

THIRTY-NINTH DAY

TUESDAY, MARCH 29, 2005

PROCEEDINGS

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, Averitt, 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.

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

The Reverend Dr. Daniel T. Hannon, Christ Church United Methodist, The Woodlands, offered the invocation as follows:

We stand this day, gracious God, as inheritors of a great freedom, where life and liberty are melded into the pursuit of happiness. We stand this day, gracious God, as citizens of this great and noble state, where our culture is as diverse as our boundaries are wide. We stand this day, gracious God, as trustee citizens of this noble freedom. Empower this great body to put service above self, goodness above glory, and righteousness above indifference. Today, do something great, through this august body, for our noble state. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of Wednesday, March 23, 2005, be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 155

On motion of Senator Shapiro, Senator Janek will be shown as Co-author of **SB 155**.

CO-AUTHOR OF SENATE BILL 271

On motion of Senator Zaffirini, Senator Deuell will be shown as Co-author of **SB 271**.

CO-AUTHOR OF SENATE BILL 302

On motion of Senator Ellis, Senator West will be shown as Co-author of **SB 302**.

CO-AUTHOR OF SENATE BILL 603

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

CO-AUTHORS OF SENATE BILL 747

On motion of Senator Carona, Senators Ellis, Lucio, West, and Whitmire will be shown as Co-authors of **SB 747**.

CO-AUTHOR OF SENATE RESOLUTION 408

On motion of Senator Ellis, Senator Gallegos will be shown as Co-author of **SR 408**.

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate: **HCR 112, HCR 119**.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
March 29, 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 18, Relating to the persons who may inspect or obtain a copy of a military discharge record under the public information law.

HB 67, Relating to designating August 26 as Women's Independence Day.

HB 74, Relating to exempting school districts from certain mold assessor and remediation licensing requirements.

HB 81, Relating to release by the comptroller of unclaimed property subject to a child support lien.

HB 102, Relating to the renewal requirements for a respiratory care practitioner certificate.

HB 204, Relating to inheritance rights of adopted adults.

HB 230, Relating to grounds for removal of a guardian.

HB 256, Relating to investments in certificates of deposit by certain governmental entities.

HB 263, Relating to the civil service status of certain fire department employees.

HB 265, Relating to the time for processing a municipal building permit.

- HB 297**, Relating to changing the title of assistant secretary of state to deputy secretary of state.
- HB 322**, Relating to concealed handgun licenses for members and veterans of the United States armed forces.
- HB 350**, Relating to the filing of certain reports of political contributions and expenditures.
- HB 472**, Relating to annual fees imposed by the Railroad Commission of Texas in connection with surface coal mining and reclamation operations.
- HB 479**, Relating to the concurrent jurisdiction of campus peace officers commissioned by The University of Texas at Austin and law enforcement agencies of the state and political subdivisions of the state.
- HB 532**, Relating to certain investments by title insurance companies.
- HB 564**, Relating to the creation of an additional county court at law in Williamson County.
- HB 593**, Relating to the terms of court of the 47th Judicial District.
- HB 595**, Relating to the jurisdiction of the County Court at Law of Randall County.
- HB 596**, Relating to the appointment of judges to the City of Amarillo municipal court.
- HB 597**, Relating to the creation of an additional county court at law in Randall County.
- HB 638**, Relating to the applicability of procedures governing restrictive covenants in certain residential subdivisions.
- HB 705**, Relating to the disposition of seized weapons.
- HB 723**, Relating to certain reports filed with the bureau of vital statistics.
- HB 729**, Relating to an order by a court that a judgment debtor turn over certain property for the satisfaction of the judgment.
- HB 735**, Relating to updating citations to Chapter 74, Civil Practice and Remedies Code, in the Business & Commerce Code.
- HB 736**, Relating to updating citations in Chapter 84, Civil Practice and Remedies Code.
- HB 737**, Relating to updating citations to Chapter 74, Civil Practice and Remedies Code, in Chapter 88, Civil Practice and Remedies Code.
- HB 738**, Relating to updating citations to Chapter 74, Civil Practice and Remedies Code, in Chapter 81, Health and Safety Code.
- HB 739**, Relating to updating citations in Chapter 241, Health and Safety Code.
- HB 740**, Relating to updating citations to Chapter 74, Civil Practice and Remedies Code, in Chapter 578, Health and Safety Code.

- HB 741**, Relating to updating citations to Chapter 74, Civil Practice and Remedies Code, in Chapter 611, Health and Safety Code.
- HB 742**, Relating to updating citations to Chapter 74, Civil Practice and Remedies Code, in Chapter 159, Occupations Code.
- HB 743**, Relating to updating citations to Chapter 74, Civil Practice and Remedies Code, in Chapter 160, Occupations Code.
- HB 744**, Relating to updating citations to Chapter 74, Civil Practice and Remedies Code, in Chapter 164, Occupations Code.
- HB 747**, Relating to the designation of the El Camino East/West Corridor.
- HB 755**, Relating to procedures relating to the doctrine of forum non conveniens in a civil cause of action.
- HB 760**, Relating to fees for registration and inspection of certain fuel measuring and dispensing devices.
- HB 794**, Relating to the establishment of an advisory committee on health care information technology.
- HB 885**, Relating to premium reserve amounts required for title insurers.
- HB 901**, Relating to expiration dates for certain licenses issued or renewed by the Department of Agriculture.
- HB 914**, Relating to disclosure of certain business or financial relationships with certain local government officers; providing criminal penalties.
- HB 932**, Relating to structures on coastal public land.
- HB 946**, Relating to the removal, relocation, or alteration of certain monuments or memorials on state property.
- HB 957**, Relating to the valuation of state-owned real property.
- HB 1139**, Relating to certain bonds required for employees of the General Land Office.
- HB 1163**, Relating to the filing fee for a candidate for certain offices on the general primary election ballot.
- HB 1285**, Relating to the exception from required disclosure under the public information law of certain audit working papers.
- HB 1310**, Relating to the authority of certain local dispute resolution centers to collect a fee from persons receiving dispute resolution services from the centers.
- HB 1394**, Relating to the appointment of magistrates to serve the municipal court of record in Kennedale.
- HB 1478**, Relating to the eminent domain power of certain municipal management districts.
- HCR 130**, In memory of Colleen Tough of The Woodlands.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RESOLUTION 486

Senator Lindsay offered the following resolution:

WHEREAS, On March 29, 2005, residents from Katy are gathering in Austin to celebrate Katy Day at the State Capitol; and

WHEREAS, First settled in 1872 and originally known as Cane Island, Katy took its present-day name from the Missouri, Kansas, and Texas Railway Company, the "Katy," which built through the area in the 1890s; the city was formally incorporated in 1945 and is located in three counties—Harris, Fort Bend, and Waller; and

WHEREAS, In the early days, the town's prosperity derived from the production of cotton, peanuts, and corn, but those crops were eclipsed after William Eule introduced rice farming in 1901; natural gas was discovered in 1934, and during World War II, the size of the field's reserves, coupled with its proximity to Houston-area refineries, made it the most important gas-condensate field in the United States; today, Katy remains an important rail and agricultural center and continues to profit from one of the largest gas fields in the Lone Star State; and

WHEREAS, Among the town's cultural assets are Heritage Park, home to a number of historic buildings that have been restored by the Katy Heritage Society, and the Katy Veterans Memorial Museum, which features military exhibits of every foreign conflict involving the United States; and

WHEREAS, Residents of this fine city enjoy commemorating its heritage each year at the Katy Rice Harvest Festival, sponsored by the Katy Area Chamber of Commerce; this celebration draws more than 50,000 people over a two-day period; in addition, numerous parks in the city provide year-round opportunities for a wide range of recreational activities; and

WHEREAS, The award-winning Katy Independent School District provides young Texans with a top-notch education and is considered one of the strongest and most competitive school districts in the state; and

WHEREAS, Katy Independent School District has National Blue Ribbon Schools of Excellence, as well as an award-winning Partners in Education program, which provides approximately one volunteer for every three children in the district; furthermore, Katy Independent School District is the first school district in the world to adopt a Junior Achievement "whole district" approach, providing the Junior Achievement curriculum at each grade level and every campus; and

WHEREAS, This charming town prides itself on making sure "You'll Love Katy," and such organizations as Katy Veterans of Foreign Wars Post 9182 contribute to making the community special; the post has received national awards for its exemplary community services; and

WHEREAS, Katy is also the proud hometown of several talented citizens who have gained national attention; accomplished actress Renee Zellweger, a native of Katy, has won numerous awards for her performances in films; country western superstar Clint Black also grew up in Katy and has won nearly every music industry accolade imaginable; and

WHEREAS, Situated a scant 25 miles west of downtown Houston, Katy offers ready access to all the benefits of a big city while affording its residents the friendly community life of a small town; the citizens of Katy are embracing the myriad challenges and opportunities of the future while continuing to build on their history, and it is indeed most appropriate to pay tribute to them at this time; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby recognize March 29, 2005, as Katy Day at the State Capitol and extend to the delegation here today sincere best wishes for an enjoyable and memorable visit.

SR 486 was read and was adopted without objection.

GUESTS PRESENTED

Senator Lindsay was recognized and introduced to the Senate representatives of the Katy Area Chamber of Commerce: Jacqueline Birkel, Vice-president, Katy Independent School District Board; Doyle Callender, Katy Mayor; Kelly Gaines, Chair, Katy Area Chamber of Commerce; Kaye Goolsby, volunteer; and Ann Hodge, President and Chief Executive Officer, Katy Area Chamber of Commerce; accompanied by a delegation of citizens from Katy.

The Senate welcomed its guests.

PHYSICIAN OF THE DAY

Senator Wentworth was recognized and presented Dr. Mitchell Frank Finnie of San Antonio as the Physician of the Day.

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

SENATE RESOLUTION 477

Senator Seliger offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize March 29, 2005, as Cotton Day at the State Capitol in honor of the significant role cotton has played in the economic history of Texas; and

WHEREAS, Cotton farming began in Texas as early as 1745 and was practiced by Spanish missionaries living around present-day San Antonio; later, Anglo-American colonists who traveled to Texas with Stephen F. Austin would begin cultivating cotton on their settlements between the Trinity and Brazos Rivers; and

WHEREAS, In the late 1850s and early 1860s, a sharp rise in cotton production occurred when new areas for planting were opened with the westward push of Texas settlers; and

WHEREAS, Several developments aided cotton production in West Texas, an arid region devoted to ranching; inventions like barbed wire, along with the expansion of the railroad and improved methods of irrigation, allowed cotton to be grown in the plains and the prairies of the Panhandle by the early 20th century; and

WHEREAS, Because of its pervasiveness, cotton earned the title of "King" in Texas; today, cotton is still King in Texas, as our state's annual cotton harvest accounts for approximately one quarter of the nation's total cotton production; and

WHEREAS, Since 1995, the annual cotton crop in Texas has averaged 4.81 million bales; the total value of upland and pima lint cotton produced in Texas in 2003 was \$1.2 billion, and cottonseed value in 2003 was \$208.3 million; and

WHEREAS, Due to improved seed cotton varieties, along with the recent success of the Boll Weevil Eradication Program in Texas, this year's production of 7.5 million bales of cotton on 5.4 million acres will far exceed the previous production record of six million bales on 11.1 million acres in 1949, allowing the state to account for 32.8 percent of our nation's total production; and

WHEREAS, In this new millennium, uses for cotton are ever increasing; in addition to using its fiber for cloth, cottonseeds are now used for cooking oils, livestock feed, and cleansing products, as well as for various other products made from its linters, hulls, and meats; and

WHEREAS, Texas is a major supplier of cotton, not only for the United States, but for the world; major buyers of Texas cotton are located in Asia, Central America, and Mexico; and

WHEREAS, The state is especially proud of its tradition of cotton growth and production; cotton is a versatile crop which affords thousands of Texans their livelihood, and all those citizens associated with its production are deserving of legislative recognition; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby extend a warm welcome to all those associated with the cotton industry who are visiting Austin on this day and best wishes for an enjoyable Cotton Day at the State Capitol; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the cotton industry as an expression of appreciation from the Texas Senate.

SR 477 was read and was adopted without objection.

GUESTS PRESENTED

Senator Seliger was recognized and introduced to the Senate representatives of the cotton industry celebrating Cotton Day at the State Capitol.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Carona was recognized and introduced to the Senate a group of students from The University of Texas at Dallas.

The Senate welcomed its guests.

(Senator Averitt in Chair)

SENATE RESOLUTION 481

Senator Staples offered the following resolution:

WHEREAS, Residents of Montgomery County are celebrating the contributions of their county with a trip to the State Capitol on March 29, 2005; and

WHEREAS, Located in the East Texas Timberlands region, Montgomery County was the third county formed under the Republic of Texas; artifacts from the Paleo-Indian and Archaic cultures have been found in the area, suggesting a human presence for more than 10,000 years; and

WHEREAS, Among the region's earliest Anglo-American settlers was Andrew Montgomery, who established a trading post that was one of the county's first settlements and that eventually became the town of Montgomery; the Republic of Texas Congress officially established Montgomery County in 1837; and

WHEREAS, The construction of the railroads toward the end of the 19th century led to a significant economic transformation in the region, and in 1932, oil was discovered southeast of Conroe; and

WHEREAS, Today the county's major industries still include oil and lumber, but its abundant lakes and forest land also make it an attractive destination for many; opportunities for hunting, boating, fishing, and hiking abound in the Sam Houston National Forest, the W. Goodrich Jones State Forest, Lake Conroe, and Lake Woodlands; and

WHEREAS, Many charming towns dot the landscape of Montgomery County, including the county seat, Conroe; the region's first settlement, Montgomery; the cities of Porter and Shenandoah, which provide comfortable residential neighborhoods for some of the county's population, and the township of Willis, which originally thrived with a successful tobacco industry and now has a profitable timber and farming economy; and

WHEREAS, The Woodlands is located in southern Montgomery County and is the site of the Houston Advanced Research Center, which promotes scientific research and technology development on issues relating to the environment, energy, medicine, and information technology; the city also features an innovative waterway linking offices, retail space, and dining and entertainment venues to minimize automobile traffic; and

WHEREAS, The town of Cut and Shoot earned its unique name after a 1912 community dispute over the design of a new steeple for the town's only church and land claims among church members; when the issue reached a boiling point, a young boy near the church reportedly yelled, "I'm going to cut around the corner and shoot through the bushes," which stuck in the minds of residents, who soon adopted the name Cut and Shoot; and

WHEREAS, The residents of Montgomery County may take justifiable pride in their region's rich heritage, and it is a pleasure to honor them as they look forward to a bright and promising future; now, therefore, be it

RESOLVED, That the Senate of the 79th Texas Legislature hereby recognize March 29, 2005, as Montgomery County Day at the State Capitol and extend to its citizens here today sincere best wishes for an enjoyable visit to Austin.

STAPLES
WILLIAMS

SR 481 was read and was adopted without objection.

GUESTS PRESENTED

Senator Staples, joined by Senator Williams, was recognized and introduced to the Senate representatives of Montgomery County: Mike Smith, Rui Martin, Byron Ellis, Marisa Rummell, and David Whitaker, accompanied by a delegation of citizens from Montgomery County.

The Senate welcomed its guests.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

March 29, 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 123, Honoring the Ennis High School Lions football team for winning the 2004 Class 4A Division I state championship.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Shapiro was recognized and introduced to the Senate representatives of the Juvenile Diabetes Research Foundation: Rudy and Lauren Gatlin, Allen Feltman, Ron Fleisher, and Kevin Fleisher, accompanied by a delegation of other representatives.

The Senate welcomed its guests.

(Senator Armbrister in Chair)

SENATE RESOLUTION 485

Senator Averitt offered the following resolution:

WHEREAS, Residents of Ellis County are gathering at the State Capitol on March 29, 2005, to celebrate the contributions of this fine region of the Lone Star State; and

WHEREAS, Located in north central Texas, Ellis County was officially established by the state legislature on December 20, 1849; named for Richard Ellis, the president of the Convention of 1836 in which Texas declared its independence from Mexico, the county originally profited from cattle raising because of its mild climate and native grasses; and

WHEREAS, The arrival of the railroad in 1871 stimulated agricultural production, and in the early 20th century, Ellis County ranked as one of the chief cotton-producing regions in the country; today the economy is balanced between manufacturing, agribusiness, and commerce; and

WHEREAS, The people of Ellis County are dedicated to preserving their rich heritage; historic sites of interest include the Railroad and Cultural Heritage Museum, the Larkin Newton Cabin, and the Ellis County Museum, and several communities participate in the Texas Main Street Project, a program to rehabilitate and revitalize historic downtowns and commercial districts; and

WHEREAS, The city of Waxahachie is thought of by many as the Gingerbread City because of its lovingly maintained Victorian homes, many of them framed by colorful trees and shrubs, and the town is also the Crape Myrtle Capital of Texas; the city hosts many events that attract more than a half-million visitors each year, including the Scarborough Faire Renaissance Festival, the Bob Phillips Texas Country Reporter Festival, Bethlehem Revisited, the Candlelight Home Tour, and the Gingerbread Trail Historic Home Tour; and

WHEREAS, A global leader in manufacturing, Waxahachie claims among its thriving business community the following companies: Performance Pipe, Rock-Tenn Corporation, Saint-Gobain Containers, United States Aluminum Corporation of Texas, Cardinal IG, Better Bath Components, Owens-Corning, Burleson Honey, Dartco of Texas, Georgia Pacific, AEP Industries, and Hardie Company; and

WHEREAS, Ennis, located in the eastern part of the county, was designated the Bluebonnet City of Texas by the state legislature in 1997; a cultural center for descendants of Czech farmers who first settled in the region in 1875, the community also appeals to visitors who are drawn to such attractions as the National Polka Festival and the Texas Motorplex, a professional and amateur track that offers world-class auto racing; and

WHEREAS, The city's progressive economy has brought in numerous industry leaders, including Sterilite Corporation, Elk Roofing, Legget & Platt, Inc., Atlas Soundolier, Ennis Steel Industries, Inc., Lowe's Distribution Center, CVS Pharmacy Distribution Center, Ennis-Tractebel Electricity and Gas International, and Koyo Steering Systems of Texas; and

WHEREAS, Other vibrant towns that dot the landscape of Ellis County are Midlothian, Red Oak, Ferris, and Ovilla; Midlothian, a center for cement and steel production, is home to firms such as Chaparral Steel Company, Texas Industries, Holcim Texas, Ash Grove Cement LP, Target Distribution Center, Toys R Us, American National Power, Ennis Inc., and Free Trade Zone No. 113; and

WHEREAS, Red Oak, with its flourishing local economy, sustained residential growth, low crime rate, and award-winning school district, balances the charm and comfort of small-town life with convenient access to the Dallas/Fort Worth metroplex; and

WHEREAS, Ellis County has long benefited from the dedication of its fine citizens, who are ever mindful of the past while actively preparing for a productive future, and it is a pleasure to honor them on this special day; now, therefore, be it

RESOLVED, That the Senate of the 79th Texas Legislature hereby recognize March 29, 2005, as Ellis County Day at the State Capitol and extend to all those associated with this happy day sincere best wishes for a memorable visit.

SR 485 was read and was adopted without objection.

GUESTS PRESENTED

Senator Averitt was recognized and introduced to the Senate representatives of Ellis County: Ellis County Judge Chad Adams, County Commissioner Ron Brown, and Ennis Independent School District Athletic Director Bill Cox, accompanied by a delegation of citizens from Ellis County.

The Senate welcomed its guests.

HOUSE CONCURRENT RESOLUTION 123

The Presiding Officer laid before the Senate the following resolution:

HCR 123, Honoring the Ennis High School Lions football team for winning the 2004 Class 4A Division I state championship.

AVERITT

HCR 123 was read.

On motion of Senator Averitt 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.

GUESTS PRESENTED

Senator Averitt was recognized and introduced to the Senate members of the football team from Ennis High School in Ennis and their coach, Sam Harrell.

The Senate welcomed its guests.

SENATE RESOLUTION 478

Senator Duncan offered the following resolution:

WHEREAS, Those Texans who give freely of their time and talents to benefit the larger community make the world a better place through their actions and their example, and Joe V. Boerner, Jr., of Lubbock is one such person; and

WHEREAS, A native of San Antonio, Mr. Boerner moved to Lubbock after earning his law degree from The University of Texas at Austin in 1958, and since that time he has distinguished himself as a leader in the community; and

WHEREAS, Mr. Boerner made his reputation as a partner at the firm of Crenshaw, Dupree & Milam before forming his own law firm, Boerner & Dennis, in 1993; and

WHEREAS, Highly esteemed by his professional peers, Mr. Boerner is a former director of both the Lubbock County Junior Bar Association and the Lubbock County Senior Bar Association and has served on the State Bar of Texas Forms Committee; and

WHEREAS, His intelligence and integrity have made him much sought after as an advisor to organizations and institutions, and he has served as director of the Lubbock Club, the Lubbock Urban Renewal Commission, and the South Plains Guidance Center, as a trustee of the Lubbock Regional Mental Health & Mental Retardation Center, and as a member of the Lubbock State School Public Responsibility Committee; and

WHEREAS, A charter member of the Associated Republicans of Texas, he is well known for his active interest in political life, and he was voted the Outstanding Republican of Lubbock County in 1985; and

WHEREAS, His love of young people finds expression in both his civic activities, such as his past directorship of Lubbock Little League and Pony League, and in his close relationship with his seven grandchildren, who over the years have taken great delight in their grandfather's signature "Black Buzzard" stories; and

WHEREAS, Mr. Boerner takes pride and pleasure in his family, especially in Linda, his loving wife of 25 years, and in his children, Rebecca Jones, Joseph Victor Boerner III, and John Gregory Boerner; and

WHEREAS, Though it is impossible to gauge the full effect of a man's life, some individuals leave their unmistakable mark on the world as they move through it, and Joe Boerner's contributions to his community continue to resonate in the lives of all who know him; now, therefore, be it

RESOLVED, That the Senate of the 79th Texas Legislature hereby honor Joe V. Boerner, Jr., for his many efforts in behalf of his fellow Texans; and, be it further

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

SR 478 was read and was adopted without objection.

GUESTS PRESENTED

Senator Duncan was recognized and introduced to the Senate family and friends of Joe V. Boerner, Jr.: Ken Towery, John Nags, Ashley Boerner, Greg Boerner, and Norman Newton.

The Senate welcomed its guests.

MESSAGES FROM THE GOVERNOR

The following Messages from the Governor were read and were referred to the Committee on Nominations:

Austin, Texas
March 24, 2005

TO THE SENATE OF THE SEVENTY-NINTH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

To be a member of the Executive Council of Physical Therapy and Occupational Therapy Examiners for a term to expire February 1, 2007:

L. Suzan Kedron
Dallas, Texas

(Ms. Kedron is being reappointed)

To be a member of the Lease Board for the Texas Department of Criminal Justice for a term to expire February 1, 2007:

Spencer Hayes
Austin, Texas

(Mr. Hayes is being reappointed)

To be a member of the Upper Neches Municipal Water Authority for a term to expire February 1, 2011:

Robert E. McKelvey
Palestine, Texas

(Mr. McKelvey is being reappointed)

To be members of the Jefferson and Orange County Pilots Board for terms to expire August 22, 2006:

Kevin Williams
Orange, Texas

Morris Carter, Jr.
Port Arthur, Texas

(Both members are being reappointed)

To be a member of the Sabine River Authority of Texas for a term to expire July 6, 2009:

Richard A. Linkenauger
Greenville, Texas

(Mr. Linkenauger is being reappointed)

Respectfully submitted,

/s/Rick Perry
Governor

(President in Chair)

SENATE RESOLUTION 487

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Honorable Francisco Javier Alejo on the occasion of his departure from his post as Consul General of Mexico in Austin on March 28, 2005; and

WHEREAS, Javier Alejo's primary responsibilities as a Consul General of Mexico have been to protect the interests of Mexican citizens and to promote trade, commerce, and cultural relations between Mexico and the United States; and

WHEREAS, Since his appointment by President Vicente Fox of Mexico in May of 2002, Consul General Alejo has served his country with distinction and has made many contributions to the advancement of better relations between Mexico and Texas; and

WHEREAS, A professional economist, Javier Alejo has had a long and distinguished career in the academic field; in the public sector, his assignments have included serving as general director of the Fund for Economic Culture, undersecretary in the Treasury Ministry, secretary for the oil and mining industries, and vice president of Promotion and Development of the International Finance Corporation; and

WHEREAS, In the Ministry of Foreign Affairs, Javier has served as the ambassador of Mexico to Japan, South Korea, and Italy; and

WHEREAS, Francisco Javier Alejo has been an outstanding Consul General of Mexico, and while serving his country in the City of Austin, he has earned the respect and admiration of Texans across the state; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend the Honorable Francisco Javier Alejo on his outstanding service as Consul General of Mexico and his many contributions to the Austin community and this state and extend to him best wishes for the future; and, be it further

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

LUCIO
BARRIENTOS
SHAPLEIGH

SR 487 was read and was adopted without objection.

GUESTS PRESENTED

Senator Lucio, joined by Senators Barrientos and Shapleigh, was recognized and introduced to the Senate former Consul General of Mexico in Austin, the Honorable Francisco Javier Alejo, accompanied by Vicente Sánchez and Ángeles Gómez.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The President at 11:54 a.m. announced the conclusion of morning call.

COMMITTEE SUBSTITUTE

SENATE BILL 877 ON SECOND READING

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 877** at this time on its second reading:

CSSB 877, Relating to the direct shipment of wine to consumers; providing a criminal penalty.

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.

**COMMITTEE SUBSTITUTE
SENATE BILL 877 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 **CSSB 877** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Wentworth.

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 877**, 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 877** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 423 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 423** at this time on its second reading:

CSSB 423, Relating to the issuance of a limited license to practice medicine to certain applicants.

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.

**COMMITTEE SUBSTITUTE
SENATE BILL 423 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 423** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Wentworth.

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 423**, 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 423** 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 31, Nays 0.

GUESTS PRESENTED

Senator Janek was recognized and introduced to the Senate a delegation representing Parkinson's Disease Awareness Month.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE
SENATE BILL 446 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 446** at this time on its second reading:

CSSB 446, Relating to the reduction in value of a gift card.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 446** (committee printing) as follows:

(1) In SECTION 1 of the bill (page 1, lines 14-33), strike proposed Section 35.42, Business & Commerce Code, and substitute the following:

Sec. 35.42. REDUCTION OF VALUE OR EXPIRATION OF STORED VALUE CARD. (a) In this section:

(1) "Record" has the meaning assigned by Section 43.002, and includes a record that contains a microprocessor chip, magnetic strip, or other means of storing information.

(2) "Stored value card" means a record that evidences a promise made for monetary consideration by the seller or issuer of the record that goods or services will be provided to the owner of the record in the value shown in the record, that is prefunded, and the value of which is reduced on redemption. The term includes a gift card or gift certificate.

(3) "Use" of a stored value card includes a whole or partial redemption of or adding value to the card.

(b) This section does not apply to a stored value card that:

(1) is distributed by the issuer to a person under an awards, rewards, loyalty, or promotional program and not issued or reloaded in exchange for money tendered by the cardholder;

(2) is sold below face value or donated to:

(A) an employee of the seller or issuer;

(B) a nonprofit or charitable organization; or

(C) an educational institution, for fund-raising purposes;

(3) is issued by a financial institution acting as a financial agent of the United States or this state;

(4) is issued as a prepaid calling card by a prepaid calling card company regulated under Section 55.253, Utilities Code; or

(5) does not expire and for which the seller does not charge a fee other than at the time of purchase.

(c) This section does not apply to a stored value card issued by a federally insured financial institution, as defined by Section 201.101, Finance Code, for which the financial institution is primarily liable as the issuing principal.

(d) If disclosed as provided by Subsection (f), the issuer of a stored value card may impose and collect a reasonable handling fee in connection with the issuance of or adding of value to the card and a reasonable reissue or replacement charge if a lost or expired card is reissued or replaced.

(e) The issuer of a stored value card may impose or collect a periodic fee or other charge that causes the unredeemed balance of the card to decrease over time only if the fee is reasonable, is not assessed until after the first anniversary of the date the card is sold or issued, and is disclosed as provided by Subsection (f).

(f) An expiration date or policy, fee, or other material restriction or contract term applicable to a stored value card must be clearly and conspicuously disclosed to a person at the time the card is sold or issued to the person to enable the person to make

an informed decision before the person purchases the card. A disclosure must be legibly printed on the retail packaging for the stored value card or on a posted notice accompanying the sales display. A disclosure regarding expiration or a periodic fee that reduces the unredeemed value of the stored value card must also be legibly printed on the card. A stored value card that is sold without the disclosure as required by this section of an expiration date or policy, fee, or other material restriction or contract term applicable to the card is valid until redeemed or replaced.

(2) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION ____. Section 72.101(a), Property Code, is amended to read as follows:

(a) Except as provided by this section and Sections 72.1015, 72.1016, and 72.102, personal property is presumed abandoned if, for longer than three years:

(1) the existence and location of the owner of the property is unknown to the holder of the property; and

(2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

SECTION ____. Subchapter B, Chapter 72, Property Code, is amended by adding Section 72.1016 to read as follows:

Sec. 72.1016. STORED VALUE CARD. (a) This section applies to a stored value card, as defined by Section 35.42(a), Business & Commerce Code, other than a card:

(1) to which Section 35.42, Business & Commerce Code, does not apply by operation of Subsection (b) of that section; or

(2) that is linked to and draws its value solely from a deposit account subject to Chapter 73.

(b) If the existence and location of the owner of a stored value card is unknown to the holder of the property, the stored value card is presumed abandoned to the extent of its unredeemed and uncharged value on the earlier of:

(1) the card's expiration date;

(2) the third anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card; or

(3) the first anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card, if the card's value represents wages, as defined by Section 61.001, Labor Code.

(c) A person who sells or issues a stored value card in this state shall obtain the name and address of the apparent owner of the card and maintain a record of the owner's name and address and the identification number of the card. In the absence of an address record, the address of the apparent owner is considered to be the Austin, Texas, address of the comptroller.

(d) A person may charge a fee against a stored value card as provided by Section 35.42, Business & Commerce Code. A fee may not be charged against a stored value card after the card is presumed abandoned under this section.

SECTION _____. Section 72.103, Property Code, is amended to read as follows:

Sec. 72.103. PRESERVATION OF PROPERTY. Notwithstanding any other provision of this title except a provision of this section or Section 72.1016 relating to a money order or a stored value card, a holder of abandoned property shall preserve the property and may not at any time, by any procedure, including a deduction for service, maintenance, or other charge, transfer or convert to the profits or assets of the holder or otherwise reduce the value of the property. For purposes of this section, value is determined as of the date of the last transaction or contact concerning the property, except that in the case of a money order, value is determined as of the date the property is presumed abandoned under Section 72.102(c). If a holder imposes service, maintenance, or other charges on a money order prior to the time of presumed abandonment, such charges may not exceed the amount of 50 cents per month for each month the money order remains uncashed prior to the month in which the money order is presumed abandoned.

SECTION _____. Section 73.001(a)(1), Property Code, is amended to read as follows:

(1) "Account" means funds deposited with a depository in an interest-bearing account, a checking or savings account, or funds received by a depository in exchange for the purchase of a stored value card.

(3) In SECTION 2 of the bill (page 1, lines 34-35), strike "change in law made by Section 35.42, Business & Commerce Code, as added by this Act, applies" and substitute "changes in law made by this Act apply".

(4) In SECTION 2 of the bill (page 1, line 35), strike "gift" and substitute "stored value".

(5) In SECTION 2 of the bill (page 1, line 37), strike "gift" and substitute "stored value".

The amendment was read.

Senator Barrientos offered the following amendment to Floor Amendment No. 1:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **CSSB 446** as follows:

(1) On page 4, between lines 13 and 14, add a new Subsection (e) as follows:

(e) The comptroller shall transfer five percent of the money collected from cards presumed to be abandoned for use as grants under Subchapter M, Chapter 56, Education Code.

The amendment to Floor Amendment No. 1 to **CSSB 446** 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. 2.

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 446**, the amendment as amended was adopted by a viva voce vote.

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

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

CSSB 446 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment.

SENATE BILL 593 ON SECOND READING

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 593** at this time on its second reading:

SB 593, Relating to the governor's study of emerging technology and economic development.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 593** (committee printing) as follows:

(1) In Subsection (a), SECTION 1 of the bill (page 1, lines 16-23), strike Subdivisions (1) and (2).

(2) In Subdivision (3), Subsection (a), SECTION 1 of the bill (page 1, line 24), strike "(3)" and substitute "(1)".

(3) In Subdivision (4), Subsection (a), SECTION 1 of the bill (page 1, line 28), strike "(4)" and substitute "(2)".

The amendment to **SB 593** 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.

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

SB 593 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment.

SENATE BILL 593 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 **SB 593** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Wentworth.

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 593**, 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 593** 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 31, Nays 0.

COMMITTEE SUBSTITUTE
SENATE BILL 446 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 446** be placed on its third reading and final passage:

CSSB 446, Relating to the reduction in value or expiration of a stored value card.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Wentworth.

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 446**, 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 446** 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 31, Nays 0.

PERMISSION TO INTRODUCE BILLS

Senator Whitmire 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 1790, SB 1791, SB 1793, SB 1794, SB 1796, SB 1809, SB 1812, SB 1815, SB 1816.

The motion prevailed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 271 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 271** at this time on its second reading:

CSSB 271, Relating to the issuance of a certificate of birth resulting in stillbirth on request of a parent.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 271**, in SECTION 1 of the bill, by striking subsection (c) of added Section 192.0022, Health and Safety Code (Senate committee printing page 1, lines 34-43), and substituting the following:

(c) A parent may provide a name for a stillborn child on the request for a certificate of birth resulting in stillbirth. If the requesting parent does not wish to provide a name, vital statistics shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent. The name of the stillborn child provided on or later added by amendment to the certificate of birth resulting in stillbirth shall be the same name as placed on the original or amended fetal death certificate.

The amendment to **CSSB 271** 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.

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

CSSB 271 as amended was passed to engrossment by a viva voce vote.

All Members are deemed to have voted "Yea" on the passage to engrossment.

**COMMITTEE SUBSTITUTE
SENATE BILL 271 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 271** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 1.

Nays: Wentworth.

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 271**, 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 271** 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 31, Nays 0.

SENATE RULES SUSPENDED (Posting Rules)

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

SB 145, SB 165, SB 349.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 465 by Barrientos, In memory of Carlos Luis Vallejo, Sr., of Austin.

SR 466 by Barrientos, In memory of Donald Joseph Spence of Austin.

SR 467 by Barrientos, In memory of Trevor David Aston of Austin.

SR 468 by Barrientos, In memory of Edgar Kendrick "E. K." Browning, Jr., of Austin.

SR 469 by Barrientos, In memory of Fred G. Wright of Bastrop.

SR 471 by Van de Putte, In memory of Frank Prosser of San Antonio.

SR 473 by Gallegos, In memory of Ana Maria Rodriguez de Lopez of Houston.

SR 483 by Gallegos, In memory of Margarita H. Saldivar of Houston.

Congratulatory Resolutions

SR 470 by Shapiro, Congratulating the cheerleaders of Clark High School in Plano for winning the National Champions title at the American Showdown National Competition.

SR 479 by Lindsay, Commending Rick Delhommer for achieving the rank of Eagle Scout.

SR 480 by Lindsay, Commending Blake Loren Cunningham for achieving the rank of Eagle Scout.

SR 482 by Gallegos, Recognizing Oralia J. Guerrero on the occasion of her retirement.

SR 484 by Gallegos, Recognizing Jim C. Kollaer for his contributions to the City of Houston and to the State of Texas.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 12:57 p.m. adjourned, in memory of victims of an explosion at the British Petroleum refinery in Texas City and Arnold Gallegos, cousin of Senator Gallegos, until 11:00 a.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

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

March 29, 2005

CRIMINAL JUSTICE — **CSSB 307, CSSB 732**

NATURAL RESOURCES — **SB 355, SB 374, SB 496, SB 945, SB 986**

STATE AFFAIRS — **CSSB 522**

HEALTH AND HUMAN SERVICES — **CSSB 40**

EDUCATION — **CSSB 32, CSSB 126, SB 188, CSSB 189, CSSB 221, SB 283, SB 511, SB 527, CSSB 702, CSSB 730, SB 777, SB 961, SB 963, SB 851**
(Amended)

HEALTH AND HUMAN SERVICES — **SB 98** (Amended)

INTERGOVERNMENTAL RELATIONS — **CSSB 879**

JURISPRUDENCE — **CSSCR 7, CSSB 149, CSSB 673, SB 291, SB 671, SB 672**