

# THIRTY-FOURTH DAY

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WEDNESDAY, MARCH 16, 2005

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## PROCEEDINGS

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The Senate met at 11:00 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, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Averitt, Williams.

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

Rabbi Allison Bergman Vann, Temple Beth-El, San Antonio, offered the invocation as follows:

The ancient rabbis once wrote: The day is short, the task is great. Indeed, the day is short and the tasks in front of this assembly are great. We pause for a moment of prayer to gather our thoughts, to focus our energies, as the work of this Senate begins in earnest. God, they are so busy. Help them to be truly present in their many tasks. Grant that they be ever mindful of the influence of their positions, and guide them to good works. Be with these men and women, O God. Shine Your light upon their path, making clearer their vision. Give them guidance to make sound and attentive choices. Offer them courage to stand firm when necessary. Allow them to truly listen to their constituents and colleagues. Temper their words so that they are gentle yet strong, pointed yet insightful. Strengthen them so they will not falter when the tasks grow difficult. Lift them upon Your wings so that they may rise easily to new challenges. God, these men and women represent such diverse constituent groups. Help them to balance their many different needs and demands. Open their ears to the depth of the passions and concerns of the residents of Texas. Grant them wisdom in creating law and policy. Most of all, God, bless these men and women for the work they do. Protect and care for them. May Texas grow ever stronger in the care of their able hands. Amen.

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

The motion prevailed without objection.

### LEAVES OF ABSENCE

On motion of Senator Whitmire, Senator Averitt was granted leave of absence for today on account of an illness in the family.

On motion of Senator Whitmire, Senator Williams was granted leave of absence for today on account of a death in the family.

#### CO-AUTHOR OF SENATE BILL 223

On motion of Senator Ellis, Senator Gallegos will be shown as Co-author of **SB 223**.

#### CO-AUTHOR OF SENATE BILL 226

On motion of Senator Ellis, Senator Shapleigh will be shown as Co-author of **SB 226**.

#### CO-AUTHORS OF SENATE BILL 231

On motion of Senator Ellis, Senators Gallegos and Shapleigh will be shown as Co-authors of **SB 231**.

#### CO-AUTHOR OF SENATE BILL 548

On motion of Senator Ellis, Senator Shapleigh will be shown as Co-author of **SB 548**.

#### CO-AUTHOR OF SENATE BILL 603

On motion of Senator Ellis, Senator Gallegos will be shown as Co-author of **SB 603**.

#### CO-AUTHOR OF SENATE BILL 604

On motion of Senator Ellis, Senator Duncan will be shown as Co-author of **SB 604**.

#### CO-AUTHORS OF SENATE BILL 662

On motion of Senator Ellis, Senators Hinojosa and Shapleigh will be shown as Co-authors of **SB 662**.

#### CO-AUTHORS OF SENATE BILL 871

On motion of Senator Nelson, Senators Deuell and Janek will be shown as Co-authors of **SB 871**.

#### CO-AUTHOR OF SENATE BILL 900

On motion of Senator Eltife, Senator Staples will be shown as Co-author of **SB 900**.

#### CO-AUTHOR OF SENATE BILL 943

On motion of Senator Armbrister, Senator Lucio will be shown as Co-author of **SB 943**.

#### CO-AUTHOR OF SENATE BILL 1016

On motion of Senator Deuell, Senator Lucio will be shown as Co-author of **SB 1016**.

**CO-AUTHOR OF SENATE BILL 1019**

On motion of Senator Ellis, Senator Eltife will be shown as Co-author of **SB 1019**.

**CO-AUTHOR OF SENATE BILL 1025**

On motion of Senator Madla, Senator Van de Putte will be shown as Co-author of **SB 1025**.

**GUESTS PRESENTED**

Senator Van de Putte was recognized and introduced to the Senate a group from Temple Beth-El in San Antonio.

The Senate welcomed its guests.

**PHYSICIAN OF THE DAY**

Senator Nelson was recognized and presented Dr. Robbye Richards of Fort Worth as the Physician of the Day.

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

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

March 16, 2005

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 3**, Relating to property tax relief and protection of taxpayers, taxes and fees, and other matters relating to the financing of public schools; providing civil and criminal penalties.

**HCR 112**, Awarding the Texas Legislative Medal of Honor to Captain Robert Thomas Edlin of Corpus Christi and requesting the governor to confer the award.

**HCR 114**, Commemorating the dedication of the Camp Fannin Association WWII Memorial on the campus of The University of Texas Health Science Center at Tyler.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE RESOLUTION 383**

Senator Jackson offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Sunoco Chemicals employees Terry Champ, Ted Guth, James McMillan, Burl McBride, and Jay Garrett, whose efficient and prompt response to a stricken colleague saved his life; and

WHEREAS, Christmas Day in 2004 will be long remembered by Art Jones; the day began with a rare snowfall in Houston, and later that morning his life was saved by his co-workers at the Sunoco Chemicals plant in La Porte; and

WHEREAS, Art was on duty as an operator when he reported a pain in his side, and minutes later his heart stopped; shift supervisor Terry Champ called local emergency medical services (EMS) and the company's on-site emergency care attendant, Jay Garrett; Ted Guth and James McMillan provided immediate medical assistance to Art as Burl McBride obtained the necessary EMS equipment; and

WHEREAS, Within two minutes, Jay arrived and began cardiac pulmonary resuscitation by applying an automatic external defibrillator; Art's heartbeat returned, and because of the quick response of his co-workers, Art survived and is recovering from his ordeal; and

WHEREAS, Sunoco Chemicals Houston Operations is noted for its ongoing commitment to the safety of its employees, and last year the company instituted an EMS training program that provides 24-hour coverage for employees by emergency care attendants; and

WHEREAS, Sunoco Chemicals can be justifiably proud of its safety training programs and its exemplary employees, who demonstrated their knowledge of safety practices and their expertise in handling a medical emergency; they are truly worthy of legislative recognition; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend Terry Champ, Ted Guth, James McMillan, Burl McBride, and Jay Garrett for saving the life of Art Jones and pay tribute to them for their exemplary actions; and, be it further

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

**SR 383** was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Jackson was recognized and introduced to the Senate Sunoco Chemicals employees Terry Champ, Ted Guth, James McMillan, Burl McBride, and Jay Garrett.

The Senate welcomed its guests.

**GUESTS PRESENTED**

Senator Nelson was recognized and introduced to the Senate Ms. Texas Latina United States Emperatriz "Stephanie" Boren, accompanied by her husband.

The Senate welcomed its guests.

**GUESTS PRESENTED**

Senator Barrientos was recognized and introduced to the Senate exchange students from Munich, Germany, visiting Bowie High School in Austin, accompanied by their teachers and hosts.

The Senate welcomed its guests.

**SENATE CONCURRENT RESOLUTION 12**

The President laid before the Senate the following resolution:

WHEREAS, Texas is well known for its pioneering musical talent, and The Crickets are among those Texas legends who grew to symbolize this brilliant creative spirit; and

WHEREAS, Originally formed in Lubbock by Buddy Holly, J. I. Allison, and Joe B. Mauldin, the group went on to include Sonny Curtis, Niki Sullivan, Tommy Allsup, and Earl Sinks; and

WHEREAS, The Crickets were one of the first rock and roll bands to be self-contained, writing, playing, producing, and recording their own material; and

WHEREAS, Beginning in 1957, hits such as "That'll Be the Day," "Peggy Sue," "Oh Boy," "Not Fade Away," "Maybe Baby," "It's So Easy," "I Fought the Law," and "More Than I Can Say" established The Crickets as a leading rock and roll band that would become known the world over; and

WHEREAS, By solidifying the rock and roll instrumental format of bass, guitars, drums, and vocals, and writing their own material, The Crickets provided a blueprint and inspiration for the Beatles, the Rolling Stones, and virtually every major rock band that came after them; and

WHEREAS, Nearly 50 years later, The Crickets continue to record and perform, and their songs are considered rock and roll standards as evidenced by their release last year of "The Crickets and Their Buddies," an all-star collection of The Crickets playing their songs with such talented musicians and friends as Rodney Crowell, Waylon Jennings, John Prine, Phil and Jason Everly, Eric Clapton, and Nanci Griffith; now, therefore, be it

RESOLVED, That the 79th Legislature of the State of Texas hereby pay tribute to The Crickets for their many contributions to Texas music and recognize March 16, 2005, as The Crickets Day in Texas in their honor; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the members of The Crickets as an expression of high regard by the Texas Senate and House of Representatives.

DUNCAN

**SCR 12** was read.

On motion of Senator Duncan and by unanimous consent, the resolution 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: Averitt, Williams.

### **GUESTS PRESENTED**

Senator Duncan was recognized and introduced to the Senate members of The Crickets: J. I. "Jerry" Allison, Joe B. Mauldin, and Sonny Curtis, accompanied by their friends George Nunes, Geoff Cline, Burt Stein, Casey Monahan, and Nanci Griffith.

The Senate welcomed its guests.

### **HOUSE CONCURRENT RESOLUTION 109**

The President laid before the Senate the following resolution:

**HCR 109**, Granting permission to adjourn for more than three days during the period beginning on Wednesday, March 23, 2005, and ending on Tuesday, March 29, 2005.

HARRIS

The resolution was read.

On motion of Senator Harris and by unanimous consent, the resolution 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: Averitt, Williams.

### **SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The President announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Lindsay.

Senator Lindsay moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

There were no requests offered.

### **NOMINEES CONFIRMED**

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 29, Nays 0.

Absent-excused: Averitt, Williams.

Members, The University of Texas System Board of Regents: John W. Barnhill, Jr., Washington County; Robert B. Rowling, Dallas County.

Members, Angelina and Neches River Authority Board of Directors: Karen E. Barber, Jasper County; Dominick B. "Nick" Bruno, Cherokee County; Kenneth R. Darden, Polk County.

Commissioners, Texas Animal Health Commission: Coleman Hudgins Locke, Wharton County; Ralph Simmons, Shelby County.

Members, Texas Economic Development Corporation Board of Directors: George S. Bayoud, Jr., Dallas County; Sada Cumber, Travis County; Jane F. Juett, Potter County; Macedonio "Massey" Villarreal, Fort Bend County; Robert Vernon Wingo, El Paso County.

Members, State Board for Educator Certification: Bonny L. Cain, Brazoria County; Patti Lynn Johnson, Comal County; Cynthia M. Saenz, Travis County; John Cleveland Shirley, Dallas County; Judie Zinsser, Harris County.

Members, Lavaca-Navidad River Authority Board of Directors: John Alcus Cotten, Jr., Jackson County; Jackie Ann Fowler, Jackson County; Sherry Kay Frels, Jackson County; Ronald Edwin Kubecka, Jackson County.

Members, San Jacinto River Authority Board of Directors: Marisa L. "Mary" Rummell, Montgomery County; John H. "Jack" Stibbs, Jr., Montgomery County.

Members, State Securities Board: Beth Ann Blackwood, Dallas County; Bryan K. Brown, Brazoria County; William R. Smith, Hunt County.

Chair, State Board of Education: Geraldine "Tincy" Miller, Dallas County.

#### **SENATE BILL 964 REREFERRED**

Senator Lucio submitted a Motion In Writing requesting that **SB 964** be withdrawn from the Committee on Natural Resources and rereferred to the Committee on International Relations and Trade.

The Motion In Writing prevailed without objection.

#### **CONCLUSION OF MORNING CALL**

The President at 11:43 a.m. announced the conclusion of morning call.

#### **SENATE BILL 299 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 299** at this time on its second reading:

**SB 299**, Relating to the exception from required public disclosure of the name of an applicant for the position of city manager of certain home-rule municipalities.

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

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

Nays: Eltife.

Absent-excused: Averitt, Williams.

#### **SENATE BILL 450 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 450** at this time on its second reading:

**SB 450**, Relating to the confidentiality of certain personal information regarding the employees of a prosecutor's office.

The bill was read second time.

Senator Wentworth offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **SB 450** in Section 2 of the bill, in Section 552.1175(a)(5), Government Code, between "criminal law" and "matters" (page 2, line 2, introduced version), by inserting "or child protective services".

The committee amendment to **SB 450** was read and was adopted by a viva voce vote.

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

Absent-excused: Averitt, Williams.

Senator Wentworth offered the following committee amendment to the bill:

**Committee Amendment No. 2**

Amend **SB 450** in Section 2 of the bill, in Section 552.1175(a)(5), Government Code, between "county" and "attorney" (page 2, line 1, introduced version), by inserting "or municipal".

The committee amendment to **SB 450** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Committee Amendment No. 2 except as follows:

Absent-excused: Averitt, Williams.

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

**SB 450** as amended was passed to engrossment by a viva voce vote.

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

Absent-excused: Averitt, Williams.

**COMMITTEE SUBSTITUTE  
SENATE BILL 124 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 124** at this time on its second reading:

**CSSB 124**, Relating to a review of the rule concerning the content of individualized education programs for students with autism or other pervasive developmental disorders.

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



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

Absent-excused: Averitt, Williams.

**COMMITTEE SUBSTITUTE  
SENATE BILL 124 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 124** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Wentworth.

Absent-excused: Averitt, Williams.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Averitt, Williams.

**SENATE RULE 11.18(a) SUSPENDED  
(Public Hearings)**

On motion of Senator Madla and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Intergovernmental Relations might consider **SB 734** today.

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator West and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Subcommittee on Higher Education might meet and consider **SB 730** today.

**NOTICE GIVEN FOR  
LOCAL AND UNCONTESTED CALENDAR**

Senator Harris announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 12:02 p.m. agreed to adjourn, in memory of Corrina Rodriguez and Milton F. Kuhn, father-in-law of Senator Williams, upon conclusion of the Local and Uncontested Calendar Session, until 10:00 a.m. tomorrow.

## RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

### **Congratulatory Resolutions**

**SR 401** by Barrientos, Recognizing the Texas Thoroughbred Association on the occasion of its 50th anniversary.

**SR 402** by Barrientos, Recognizing Jo Nell and Melvin Charles Michaud of Whitney on the occasion of their 50th wedding anniversary.

**SR 403** by Barrientos, Recognizing Johnnie Sielbeck on the occasion of her retirement.

**SR 404** by Barrientos, Recognizing David Diaz on the occasion of his retirement.

**SR 405** by Barrientos, Recognizing Joe Z. Herrera on the occasion of his retirement.

**SR 406** by West, Congratulating Janet Louise Willis Thomas for being named a Silver Star Honoree by the Alpha Xi Omega Chapter of Alpha Kappa Alpha Sorority, Incorporated.

**SR 407** by West, Congratulating Mary Evans Sias on the occasion of her inauguration as President of Kentucky State University.

**SR 409** by Ellis, Commending the Southwest and North Texas Regions of the Anti-Defamation League for their efforts to combat anti-Semitism.

### **Official Designation Resolution**

**SR 410** by Estes, Recognizing March 10, 2005, as Gainesville Day at the Capitol.

### **RECESS**

On motion of Senator Whitmire, the Senate at 12:02 p.m. recessed until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

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## **APPENDIX**

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### **COMMITTEE REPORTS**

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

March 16, 2005

GOVERNMENT ORGANIZATION — **SB 140, SB 164, SB 483, CSSB 399, CSSB 464**

CRIMINAL JUSTICE — **CSSB 60**