

NINTH DAY

FRIDAY, MAY 12, 2006

PROCEEDINGS

The Senate met at 3:50 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Brimer, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hinojosa, Jackson, Janek, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, Whitmire, Williams, Zaffirini.

Absent-excused: Carona, Fraser, Lindsay, West.

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

Senator Craig Estes offered the invocation as follows:

May God be gracious to us and bless us and make His face shine upon us, that Your ways may be known on Earth, Your salvation among all nations. May the peoples praise You, O God; may all the peoples praise You. May the nations be glad and sing for joy, for You rule the peoples justly and guide the nations of the Earth. May the peoples praise You, O God; may all the peoples praise You. Then the land will yield its harvest, and God, our God, will bless us. God will bless us, and all the ends of the Earth will fear Him. May God arise, may His enemies be scattered. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the Eighth Day Continued be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

LEAVES OF ABSENCE

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

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

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

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

CONCLUSION OF MORNING CALL

The President at 3:59 p.m. announced the conclusion of morning call.

**COMMITTEE SUBSTITUTE
HOUSE BILL 5 ON THIRD READING**

Senator Armbrister again moved to suspend the regular order of business to take up for consideration **CSHB 5** at this time on its third reading and final passage:

CSHB 5, Relating to increases in the taxes on cigarettes and other tobacco products.

The motion prevailed by the following vote: Yeas 18, Nays 9.

Yeas: Armbrister, Averitt, Brimer, Deuell, Duncan, Ellis, Estes, Harris, Hinojosa, Janek, Lucio, Madla, Ogden, Seliger, Staples, Van de Putte, Wentworth, Williams.

Nays: Barrientos, Eltife, Gallegos, Jackson, Nelson, Shapiro, Shapleigh, Whitmire, Zaffirini.

Absent-excused: Carona, Fraser, Lindsay, West.

The bill was read third time and was again finally passed by the following vote: Yeas 14, Nays 13.

Yeas: Armbrister, Averitt, Brimer, Duncan, Estes, Harris, Janek, Madla, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Deuell, Ellis, Eltife, Gallegos, Hinojosa, Jackson, Lucio, Nelson, Shapleigh, Van de Putte, Whitmire, Zaffirini.

Absent-excused: Carona, Fraser, Lindsay, West.

**SENATE RULE 12.09(a) SUSPENDED
(Printing and Notice of Conference Committee Reports)**

On motion of Senator Williams, Senate Rule 12.09(a) was suspended as it relates to the Conference Committee Report on **HB 2** by the following vote: Yeas 19, Nays 8.

Yeas: Armbrister, Averitt, Brimer, Deuell, Duncan, Eltife, Estes, Harris, Hinojosa, Jackson, Janek, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Lucio, Shapleigh, Van de Putte, Whitmire, Zaffirini.

Absent-excused: Carona, Fraser, Lindsay, West.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 2 ADOPTED**

Senator Williams called from the President's table the Conference Committee Report on **HB 2**. The Conference Committee Report was filed with the Senate on Thursday, May 11, 2006.

On motion of Senator Williams, the Conference Committee Report was adopted by the following vote: Yeas 19, Nays 8.

Yeas: Armbrister, Averitt, Brimer, Deuell, Duncan, Eltife, Estes, Harris, Hinojosa, Jackson, Janek, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Lucio, Shapleigh, Van de Putte, Whitmire, Zaffirini.

Absent-excused: Carona, Fraser, Lindsay, West.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Ogden and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Finance might meet and consider the following bills and resolution today:

SB 2, HB 72, HJR 26.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Janek and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Business and Commerce might meet and consider **HB 163** today.

SENATE RULE 11.13 SUSPENDED
(Consideration of Bills in Committees)

On motion of Senator Whitmire and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate was meeting today.

MOTION TO RECESS

On motion of Senator Whitmire and by unanimous consent, the Senate at 4:47 p.m. agreed to recess, pending receipt of Messages from the House, Committee Reports, and upon completion of the introduction of bills and resolutions on first reading, until 7:00 p.m. today.

AT EASE

The President at 4:47 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

Senator Ellis at 5:15 p.m. called the Senate to order as In Legislative Session.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 12, 2006

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:

HB 97, Relating to prohibiting certain disruptions at a funeral service; creating an offense.

HB 149, Relating to a clean coal project.

HCR 41, Honoring Nancy Schunke of Lubbock ISD on her receipt of the 2005 Presidential Award for Excellence in Mathematics and Science Teaching.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

HOUSE BILLS ON FIRST READING

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

HB 97 to Committee on Criminal Justice.

HB 149 to Committee on Finance.

RECESS

Pursuant to a previously adopted motion, the Senate at 5:16 p.m. recessed until 7:00 p.m. today.

AFTER RECESS

The Senate met at 7:55 p.m. and was called to order by the President.

SENATORS ANNOUNCED PRESENT

Senators Fraser and West, who had previously been recorded as "Absent-excused," were announced "Present."

**SENATE RULES SUSPENDED
(Posting Rules)**

On motion of Senator Whitmire and by unanimous consent, Senate Rule 11.13, Senate Rule 11.10(a), and Senate Rule 11.18(a) were suspended in order that the Committee on Criminal Justice might meet and consider **HB 97** today.

AT EASE

The President at 7:56 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

The President at 8:00 p.m. called the Senate to order as In Legislative Session.

HOUSE CONCURRENT RESOLUTION 48

The President laid before the Senate the following resolution:

WHEREAS, **HB 1** has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

WHEREAS, The bill contains technical and typographical errors that should be corrected; now, therefore, be it

RESOLVED by the 79th Legislature of the State of Texas, That the enrolling clerk of the house of representatives be instructed to correct House Bill No. 1 as follows:

(1) In Section 26.08(n)(2)(B)(ii), Tax Code, as added by Senate Floor Amendment No. 17 by Ogden, strike "the product of the state compression percentage, as determined under Section 42.2516, multiplied by" and substitute "the rate per \$100 of taxable value that is equal to the product of the state compression percentage, as determined under Section 42.2516, Education Code, for the current year and" to clarify a mathematical formula set out in the bill.

(2) In the introductory language to SECTION 4.05 of the senate committee substitute, amending Section 21.402, Education Code, strike "Subsections (a-1), (c-1), and (c-2)" and substitute "Subsections (c-1) and (c-2)" to conform to the deletion of Subsection (a-1) by Senate Floor Amendment No. 8 by Duncan.

(3) In SECTION 4.05 of the senate committee substitute, in amended Section 21.402(a), Education Code, in the first line of Subsection (a), strike "(a-1)," to conform to the deletion of Subsection (a-1) by Senate Floor Amendment No. 8 by Duncan.

(4) In SECTION 4.10 of the senate committee substitute, adding Section 42.2513, Education Code, reletter Subsections (c) and (d) as Subsections (b) and (c), respectively, to conform to the deletion of Subsection (b) by Item (8) of Senate Floor Amendment No. 12 by Zaffirini.

(5) Strike SECTION 4.12 of the senate committee substitute, referring to the applicability of Section 21.402(a-1), Education Code, to conform to the deletion of Subsection (a-1) by Senate Floor Amendment No. 8 by Duncan.

(6) In the section of the bill added by Senate Floor Amendment No. 6 by Shapiro, strike the reference to "Chapters 41 or 42" and substitute "Chapter 41 or 42, Education Code," to clarify the reference.

SHAPIRO

The resolution was read.

On motion of Senator Shapiro and by unanimous consent, **HCR 48** was considered immediately and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution except as follows:

Absent-excused: Carona, Lindsay.

HOUSE BILL 63 ON SECOND READING

On motion of Senator Williams and by unanimous consent, Senate Rule 7.12(a) and the regular order of business were suspended to take up for consideration **HB 63** at this time on its second reading:

HB 63, Relating to appropriations to pay for damages and disruptions suffered by Lamar University and its related institutions caused by Hurricanes Katrina and Rita.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 63** by striking SECTION 3 of the bill and substituting the following:

SECTION 3. PREVENTION OF DOUBLE RECOVERY OR DOUBLE REIMBURSEMENT. (a) The purpose of this section is to prevent double recovery or double reimbursement for the same hurricane-related cost or expenditure.

(b) If the Texas State University System, Lamar University or one of its related institutions, or another state agency, institution, or office receives reimbursement from the federal government for expenditures made for a purpose described by Section 2 of this Act, the amounts received may not be spent without the prior approval of the governor and the Legislative Budget Board. A federal reimbursement described by this subsection shall be deposited in the state treasury and is considered to be undedicated general revenue.

(c) It is the intent of the legislature that the governor and the Legislative Budget Board consider the money described by Subsection (b) of this section to be available for budget execution transfers to the extent that the governor and the Legislative Budget Board determine that the federal reimbursement covers the same costs or expenditures as those covered by the appropriation made by Section 2 of this Act.

The amendment to **HB 63** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 except as follows:

Absent-excused: Carona, Lindsay.

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

HB 63 as amended was passed to third reading by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Carona, Lindsay.

HOUSE BILL 63 ON THIRD READING

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 63** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Carona, Lindsay.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

HOUSE BILL 163 ON SECOND READING

On motion of Senator Williams and by unanimous consent, Senate Rule 7.12(a) and the regular order of business were suspended to take up for consideration **HB 163** at this time on its second reading:

HB 163, Relating to the recovery and securitization of hurricane reconstruction costs incurred by certain electric utilities outside of the Electric Reliability Council of Texas area.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Carona, Lindsay.

HOUSE BILL 163 ON THIRD READING

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 163** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Carona, Lindsay.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

HOUSE BILL 154 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, Senate Rule 7.12(a) and the regular order of business were suspended to take up for consideration **HB 154** at this time on its second reading:

HB 154, Relating to the administration of the Irma Rangel School of Pharmacy.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Carona, Lindsay.

HOUSE BILL 154 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 **HB 154** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Carona, Lindsay.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

HOUSE BILL 97 ON SECOND READING

Senator Duncan moved to suspend Senate Rule 7.12(a), Senate Rule 7.24(a), and the regular order of business to take up for consideration **HB 97** at this time on its second reading:

HB 97, Relating to prohibiting certain disruptions at a funeral service; creating an offense.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Carona, Lindsay.

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

All Members are deemed to have voted "Yea" on the passage to third reading except as follows:

Absent-excused: Carona, Lindsay.

HOUSE BILL 97 ON THIRD READING

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 97** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Carona, Lindsay.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

RECESS

On motion of Senator Whitmire and by unanimous consent, the Senate at 8:32 p.m. recessed until 7:00 p.m. Sunday, May 14, 2006.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

May 12, 2006

CRIMINAL JUSTICE — **SB 14**

BUSINESS AND COMMERCE — **HB 163**

FINANCE — **HB 63, HB 154**

CRIMINAL JUSTICE — **HB 97**

SENT TO GOVERNOR

May 12, 2006

SCR 5, SCR 6

