

THIRTY-FIFTH DAY

THURSDAY, MARCH 17, 2005

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, 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, Williams, Zaffirini.

Absent-excused: Averitt.

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

The Reverend Michael DeGerolami, Saint Philip of Jesus Catholic Church, San Antonio, offered the invocation as follows:

Loving God, send Your spirit of wisdom and compassion upon us this day. Inspire each Senator to discern and follow Your divine will for the people of Texas. Guide the Members of this body in the difficult decisions ahead. May our love for You, dear Lord, be manifest in real concern for those most affected by what transpires in this Chamber. We turn to You, O God, for Your help and strength today and in the weeks to come. May the goal of this body be service and may justice for all be our shield. Forever and ever. 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.

LEAVE OF ABSENCE

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

CO-AUTHOR OF SENATE BILL 226

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

CO-AUTHOR OF SENATE BILL 234

On motion of Senator Harris, Senator Nelson will be shown as Co-author of **SB 234**.

CO-AUTHOR OF SENATE BILL 528

On motion of Senator Hinojosa, Senator Zaffirini will be shown as Co-author of **SB 528**.

CO-AUTHOR OF SENATE BILL 786

On motion of Senator Ellis, Senator Hinojosa will be shown as Co-author of **SB 786**.

CO-AUTHOR OF SENATE BILL 831

On motion of Senator Shapiro, Senator Fraser will be shown as Co-author of **SB 831**.

CO-AUTHOR OF SENATE BILL 836

On motion of Senator Duncan, Senator Shapleigh will be shown as Co-author of **SB 836**.

CO-AUTHOR OF SENATE BILL 943

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

SENATE RESOLUTION 385

Senator Barrientos offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Cirque du Soleil on the occasion of its 20th anniversary and its Austin performance of Varekai; and

WHEREAS, Cirque du Soleil was founded in Montreal in 1984 by street performers; the company presents a theatrical blend of circus arts played out against fairyland sets and accompanied by magical effects and spellbinding soundtracks; it currently has 10 shows in production on three continents; and

WHEREAS, The company has brought its latest touring production to Austin and is performing February 24 through March 27; and

WHEREAS, The critically acclaimed Varekai is a kaleidoscopic production imbued with fantastical creatures; the show is noted for its extraordinary lighting and elaborate set designs; its cast consists of more than 50 performers and musicians from a variety of countries; dressed in flamboyant costumes, cast members put on an astonishing spectacle that combines athleticism with artistry; and

WHEREAS, Cirque du Soleil has created a uniquely special show, and Austin is proud to be the site of this historic performance of Varekai; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend all associated with Cirque du Soleil on their exceptional talents and artistic accomplishments and extend to them best wishes on the grand occasion of the 20th anniversary of Cirque du Soleil; and, be it further

RESOLVED, That a copy of this Resolution be prepared for Cirque du Soleil as an expression of esteem from the Texas Senate.

SR 385 was read and was adopted without objection.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate Jean-Jacques Pillet, artistic coordinator of Cirque du Soleil of Canada; Nathalie Marchand, head wardrobe; and characters Maxism Levantsevich, Sergey Cherkasov, and Valentin Menjega.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Jackson was recognized and introduced to the Senate members of the debate team of Clear Creek High School in League City and their teachers and coach.

The Senate welcomed its guests.

RESOLUTION SIGNED

The President announced the signing of the following enrolled resolution in the presence of the Senate: **HCR 106**.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate students from Nixon High School in Laredo and their teachers.

The Senate welcomed its guests.

PHYSICIAN OF THE DAY

Senator Armbrister was recognized and presented Dr. Jorge Duchicela of Weimar as the Physician of the Day.

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

GUESTS PRESENTED

Senator Madla was recognized and introduced to the Senate a delegation of citizens from Uvalde.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Ogden was recognized and introduced to the Senate Lance Corporal Luke Connally, Lance Corporal Justin Gower, and Sergeant Christoffer Apgar of the United States Marines.

The Senate welcomed its guests.

The President presented to each guest a United States of America flag which had been flown previously over the State Capitol.

SENATE RESOLUTION 412

Senator Lucio offered the following resolution:

WHEREAS, Jesse Marines, a senior at Weslaco High School, claimed the silver medal at the 2005 University Interscholastic League State Wrestling Championships, and his achievement is a source of tremendous pride to his school and community; and

WHEREAS, Jesse defeated three talented opponents to advance to the championship final, and he has earned well-deserved praise from his fans for representing his fellow Rio Grande Valley wrestlers with honor and dignity; and

WHEREAS, Competing in the 171-pound weight class, this gifted young wrestler completed his senior campaign with an impressive 31-2 record; throughout the long season, he has relied on the support of his coach, John Glapa, his teammates, and the students, faculty, and staff of Weslaco High School; and

WHEREAS, Although he has been involved in competitive wrestling for only two years, Jesse Marines has demonstrated great skill and ability in this challenging sport, and he is most deserving of special recognition for his impressive finish at the 2005 University Interscholastic League State Wrestling Championships and for his outstanding season; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby congratulate Jesse Marines for winning the silver medal at the 2005 University Interscholastic League State Wrestling Championships and extend best wishes to him for continued success in all his future endeavors; and, be it further

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

SR 412 was read and was adopted without objection.

GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate Jesse Marines, Jr., silver medal winner at the 2005 University Interscholastic League State Wrestling Championship, accompanied by his parents, Jesse Marines, Sr., and Edna Fuentes, and his girlfriend, Melissa Castillo.

The Senate welcomed its guests.

**INTRODUCTION OF
BILLS AND RESOLUTIONS POSTPONED**

The President announced that the introduction of bills and resolutions on first reading would be postponed until the end of today's session.

There was no objection.

CONCLUSION OF MORNING CALL

The President at 10:59 a.m. announced the conclusion of morning call.

SENATE BILL 299 ON THIRD 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 third reading and final passage:

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 third time and was passed by the following vote: Yeas 29, Nays 1.

Nays: Eltife.

Absent-excused: Averitt.

SENATE BILL 450 ON THIRD 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 third reading and final passage:

SB 450, Relating to the confidentiality of certain personal information regarding the employees of a prosecutor's office or of an office with jurisdiction over child protective services.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Averitt.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

March 17, 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:

HCR 89, In memory of President Ronald Wilson Reagan.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 212 ON SECOND READING

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 212** at this time on its second reading:

SB 212, Relating to the provision of employment services by the Texas Workforce Commission to the families of military personnel stationed in this state.

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.

SENATE BILL 212 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 212** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Averitt.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 212**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 212** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Averitt.

SENATE BILL 75 ON SECOND READING

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 75** at this time on its second reading:

SB 75, Relating to high school diplomas for certain veterans.

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.

SENATE BILL 75 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 75** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Averitt.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 75**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 75** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Averitt.

(Senator Shapiro in Chair)

SENATE BILL 296 ON SECOND READING

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 296** at this time on its second reading.

SB 296, Relating to the student enrollment required for the operation of Texas A&M University—San Antonio as an independent general academic teaching institution.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 296** (Senate committee report) as follows:

1. Add a new SECTION 2 (at page 1, line 28) as follows:

SECTION 2. Section 87.861(d), Education Code, is amended to read as follows:

(d) Notwithstanding any other provision of this subchapter, Texas A&M University–Central Texas may not operate as a general academic teaching institution until the Texas Higher Education Coordinating Board certifies that enrollment at the Tarleton State University System Center–Central Texas in Killeen has reached an enrollment equivalent of:

(1) 1,000 full-time students for one semester if the legislature authorizes revenue bonds to be issued to finance educational and related facilities for the institution, and the bonds are issued for that purpose; or

(2) 2,500 full-time students for one semester if the conditions specified by Subdivision (1) are not satisfied.

2. Renumber existing SECTION accordingly

The amendment to **SB 296** 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: Averitt.

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

SB 296 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.

SENATE BILL 296 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 296** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Averitt.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 296**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the

requirement of the Texas Constitution, third reading and a vote on **SB 296** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Averitt.

**COMMITTEE SUBSTITUTE
SENATE BILL 335 ON SECOND READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 335** at this time on its second reading:

CSSB 335, Relating to the recording of electronic documents.

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.

**COMMITTEE SUBSTITUTE
SENATE BILL 335 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 335** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Averitt.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 335**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 335** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed.

Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Averitt.

(President in Chair)

**SENATE RULE 11.10(a) SUSPENDED
(Public Notice of Committee Meetings)**

On motion of Senator Duncan and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on State Affairs might meet upon adjournment today.

GUEST PRESENTED

Senator West was recognized and introduced to the Senate Kendra Scott, an intern in his office, who will be finishing her internship today.

The Senate extended its best wishes.

SENATE JOINT RESOLUTION 27 REREFERRED

Senator Lucio submitted a Motion In Writing requesting that **SJR 27** 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.

MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 11:30 a.m. agreed to adjourn, in honor of Lance Corporal Luke Connally, Lance Corporal Justin Gower, and Sergeant Christoffer Apger of the United States Marines, upon completion of the introduction of bills and resolutions on first reading, until 1:30 p.m. Monday, March 21, 2005.

(Senator Shapleigh in Chair)

SENATE BILL AND RESOLUTION ON FIRST READING

The following bill and resolution, filed on or before March 11, 2005, were introduced, read first time, and referred to the committees indicated:

SB 18 by Williams, Janek

Relating to the adoption of an ad valorem tax rate by a taxing unit other than a school district.

To Committee on Finance.

SJR 4 by Janek, Williams

Proposing a constitutional amendment authorizing the legislature to establish a lower limit on the maximum average annual percentage increase in the appraised value of

residence homesteads for ad valorem tax purposes and to authorize the governing body of a taxing unit to determine whether a limit on residence homestead appraisal increases shall apply in the taxing unit.
To Committee on Finance.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Congratulatory Resolutions

SR 396 by Zaffirini, Congratulating the City of Ingleside on the occasion of the dedication of the N.O. Simmons Community Recreation Facility.

SR 411 by Carona and Shapiro, Recognizing the McDermott Scholars Program for its commitment to education and community service.

SR 413 by Zaffirini, Recognizing the alumni of Central High School of Parkin, Arkansas, on the occasion of their reunion in San Antonio.

HCR 86 (Madla), Congratulating "Jesse" James Leija of San Antonio on his remarkable career as a boxer and commending him for his ongoing contributions to the city of San Antonio.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 11:32 a.m. adjourned, in honor of Lance Corporal Luke Connally, Lance Corporal Justin Gower, and Sergeant Christoffer Apgar of the United States Marines, until 1:30 p.m. Monday, March 21, 2005.

APPENDIX

COMMITTEE REPORTS

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

March 17, 2005

GOVERNMENT ORGANIZATION — **CSSB 403, CSSB 402, CSSB 415**

INTERGOVERNMENTAL RELATIONS — **SCR 8, SB 668, SB 670, SB 716, SB 792**

BUSINESS AND COMMERCE — **SB 381, SB 593, SB 382**

HEALTH AND HUMAN SERVICES — **CSSB 248, CSSB 271, CSSB 423, CSSB 521, CSSB 523, CSSB 626, CSSB 627, SB 563**

GOVERNMENT ORGANIZATION — **CSSB 407, CSSB 288**

JURISPRUDENCE — **SB 524, SB 669**

