

FIFTY-FIRST DAY

TUESDAY, APRIL 19, 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, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Absent-excused: Lucio, Williams.

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

The Right Reverend Michael Pfeifer, Bishop of the Catholic Diocese of San Angelo, offered the invocation as follows:

Kind, loving, and gracious God, our father and creator, we give You praise, adoration, thanksgiving, and worship by our presence, our prayer, and the service that we have the privilege of giving You and the citizens of the great State of Texas. With great humility and profound gratitude, we thank You for the countless blessings, both material and spiritual, that are poured out upon us like the rain, and so often we take them too much for granted. In particular, we thank You for the greatest blessing that You have given to our world, Your own son, who is the visible manifestation of Your love in our lives. May we remember that we are most like You, Father, when we love one another. Father, with sincerity and humility, we ask today that You would send down upon these Your servants Your loving spirit, and may these public servants be filled with the wonderful gifts of the holy spirit as they deliberate, discuss, and make decisions for the common good of the people they have the privilege of serving. May this spirit guide them with courage, with wisdom, and may they always feel the support of Your power. God, our heavenly father, You desire justice for all. We ask that You would enable these Senators to uphold the rights of others, and do not allow them to be misled by ignorance, selfish interests, or corrupted by fear or favor. Unite them to Yourself in bonds of love and keep them faithful to all that is true. May they always temper justice with love, so that all their decisions may be pleasing to You and earn the reward promised to good and faithful servants. Lord, may everything that we do begin with

Your inspiration and continue with Your help so that all of our prayers and works may begin in You and be happily ended. And we ask this through Christ our lord. 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 Lucio was granted leave of absence for today on account of important business.

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

CO-AUTHOR OF SENATE BILL 14

On motion of Senator Jackson, Senator Fraser will be shown as Co-author of **SB 14**.

CO-AUTHOR OF SENATE BILL 108

On motion of Senator Estes, Senator Lindsay will be shown as Co-author of **SB 108**.

CO-AUTHOR OF SENATE BILL 109

On motion of Senator Estes, Senator Lindsay will be shown as Co-author of **SB 109**.

CO-AUTHOR OF SENATE BILL 110

On motion of Senator Estes, Senator Lindsay will be shown as Co-author of **SB 110**.

CO-AUTHOR OF SENATE BILL 560

On motion of Senator Carona, Senator West will be shown as Co-author of **SB 560**.

CO-AUTHOR OF SENATE BILL 674

On motion of Senator West, Senator Estes will be shown as Co-author of **SB 674**.

CO-AUTHOR OF SENATE BILL 959

On motion of Senator Shapiro, Senator West will be shown as Co-author of **SB 959**.

CO-AUTHOR OF SENATE BILL 1146

On motion of Senator Shapiro, Senator West will be shown as Co-author of **SB 1146**.

CO-AUTHOR OF SENATE BILL 1186

On motion of Senator Nelson, Senator Fraser will be shown as Co-author of **SB 1186**.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
April 19, 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 135, Relating to regulation of health spas.

HB 248, Relating to the amendment of certain qualified domestic relations orders.

HB 291, Relating to victim notification regarding the release of certain defendants following acquittal by reason of insanity.

HB 649, Relating to the funding of transportation projects by the Texas Department of Transportation.

HB 1126, Relating to emergency medical services vehicles and personnel.

HB 1185, Relating to the exemptions from ad valorem taxation of real and personal property of a religious organization or a school.

HB 2191, Relating to providing that the social security number of a living person is excepted from required disclosure under the public information law and may be redacted without the necessity of requesting a decision from the attorney general.

HB 2382, Relating to training requirements for certain chief appraisers of appraisal districts.

HB 3250, Relating to the acquisition of unemployment compensation experience after the transfer of an employing unit; providing penalties.

HCR 37, Memorializing Congress to increase the presence of federal health and human services agencies, improve coordination of health and human services programs, and increase related funding in Texas.

HCR 63, Memorializing Congress to repeal the Government Pension Offset provision and the Windfall Elimination Provision of the Social Security Act.

HCR 88, Urging the Supreme Court of Texas and the Court of Criminal Appeals of Texas, as necessary, to develop rules relating to the random assignment to courts of appeals of cases pending or on appeal from counties with overlapping appellate jurisdictions and relating to determining the court of appeals precedent applicable in such randomly assigned cases.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

RESOLUTION SIGNED

The President announced the signing of the following enrolled resolution in the presence of the Senate: **HCR 141**.

PHYSICIAN OF THE DAY

Senator Seliger was recognized and presented Dr. George Martin Cole of Farmers Branch as the Physician of the Day.

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

SENATE RESOLUTION 627

Senator Hinojosa offered the following resolution:

WHEREAS, The Texas Senate takes great pleasure in recognizing the third class of the Senator Gregory Luna Memorial Legislative Scholars and Fellows Program instituted through the Senate Hispanic Research Council, Incorporated; and

WHEREAS, The program was named in memory of the late Senator Gregory Luna of San Antonio, who was a tireless advocate for equal access to education and who believed that a quality education is the key to a more effective and inclusive government; and

WHEREAS, During his tenure representing Bexar County, from 1985 to 1998, Senator Luna was a champion of the people and strove to dissolve barriers for Texas' less fortunate citizens; he was always committed to helping underrepresented and underserved Texans; and

WHEREAS, As a follow-up to Senator Luna's mission, this unique program was created to provide opportunities for undergraduate and graduate students from across the state to serve as full-time legislative assistants in the Texas Senate and to acquire the training they need to ultimately become effective leaders; and

WHEREAS, These Scholars and Fellows perform a variety of legislative tasks, including drafting proposed legislation and writing floor statements, articles, press releases, and legislative research summaries; the third class developed the First Annual Luna Scholars Leadership Institute, which teaches high-school-age foster students about diversity, college and career preparation, and leadership among peers; and

WHEREAS, The following four graduate Fellows and six undergraduate Scholars have demonstrated outstanding dedication and achievement in Senate offices: Carlos Calderon from Houston, serving in the office of Lieutenant Governor David Dewhurst; Stephen Cortes from Waco, serving in the office of Senator Kel Seliger; Jenny Marquez from Houston, serving in the office of Senator John Whitmire; Alejandro Martinez from McAllen, serving in the office of Senator Juan "Chuy" Hinojosa; Nicanor Pesina from Royse City, serving in the office of Senator Eddie Lucio; Elvira Ramos from Carrollton, serving in the office of Senator Gonzalo Barrientos; Jamal Rhadbane from San Antonio, serving in the office of Senator Judith Zaffirini; Marisol Sanchez from Austin, serving in the office of Senator Eliot

Shapleigh; Vanessa Solesbee from Austin, serving in the office of Senator Leticia Van de Putte; and Ricardo Zavala from Austin, serving in the office of Senator Frank Madla; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend these remarkable individuals for their service this session and extend to them best wishes as they prepare themselves to become the future leaders of our state and nation; and, be it further

RESOLVED, That a copy of this Resolution be presented to them as an expression of high regard from the Texas Senate.

HINOJOSA	LUCIO	VAN DE PUTTE
BARRIENTOS	MADLA	WEST
ELLIS	SELIGER	WHITMIRE
GALLEGOS	SHAPLEIGH	ZAFFIRINI

SR 627 was read and was adopted without objection.

GUESTS PRESENTED

Senator Hinojosa, joined by Senators Barrientos, Ellis, Madla, Seliger, Van de Putte, Whitmire, and Zaffirini, was recognized and introduced to the Senate participants in the Senator Gregory Luna Memorial Legislative Scholars and Fellows Program: Carlos Calderon, Stephen Cortes, Jenny Marquez, Alejandro Martinez, Nicanor Pesina, Elvira Ramos, Jamal Rhadbane, Marisol Sanchez, Vanessa Solesbee, and Ricardo Zavala.

The Senate welcomed its guests.

SENATE RESOLUTION 642

Senator Nelson offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the members of Leadership Flower Mound and the members of its Class of 2005 on the occasion of their visit to the State Capitol on April 19; and

WHEREAS, Sponsored by the Flower Mound Chamber of Commerce, Leadership Flower Mound provides a unique educational experience that enables its class participants to develop leadership skills and to acquire a working knowledge of the community; the goal of the program is to identify and encourage future leaders; and

WHEREAS, Anyone who works or resides in the greater Flower Mound area is eligible to apply for admission to the program; the class of 20 to 30 members is chosen without regard to race, gender, age, education, or personal or employment affiliations; and

WHEREAS, The town of Flower Mound is named for an actual spot in North Texas where the cross timbers meet the long prairie and where wildflowers sprout after the brush fires of dry summer months; it is a thriving town of about 59,000 citizens in southern Denton County and is a wonderful place in which to live, work, and raise a family; and

WHEREAS, Learning the inner workings of private and public institutions and finding how and where one might make contributions to the community are the desired ends of Leadership Flower Mound; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend Leadership Flower Mound for its innovative and thorough approach to preparing citizens for prominent roles in their community and extend best wishes for the future to the members of the Class of 2005; and, be it further

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

NELSON
HARRIS

SR 642 was read and was adopted without objection.

GUESTS PRESENTED

Senator Nelson, joined by Senator Harris, was recognized and introduced to the Senate the Leadership Class of the Flower Mound Chamber of Commerce.

The Senate welcomed its guests.

SENATE CONCURRENT RESOLUTION 20

The President laid before the Senate the following resolution:

WHEREAS, The Legislature of the State of Texas takes pleasure in recognizing the Texas Juvenile Justice System and in declaring April 19 Texas Juvenile Justice Day 2005; and

WHEREAS, The State of Texas and county governments are partners in providing one of the most progressive juvenile justice systems in the nation; and

WHEREAS, The Texas Juvenile Justice System is comprised of 169 community-based probation departments, which serve youths and families in all 254 counties in the state; the Texas Juvenile Probation Commission, which provides oversight for the probation departments; and the Texas Youth Commission, which provides institutional programs and services to high-risk juvenile offenders; and

WHEREAS, The Texas Legislature extensively studied and analyzed the juvenile justice system and in 1995 made sweeping reforms that provided for greater accountability for offenders, broader options for the prosecution of juvenile offenders, increased public safety, focused prevention and early intervention programs, and increased funding for the entire juvenile justice system; and

WHEREAS, With increased resources and guidelines, juvenile justice system professionals are able to make a positive difference in the lives of many troubled Texas youths and their families; and

WHEREAS, The reforms that began in 1995 have produced dramatic results; between 1995 and 2003, the juvenile-age population has increased 20 percent; however, referrals of youths to the justice system decreased by 20 percent, arrests decreased by 20 percent, violent felony offenses decreased by 27 percent, and the total number of juveniles certified as adults decreased by 77 percent; and

WHEREAS, Statistics show that the State of Texas has avoided millions of dollars in correctional costs because of the effective use of probation services and rehabilitative programs that reduce the number of referrals to the juvenile justice system; and

WHEREAS, The juvenile probation departments handle 98 percent of the referrals of youths to the juvenile justice system each year through the efforts of 2,880 certified juvenile probation officers and 4,106 certified detention officers; and

WHEREAS, Dedicated probation, detention, and corrections officers are represented by the Juvenile Justice Association of Texas, whose mission is to promote advocacy for Texas children by providing quality juvenile services through professional development, leadership, education, and training; and

WHEREAS, The persons who enter the field of juvenile justice accept a great responsibility to the youths and families of Texas; they work tirelessly and courageously to rehabilitate the lives of troubled youths and maintain the security and safety of our state's communities; now, therefore, be it

RESOLVED, That the 79th Legislature of the State of Texas hereby commend the outstanding professionals of our juvenile justice system for their vital contributions to the citizens of this state and extend sincere appreciation to them on Texas Juvenile Justice Day 2005; and, be it further

RESOLVED, That a copy of this resolution be prepared in their honor and as an expression of high regard from the Texas Legislature.

BARRIENTOS

SCR 20 was read.

On motion of Senator Barrientos 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: Lucio, Williams.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate representatives of the Texas Juvenile Justice System, celebrating April 19 as Texas Juvenile Justice Day 2005: Mike Thomas, Travis County; Adrian Garza, Duval County; Estela Medina, Travis County; and Kenneth Martindale, Wheeler County; accompanied by representatives of the juvenile justice system.

The Senate welcomed its guests.

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 1861, SB 1863.

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

Absent-excused: Lucio, Williams.

SENATE BILLS ON FIRST READING

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

SB 1861 by Ellis

Relating to a prohibition on the investment of state funds in private business entities doing business in Sudan.

To Committee on Finance.

SB 1862 by Shapleigh

Relating to the creation of the Tierra del Este Municipal Utility District; providing authority to impose a tax and issue bonds; granting the power of eminent domain. (Local Bill)

To Committee on Intergovernmental Relations.

SB 1863 by Ogden

Relating to certain fiscal matters affecting governmental entities.

To Committee on Finance.

SB 1864 by Jackson

Relating to the powers of the Galveston County Municipal Utility District No. 51, including powers related to the construction, maintenance, operation, and financing of roads or turnpikes. (Local Bill)

To Committee on Intergovernmental Relations.

SB 1865 by Jackson

Relating to the creation of the Galveston County Municipal Utility District No. 53; providing authority to impose a tax and issue bonds; granting the power of eminent domain. (Local Bill)

To Committee on Intergovernmental Relations.

SB 1866 by Jackson

Relating to the creation of Dickinson Management District No. 1; providing authority to levy assessments, impose taxes and issue bonds. (Local Bill)

To Committee on Intergovernmental Relations.

SB 1867 by Jackson

Relating to the creation of the NASA Area Management District; providing authority to impose an assessment, impose a tax, and issue bonds. (Local Bill)

To Committee on Intergovernmental Relations.

SB 1868 by Deuell

Relating to the creation of an additional county court at law in Kaufman County. (Local Bill)

To Committee on Jurisprudence.

HOUSE BILLS AND RESOLUTION ON FIRST READING

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

HB 22 to Committee on Government Organization.

HB 27 to Committee on Criminal Justice.

HB 201 to Committee on Jurisprudence.

HB 202 to Committee on Jurisprudence.

HB 203 to Committee on Jurisprudence.

HB 365 to Committee on Natural Resources.

HB 422 to Committee on Natural Resources.
HB 667 to Committee on Criminal Justice.
HB 706 to Committee on Criminal Justice.
HB 731 to Committee on Intergovernmental Relations.
HB 754 to Committee on Transportation and Homeland Security.
HB 769 to Committee on Natural Resources.
HB 828 to Committee on Natural Resources.
HB 836 to Committee on Health and Human Services.
HB 860 to Committee on Finance.
HB 894 to Committee on Health and Human Services.
HB 912 to Committee on Government Organization.
HB 950 to Committee on Intergovernmental Relations.
HB 960 to Committee on Intergovernmental Relations.
HB 1009 to Committee on Transportation and Homeland Security.
HB 1107 to Committee on Transportation and Homeland Security.
HB 1136 to Committee on Transportation and Homeland Security.
HB 1231 to Committee on Intergovernmental Relations.
HB 1331 to Subcommittee on Higher Education.
HB 1438 to Committee on Criminal Justice.
HB 1471 to Committee on Intergovernmental Relations.
HB 1544 to Committee on Health and Human Services.
HB 1549 to Committee on Criminal Justice.
HB 1602 to Committee on State Affairs.
HB 1604 to Committee on Health and Human Services.
HB 1645 to Committee on Transportation and Homeland Security.
HB 1672 to Committee on Transportation and Homeland Security.
HB 1681 to Committee on Criminal Justice.
HB 1697 to Subcommittee on Higher Education.
HB 1735 to Committee on Transportation and Homeland Security.
HB 1751 to Committee on Criminal Justice.
HB 1814 to Committee on Transportation and Homeland Security.
HB 1817 to Committee on Business and Commerce.
HB 1905 to Committee on Jurisprudence.
HB 1939 to Committee on Business and Commerce.
HB 2171 to Committee on Business and Commerce.
HB 2179 to Committee on Business and Commerce.
HB 2231 to Committee on Jurisprudence.
HB 2377 to Committee on Government Organization.
HB 2379 to Committee on Government Organization.
HB 2410 to Committee on Natural Resources.
HB 2453 to Committee on Transportation and Homeland Security.
HB 2457 to Committee on Intergovernmental Relations.
HB 2549 to Committee on Intergovernmental Relations.
HB 2565 to Committee on Business and Commerce.
HB 2619 to Committee on Intergovernmental Relations.
HB 2645 to Committee on State Affairs.

HB 2658 to Committee on Intergovernmental Relations.
HB 2659 to Committee on Transportation and Homeland Security.
HB 2761 to Committee on Business and Commerce.
HB 2814 to Committee on Intergovernmental Relations.
HB 2870 to Committee on Business and Commerce.
HB 2871 to Committee on Business and Commerce.
HB 2872 to Committee on Business and Commerce.
HB 2913 to Committee on Jurisprudence.
HB 2921 to Committee on Transportation and Homeland Security.
HB 2949 to Committee on Natural Resources.
HB 2987 to Committee on Business and Commerce.
HB 3101 to Committee on Intergovernmental Relations.
HB 3240 to Committee on Jurisprudence.
HB 3475 to Committee on Jurisprudence.
HCR 30 to Committee on Intergovernmental Relations.

GUESTS PRESENTED

Senator Fraser was recognized and introduced to the Senate the senior class members of Center Point High School in Center Point.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

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

(Senator Averitt in Chair)

COMMITTEE SUBSTITUTE SENATE BILL 165 ON THIRD READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 165** at this time on its third reading and final passage:

CSSB 165, Relating to the regulation of private process servers; providing penalties.

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

Absent-excused: Lucio, Williams.

COMMITTEE SUBSTITUTE SENATE BILL 560 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 560** at this time on its second reading:

CSSB 560, Relating to court orders for discovery in a criminal case.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 560** by striking all below the enacting clause and substituting the following:

SECTION 1. Article 39.14, Code of Criminal Procedure, is amended to read as follows:

Art. 39.14. DISCOVERY

Sec. 1. DISCLOSURE BY STATE. (a) As soon as practicable after receiving a timely request from the defendant, the attorney representing the state shall disclose to the defendant or the defendant's counsel and permit inspection, photocopying, or photographing of the following materials and information in the possession, custody, or control of the state or any of its agencies:

(1) any exculpatory or impeachment evidence material to the defendant's guilt or punishment;

(2) any written or recorded statements that are made by the defendant or by any witness the attorney representing the state intends to call at the trial and that are related to the case charged, including offense reports by law enforcement personnel and grand jury testimony, if any;

(3) any written record containing the substance of any oral statement that is made by the defendant and that is related to the case charged, whether made before or after the defendant's arrest, in response to interrogation by any person whom the defendant believed to be a peace officer;

(4) the defendant's prior criminal record;

(5) any record of a criminal conviction admissible for impeachment under Rule 609, Texas Rules of Evidence, of a witness the attorney representing the state intends to call at the trial;

(6) any affidavit, warrant, or return pertaining to a search or seizure in connection with the case;

(7) any real evidence that was obtained from or belongs to the defendant or that the attorney representing the state intends to use at the trial, and on a showing of materiality by the defendant, the opportunity to test that evidence;

(8) the names and addresses of all witnesses the attorney representing the state intends to call at the trial, including those called to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence;

(9) any report produced by or for an expert witness the attorney representing the state intends to call at the trial; and

(10) any plea agreement, grant of immunity, or other agreement for testimony issued by the attorney representing the state in connection with the case.

~~[Upon motion of the defendant showing good cause therefor and upon notice to the other parties, the court in which an action is pending may order the State before or during trial of a criminal action therein pending or on trial to produce and permit the inspection and copying or photographing by or on behalf of the defendant of any designated documents, papers, written statement of the defendant, (except written statements of witnesses and except the work product of counsel in the case and their investigators and their notes or report), books, accounts, letters, photographs, objects~~

or tangible things not privileged, which constitute or contain evidence material to any matter involved in the action and which are in the possession, custody or control of the State or any of its agencies. The order shall specify the time, place and manner of making the inspection and taking the copies and photographs of any of the aforementioned documents or tangible evidence; provided, however, that the rights herein granted shall not extend to written communications between the State or any of its agents or representatives or employees. Nothing in this Act shall authorize the removal of such evidence from the possession of the State, and any inspection shall be in the presence of a representative of the State.]

(b) If the defendant gives notice of a defense under Section 2(b), the attorney representing the state shall, not later than 10 days before the date the trial begins, disclose to the defendant or the defendant's counsel the names and addresses of the witnesses the state intends to use to rebut the defense or the testimony of any of the defendant's witnesses called to establish that defense. [On motion of a party and on notice to the other parties, the court in which an action is pending may order one or more of the other parties to disclose to the party making the motion the name and address of each person the other party may use at trial to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence. The court shall specify in the order the time and manner in which the other party must make the disclosure to the moving party, but in specifying the time in which the other party shall make disclosure the court shall require the other party to make the disclosure not later than the 20th day before the date the trial begins.]

(c) This article does not authorize the removal of physical evidence from the possession of the state, and any inspection of physical evidence shall be conducted in the presence of a representative of the state.

Sec. 2. DISCLOSURE BY DEFENDANT. (a) As soon as practicable after receiving the initial disclosure under Section 1 from the attorney representing the state, the defendant shall disclose to the attorney representing the state and permit inspection, photocopying, or photographing of the following materials and information:

(1) any relevant written or recorded statements by any witnesses, other than the defendant, the defendant intends to call at the trial;

(2) any record of a criminal conviction admissible for impeachment under Rule 609, Texas Rules of Evidence, of a witness, other than the defendant, the defendant intends to call at the trial if that information is known to the defendant;

(3) any real evidence that the defendant intends to use at the trial, and on a showing of materiality by the attorney representing the state, the opportunity to test that evidence;

(4) the names and addresses of all witnesses, other than the defendant, the defendant intends to call at the trial, including those called to present evidence under Rules 702, 703, and 705, Texas Rules of Evidence; and

(5) any report produced by or for an expert witness the defendant intends to call at the trial.

(b) On a request by the state, a defendant planning to offer evidence of one or more defenses listed in Chapter 8 or 9, Penal Code, or evidence of an alibi defense, shall file a good faith notice of intent to raise the defense with the court and the

attorney representing the state not later than the 30th day before the date the trial begins. If the defendant intends to raise an alibi defense, the notice must include the place at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses the defendant intends to use to establish the alibi. Any notice provided under this subsection is for purposes of discovery only and is not admissible at trial unless the court finds that the contents of the notice were not made in good faith.

(c) After the filing of the indictment or information, the court may require the defendant to submit nontestimonial evidence to the state. This article does not limit any law enforcement or prosecuting agency from seeking or obtaining nontestimonial evidence to the extent permitted by law.

Sec. 3. EXCEPTIONS TO DISCLOSURE. (a) Neither the attorney representing the state nor the defendant is required to disclose materials or information that are:

(1) recorded proceedings of a grand jury, except as provided in Section 1(a)(2) of this article and Rule 615, Texas Rules of Evidence;

(2) a work product, including a report, memorandum, or other internal document, of the attorney representing the state, the defendant, or their investigators or other agents that is made in connection with the investigation, prosecution, or defense of the case; or

(3) privileged under an express statutory provision, the Texas Constitution, or the United States Constitution.

(b) This article does not authorize disclosure of the name, address, or telephone number of a victim in violation of the provisions of Chapter 57.

(c) A victim impact statement is subject to disclosure before the testimony of the victim is taken only if the court determines that the statement contains exculpatory material.

Sec. 4. CONTINUING DUTY TO DISCLOSE. If, before a trial begins, but subsequent to compliance with this article or a relevant court order, a party discovers additional material or information subject to disclosure, the party shall immediately notify the other party or the other party's counsel of the existence of the additional material or information.

Sec. 5. EXCISION. (a) Except as provided by Subsection (b), if a portion of material or information is subject to discovery under this article and a portion is not subject to discovery, only the portion that is subject to discovery must be disclosed. The disclosing party shall inform the other party that the portion of material or information that is not subject to discovery has been excised and withheld. On request, the court shall conduct a hearing to determine whether the reasons for excision are justifiable. Material or information excised pursuant to judicial order shall be sealed and preserved in the records of the court and shall be made available to an appellate court in the event of an appeal.

(b) Excision of a witness statement produced in accordance with Rule 615, Texas Rules of Evidence, is governed by that rule.

Sec. 6. PROTECTIVE ORDERS. (a) On a showing of good cause, the court may at any time enter an appropriate protective order that a specified disclosure be denied, restricted, or deferred. "Good cause," for purposes of this section, includes

threats, harm, intimidation, or possible danger to the safety of a victim or witness, possible loss, destruction, or fabrication of evidence, or possible compromise of other investigations by law enforcement or a defense offered by a defendant.

(b) If a protective order is granted concerning the personal information for a victim or witness, the party in possession of that information shall make the victim or witness available for an interview by the opposing party or their representative at a time, date, place, and manner specified by the court.

Sec. 7. IN CAMERA PROCEEDINGS. On request, the court may permit to be made in camera an excision hearing under Section 5(a), a showing of good cause for denial or regulation of a disclosure under Section 6, or any portion of a proceeding. A verbatim record shall be made of a proceeding in camera. If the court excises a portion of the material or information or enters an order granting relief following a showing of good cause, the entire record shall be sealed and preserved in the records of the court and shall be made available to an appellate court in the event of an appeal.

Sec. 8. CONFERENCE. On request of the attorney representing the state or the defendant, the court shall hold a discovery hearing under Section 1(8), Article 28.01, not later than the 10th day before the date the trial begins, to verify compliance by each party with this article.

Sec. 9. COMPLIANCE; SANCTIONS. (a) The disclosures required under this article may be performed in any manner that is mutually agreeable to the attorney representing the state and the defendant or that is ordered by the court in accordance with this article. The order issued by the court must specify the time, place, and manner of making the required disclosures.

(b) On a showing that a party has not complied with this article or a relevant court order, the court may make any order the court finds necessary under the circumstances, including an order related to immediate disclosure, contempt proceedings, delay or prohibition of the testimony of a witness or the presentation of real evidence, or continuance of the matter. The court may also inform the jury of any failure or refusal to disclose or any untimely disclosure under this article.

(c) The court may prohibit the use of a defense or the presentation of a witness under Subsection (b) only if all other sanctions have been exhausted or the discovery violation amounts to wilful misconduct designed to obtain a tactical advantage that would minimize the effectiveness of cross-examination and the ability to adduce rebuttal evidence. The court may not dismiss a charge under Subsection (b) unless required to do so by the Texas Constitution or the United States Constitution.

SECTION 2. Section 2, Article 46.03, Code of Criminal Procedure, is repealed.

SECTION 3. The change in law made by this Act applies to the prosecution of an offense committed on or after the effective date of this Act. The prosecution of an offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 4. This Act takes effect September 1, 2005.

The amendment to **CSSB 560** 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: Lucio, Williams.

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

CSSB 560 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: Lucio, Williams.

**COMMITTEE SUBSTITUTE
SENATE BILL 560 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 560** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio, Williams.

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 560**, 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 560** 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 29, Nays 0.

Absent-excused: Lucio, Williams.

SENATE BILL 251 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 251** at this time on its second reading:

SB 251, Relating to the questioning of prospective jurors during voir dire examination.

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: Lucio, Williams.

SENATE BILL 251 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 251** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio, Williams.

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 251**, 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 251** 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 29, Nays 0.

Absent-excused: Lucio, Williams.

SENATE BILL 1297 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1297** at this time on its second reading:

SB 1297, Relating to the elements of the criminal offense of discharging used oil into water in the state.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 1297** as follows:

(1) In SECTION 1 of the bill, in amended Subsection (a), Section 7.147, Water Code, strike proposed Subdivision (2) (committee printing page 1, lines 20-23) and substitute the following:

(2) consists of used oil and the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040.

(2) In SECTION 2 of the bill, in amended Subsection (a), Section 7.176, Water Code, strike Subdivision (1) (committee printing page 1, lines 27-32) and substitute the following:

(1) intentionally discharges used oil into:

(A) a sewer or ~~[-drainage system,]~~ septic tank; or

(B) a drainage system, surface water or groundwater, a watercourse, or marine water unless the concentration of used oil in the waste stream resulting from the discharge as it enters water in the state is less than 15 parts per million following the discharge and the person is authorized to discharge storm water under a general permit issued under Section 26.040;

The amendment to **SB 1297** 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: Lucio, Williams.

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

SB 1297 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: Lucio, Williams.

SENATE BILL 1297 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1297** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio, Williams.

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 1297**, 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 1297** 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 28, Nays 1.

Nays: Barrientos.

Absent-excused: Lucio, Williams.

SENATE BILL 689 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 689** at this time on its second reading:

SB 689, Relating to a feasibility study regarding the creation of a federal criminal history record clearinghouse at the Department of Public Safety of the State of Texas.

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: Lucio, Williams.

SENATE BILL 689 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 **SB 689** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio, Williams.

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 689**, 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 689** 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 29, Nays 0.

Absent-excused: Lucio, Williams.

**COMMITTEE SUBSTITUTE
SENATE BILL 879 ON SECOND READING**

Senator Gallegos moved to suspend the regular order of business to take up for consideration **CSSB 879** at this time on its second reading:

CSSB 879, Relating to the regulation of firefighters and fire departments by the Texas Commission on Fire Protection.

The motion prevailed.

Senator Nelson asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 879** by striking "or adjust the amount of a fee prescribed by a rule" (committee printing, page 1, lines 17-18).

The amendment to **CSSB 879** 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: Lucio, Williams.

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

CSSB 879 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:

Nays: Nelson.

Absent-excused: Lucio, Williams.

**COMMITTEE SUBSTITUTE
SENATE BILL 879 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 879** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 2.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Madla, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Zaffirini.

Nays: Nelson, Wentworth.

Absent-excused: Lucio, Williams.

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 879**, 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 879** 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 28, Nays 1.

Nays: Nelson.

Absent-excused: Lucio, Williams.

SENATE BILL 1299 ON SECOND READING

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1299** at this time on its second reading:

SB 1299, Relating to an exception to the prohibition against commingling used oil with solid waste if the commingling is incident to the dismantling of scrap, used, or obsolete metals.

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: Lucio, Williams.

SENATE BILL 1299 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1299** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio, Williams.

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 1299**, 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 1299** 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 29, Nays 0.

Absent-excused: Lucio, Williams.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

April 19, 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:

SB 217, Relating to reporting the outcome of alcohol and drug tests of holders of commercial driver's licenses.

(Committee Substitute)

SB 581, Relating to the powers and duties of the Veterans' Land Board.

(Committee Substitute)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

COMMITTEE SUBSTITUTE**SENATE BILL 767 ON SECOND READING**

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 767** at this time on its second reading:

CSSB 767, Relating to the appraisal for ad valorem tax purposes of certain land included in a habitat preserve and subject to a conservation easement.

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: Lucio, Williams.

(President in Chair)**COMMITTEE SUBSTITUTE****SENATE BILL 1263 ON SECOND READING**

Senator Whitmire moved to suspend the regular order of business to take up for consideration **CSSB 1263** at this time on its second reading:

CSSB 1263, Relating to the creation of a commission to ensure the quality of forensic science.

The motion prevailed.

Senator Estes asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1263** as follows:

On page 1, SECTION 3, Subsection (a)(1), line 22, strike "~~three members appointed by the governor, at least one of whom must be a dean of a law school or the dean's designee and at least one of whom must be a law enforcement officer in this state~~" and insert "one member appointed by the governor, one member appointed by the lieutenant governor, and one member appointed by the Speaker of the Texas House".

On page 1, SECTION 3, Subsection (a)(2), line 26, strike "~~two members appointed by the attorney general, at least one of whom must have expertise in the field of forensic science~~" and insert "one member appointed by the attorney general, whom must have expertise in the field of forensic science".

On page 1, SECTION 3, Subsection (a)(4), line 34, strike "~~two members appointed by the chancellor of the Texas State University System, both of whom must be faculty or staff members of the Sam Houston State University College of Criminal Justice~~" and insert "one member appointed by the chancellor of the Texas State University System, whom must be a faculty or staff member of the Sam Houston State University College of Criminal Justice".

Add the following to line after page 2, SECTION 3, subsection (a)(4), and renumber accordingly:

(5) one member appointed by the chancellor of the University of North Texas System, whom must be a faculty member and specialize in clinical laboratory medicine;

(6) one member appointed by the president of Texas Southern University, whom must be a faculty member of the College of Pharmacy and Health Sciences;

The amendment to **CSSB 1263** 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: Lucio, Williams.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 1263** as follows:

In SECTION 2, on page 3, add the following:

(f) This article does not apply to the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

The amendment to **CSSB 1263** 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 except as follows:

Absent-excused: Lucio, Williams.

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

CSSB 1263 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:

Nays: Estes.

Absent-excused: Lucio, Williams.

COMMITTEE SUBSTITUTE SENATE BILL 1263 ON THIRD READING

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1263** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 2.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Zaffirini.

Nays: Estes, Wentworth.

Absent-excused: Lucio, Williams.

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 1263**, 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 1263** 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 28, Nays 1.

Nays: Estes.

Absent-excused: Lucio, Williams.

**COMMITTEE SUBSTITUTE
SENATE BILL 9 ON SECOND READING**

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 9** at this time on its second reading:

CSSB 9, Relating to homeland security; providing a penalty.

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 9** as follows:

In SECTION 10 of the bill, Section 791.006, Government Code, strike Subsection (a) and replace it with the following:

(a) ~~If governmental units~~ In the absence of a contract, under this chapter to if a municipality, county, rural fire prevention district, emergency services district, fire protection agency, organized volunteer group, joint board or other emergency services entity furnishes or obtain the fire or emergency services to another municipality, county, rural or a fire prevention district, emergency services district, fire protection agency, organized volunteer group, joint board or other emergency services entity, each department, the governmental unit that would have been is responsible for furnishing the services in the absence of the contract is responsible its own actions for any civil liability that arises from the furnishing or obtaining of those services.

The amendment to **CSSB 9** 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: Lucio, Williams.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 9** by adding the following new SECTION, appropriately numbered, and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Chapter 2, Agriculture Code, is amended by adding Section 2.006 to read as follows:

Sec. 2.006. POLICY: INSPECTION STATIONS. (a) Protecting this state from the intentional or unintentional introduction of damaging plant and animal pests and diseases is paramount to the interests of the agriculture industry and this state.

(b) The department, with the assistance of the Texas Animal Health Commission, shall protect this state by ensuring that the borders of this state are secure from shipments of potentially dangerous plant and animal pests and diseases.

(c) In recognition of the key role that plant and animal inspections play in proactively protecting this state's borders, the department and the Texas Animal Health Commission, under the direction of the department, shall carry out joint road station and interstate shipment inspections when feasible at strategic points throughout this state as determined by the department and the Texas Animal Health Commission.

The amendment to **CSSB 9** 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 except as follows:

Absent-excused: Lucio, Williams.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 9** by adding the following appropriately numbered SECTION to the bill and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION ____. Section 161.048, Agriculture Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) The commission may execute agreements with corporations or other private concerns to provide goods or services to establish checkpoints or conduct inspections under this section.

The amendment to **CSSB 9** 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. 3 except as follows:

Absent-excused: Lucio, Williams.

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

CSSB 9 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: Lucio, Williams.

COMMITTEE SUBSTITUTE SENATE BILL 9 ON THIRD READING

Senator Staples moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 9** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio, Williams.

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 9**, 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 9** 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 29, Nays 0.

Absent-excused: Lucio, Williams.

GUESTS PRESENTED

Senator West was recognized and introduced to the Senate a group of students from W. H. Adamson High School in Dallas.

The Senate welcomed its guests.

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 the following bills and resolutions today:

SB 31, SB 532, SB 817, SB 927, SB 1037, SB 1208, SB 1227, SB 1300, SB 1528, SB 1544, SB 1553, SB 1594, SB 1671, SB 1778, SB 1780, SCR 17, SCR 27.

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

On motion of Senator Madla and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Intergovernmental Relations might meet today.

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 1174** tomorrow.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Carona and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Subcommittee on Emerging Technologies and Economic Development might meet and consider the following bills today:

SB 559, SB 1038, SB 1253, SB 1254, SB 1304, SB 1711, HB 2307.

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

On motion of Senator Lindsay and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Nominations might meet today.

SENATE RULE 11.13 SUSPENDED
(Consideration of Bills in Committees)

On motion of Senator Harris and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate is meeting Thursday, April 21, 2005, during the Local and Uncontested Calendar Session.

SENATE RULE 11.18(a) SUSPENDED
(Public Hearings)

On motion of Senator Fraser and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Business and Commerce might consider **SB 1096** today.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 638 by Seliger, In memory of J. Mark Fuller of Amarillo.

SR 639 by Van de Putte, In memory of Elmer Brotze.

SR 646 by Barrientos, In memory of Paul K. Lane.

Congratulatory Resolutions

SR 637 by Seliger, Recognizing the girls basketball team of Canyon High School for winning a state championship.

SR 640 by Ellis, Recognizing Spring Antioch Baptist Church on the occasion of its sixth anniversary.

SR 641 by Shapleigh, Recognizing the boys soccer team of Del Valle High School in El Paso for winning a state championship.

SR 644 by Jackson, Recognizing Bill Bailey of Pasadena for his accomplishments.

SR 645 by Carona, Recognizing the concert band of L. V. Berkner High School in Richardson for receiving the 2004 Sudler Flag of Honor from the John Philip Sousa Foundation.

SR 647 by Barrientos, Recognizing the McCallum Fine Arts Academy in Austin for being named a 2005 GRAMMY Signature School.

SR 648 by Barrientos, Recognizing James W. Vick for his contributions to The University of Texas at Austin.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 1:23 p.m. adjourned 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:

April 19, 2005

ADMINISTRATION — **HCR 36**

EDUCATION — **CSSB 474, CSSB 962, CSSB 1395**

FINANCE — **SB 567, SB 1569**

