highway System are also works of public art, championing an initiative to raise awareness of bridge aesthetics throughout the department while maintaining the good fiscal stewardship for which TXDOT has long been known; and

WHEREAS, The foresight and initiative David Laney demonstrated in negotiating the purchase of the South Orient Railroad has protected and preserved a valuable rail corridor into Mexico, rail service to West Texas, and an economic asset to future generations of Texans; and

WHEREAS, Both as Commissioner of Transportation and as a member of the Texas Transportation Commission, David Laney has demonstrated strong, confident, and visionary leadership, always looking both above and beyond highways and well into the future; and

WHEREAS, David M. Laney stepped down as Commissioner of Transportation in April, 2000, and has completed his term as a member of the commission; and

WHEREAS, Texas can better respond to the demands of growing regional and international trade because of David Laney's leadership; and

WHEREAS, In addition to the nation's premier transportation system, David Laney's legacy includes a transportation agency with an expanded menu of financial and operational tools to maintain and improve the safety and effectiveness of the transportation system with greater environmental sensitivity; and

WHEREAS, The people of Texas and the nation will miss David Laney's dedication to transportation and his strong leadership on the commission; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby express appreciation to David M. Laney for a job well done and wish him even greater success in his future endeavors; and, be it further

RESOLVED, That a copy of this Resolution be prepared for Mr. Laney as an expression of highest esteem from the Texas Senate.

The resolution was read.

On motion of Senator Truan and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Shapiro, the resolution was adopted by a viva voce vote.

GUEST PRESENTED

Senator Shapiro was recognized and introduced to the Senate David M. Laney.

The Senate welcomed Mr. Laney.

REMARKS ORDERED PRINTED

On motion of Senator Truan and by unanimous consent, the following remarks regarding **SR 580** were ordered reduced to writing and printed in the *Senate Journal*:

Senator Shapiro: Thank you Mr. President and Members. David Laney is obviously no stranger to the Texas Senate. Mr. Laney is the Chairman of the Board and President of the law firm of Jenkins & Gilchrist and was appointed by Governor Bush, not only as the Chairman, but also Commissioner of the Transportation Commission in 1995. As Commissioner of Transportation, David Laney has, among his many great accomplishments, increased the Texas share of transportation dollars from the federal government. He began, and I hope we will continue, as we all know, the development of Interstate 69, our country's next great north-south trade corridor, half of which is located within the confines of the State of Texas. He directed transportation dollars to areas throughout the State of Texas where it was needed the most. His steady hand has been at the wheel for the past six years and he will be sorely missed on this commission. But his tremendous contributions have greatly improved the State of Texas. I will tell you that it's because of his visionary leadership and the fine work that he's done with the Texas Department of Transportation that I believe we will be the beneficiaries in this state for many, many years to come. We appreciate what you've done, David Laney. We appreciate your service to the State of Texas and we wish you well in your next endeavors. It is with a great deal of honor that we honor you here today and tell you, not only from us, but from all Texans, job well done, David Laney, and thank you.

Senator Bernsen: Mr. President and Members. I want to stand and concur in what Senator Shapiro has said. It was my distinct honor and privilege to serve with David Laney on the Commission for the Texas Department of Transportation. It was through his vision and his energy that led our great state in many different areas, the I-69 corridor, the I-35 corridor, with funding along the border, and in other parts of Texas. I want to concur and agree and compliment Senator Shapiro for making those comments. I also want to thank David Laney and his family, because I know that he spent many hours away from his family, to the benefit of the citizens of Texas, to the Department of Transportation. I like to believe that we have the best transportation system in the country, if not the free world, and a lot of it has to do with what David Laney did on behalf of Texas, and the legacy that he leaves for all of us. I concur in that and thank you for service to the state. Thank you.

Senator Moncrief: Mr. President, I rise to support the resolution, also to speak glowing words on behalf of Mr. Laney, he does an outstanding job of being a public servant. He understands that that is a sacrifice, but at the same time I think he has kept the big picture in focus and I certainly wish him the very best.

Senator Duncan: Thank you Mr. President and Members. I also want to congratulate David Laney. The folks in rural Texas, and especially rural West Texas, have been well served by his leadership at the Texas Department of Transportation. I know he was instrumental in helping us on the port-to-plains issue, which is an issue that was a significant hurdle for us to deal with in West Texas, and I really appreciate the leadership he gave us on that. Thank you, David.

Mr. President: Chairman Laney, the people of Texas owe you a great debt. Thank you for your service.

MESSAGE FROM THE HOUSE**HOUSE CHAMBER**

Austin, Texas

March 29, 2001

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 2, Recognizing February 6-7, 2001, as El Paso Days at the State Capitol.

HCR 3, In memory of Dr. Arvel R. Ponton, Jr.

HCR 4, Honoring John R. Foster on the occasion of his retirement.

HCR 6, In memory of E. W. "Buddy" Anguish, Jr., of Midland.

HCR 13, Honoring the 80th anniversary of the National Association of Retired Federal Employees and declaring February 19-23, 2000, National Association of Retired Federal Employees Week in the State of Texas.

HCR 14, Congratulating Christopher Smith on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 15, Congratulating Joe Scott on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 16, Congratulating Connie Griffin on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 17, Congratulating Brian S. Hussey on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 18, Congratulating Janet Moyer on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 19, Congratulating Iris Betancourt on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 20, Congratulating Willie Cormier on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 21, Congratulating Diana Worie on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 22, Congratulating Valorie Jones on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 23, Congratulating Margareth Santos on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 24, Congratulating James Bell on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 25, Congratulating Mildred Davis on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 26, Congratulating Tony Thomas on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 27, Congratulating Bryan Carter on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 28, Congratulating Michael Banta on being named a Fort Worth Independent School District Outstanding Teacher.

HCR 32, Honoring all those associated with the Atlas Intercontinental Ballistic Missile (ICBM) program for their contributions to the safety of their fellow citizens.

HCR 35, In memory of Jason Wesley Morgan.

HCR 37, In memory of John G. Prude.

HCR 44, Honoring Jonathan Galindo, Hervey Rey, and Fernando Rey for their heroic actions.

HCR 101, In memory of Bert Corona of Los Angeles.

HCR 129, Paying tribute to the late Bobby Fuller of El Paso for his musical accomplishments.

HCR 130, In memory of Esperanza Acosta Moreno of El Paso.

HCR 131, In memory of Tom Lea of El Paso.

HCR 219, In memory of Charles N. Prothro of Wichita Falls.

Respectfully,

/s/Sharon Carter, Chief Clerk
House of Representatives

PERSONAL PRIVILEGE STATEMENTS

Senator Duncan and Senator Sibley were recognized and addressed the Senate on matters of personal privilege.

SENATE RESOLUTION 602

Senator Sibley offered the following resolution:

WHEREAS, This year is indeed a special time in the North Texas city of Glen Rose, as it marks the 75th anniversary of the city's founding, and it is most fitting to recognize the rich history and the many significant contributions of this picturesque community at this time; and

WHEREAS, Founded in 1926, Glen Rose was originally called Rose Glen because the shores of its winding Paluxy River were flanked by wild roses and lush ferns; blessed with abundant natural beauty, the area features spring-fed pools that have long been reported to contain healing minerals, spurring the town's main source of income today, tourism; and

WHEREAS, The discovery of several dinosaur footprints in the Paluxy riverbed led to the establishment of the city's Dinosaur Valley State Park, a place that allows visitors the opportunity to experience this rare piece of history, while preserving it in a controlled environment; recognized by the Texas House of Representatives as the Dinosaur Capital of Texas in 1997, Glen Rose welcomes more than a million visitors each year to its dinosaur park and other outdoor and cultural attractions; and

WHEREAS, A facility that has contributed greatly to the economy of the Glen Rose area is the Comanche Peak Steam Electric Station, a nuclear power plant located just north of the city limits; this facility invites guests on guided tours of the power plant site, and offers a truly memorable and educational experience; and

WHEREAS, Residents of this lovely city are also proud to host the acclaimed Fossil Rim Wildlife Center, 2,700 acres of unspoiled countryside that is home to some of the world's most endangered animals, including the white rhino, cheetah, and Grevy's zebra; and

WHEREAS, A city of approximately 2,500 residents, Glen Rose has a small-town charm coupled with innumerable opportunities for adventure, making it a wonderful place to visit as well as live, work, and raise a family; its unique offerings and warm-hearted citizens are truly an asset to the state, and it is a privilege to honor this city on this most memorable occasion; now, therefore, be it

RESOLVED, That the Senate of the 77th Texas Legislature hereby congratulate the citizens of Glen Rose as they celebrate the 75th anniversary of the founding of their city and extend to them sincere best wishes for a wonderful year; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the city of Glen Rose as an expression of high regard by the Texas Senate.

The resolution was read and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Sibley was recognized and introduced to the Senate Somervell County Judge Walter Maynard, Glen Rose Mayor Connie Kirk, Glen Rose Sheriff Roger Hill, Glen Rose Independent School District Superintendent Ed Zachary, and Somervell County Commissioner Helen Kerwin, accompanied by a delegation of citizens from the City of Glen Rose.

The Senate welcomed its guests.

SENATE RESOLUTION 601

Senator Staples offered the following resolution:

WHEREAS, Many proud citizens of Jacksonville are visiting the Capitol on March 29, 2001, to celebrate the rich heritage and attractive qualities of this East Texas community; and

WHEREAS, Located in northwest Cherokee County, Jacksonville dates from 1847 and was known originally as Gum Creek, after its initial location on a nearby stream; a townsite was surveyed in 1850 and the name was changed to Jacksonville in honor of two early settlers; in 1872, most of the town relocated two miles east to a new site on the International-Great Northern Railroad; and

WHEREAS, Jacksonville became a shipping point for area farmers, who helped put Cherokee County on the map as a peach producer at the turn of the 20th century;

subsequently, county farmers excelled at tomato production, and in the 1930s and 1940s Jacksonville boasted the title "Tomato Capital of the World," fame commemorated every June by the city's Tomato Fest; today, timber and cattle are the chief agricultural products, while manufacturing and tourism also contribute significantly to the economy; and

WHEREAS, Local attractions include a museum of Cherokee County history housed in the Jacksonville Public Library and shopping for bargains at several factory-direct stores; surrounded by hilly, luxuriant terrain, this city of some 13,800 residents also makes a convenient base for touring the area's scenic country roads and for taking in the many recreational opportunities at lakes Jacksonville, Palestine, and Striker; and

WHEREAS, In addition to serving as the commercial and industrial center of Cherokee County and as a popular tourist destination, Jacksonville claims several institutions of higher learning: Jacksonville College, Lon Morris College, and the Baptist Missionary Association Theological Seminary; and

WHEREAS, For 150 years, Jacksonville residents have been building a productive, forward-looking community, one that offers the charm and friendliness of a small town together with the quality public services of a modern city, and it is altogether fitting that Jacksonville and its residents be honored at this time; now, therefore, be it

RESOLVED, That the Senate of the 77th Texas Legislature hereby recognize March 29, 2001, as Jacksonville Day at the State Capitol and extend to the delegation here today sincere best wishes for an enjoyable and memorable visit.

The resolution was read and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Staples was recognized and introduced to the Senate a delegation of citizens from the City of Jacksonville.

The Senate welcomed its guests.

SENATE RESOLUTION 587

Senator Barrientos offered the following resolution:

WHEREAS, The Senate of the State of Texas takes great pleasure in recognizing Casis Elementary School of Austin as it celebrates the auspicious occasion of its 50th anniversary on March 30, 2001; and

WHEREAS, Since its doors were opened on January 29, 1951, with 650 students, Casis has been considered an excellent elementary school; the original teaching staff was composed of 36 university-trained teachers; and

WHEREAS, Originally a 20-room school, Casis was a joint undertaking of The University of Texas and the Austin public schools; for years it served as a demonstration and research center for the university; and

WHEREAS, "Celebrating Excellence Through the Decades" is the theme for this noteworthy occasion, and today Casis Elementary maintains this excellence; Casis has been given an Exemplary rating by the Texas Education Agency for the last several years; it is also the only school in the Austin Independent School District and one of only 57 schools in Texas to be designated a Mentor School; and

WHEREAS, As a project to mark the 50th anniversary of this outstanding elementary school, a Path of Excellence walkway will be located on the front lawn of the school; several categories of giving will be available for honoring special persons or events in the form of permanent brick pavers; and

WHEREAS, By working with other schools and sharing experiences and knowledge, Casis has assumed a leadership role in Texas education, assisting as a model for schools seeking improvement; and

WHEREAS, Still upholding its proud traditions, Casis Elementary School received the Governor's Education Excellence Program Award in 1990; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby honor Casis Elementary School on the observance of its 50th anniversary; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the school as an expression of the highest regard of the Texas Senate.

The resolution was again read.

The resolution was previously adopted on Wednesday, March 28, 2001.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate students from Casis Elementary School in Austin, accompanied by their teachers.

The Senate welcomed its guests.

COMMITTEE SUBSTITUTE

SENATE JOINT RESOLUTION 10 ON SECOND READING

Senator Lucio asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

CSSJR 10, Proposing a constitutional amendment authorizing the legislature to provide for the issuance of bonds for improvements to the state highway system.

There was objection.

Senator Lucio then moved to suspend the regular order of business and take up **CSSJR 10** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 6, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Lucio, Madla, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Bernsen, Cain, Jackson, Lindsay, Moncrief, Nelson.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The resolution was read second time.

Senator Lucio offered the following amendment to the resolution:

Floor Amendment No. 1

Amend **CSSJR 10** at the end of SECTION 1 of the resolution, by inserting:

(c) Before each issuance of bonds authorized by this section, the Texas Transportation Commission or its successor shall determine the 10-year historic average expenditure ratio of non-federal aid projects to federal aid projects and certify to the governor and legislative budget board or its successor, in a form prescribed by the governor and legislative budget board or its successor, that the ratio will not be reduced as a result of the proposed issuance.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the resolution as amended.

CSSJR 10 as amended was passed to engrossment by the following vote: Yeas 22, Nays 7, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carona, Duncan, Ellis, Gallegos, Harris, Lucio, Madla, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Bernsen, Cain, Fraser, Jackson, Lindsay, Moncrief, Nelson.

Present-not voting: Mr. President.

Absent-excused: Haywood.

**COMMITTEE SUBSTITUTE
SENATE JOINT RESOLUTION 10 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSJR 10** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 3, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Lindsay, Lucio, Madla, Moncrief, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Jackson, Nelson, Wentworth.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The resolution was read third time and was passed by the following vote: Yeas 22, Nays 7, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carona, Duncan, Ellis, Gallegos, Harris, Lucio, Madla, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Bernsen, Cain, Fraser, Jackson, Lindsay, Moncrief, Nelson.

Present-not voting: Mr. President.

Absent-excused: Haywood.

**COMMITTEE SUBSTITUTE
SENATE BILL 241 ON SECOND READING**

Senator Lucio asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

CSSB 241, Relating to the financing and construction of highways.

There was objection.

Senator Lucio then moved to suspend the regular order of business and take up **CSSB 241** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 6, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bivins, Brown, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Lucio, Madla, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Bernsen, Cain, Jackson, Lindsay, Moncrief, Nelson.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 241** at the end of SECTION 1 of the bill, by inserting:

(j) Before each issuance of bonds authorized by this section, the commission shall determine the 10-year historic average expenditure ratio of non-federal aid projects to federal aid projects and certify to the governor and legislative budget board, in a form prescribed by the governor and legislative budget board, that the ratio will not be reduced as a result of the proposed issuance.

The amendment was read and was adopted by a viva voce vote.

On motion of Senator Lucio and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSSB 241 as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 241 ON THIRD READING**

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 241** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 4, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Lindsay, Lucio, Madla, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Jackson, Moncrief, Nelson, Wentworth.

Present-not voting: Mr. President.

Absent: Bernsen.

Absent-excused: Haywood.

The bill was read third time and was passed by a viva voce vote.

RECORD OF VOTES

Senators Bernsen, Cain, Fraser, Jackson, Lindsay, Moncrief, and Nelson asked to be recorded as voting "Nay" on the final passage of **CSSB 241**.

COMMITTEE SUBSTITUTE SENATE BILL 314 ON SECOND READING

On motion of Senator Sibley and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

CSSB 314, Relating to the continuation and functions of the Texas Department of Banking and the regulation of certain financial institutions and businesses; providing an administrative penalty.

The bill was read second time and was passed to engrossment by a viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 314 ON THIRD READING

Senator Sibley moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 314** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Wentworth.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 1596 ON SECOND READING

Senator Bivins moved to suspend the regular order of business to take up for consideration at this time:

SB 1596, Relating to the establishment and operation of the Toward EXcellence, Access, & Success (TEXAS) grant II program.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read second time and was passed to engrossment by a viva voce vote.

SENATE BILL 1596 ON THIRD READING

Senator Bivins moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1596** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogen, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Wentworth.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Haywood.

**COMMITTEE SUBSTITUTE
SENATE BILL 302 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration at this time:

CSSB 302, Relating to the continuation of the State Pension Review Board and to functions performed by the board.

The motion prevailed by the following vote: Yeas 29, Nays 0, Present-not voting 1.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read second time and was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 302 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 302** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Wentworth.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read third time and was passed by a viva voce vote.

SENATE RESOLUTION 599

Senator Shapiro offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the citizens of the City of Allen, who are visiting the Capitol; and

WHEREAS, Situated in Collin County in Northeast Texas, the City of Allen is home to over 30,000 residents; the new economy is rapidly changing the local culture in Allen, transforming it into one of the world's high-tech centers; and

WHEREAS, Optical networking company Metro-Optix, which will be jointly headquartered in Allen and in Silicon Valley, recently opened its new 92,000-square-foot, state-of-the-art facility in Allen; one of many telecommunications and technology companies to relocate to North Texas, Metro-Optix will complement the town's existing infrastructure and culture; and

WHEREAS, Trammell Crow Company and Bradford Companies are currently planning the construction of buildings for technology and research; these and other development projects will provide Allen with millions of square feet for technology research and office space; and

WHEREAS, In addition to economic opportunity, Allen offers its residents all the amenities of a city on the cutting edge of technology, including a state-of-the-art hospital; city planners are working to establish entertainment and retail centers, an 18-hole championship golf course, and a luxury hotel with meeting facilities; and

WHEREAS, Citizens of Allen have much to be proud of, for their community boasts industrious, civic-minded residents, a healthy economy, and many magnificent opportunities; the future could not be brighter for this great Texas city; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 77th Legislature, hereby recognize the City of Allen and thank the city's leaders and planners for the magnificent work they have done to bolster their community's reputation as a major technology center; and, be it further

RESOLVED, That a copy of this Resolution be prepared for residents of Allen as an expression of high regard from the Texas Senate.

The resolution was read and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Shapiro was recognized and introduced to the Senate Steve Terrell, Mayor of Allen, and Peter Vargas, City Manager of Allen.

The Senate welcomed its guests.

SENATE BILL 939 ON SECOND READING

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

SB 939, Relating to certain studies of the Texas Strategic Military Planning Commission.

The bill was read second time.

Senator Shapleigh offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **SB 939**, in Subsection (a), SECTION 1 (page 1, line 7) after the words "attract new military" by striking "installations" and substituting "missions".

The committee amendment was read and was adopted by a viva voce vote.

On motion of Senator Shapleigh and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

SB 939 as amended was passed to engrossment by a viva voce vote.

SENATE BILL 939 ON THIRD READING

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 939** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1, Present-not voting 1.

Yeas: Armbrister, Barrientos, Bernsen, Bivins, Brown, Cain, Carona, Duncan, Ellis, Fraser, Gallegos, Harris, Jackson, Lindsay, Lucio, Madla, Moncrief, Nelson, Ogden, Shapiro, Shapleigh, Sibley, Staples, Truan, Van de Putte, West, Whitmire, Zaffirini.

Nays: Wentworth.

Present-not voting: Mr. President.

Absent-excused: Haywood.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 962 RECOMMITTED

On motion of Senator Moncrief and by unanimous consent, **SB 962** was recommitted to the Committee on Health and Human Services.

SENATE RULE 11.18 SUSPENDED
(Posting Rule)

On motion of Senator Brown and by unanimous consent, Senate Rule 11.18 was suspended in order that the Committee on Natural Resources might consider **SB 398** today.

CONFERENCE COMMITTEE REPORT ON
SENATE BILL 3

Senator Duncan submitted the following Conference Committee Report:

Austin, Texas
March 28, 2001

Honorable Bill Ratliff
President of the Senate

Honorable James E. "Pete" Laney
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 3** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

DUNCAN

HINOJOSA

BROWN

DUNNAM

ELLIS

DUTTON

WEST

KEEL

WENTWORTH

TALTON

On the part of the Senate

On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to establishing procedures for the preservation of evidence containing DNA and postconviction DNA testing.

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

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.39 to read as follows:

Art. 38.39. PRESERVATION OF EVIDENCE CONTAINING BIOLOGICAL MATERIAL. (a) In a criminal case in which a defendant is convicted, the attorney representing the state, a clerk, or any other officer in possession of evidence described by Subsection (b) shall ensure the preservation of the evidence.

(b) This article applies to evidence that:

(1) was in the possession of the state during the prosecution of the case; and
(2) at the time of conviction was known to contain biological material that if subjected to scientific testing would more likely than not:

(A) establish the identity of the person committing the offense; or

(B) exclude a person from the group of persons who could have committed the offense.

(c) Except as provided by Subsection (d), material required to be preserved under this article must be preserved:

(1) until the inmate is executed, dies, or is released on parole, if the defendant was convicted of a capital felony; or

(2) until the defendant dies, completes the defendant's sentence, or is released on parole or mandatory supervision, if the defendant is sentenced to a term of confinement or imprisonment.

(d) The attorney representing the state, clerk, or other officer in possession of evidence described by Subsection (b) may destroy the evidence, but only if the attorney, clerk, or officer by mail notifies the defendant, the last attorney of record for the defendant, and the convicting court of the decision to destroy the evidence and a written objection is not received by the attorney, clerk, or officer from the defendant, attorney of record, or court before the 91st day after the later of the following dates:

(1) the date on which the attorney representing the state, clerk, or other officer receives proof that the defendant received notice of the planned destruction of evidence; or

(2) the date on which notice of the planned destruction of evidence is mailed to the last attorney of record for the defendant.

(e) To the extent of any conflict, this article controls over Article 2.21.

SECTION 2. Part 1, Code of Criminal Procedure, is amended by adding Chapter 64 to read as follows:

CHAPTER 64. MOTION FOR FORENSIC DNA TESTING

Art. 64.01. MOTION. (a) A convicted person may submit to the convicting court a motion for forensic DNA testing of evidence containing biological material. The motion must be accompanied by an affidavit, sworn to by the convicted person, containing statements of fact in support of the motion.

(b) The motion may request forensic DNA testing only of evidence described by Subsection (a) that was secured in relation to the offense that is the basis of the challenged conviction and was in the possession of the state during the trial of the offense, but:

(1) was not previously subjected to DNA testing:

(A) because DNA testing was:

(i) not available; or

(ii) available, but not technologically capable of providing probative results; or

(B) through no fault of the convicted person, for reasons that are of a nature such that the interests of justice require DNA testing; or

(2) although previously subjected to DNA testing, can be subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test.

(c) A convicted person is entitled to counsel during a proceeding under this chapter. If a convicted person informs the convicting court that the person wishes to submit a motion under this chapter, and if the court determines that the person is indigent, the court shall appoint counsel for the person. Compensation of counsel is provided in the same manner as is required by:

(1) Article 11.071 for the representation of a petitioner convicted of a capital felony; and

(2) Chapter 26 for the representation in a habeas corpus hearing of an indigent defendant convicted of a felony other than a capital felony.

Art. 64.02. NOTICE TO STATE; RESPONSE. On receipt of the motion, the convicting court shall:

(1) provide the attorney representing the state with a copy of the motion; and

(2) require the attorney representing the state to:

(A) deliver the evidence to the court, along with a description of the condition of the evidence; or

(B) explain in writing to the court why the state cannot deliver the evidence to the court.

Art. 64.03. REQUIREMENTS; TESTING. (a) A convicting court may order forensic DNA testing under this chapter only if:

(1) the court finds that:

(A) the evidence:

(i) still exists and is in a condition making DNA testing possible; and

(ii) has been subjected to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect; and

(B) identity was or is an issue in the case; and

(2) the convicted person establishes by a preponderance of the evidence that:

(A) a reasonable probability exists that the person would not have been prosecuted or convicted if exculpatory results had been obtained through DNA testing; and

(B) the request for the proposed DNA testing is not made to unreasonably delay the execution of sentence or administration of justice.

(b) A convicted person who pleaded guilty or nolo contendere in the case may submit a motion under this chapter, and the convicting court is prohibited from finding that identity was not an issue in the case solely on the basis of that plea.

(c) If the convicting court finds in the affirmative the issues listed in Subsection (a)(1) and the convicted person meets the requirements of Subsection (a)(2), the court shall order that the requested forensic DNA testing be conducted. The court may order the test to be conducted by the Department of Public Safety, by a laboratory operating under a contract with the department, or, on agreement of the parties, by another laboratory.

(d) If the convicting court orders that the forensic DNA testing be conducted by a laboratory other than a Department of Public Safety laboratory or a laboratory under contract with the department, the State of Texas is not liable for the cost of testing. If the court orders that the testing be conducted by a laboratory described by this subsection, the court shall include in the order requirements that:

(1) the DNA testing be conducted under reasonable conditions designed to protect the integrity of the evidence and the testing process;

(2) the DNA testing employ a scientific method sufficiently reliable and relevant to be admissible under Rule 702, Texas Rules of Evidence; and

(3) on completion of the DNA testing, the results of the testing and all data related to the testing required for an evaluation of the test results be immediately filed with the court and copies of the results and data be served on the convicted person and the attorney representing the state.

(e) The convicting court, not later than the 30th day after the conclusion of a proceeding under this chapter, shall forward the results to the Department of Public Safety.

Art. 64.04. FINDING. After examining the results of testing under Article 64.03, the convicting court shall hold a hearing and make a finding as to whether the results are favorable to the convicted person. For the purposes of this article, results are favorable if, had the results been available before or during the trial of the offense, it is reasonably probable that the person would not have been prosecuted or convicted.

Art. 64.05. APPEALS. An appeal of a finding under Article 64.03 or 64.04 is to a court of appeals, except that if the convicted person was convicted in a capital case, the appeal of the finding is a direct appeal to the court of criminal appeals.

SECTION 3. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.47 to read as follows:

Art. 17.47. POSTTRIAL ACTIONS. A convicting court on entering a finding favorable to a convicted person under Article 64.04, after a hearing at which the attorney representing the state and the counsel for the defendant are entitled to appear, may release the convicted person on bail under this chapter pending the conclusion of court proceedings or proceedings under Section 11, Article IV, Texas Constitution, and Article 48.01.

SECTION 4. Subsection (g), Section 411.142, Government Code, is amended to read as follows:

- (g) The DNA database may contain DNA records for the following:
- (1) a person described by Section 411.148 or 411.150;
 - (2) a biological specimen of a deceased victim of a crime;
 - (3) a biological specimen that is legally obtained in the investigation of a crime, regardless of origin;
 - (4) results of testing ordered under Article 64.03, Code of Criminal Procedure;
 - (5) an unidentified missing person, or unidentified skeletal remains or body parts;
 - (6) [~~5~~] a close biological relative of a person who has been reported missing to a law enforcement agency;
 - (7) [~~6~~] a person at risk of becoming lost, such as a child or a person declared by a court to be mentally incapacitated, if the record is required by court order or a parent, conservator, or guardian of the person consents to the record; or
 - (8) [~~7~~] an unidentified person, if the record does not contain personal identifying information.

SECTION 5. (a) If a person filed an application for a postconviction writ of habeas corpus that was denied or dismissed before September 1, 2001, and if the results of forensic testing conducted under Article 64.03, Code of Criminal Procedure, as added by this Act, are favorable to the person, a claim based on actual innocence that is asserted in a subsequent application is, for the purposes of Subsection (a), Section 4, Article 11.07, Code of Criminal Procedure, and Subsection (a), Section 5, Article 11.071, Code of Criminal Procedure, a claim the legal basis for which was unavailable on the date the applicant filed the previous application.

(b) An applicant whose application for a writ of habeas corpus is pending on September 1, 2001, on submitting a motion under Chapter 64, Code of Criminal Procedure, as added by this Act, is entitled to a stay of the proceeding pending a determination by the convicting court as to whether to order DNA testing and, on

receiving favorable results, to amend the petition. The court of criminal appeals shall adopt rules to provide for a stay of proceedings and the filing of amendments as authorized by this subsection.

(c) The Texas Department of Criminal Justice shall provide notice of the provisions of this Act to all persons housed in facilities operated by or under contract with the department. In providing notice under this section, the Texas Department of Criminal Justice shall:

(1) include notice of the provisions of this Act in a newspaper or similar publication published for persons housed in facilities operated by or under contract with the department;

(2) post notice of the provisions of this Act in each law library maintained by the department or under contract with the department in a facility in which persons are housed; and

(3) ensure that adequate notice is provided to persons who are not housed in the general population of inmates.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2001.

The Conference Committee Report was filed with the Secretary of the Senate.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

SR 597 by Wentworth, In memory of David Malcolm Smith of San Angelo.

Welcome and Congratulatory Resolutions

SR 598 by Wentworth, Congratulating Susan and Jon Snare on the birth of their son, Jonathan Lee Snare, Jr.

SR 600 by Zaffirini, Congratulating Miriam Reizner Norton of Laredo.

SR 603 by Shapleigh, Congratulating Maria Calixtro of El Paso.

SR 605 by Barrientos, Welcoming the German exchange students visiting Bowie High School in Austin.

SR 607 by Whitmire, Congratulating Naomi Wolfe.

SR 608 by Whitmire, Congratulating Duane "Buddy" Baker.

Legislative Policy Resolution

SR 606 by Madla, Requesting the Lieutenant Governor to appoint a Senate interim study committee to examine the need for establishing a commission on Native American affairs.

ADJOURNMENT

On motion of Senator Truan, the Senate at 12:25 p.m. adjourned, in memory of Hector Garza of San Antonio and in memory of the life of Cesar Chavez, until 10:00 a.m. Monday, April 2, 2001.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Senate:

March 29, 2001

NATURAL RESOURCES — CSSB 1561

JURISPRUDENCE — CSSB 1223, CSSB 1210

BUSINESS AND COMMERCE — SB 1318, SB 770, SB 544, SB 1637, CSSB 192, CSSB 393, CSSB 1143, CSSB 1391, CSSB 195, CSSB 1127, CSSB 1659, CSSCR 12, SCR 7, SCR 8

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — SB 1449

EDUCATION — CSSB 1205, SB 975, SB 924, SB 1498, SB 1766, SB 460, SB 26, CSSB 743

HEALTH AND HUMAN SERVICES — CSSB 962