

FIFTY-SEVENTH DAY

WEDNESDAY, APRIL 27, 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, Zaffirini.

Absent-excused: Williams.

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

The Reverend Brandon L. Hollar, Capital Christian Center, Austin, offered the invocation as follows:

Heavenly Father, possessor of heaven and Earth, we come before You in the name of Your risen son. Bless this assembly with grace, wisdom, and understanding. Lead them in the paths of truth so that the decisions made will lead this great state into times of prosperity and peace for all the people. Cause protection, health, and favor to rest upon these appointed men and women who lead us. In the name of our great and loving savior, we pray. Amen.

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

The motion prevailed without objection.

LEAVE OF ABSENCE

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

April 27, 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 418, Relating to an exception to the 72-hour waiting period for a marriage ceremony for certain individuals.

HB 440, Relating to the modification or enforcement of a child support order during the obligor's confinement in jail or prison.

HB 480, Relating to the towing and storage of certain vehicles; providing a penalty.

HB 798, Relating to release of a child taken into protective custody by a law enforcement or juvenile probation officer.

HB 850, Relating to professional health care liability insurance coverage information provided by a nursing home.

HB 916, Relating to creating the Governor's Health Care Coordinating Council.

HB 1036, Relating to conflicts of interest of policy board members of metropolitan planning organizations; providing a criminal penalty.

HB 1189, Relating to the creation of two additional criminal judicial districts composed of Dallas County.

HB 1213, Relating to fitness incentive pay for certain fire fighters and police officers.

HB 1316, Relating to immunization requirements for children in regulated child-care facilities.

HB 1418, Relating to the justice court technology fund and to requiring the assessment of a technology fee on conviction of certain misdemeanor offenses.

HB 1483, Relating to the method of payment for a concealed handgun license and the fee for a duplicate or modified license.

HB 1599, Relating to a conservation and reclamation district's use of money received under a contract with a municipality.

HB 1688, Relating to the employment of school district peace officers and the enforcement of certain violations under a student code of conduct.

HB 1708, Relating to the applicability of state ethics laws to and indemnification of directors of regional mobility authorities; providing penalties.

HB 1833, Relating to disclosures required for the creation of certain consumer contracts solicited by mail; providing a civil penalty.

HB 2077, Relating to the prohibition of wireless communications devices in correctional facilities operated by or under contract with the Texas Department of Criminal Justice; providing penalties.

HB 2137, Relating to the construction or improvement of buildings by the Texas Department of Transportation.

HB 2208, Relating to the creation of a cultural and fine arts district program by the Texas Commission on the Arts.

HB 2275, Relating to the forfeiture of certain contraband used in the commission of certain felony intoxication offenses.

HB 2296, Relating to the reduction of a state jail felony prosecution to a misdemeanor prosecution.

HB 2333, Relating to the qualifications of and training and continuing education for certain officials and personnel of career schools or colleges.

HB 2370, Relating to the regulation of poultry facilities.

HB 2423, Relating to discrimination by a groundwater conservation district against landowners whose land is enrolled or participating in a federal conservation program.

HB 2661, Relating to the use of competitive sealed proposals for certain construction projects.

SB 187, Relating to permissible uses of money in the comprehensive rehabilitation fund.

SB 402, Relating to the administration and functions of the Texas State Board of Podiatric Medical Examiners; providing an administrative penalty.

SB 407, Relating to the continuation and functions of the State Board of Veterinary Medical Examiners.

(Committee Substitute)

SB 566, Relating to a Medicaid buy-in program for employed persons with disabilities.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

BILL SIGNED

The President announced the signing of the following enrolled bill in the presence of the Senate after the caption had been read: **SB 245**.

SENATE RESOLUTION 697

Senator Seliger offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize April 27, 2005, as Big Spring Area Day at the Capitol; a West Texas city with a rich history, Big Spring is known for its brilliant skies and earnest hospitality, and the "Big Sky, Big Heart" community stands ready to move into the future; and

WHEREAS, Big Spring is the regional hub for a variety of health-care services, including the Big Spring State Hospital, which furnishes psychiatric inpatient services for 57 West Texas counties and provides mental health care to the Veteran's Administration Hospital for West Texas, New Mexico, and Arizona; and

WHEREAS, West Texas Centers for Mental Health and Mental Retardation supports an area of 23 counties with a wide array of mental health and mental retardation services, as well as early childhood intervention assistance to more than 2,200 individuals each year; and

WHEREAS, One of the first homes of its kind, Lamun-Lusk-Sanchez State Veterans Home continues to provide long-term care for veterans and their spouses, allowing them to reside in dignity and comfort in their senior years; and

WHEREAS, Big Spring maintains a vital oil and gas industry, and its citizens recently enjoyed a citywide celebration of the 75th anniversary of the Big Spring Alon Refinery; agriculture and ranching remain the cornerstones of the city's economy, but the importance of economic diversity has brought teleservices, plastics, and composites manufacturing to the area; and

WHEREAS, Educational excellence is paramount to the citizens of Big Springs; Howard College and Southwest Collegiate Institute for the Deaf provide essential programs for a skilled workforce; students from Big Spring, Coahoma, and Forsan Independent School Districts are encouraged to acquire skills and education needed to meet future personal and economic goals; and

WHEREAS, The Colorado River Municipal Water District was created by the 51st Texas Legislature to provide a dependable source of water supply to its member cities, and for the last 56 years the district has successfully carried out that mission by never having rationed water to the more than 425,000 people it serves in West Texas; and

WHEREAS, Big Spring offers its citizens the possibility of job opportunities, educational advancement, and recreational activities; the city and its citizens have made important contributions to the vitality and prosperity of Texas; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby extend to the citizens of Big Spring, Forsan, and Coahoma best wishes for a delightful Big Spring Area Day at the Capitol; and, be it further

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

SR 697 was read and was adopted without objection.

GUESTS PRESENTED

Senator Seliger was recognized and introduced to the Senate a delegation of citizens from Big Spring celebrating Big Spring Area Day at the Capitol: Bill Crooker, Howard County Commissioner; Russ McEwen, Mayor, Big Spring; Michael Downes, Superintendent, Big Spring Independent School District; Dr. Cheri Sparks, President, Howard College; and Ed Moughon, Superintendent, Big Spring State Hospital; accompanied by a delegation of citizens from the Big Spring area.

The Senate welcomed its guests.

GUEST PRESENTED

Senator Armbrister was recognized and introduced to the Senate Linda Fraser, wife of Senator Fraser.

The Senate welcomed its guest.

SENATE BILL AND RESOLUTION ON FIRST READING

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

SB 1884 by Ellis

Relating to the creation of the Harris County Municipal Utility District No. 460; providing authority to impose a tax and issue bonds; granting the power of eminent domain. (Local Bill)

To Committee on Intergovernmental Relations.

SCR 32 by Averitt

Opposing any proposal to close the Waco Veterans Affairs Hospital and urging Texans and veterans to express their support for the hospital and its retention.

To Committee on Veteran Affairs and Military Installations.

HOUSE BILL AND RESOLUTIONS ON FIRST READING

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

HB 183 to Committee on Transportation and Homeland Security.

HJR 6 to Committee on State Affairs.

HJR 87 to Committee on Jurisprudence.

SENATE RESOLUTION 692

Senator Barrientos offered the following resolution:

WHEREAS, The Senate of the State of Texas is proud to recognize The University of Texas at Austin Longhorn football team on the occasion of its historic Rose Bowl victory over the University of Michigan Wolverines on January 1, 2005; and

WHEREAS, Both schools have a long tradition of participation in intercollegiate football; The University of Texas Longhorns have been playing since 1893, and the University of Michigan Wolverines have been playing since 1879; and

WHEREAS, The post-season Rose Bowl game has been held annually in Pasadena, California, since 1916; January 1, 2005, marks the first Rose Bowl appearance for The University of Texas Longhorns and their first meeting with the University of Michigan Wolverines; and

WHEREAS, Playing before a crowd of more than 90,000, the Longhorns defeated the University of Michigan Wolverines by a score of 38-37 to win their first Rose Bowl Championship Series game; and

WHEREAS, Going into the Rose Bowl, the Longhorns were ranked sixth in the nation with a season record of 10-1, and they continued to prove their capacity to combine teamwork and talent to lead them to this tremendous victory; and

WHEREAS, Longhorn quarterback Vince Young led Texas to 17 fourth-quarter points; he ran for 192 yards and four touchdowns, passed for 180 yards and one additional touchdown, and was voted the offensive player of the game; and

WHEREAS, With just two seconds remaining in the game and the Wolverines holding a 37-35 lead, senior Longhorn placekicker Dusty Mangum, playing in his last game, kicked the winning 37-yard field goal in the dramatic ending that gave Texas its Rose Bowl championship; and

WHEREAS, Under the outstanding leadership of coach Mack Brown, the 2005 senior class of Texas Longhorn football players compiled a four-year record of 43-8 and appeared in four bowl games, winning three; receiving special honors during the season were senior Cedric Benson, who won the 2004 Doak Walker Award as the nation's top running back, and senior Derrick Johnson, who won the 2004 Butkus Award as the nation's best linebacker; and

WHEREAS, The Longhorns' victory in the Rose Bowl is the culmination of the team's outstanding season, and they have brought great honor to themselves, their school, and the Lone Star State; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby extend congratulations to The University of Texas Longhorns on their 2005 Rose Bowl Championship; and, be it further

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

SR 692 was read and was adopted without objection.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate members of The University of Texas at Austin Longhorns football team: Coach Mack Brown; players Dusty Mangum and Ahmard Hall; accompanied by DeLoss Dodds, Athletics Director, and Patricia Ohlendorf, Vice Chancellor.

The Senate welcomed its guests.

PHYSICIAN OF THE DAY

Senator Estes was recognized and presented Dr. Mark C. Eidson of Weatherford as the Physician of the Day.

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

GUESTS PRESENTED

Senator Hinojosa was recognized and introduced to the Senate a delegation of students from Moody High School in Corpus Christi representing Moody Civic Minded Students.

The Senate welcomed its guests.

GUEST PRESENTED

The President acknowledged the presence of Senator Carlos Truan, former Dean of the Senate.

The Senate welcomed its guest.

SENATE RESOLUTION 666

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Texas Senate Internship Program, which is being offered in the 2005 spring semester for the first time as an academic course at The University of Texas School of Law; and

WHEREAS, This legislative internship program provides an opportunity for law students to work on legal issues at approved placements in the Texas Legislature for academic credit; and

WHEREAS, Law students study the legislative process and the role of lawyers in the legislature while under the close supervision of experienced attorneys; and

WHEREAS, There are 25 law students participating in the internship program this spring; one student works in the Office of the Governor, and one student works in the Office of the Lieutenant Governor; 13 students work in the Texas Senate with five senators and two committees, and 10 students work in the Texas House of Representatives with five representatives and two committees; and

WHEREAS, Students in the Texas Senate Internship Program gain valuable firsthand knowledge of the governmental process and insight into the issues facing our communities and our state; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend the administrators of The University of Texas School of Law for providing the internship program for law students and extend to members of the inaugural class best wishes for the future; and, be it further

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

SR 666 was read and was adopted without objection.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate Bill Powers, Dean, The University of Texas School of Law; Eden Harrington, Director, William Wayne Justice Center for Public Interest Law; and The University of Texas School of Law students Eric Heins, David Crumby, and Anastasia Breloff; accompanied by a delegation of law students participating in the Texas Senate Internship Program.

The Senate welcomed its guests.

SENATE RESOLUTION 701

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas is honored to welcome a number of distinguished legislators present this day from Tamaulipas, Mexico, and to commend them for their invaluable service on behalf of our nations' common goals for the border region; and

WHEREAS, These dedicated public servants have provided vital support to such mutually beneficial projects as construction on international bridges and work on interconnected highways between our two countries, demonstrating their strong commitment to enhancing economic development in the border region; and

WHEREAS, To that end, several of these Tamaulipas state leaders also participated in a tour sponsored by the Rio Grande Valley Partnership, during which they traveled to various sites in the Valley to learn about significant initiatives taking place and to discuss issues of interest to members on both sides of the border; they were joined on the tour by Rio Grande Valley legislators and other officials from across the Lone Star State, including Senators Rodney Ellis and Leticia Van de Putte and State Representatives Tony Goolsby, Bob Griggs, Chuck Hopson, Bob Hunter, Jesse W. Jones, Mike Krusee, Anna Mowery, and Wayne Smith; and

WHEREAS, Serving their citizens with vision and outstanding leadership are the following officials from the State of Tamaulipas: Speaker of the House Amira Gomez Tueme, General Secretary of the Congress Enrique Garza Tamez, and State Representatives Jose Francisco Rabago Castillo, Alejandro Cenicerros Martinez, Gloria Del Carmen Altamirano Elizondo, Alejandro Antonio Saenz Garza, Alejandro Felipe Martinez Rodriguez, Norma Leticia Salazar Vasquez, Hector Martin Garza Gonzalez, Anastacia Guadalupe Flores Valdez, Marco Cardenas Martinez, Agustin Chapa Torres, Armando Martinez Manriquez, and Ramon Garza Barrios; and

WHEREAS, Both the tour and today's visit have helped to fortify the bond between the United States and Mexico, while serving the interests of citizens on both sides of the border, and it is a pleasure to pay tribute to all those involved for their leadership and commitment to a shared vision for the future; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby honor our esteemed guests from Tamaulipas, Mexico, and commend them for their notable efforts to enhance the border region for the benefit of all; and, be it further

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

SR 701 was read and was adopted without objection.

GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate a delegation of legislators from Tamaulipas, Mexico: Amira Gomez Tueme, Speaker of the House; and Representatives Jose Francisco Rabago Castillo, Alejandro Cenicerros Martinez, Gloria Del Carmen Altamirano Elizondo, Alejandro Antonio Saenz Garza, Alejandro Felipe Martinez Rodriguez, Agustin Chapa Torres, Hector Martin Garza Gonzalez, Anastacia Guadalupe Flores Valdez, Enrique Garza Tamez, Marco Cardenas Martinez, Roberto Benet Ramos, Jose Gudino Cardiel, and Ramon Garza Barrios.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Gallegos was recognized and introduced to the Senate a group of students from Milby High School in Houston.

The Senate welcomed its guests.

SENATE RESOLUTION 699

Senator Wentworth offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join Rotary District 5870 in recognizing the young people of ages 12 to 18 in Central Texas who have exemplified the motto of Rotary International, "Service Above Self"; and

WHEREAS, Today, April 27, 2005, is Youth Doing Service Above Self Day in the State of Texas for Rotary District 5870; the following persons are to be commended for having performed exceptional deeds for their family, their school, or their community at large: Chris Barton, Austin Benesh, Moses Calderon, Natalia Carrillo, Desiree Couchman, Stephanie David, Jonathan Dobin, Leslie Eakin, Violet Fuller, Stephanie Garrett, Ryan Hambley, Fred H. Hilscher, Jr., Charissa Johnson, Jessica Kaiser, Chris Kelley, Leonel Manzano, Melanie McDaniel, Brittany Mumme, William Ortiz, Jr., Lucia Peralta, Brandi Pilat, Jamie Prentice, Monica Robinson, Wallace Simmons, Raquel Torres, Salwa Yordi, Danielle Carroll, Mark Carvelli, Jason Collier, Frank Crabill, Jennifer Daleiden, Jillian Daleiden, Rickie Fleck, Evan Franco, Rachel Green, Jaylon Harkness, Tucker Hermans, Dagen Hybner, Rachel Johnson, Adriene Lee, Serena Loftus, Sandeep Mehta, Heydee Obregon, Kelsey Peters, Gavin Radebaugh, Alexandra Romero, Rickey Watson, Rex Wright, and Mark Zucknick; and

WHEREAS, These outstanding young people have been selected for recognition due to their exemplary service; they have all demonstrated true strength of character and are excellent role models for their peers; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby congratulate the students who exemplify Youth Doing Service Above Self in Texas and extend to them sincere best wishes for continued success; and, be it further

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

SR 699 was read and was adopted without objection.

GUESTS PRESENTED

Senator Wentworth was recognized and introduced to the Senate a delegation from Rotary District 5870 representing Youth Doing Service Above Self Day in Texas.

The Senate welcomed its guests.

SENATE RESOLUTION 698

Senator Hinojosa offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in recognizing the organizers of the 45th Annual League of United Latin American Citizens' Feria de las Flores and the Feria's participants on the occasion of their visit to the State Capitol on April 27, 2005; and

WHEREAS, This is the 45th year that the LULAC Council Number One has sponsored the Feria de las Flores; the council is noted for its efforts to raise money for scholarships for qualified college-bound students; through the generosity of South Texas businesses, the council has given more than \$1 million in scholarship money to the winners of the Feria; and

WHEREAS, The Feria de las Flores is a celebration of the heritage of Mexican American citizens and includes dance, music, and dress typical of the different regions south of the border; the participants compete in the categories of dance routine, costume, poise, personality, beauty, and on-stage questioning; and

WHEREAS, The first Feria de las Flores was created and organized by Joe Flores in 1959, and Abby Piña was crowned the first Feria de las Flores Queen; this year the contestants are Sonya Adame, Amanda Arreola, Angela Balarin, Jacqueline Castellanos, Josette Gonzales, Jennifer Gonzalez, Jessica Gonzalez, Jeanette Rivera, Crystal Rodriguez, Tiffany Rosas, Teresa Sanchez, and Dionisia Torres; the 2004 Feria de las Flores Queen is Marina Ramon; and

WHEREAS, Council Number One's Feria de las Flores is an exemplary competition that provides educational opportunities for the young people of South Texas; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend the League of United Latin American Citizens' Council Number One on its humanitarian endeavors and extend a warm welcome to the participants and organizers of the 45th Annual Feria de las Flores; and, be it further

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

SR 698 was read and was adopted without objection.

GUESTS PRESENTED

Senator Hinojosa was recognized and introduced to the Senate participants in the 45th Annual League of United Latin American Citizens' Feria de las Flores.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate a delegation of service providers for Legal Aid.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Ogden was recognized and introduced to the Senate representatives of the Commissioners Court Leadership Academy.

The Senate welcomed its guests.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

April 27, 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 481, Relating to creating an offense for the unauthorized operation of a recording device in a motion picture theater.
(Amended)

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

SB 1014, Relating to records on appeal in municipal courts of record.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Shapiro was recognized and introduced to the Senate members of the Texas Abstinence Council.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Jackson was recognized and introduced to the Senate a delegation of citizens from League City.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The President at 12:12 p.m. announced the conclusion of morning call.

**COMMITTEE SUBSTITUTE
SENATE BILL 142 ON SECOND READING**

The President laid before the Senate **CSSB 142** on its second reading. The bill had been read second time, an amendment offered, and further consideration postponed to a time certain of 11:00 a.m. today:

CSSB 142, Relating to the authority of a county to regulate land development after a local option election.

Question — Shall Floor Amendment No. 1 to **CSSB 142** be adopted?

Floor Amendment No. 1

Amend **CSSB 142** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 232, Local Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. REGULATION OF LAND DEVELOPMENT

Sec. 232.151. DEFINITIONS. In this subchapter:

(1) "Agriculture" means:

(A) cultivating the soil to produce crops for human food, animal feed, seed for planting, or the production of fibers;

(B) practicing floriculture, viticulture, silviculture, or horticulture;

(C) raising, feeding, or keeping animals for breeding purposes or for the production of food, fiber, leather, pelts, or other tangible products having commercial value;

(D) planting cover crops, including cover crops cultivated for transplantation, or leaving land idle for the purpose of participating in a governmental program or normal crop or livestock rotation procedure; or

(E) wildlife management.

(2) "Agricultural use" means use or activity involving agriculture.

Sec. 232.152. SCOPE OF REGULATORY AUTHORITY. (a) The commissioners court of a county that is granted authority in accordance with this subchapter may regulate, by order, land development in the unincorporated area of the county by:

(1) requiring a limited fire suppression system that requires a developer to construct:

(A) for a subdivision of fewer than 50 houses, 2,500 gallons of storage;

or

(B) for a subdivision of 50 or more houses, 2,500 gallons of storage with a centralized water system or 5,000 gallons of storage;

(2) requiring a buffer zone between the land used for a purpose specified by this subdivision and residential areas as follows:

(A) at least 1,000 feet for heavy industrial or quarry use;

(B) at least 750 feet for light industrial use; and

(C) at least 500 feet for commercial or other business use; or

(3) requiring a developer, before the county approves a plat filed by the developer, to:

(A) contract with an engineer licensed under Chapter 1001, Occupations Code, and specializing in civil engineering to determine the off-site roadway needs of the subdivision or other development and the costs of providing the necessary off-site roadway improvements attributable to the subdivision or other development; and

(B) provide for the necessary off-site roadway improvements attributable to the subdivision or other development, as determined by the engineer under Paragraph (A).

(b) Any contribution from a developer required to be provided for necessary off-site roadway improvements must be limited to the developer's portion of the costs required for the off-site roadway improvements that are roughly proportionate to the attributable increased off-site roadway needs of the county as a result of the proposed development, as determined by the engineer under Subsection (a)(3)(A).

(c) Subsection (a)(2) does not authorize a county to adopt zoning regulations.

(d) A county regulation under this subchapter does not apply to land used for an activity described by Section 81.051, Natural Resources Code, or to an interstate gas pipeline facility as defined by 49 U.S.C. Section 60101.

(e) A county regulation under this subchapter, other than a regulation requiring a buffer zone under Subsection (a)(2), does not apply to a tract of land used for a single-family residence that is located outside the boundaries of a platted subdivision.

(f) A county regulation under this subchapter does not apply to:

(1) a platted residential subdivision in existence on the date the regulation takes effect;

(2) a tract of land devoted to agricultural use; or

(3) an activity or a structure or appurtenance on a tract of land devoted to agricultural use.

Sec. 232.153. ELECTION TO GRANT REGULATORY AUTHORITY. The commissioners court of a county may order and hold an election in the county on the question of granting the commissioners court the authority to regulate land development in the unincorporated area of the county.

Sec. 232.154. BALLOT PROPOSITION. For an election under this subchapter, the ballot shall be prepared to permit voting for or against the proposition: "Granting (name of county) the authority to regulate land development in the unincorporated area of the county."

Sec. 232.155. EFFECT OF ELECTION. If a majority of the votes received on the question at the election approve the grant of authority, the commissioners court of the county may adopt a regulation under this subchapter.

SECTION 2. The heading to Chapter 232, Local Government Code, is amended to read as follows:

CHAPTER 232. COUNTY REGULATION OF SUBDIVISIONS
AND PROPERTY DEVELOPMENT

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

(Senator Armbrister in Chair)

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

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **CSSB 142** in SECTION 1 of the bill, in proposed Section 232.155, Local Government Code (page 3, lines 28-29), strike "the votes received" and substitute "the votes cast in the county as a whole and a majority of the votes cast in the unincorporated area of the county".

The amendment to Floor Amendment No. 1 to **CSSB 142** 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: Williams.

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 142**, the amendment as amended was adopted by the following vote: Yeas 20, Nays 9, Present-not voting 1.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Ellis, Fraser, Harris, Hinojosa, Janek, Lindsay, Madla, Ogden, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Duncan, Eltife, Estes, Gallegos, Jackson, Lucio, Nelson, Seliger, Shapiro.

Present-not voting: Deuell.

Absent-excused: Williams.

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

CSSB 142 as amended was passed to engrossment by the following vote: Yeas 17, Nays 13.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Ellis, Hinojosa, Janek, Lucio, Madla, Ogden, Shapleigh, Van de Putte, Wentworth, Whitmire, Zaffirini.

Nays: Duncan, Eltife, Estes, Fraser, Gallegos, Harris, Jackson, Lindsay, Nelson, Seliger, Shapiro, Staples, West.

Absent-excused: Williams.

COMMITTEE SUBSTITUTE SENATE BILL 1096 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1096** at this time on its second reading:

CSSB 1096, Relating to certain employment and training investment programs in this state.

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

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

Absent-excused: Williams.

COMMITTEE SUBSTITUTE
SENATE BILL 1096 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 **CSSB 1096** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: 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 1096**, 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 1096** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Williams.

SENATE BILL 629 ON THIRD READING

Senator Lucio moved to suspend the regular order of business to take up for consideration **SB 629** at this time on its third reading and final passage:

SB 629, Relating to the rights of a purchaser under an executory contract for conveyance of real property.

The motion prevailed.

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

The bill was read third time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend **SB 629** (Senate committee printing) on third reading as follows:

(1) In SECTION 5 of the bill, in the recital, strike "Sections 5.081 through 5.085" (page 2, line 11) and substitute "Sections 5.081 through 5.084".

(2) In SECTION 5 of the bill, in added Section 5.081, Property Code, strike Subsection (e) (page 2, lines 52-56) and substitute the following:

(e) A seller who violates this section is liable to the purchaser for liquidated damages in the amount of \$2,000.

(3) In SECTION 5 of the bill, strike added Section 5.084, Property Code (page 3, lines 60-64) and renumber added sections of Subchapter D, Chapter 5, Property Code, accordingly.

(4) Insert the following SECTION of the bill, appropriately numbered:

SECTION _____. (a) Sections 5.077(a) and (c), Property Code, are amended to read as follows:

(a) The seller shall provide the purchaser with an annual statement in January of each year for the term of the executory contract. The [If the] seller shall deliver [mails] the statement to the purchaser by certified mail[, the statement must be postmarked] not later than January 31. A statement is presumed delivered under this subsection when it is deposited in the mail. This presumption is rebuttable when evidence of failure to receive the statement is provided. If more than one purchaser signs the contract, a seller complies with this subsection if the seller delivers the statement to at least one of the purchasers.

(c) A seller who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of the lesser of:

(A) \$250 [a day] for each annual statement [day after January 31 that] the seller fails to provide to the purchaser on or before February 1 and an additional \$1,000 if the seller fails to provide the purchaser with the annual statement on or after March 1; or

(B) the remaining amount owed under the contract on the first day the seller fails to comply with Subsection (a); and

(2) reasonable attorney's fees.

(b) The change in law made by this Act to Section 5.077(c), Property Code, applies to all actions for damages not finally adjudicated on or before September 1, 2005.

(5) In SECTION 6 of the bill, strike Subsection (e) (page 4, lines 50-54).

(6) In SECTION 6 of the bill, in Subsection (f), renumber the reference to "Section 5.085" appropriately.

(7) Reletter subsections of SECTION 6 of the bill appropriately.

(8) Renumber SECTIONS of the bill appropriately.

The amendment was read.

On motion of Senator Lucio, further consideration of **SB 629** was postponed to a time certain of 2:00 p.m. today.

Question — Shall Floor Amendment No. 1 on Third Reading to **SB 629** be adopted?

SENATE BILL 440 ON THIRD READING

Senator Ellis moved to suspend the regular order of business to take up for consideration **SB 440** at this time on its third reading and final passage:

SB 440, Relating to compensation for wrongful imprisonment.

The motion prevailed.

Senators Brimer, Fraser, Harris, Janek, Lindsay, Nelson, Ogden, Shapiro, Staples, and Wentworth asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read third time and was passed by the following vote: Yeas 20, Nays 10.

Yeas: Armbrister, Averitt, Barrientos, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hinojosa, Jackson, Lucio, Madla, Seliger, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Nays: Brimer, Fraser, Harris, Janek, Lindsay, Nelson, Ogden, Shapiro, Staples, Wentworth.

Absent-excused: Williams.

SENATE BILL 444 ON SECOND READING

On motion of Senator Staples and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 444** at this time on its second reading:

SB 444, Relating to registration fee credits for the owners of certain dry cleaning facilities that do not participate in the dry cleaning facility release fund.

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: Williams.

SENATE BILL 444 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 **SB 444** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: 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 444**, 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 444** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Williams.

COMMITTEE SUBSTITUTE
SENATE BILL 927 ON SECOND READING

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSSB 927** at this time on its second reading:

CSSB 927, Relating to the annexation of territory in political subdivisions by certain junior college districts.

The motion prevailed by the following vote: Yeas 28, Nays 2.

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

Nays: Gallegos, Harris.

Absent-excused: Williams.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 927** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, strike the heading to proposed Section 130.0712, Education Code (page 1, lines 17-18) and substitute "ANNEXATION OF TERRITORY BY ELECTION FOR CERTAIN DISTRICTS".

(2) In SECTION 1 of the bill, strike proposed Subsection (a), Section 130.0712, Education Code (page 1, lines 18-24) and substitute the following:

(a) Notwithstanding any other provision of this subchapter, a junior college district that includes within its territory all or part of a school district with a student enrollment of more than 170,000 may annex territory by election only as provided by this section. The territory to be annexed must be located within:

(1) the service area of the junior college district; or

(2) a municipality or school district that is partly located within the junior college district.

The amendment to **CSSB 927** 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: Williams.

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

CSSB 927 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: Williams.

COMMITTEE SUBSTITUTE SENATE BILL 927 ON THIRD READING

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 927** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 3.

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

Nays: Gallegos, Harris, Wentworth.

Absent-excused: 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 927**, 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 927** 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 2.

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

Nays: Gallegos, Harris.

Absent-excused: Williams.

SENATE BILL 449 ON THIRD READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 449** at this time on its third reading and final passage:

SB 449, Relating the conversion of certain mutual life insurance companies to insurance holding companies and stock life insurance companies.

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

Absent-excused: Williams.

COMMITTEE SUBSTITUTE SENATE BILL 1064 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 1064** at this time on its second reading:

CSSB 1064, Relating to rate changes by a water and sewer utility.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1064** as follows:

(1) In the recital to SECTION 2 of the bill (committee printing page 1, line 19), strike "and (l) and adding Subsection (e-1)" and substitute "(l), (m), and (n) and adding Subsections (e-1), (n-1), and (n-2)".

(2) In SECTION 2 of the bill, in amended Subsection (a), Section 13.187, Water Code (committee printing page 1, lines 31-39), strike Subdivisions (2) and (3) and substitute the following:

(2) a billing comparison regarding the existing water rate and the new water rate computed for the use of:

- (A) 3,000 gallons of water;
- (B) 5,000 gallons of water;
- (C) 10,000 gallons of water; and
- (D) ~~(B)~~ 30,000 gallons of water; and

(3) a billing comparison regarding the existing sewer rate and the new sewer rate computed for the use of 5,000 gallons and 10,000 gallons, unless the utility proposes a flat rate for sewer services; and

(4) the proposed effective date and the deadline by which customers must file any protests of the proposed rates, provided that the protest period concludes 90 days after the statement of intent is provided to the ratepayers.

(3) In SECTION 2 of the bill, in the second sentence of amended Subsection (e), Section 13.187, Water Code (committee printing page 1, line 61), after "provided" add the following:

". The regulatory authority must provide notice to the utility and any affected municipality that a hearing is being set on the proposed rate increase"

(4) In SECTION 2 of the bill, in amended Subsection (l), Section 13.187, Water Code (committee printing page 2, line 42), after the period, add the following:

The interim rates shall be based on the information contained in the rate change application and may not be lower than the rates on the utility's approved tariff immediately before filing the notice of intent to change the rates. If the regulatory authority is the commission, the executive director shall set the interim rates.

(5) In SECTION 2 of the bill, after amended Subsection (l), Section 13.187, Water Code (committee printing page 2, between lines 42 and 43), add the following:

(m) If the regulatory authority sets a final rate that is lower than the interim rate, the utility shall refund or credit the difference between the interim rate and the final rate plus interest as determined by the regulatory authority unless otherwise agreed to by the parties to the rate proceeding. If the regulatory authority sets a final rate that is higher than the interim rate, the utility shall be allowed to collect the difference between the interim rate and final rate unless otherwise agreed to by the parties to the rate proceeding.

(n) The ~~[For good cause shown, the]~~ regulatory authority must make a final determination on the rates not later than:

(1) if the determination is made by a local regulatory authority, 150 days after the date the interim rates are established; or

(2) if the determination is made by the commission, 305 days after the effective date the interim rates are established ~~[may at any time during the proceeding require the utility to refund money collected under a proposed rate before the rate was suspended or an interim rate was established to the extent the proposed rate exceeds the existing rate or the interim rate].~~

(n-1) If the regulatory authority does not make the determination within the deadline provided by Subsection (n), the proposed rates are automatically approved.

(n-2) Notwithstanding Subsection (n-1), the deadline for making a determination under Subsection (n) may be extended by the agreement of all parties to the rate proceeding, in which case the commission shall make the determination. A hearing shall be conducted in a timely manner to allow the commission to make its final determination on the proposed rates.

(5) Renumber the subsequent SECTIONS of the bill accordingly.

The amendment to **CSSB 1064** 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: 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 1064 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: Williams.

COMMITTEE SUBSTITUTE SENATE BILL 1064 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 1064** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: 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 1064**, 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 1064** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Williams.

SENATE BILL 1464 ON SECOND READING

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1464** at this time on its second reading:

SB 1464, Relating to the authority of certain municipal electric utilities to invest funds held in a decommissioning trust.

The bill was read second time.

Senator Van de Putte offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 1464** by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill as appropriate:

SECTION _____. Section 39.205, Utilities Code, is amended to read as follows:

Sec. 39.205. REGULATION OF COSTS FOLLOWING FREEZE PERIOD. At the conclusion of the freeze period, any remaining costs associated with nuclear decommissioning obligations continue to be subject to cost of service rate regulation and shall be included as a nonbypassable charge to retail customers. The commission may adopt rules necessary to ensure that money for decommissioning is prudently collected, managed, and spent for its intended purpose and that money that remains unspent after decommissioning is completed is returned to retail customers.

The amendment to **SB 1464** 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: Williams.

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

SB 1464 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: Williams.

SENATE BILL 1464 ON THIRD READING

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1464** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: 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 1464**, 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 1464** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Williams.

COMMITTEE SUBSTITUTE SENATE BILL 1189 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 1189** at this time on its second reading:

CSSB 1189, Relating to the creation, composition, jurisdiction, and procedure of certain judicial districts, to the election of a local administrative district judge for certain counties, to the juvenile board in certain counties, and to the district courts in certain counties.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1189**, committee printing, on page 5, as follows:

(1) Between lines 60 and 61, add new SECTION 22 of the bill, to read as follows:

SECTION 22. Section 152.1511(a), Human Resources Code, is amended to read as follows:

(a) The juvenile board of Leon County is composed of the county judge and the judges of the 12th, 87th, and 278th Judicial Districts.

(2) On line 61, amend SECTION 22 of the bill by renumbering it as SECTION 23 of the bill.

The amendment to **CSSB 1189** 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: Williams.

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

CSSB 1189 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: Williams.

**MOTION TO PLACE
COMMITTEE SUBSTITUTE
SENATE BILL 728 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSSB 728** at this time on its second reading:

CSSB 728, Relating to the liability of certain entities that enter agreements with a metropolitan rapid transit authority.

Senator Wentworth withdrew further consideration of **CSSB 728**.

**(Senator Brimer in Chair)
COMMITTEE SUBSTITUTE
SENATE BILL 1323 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1323** at this time on its second reading:

CSSB 1323, Relating to the regulation of viatical settlement agreements and life settlement agreements; providing penalties.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1323**, SECTION 2 as follows:

SECTION 2. Section 1111.002, Insurance Code, is amended to read as follows:

Section 1111.002 PURPOSE; The purpose of this subchapter is to:

(1) provide for registration of persons engaged in the business of life or viatical settlements; ~~and~~

(2) provide consumer protection for a person who may sell or otherwise transfer the person's life insurance policy; and

(3) provide that the department has exclusive jurisdiction in this state to regulate viatical settlements, other than transactions governed by The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

The amendment to **CSSB 1323** 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: Williams.

Senator Averitt offered the following amendment to the bill:

Floor Amendment No. 2

Amend the committee printing of **CSSB 1323** on page 6, by striking lines 6 through 11.

The amendment to **CSSB 1323** 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: Williams.

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

CSSB 1323 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: Williams.

COMMITTEE SUBSTITUTE SENATE BILL 1323 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 **CSSB 1323** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: 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 1323**, 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 1323** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed.

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

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Williams.

(President in Chair)

SENATE BILL 629 ON THIRD READING

The President laid before the Senate **SB 629** on its third reading. The bill had been read third time, an amendment offered, and further consideration postponed to a time certain of 2:00 p.m. today:

SB 629, Relating to the rights of a purchaser under an executory contract for conveyance of real property.

Question — Shall Floor Amendment No. 1 on Third Reading to **SB 629** be adopted?

Senator Wentworth withdrew Floor Amendment No. 1 on Third Reading.

Senator West offered the following amendment to the bill:

Floor Amendment No. 2 on Third Reading

Amend **SB 629** on third reading as follows:

In SECTION 1, strike subsection (c) and substitute the following:

c) A seller, who conducts less than two transactions in a twelve month period under this Section, who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of \$100 for each annual statement the seller fails to provide to the purchaser within the time required by Subsection (a); and

(2) reasonable attorney's fees.

d) A seller, who conducts two or more transactions in a twelve month period under this section, who fails to comply with Subsection (a) is liable to the purchaser for:

(1) liquidated damages in the amount of \$250 a day for each day after January 31 that the seller fails to provide the purchaser with the statement, but not to exceed the fair market value of the property; and

(2) reasonable attorney's fees.

The amendment to **SB 629** 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 on Third Reading except as follows:

Absent-excused: Williams.

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

SB 629 as again amended was finally passed by the following vote: Yeas 29, Nays 1.

Nays: Nelson.

Absent-excused: Williams.

COMMITTEE SUBSTITUTE
SENATE BILL 15 ON SECOND READING

On motion of Senator Janek and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 15** at this time on its second reading:

CSSB 15, Relating to civil claims involving exposure to asbestos and silica.

The bill was read second time.

Senator Janek offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 15** as follows:

(1) In SECTION 1 of the bill, in proposed Subsection (n)(3) (committee printing, page 3, line 27), strike "nonmalignant".

(2) In SECTION 2 of the bill, in proposed Subdivision (23)(A), Section 90.001, Civil Practice and Remedies Code (committee printing, page 4, line 56), strike "5th ed. 2000".

(3) In SECTION 2 of the bill, in proposed Subsection (a), Section 90.003, Civil Practice and Remedies Code (committee printing, page 6, line 11), strike "at or".

(4) In SECTION 2 of the bill, in proposed Subsection (a), Section 90.003, Civil Practice and Remedies Code (committee printing, page 6, line 13), strike "below" and substitute "above".

(5) In SECTION 2 of the bill, in proposed Subsection (a), Section 90.003, Civil Practice and Remedies Code (committee printing, page 6, line 16), strike "at or".

(6) In SECTION 2 of the bill, in proposed Subsection (a), Section 90.003, Civil Practice and Remedies Code (committee printing, page 6, lines 24 through 25), strike "available to demonstrate" and substitute "demonstrating".

(7) In SECTION 2 of the bill, in proposed Subsection (c), Section 90.003, Civil Practice and Remedies Code (committee printing, page 6, lines 63 through 64), strike "available to demonstrate" and substitute "demonstrating".

(8) In SECTION 2 of the bill, in proposed Subsection (d), Section 90.003, Civil Practice and Remedies Code (committee printing, page 7, line 13), strike "at or".

(9) In SECTION 2 of the bill, in proposed Subsection (d), Section 90.003, Civil Practice and Remedies Code (committee printing, page 7, line 15), strike "at or".

(10) In SECTION 2 of the bill, in proposed Subsection (d), Section 90.003, Civil Practice and Remedies Code (committee printing, page 7, line 17), strike "at or".

(11) In SECTION 2 of the bill, in proposed Subsection (d), Section 90.003, Civil Practice and Remedies Code (committee printing, page 7, line 21), strike "at or".

(12) In SECTION 2 of the bill, in proposed Subsection (d), Section 90.003, Civil Practice and Remedies Code (committee printing, page 7, line 34), strike "available to demonstrate" and substitute "demonstrating".

(13) In SECTION 2 of the bill, in proposed Subsection (a), Section 90.004, Civil Practice and Remedies Code (committee printing, page 8, lines 17 through 18), strike "available to demonstrate" and substitute "demonstrating".

(14) In SECTION 2 of the bill, in proposed Subsection (e), Section 90.004, Civil Practice and Remedies Code (committee printing, page 8, line 56), strike "at each place of employment".

(15) In SECTION 2 of the bill, in proposed Subsection (e), Section 90.004, Civil Practice and Remedies Code (committee printing, page 8, line 57), strike "level" and substitute "frequency".

(16) In SECTION 2 of the bill, in proposed Subsection (c), Section 90.007, Civil Practice and Remedies Code (committee printing, page 9, line 44), strike "trial".

(17) In SECTION 2 of the bill, in proposed Subsection (d), Section 90.007, Civil Practice and Remedies Code (committee printing, page 9, line 54), strike "trial".

(18) In SECTION 2 of the bill, in proposed Subsection (e), Section 90.007, Civil Practice and Remedies Code (committee printing, page 9, line 55), strike "trial".

(19) In SECTION 2 of the bill, in proposed Subsection (a), Section 90.010, Civil Practice and Remedies Code (committee printing, page 10, line 9), strike "May 1, 2005" and substitute "September 1, 2003".

(20) In SECTION 2 of the bill, in proposed Subsection (c), Section 90.010, Civil Practice and Remedies Code (committee printing, page 10, line 36), after the period, insert the following:

The MDL pretrial court should, as far as reasonably possible, ensure that such action is brought to trial or final disposition within six months from the date the action is transferred to the MDL pretrial court, provided that all discovery and case management requirements of the MDL pretrial court have been satisfied.

(21) In SECTION 2 of the bill, in proposed Subsection (c), Section 90.010, Civil Practice and Remedies Code (committee printing, page 10, line 32), after "cancer," insert "malignant silica-related cancer".

(22) In SECTION 2 of the bill, in proposed Subsection (j), Section 90.010, Civil Practice and Remedies Code (committee printing, page 11, line 55), strike "circumvent" and substitute "negate".

(23) In SECTION 2 of the bill, immediately following proposed Subsection (j), Section 90.010, Civil Practice and Remedies Code (committee printing, page 11, between lines 55 and 56), insert the following:

(k) On or before September 1, 2010, each MDL pretrial court having jurisdiction over cases to which this chapter applies shall deliver a report to the governor, lieutenant governor, and the speaker of the house of representatives stating:

(1) the number of cases on the court's multidistrict litigation docket as of August 1, 2010;

(2) the number of cases on the court's multidistrict litigation docket as of August 1, 2010, that do not meet the criteria of Section 90.003 or 90.004, to the extent known;

(3) the court's evaluation of the effectiveness of the medical criteria established by Sections 90.003 and 90.004;

(4) the court's recommendation, if any, as to how medical criteria should be applied to the cases on the court's multidistrict litigation docket as of August 1, 2010; and

(5) any other information regarding the administration of cases in the MDL pretrial courts that the court deems appropriate.

(24) In SECTION 5 of the bill, in amended Subsection (a), Section 51.014, Civil Practice and Remedies Code (committee printing, page 12, line 56), after the semicolon, insert "or".

(25) In SECTION 5 of the bill, in amended Subsection (a), Section 51.014, Civil Practice and Remedies Code (committee printing, page 12), strike lines 58 through 60 and substitute "90.007".

(26) In SECTION 7 of the bill, in amended Subsection (a), Section 23.101, Government Code (committee printing, page 13, line 29), after "cancer," insert "malignant silica-related cancer".

(27) In SECTION 9 of the bill, in proposed Subsection (a) (committee printing, page 14, line 22), after "Act", insert "or in which there has been a final, unappealable disposition by order, judgment, voluntary dismissal, or otherwise".

(28) In SECTION 9 of the bill, in proposed Subsection (a) (committee printing, page 14, line 25), after the period, insert the following:
Section 16.0031, Civil Practice and Remedies Code, as added by this Act, shall not operate to revive any claims that are barred by application of the law in effect immediately before the effective date of this Act.

The amendment to **CSSB 15** 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: Williams.

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

CSSB 15 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: Williams.

COMMITTEE SUBSTITUTE SENATE BILL 15 ON THIRD READING

Senator Janek moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 15** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: 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 15**, 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 15** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Williams.

REMARKS ORDERED PRINTED

On motion of Senator Gallegos and by unanimous consent, all of the remarks regarding **CSSB 15** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Janek: Members, this bill deals with asbestos litigation and silica litigation in the State of Texas. I think what we're doing here, folks, is providing a new approach to dealing with the large number of asbestos- and silica-related cases. As I've said over the last two years, and I've bothered many of you ad nauseam, what we're trying to do is to provide medical criteria that will allow the sickest people, those people who are truly impaired, to be able to go to court and recover damages. At the same time, we recognize that a lot of people who must sue under current law because they know that they've been exposed, and they must sue within two years or lose that right forever, are allowed to postpone suing into the future so that they can wait and see if they truly get sick and need more damages in the future, they'll be able to recover more. While, certainly, we hope that that's not the case, we want to preserve their rights into the future. Much work has gone on into this bill. I'm proud of the collaboration that's taken place between the proponents of asbestos and silica reform and those people who represent injured and exposed workers. I think this is good legislation. I'm ready to talk with anyone about any device or any method that's placed into this bill. I'm proud of the work that we've done. I think it is good public policy. It's good for the people who have been exposed but are not yet ready to sue, and it, certainly, is good policy for those people who are impaired.

Senator Carona: Senator, first, let me compliment you on the excellent work that you've done. You've worked, not only this Session, diligently to reach compromise, but you did your very best work, I believe, last Session. We just weren't able to get there. But I commend you for the patience that you've had. My question, though, is this. We all recognize this bill as the work of significant compromise on all parties and all sides to this issue, and it, in fact, is a very delicate balance and a very delicate compromise. Though I know this issue's been discussed informally, I ask your indulgence in asking your commitment on the floor that this bill, in the event that it changes in the House or changes as a result of a Conference Report, that we have your commitment that unless it comes back in identical language to that which it leaves here today, that you have no intention of bringing it back to this floor. Is that an accurate assessment?

Senator Janek: That is an accurate assessment. We've got some changes that have, along with the compromise, that's going into the Committee Substitute that you will see. There is a floor amendment to make further changes. Those, too, have been vetted by all sides and worked out to everyone's equal dissatisfaction, or equal satisfaction, however you'd like to view it. And my commitment has been that once we leave here, and, probably, will go to a conference committee, that when you see this again it will be Committee Substitute to Senate Bill 15, as you voted on it, and with those changes that we intend to make with Floor Amendment No. 1.

Senator Carona: And, so if by some chance this bill were to, we were to suspend and this bill were to come to the floor, and someone were to successfully add an amendment, outside of those amendments that have been agreed on by all the parties, do we have your assurance at that time that this bill will not leave this Chamber?

Senator Janek: Yes, you do. And I've spoken with some of my House counterparts, they're a wonderful body, as you know, I spent eight years there, you were over there for a time yourself, and they're going to do what they think is the best policy. But I've talked with them and told many of the folks over there of my intent to keep this bill clean, keep it pure, from what the Senate votes out, and when I bring it back to you from conference committee, it is going to be what you have seen before.

Senator Carona: Identical to what we have passed previously. Well I just want to again commend you for excellent work. I think this is some of the finest work to be done yet by this Chamber. Thank you.

Senator Janek: You're very kind. Thank you.

Senator Harris: Thank you. Senator Janek, I, too, would like to compliment you, and what is this, the second or the third session you've worked on this?

Senator Janek: Seems like 10 sessions, but you're probably closer to the mark than I am.

Senator Harris: Well your diligence has certainly paid off. I would like to ask you a few questions to make sure that we have an understanding as per the legislative intent on this. Now on all these cases, there's been a work history that has been prepared in interrogatory answers. These work histories identify the nature of the exposure, they describe what these individuals work with, in the way of asbestos, where they worked,

and the time frame in which they worked with the asbestos exposure. Now the, based upon the report of the work history, well, first of all, I'd like to predicate on something else. Now all the cost that goes into preparing these reports, of course, and a cost that do not reflect on the questions I'm asking you, of course, in turn, come out of the amount that the plaintiff gets at the end of the day, because they have to be subtracted from the recovery. And, so we'll make sure that predicate's in there. Now with the report, the report has the detailed work history, will that meet the detailed occupational and exposure history that you have required in this bill, Senator?

Senator Janek: Yes. I believe, for the sake of our colleagues, what you are referring to is a report by a physician, in which the physician is going to do a physical exam, take a detailed medical history, and a detailed occupational—

Senator Harris: That, that's—

Senator Janek: Exposure history. That—

Senator Harris: Another one, but what we referred to here is where the plaintiff has answered under interrogatory—

Senator Janek: That's correct, in—

Senator Harris: As to the work history.

Senator Janek: That's correct. In some cases it has already been filed, some cases have already been filed and some work has already been applied. What we're looking for here is the opportunity for that work to count into the detailed occupational and exposure history.

Senator Harris: Where it doesn't have to go back and be duplicated and the cost—

Senator Janek: Yes—

Senator Harris: Regenerated, right?

Senator Janek: That is correct.

Senator Harris: All right.

Senator Janek: Now, the answer to your question is this, if that report meets the requirements of the bill, in terms of laying out that person's occupational exposure or exposure to the other—

Senator Harris: We're now, now we're going into the medical—

Senator Janek: Right.

Senator Harris: Report that is required, are we not, Doctor?

Senator Janek: That, yes, we are—

Senator Harris: OK.

Senator Janek: Yes, we are.

Senator Harris: And we're talking about the detailed occupational and exposure history and then, in turn, the medical report and sworn statements that are already there as sworn testimony, which is already on hand and existing at this time, are we not?

Senator Janek: That is, yes, we are.

Senator Harris: All right. So, then, in turn, there does not have to be the cost of going out and duplicating all the costly medical reports and medical findings that have already taken place, is that correct, Doctor?

Senator Janek: That is correct.

Senator Harris: Now is the intent of this bill to require plaintiffs that have already been examined by a doctor, and, again, I'm being repetitious here, but I want to be sure we cover it, to not have to be reexamined by a doctor for the sole purpose of a report that meets the requirement for a detailed occupational and exposure history, is that not correct?

Senator Janek: That is correct. That's one of the things that you and I have been, you were kind enough and gracious enough to give me the questions that you wanted to—

Senator Harris: Yes.

Senator Janek: Talk about here, and the answer is this. If there has been a detailed occupational and exposure history that's already been taken, and it is given to the doctor, then attached to the report, will that meet the detailed occupational exposure history that you have required in this bill?

Senator Harris: Yes.

Senator Janek: And the answer is, yes. If it meets the medical criteria and it meets the requirements that that doctor would do if they were doing their own detailed exposure history, then the answer is, yes. With the purposes, we don't want to force these law firms that have invested in interrogatories and they've got people taking these histories, we're not trying to force them to go back and recreate it just for the heck of running up the bill.

Senator Harris: All right. Thank you very much, Doc.

Senator Janek: Thank you.

Senator Ellis: Senator, thank you for your, your fine work on this bill, you and Chairman Duncan put a lot of time and effort into this, along with the Lieutenant Governor, convening a good number of those meetings, and I appreciate that work that you put into it. When the bill came out of Committee, I think there were two issues left to be resolved when we talked about it last Friday. And my question is, have those issues been resolved and did both sides, or all sides, agree to whatever you all came up with? The House's and—

Senator Janek: Yes, we have, and let me elucidate those two, so everybody'll know what we're talking about. The first issue is, what would we like to see in a few years if the medical research changes, new diagnostic techniques, what if the law changes in terms of bankruptcies and other things? And, so what we've done in this bill is to say that in five years, the M.D.L. Court will be able to report back to the Legislature and talk about their docket, talk about the number of cases they had resolved and have yet pending, but, importantly, they, the court can make recommendations. They may see things a few years from now, based on new medicine and new evidence, and be able

to make recommendations for changing the criteria. And that is for this body to consider. The other issue is, how do we make certain that those people who suffer from asbestos- and silica-related cancers are able to get to court, get out of the M.D.L., and get to court in a timely fashion? Some folks were proponents of a hard date. For example, six months after you file your suit, you would be guaranteed a trial date. That's very problematic. While I'm sympathetic to these instances that we need to get somebody, for example, mesothelioma, the most serious of these cancers that you will hear about—from the time of diagnosis, those folks are generally deceased within about 13 to 16 months—we want that person to get a speedy trial. We want them to go to court and to know what the resolution is going to be, and be able to say with some certainty what they're going to, that their family's going to be provided for. Now we don't want to rush it, so that we've intruded on principles of fairness. We don't want to say, a hard date from the time you file, you'll be able to go to court within six months or eight months, because then that would give an incentive to other people to slow-walk it. For example, the plaintiffs' attorneys might decide to slow-walk it, and then two weeks before trial, I think it couldn't be any more than 45 days, no fewer than 45 days before trial, they would just give all the information they've got and say, we'll see you in trial in 45 days. So we want everybody to have adequate access to the judicial system for due process, and I think the amendment that you will see, the floor amendment that you'll see, is satisfactory.

Senator Ellis: Now on that amendment, which is, I assume, agreed to, I think that's what you're saying.

Senator Janek: Yes, it is.

Senator Ellis: Is that the only amendment that you plan to accept today? I don't know if anybody else has sent any up, or plans to, but I want to get some sense about what we do, first in this Chamber. You're essentially saying that, assuming this bill comes up, you're going to fight off any other amendments that somebody might have in their—

Senator Janek: Yes, yes—

Senator Ellis: Hip pocket.

Senator Janek: That's correct. This amendment has been thought through, it corrects some technical difficulties, some drafting problems and whatnot, it is great for the bill. I have given my word to do everything I can to fight off any other amendment. If anything were to get put on, as I just explained with Senator Carona, when you see this bill again, it is going to be Committee Substitute to Senate Bill 15 that was voted out with the amendment, Floor Amendment No. 1.

Senator Ellis: I heard that commitment to Senator Carona. Let me just elaborate on it a little more, and I think I mentioned this to you, when we talked before you came out here. Since this is a bicameral Legislature, and as it goes through the process, there might be some things that both sides agree to. Just to make sure there's no misunderstanding, is it your commitment that, unless both sides agree in writing, so we don't have somebody saying they're speaking for one side or the other, but unless both sides, and you know who the sides are, agree in writing, you will not bring this bill back on the floor, if the language—

Senator Janek: That's correct—

Senator Ellis: Changes.

Senator Janek: That's correct. We've got a good piece of legislation here, finely balanced, recognizing the rights of the businesses that are being sued, recognizing the rights of people that are exposed but not impaired, and the rights of those people that are impaired. And, so we've struck a fine balance. I'm very pleased with the product that we've got, and that's what I want to bring back to you.

Senator Ellis: We talked a little on Friday about trying to make sure that the sickest cases get to court the fastest, and you referenced that earlier. I just want to, for the record, make sure that I understand, is your intent that the sickest cases get to court the fastest? Assumption being that, once somebody's no longer with us, the value of their life to their family in court might be diminished somewhat, so although they would not receive the benefit, their family would. But, is your intent that the sickest cases get to court the fastest?

Senator Janek: That is the case. And what we do in here, for noncancers, let me talk for a minute about noncancers. For those we set medical criteria, generally—

Senator Ellis: This is about noncancer victims is it—

Senator Janek: About noncancers—

Senator Ellis: OK.

Senator Janek: We set generally accepted medical criteria for what is impaired. And once you clear that hurdle, we don't make a determination that you're more sick than somebody else that clears that hurdle. Once you've cleared that hurdle, you're not, you will be able to go to court. Now for many cases, you're still subject to the mechanisms of the multi-district litigation court, and that's, that is the current law. But what we do here is say, once you clear that hurdle, you've cleared that hurdle, and we're not going to make a determination who is more sick, to go from there. However, just the simple fact that we say somebody who's cleared that hurdle is sick, more sick than somebody who has not cleared that hurdle, they will then be able to get to court more quickly. We can talk for a minute about cancers. We talk about there are different kinds of cancers that have been associated with asbestos and silica. In general terms, you've got mesothelioma, which is the very serious one that I, of which I spoke a few minutes ago. You've also got other asbestos- and silica-related cancers. And with silica, there's a condition known as acute silicosis. While it's not a cancer, and my agreement, my pronouncements have always been to make sure that those folks who have cancer get into trial the quickest, it, too, is a diagnosis for which the person that suffers from it is not going to be with us very long, so I put in acute silicosis, while it's not a cancer, those are very, very seriously ill people, and so we took all of those and said, you will not go into the M.D.L., and you will get preferential setting at trial. So the number one is, get those out of the M.D.L. as quickly as possible, and number two is, make sure that people get preferential setting once they do go back to the trial court.

Senator Ellis: What was your six-month reference earlier, about cancer cases on M.D.L.?

Senator Janek: Earlier, I did the proponent, excuse me, opponents of the bill had come and said, if you really want to take care of people, for example, with mesothelioma, give us a hard date, let's say six months from the time that the suit is filed, or six months from the time that they enter the M.D.L., that they know for certain they can go to trial. But that lends itself to gaming of the system. While I'm sympathetic, and my deep opposition was, by golly, this guy needs to get to trial before he passes away, there are very sound legal principles at stake here, and we don't want to set such a firm date that nobody can, that some people would be able to game the system. What you'll see in the floor amendment is that we got six months from the time that the plaintiffs have complied with the multi-district litigation court's case management order, the C.M.O. This multi-district litigation court has said, it's a pretrial court, and they've said, there's certain things that you need to do. And if you do those things, we will move you along so that you can get to trial. So I got called off the idea of a hard date, and, instead, had to go with saying that the court will set those preferentially and move those out, once the plaintiffs' attorneys have met their burden under the case management order. So that's what we did, and that's what you'll see in the Floor Amendment No. 1.

Senator Ellis: When the case is released from the M.D.L., is it your intent that the cancer cases have preference on the docket and go to the front of the line?

Senator Janek: Now, we did that two years ago, before there was an M.D.L. Two years ago, we did give those preferential setting at trial, and we've mirrored that in this legislation, as well.

Senator Ellis: OK. Do you agree that this body's making it well known as to, making this real well known as to the expedited handling of these cases?

Senator Janek: I think we've made it well known in a couple areas here, we've made it well known through the dialogue that you and I are having, and I believe these folks are going to get an expedited setting and an expedited trial.

Senator Ellis: One last question. My favorite little peeve, that I gave you and the Chairman a hard time about, I think this is the second time that someone has put this novel on the front of a bill, these findings, as you referred to them. And I know, early on in the process, I made the comment that we haven't found those things. And I'm sure that if you, if we pulled out all of the references, I could go and look them up, but we haven't conducted some study to find those things that are listed in your preamble, I think it was called, in the front of the bill, but I did make the comment that, you know, seems like all of the things listed in this preamble were on one side of the equation, and you didn't go and list things that would be documented findings on the other side of the equation. And I was, I raised that issue, I'm concerned about it, don't think it's a good precedent. But I assume it's there for a reason. You know, I joked about all the, the expensive suits you all had in the back room working on this bill, and sometimes these issues end up in court, and I guess one side wanted to make their case in that preamble for going to court, and I just want to say for the record, that I don't think that that list is a list of things that this body has found, that we went through some comprehensive study to find those things. And I don't think that that list, instead of arguing about whether something was, splitting hairs, accurate or not.

Like the quote by Justice Rehnquist, I believe, made reference to the need for federal legislation, if you read the entire quote and not just a certain part of it, but instead of arguing about that I just want to make the point, and I think you might agree, that we didn't list everything on both sides of this argument in that novel, in the preamble, at the front of the bill.

Senator Janek: Well, certainly, since it was my bill, it was a little difficult for me to come forward and put in the—I like preamble. You don't like findings because you say we haven't found it; I don't like novel because novel implies it's a work of fiction, it clearly is not. We have citations for all the things that you will see in there, be happy to provide them to you, as I've offered to do in the past. So I would just say that I would not come forward with the bill and say, Members, this may be a good idea, of course, it may not be a good idea, so vote for my bill. The things in here are not opinions, things in here are facts and can be documented, the number of bankruptcies that've occurred in this country due to asbestos litigation, the number of jobs that have been lost, too, and there will be more jobs that can be lost as companies go bankrupt. So I'm comfortable that what's in here is well-documented, and as I've told you, I'd be happy to give you the cites for those, it's, I like it.

Senator Ellis: Well I won't argue the point, but just as an example, and you mentioned bankruptcies, you could also pull, it'd be easy to discern, say, the profits made by those companies over that period of time. I mean, you could just go back and look at their annual statements, so that's what I'm making reference to when I'm saying you put one side of the argument. Now, obviously, you were trying to make your case—

Senator Janek: Well, now—

Senator Ellis: And, so all I'm saying is—

Senator Janek: I, briefly, after you brought this up in Committee hearing, I briefly tried to think how I would argue against this legislation, but I'm not up to your league. I figured you're going to do a much better job than I could ever hope to do arguing—

Senator Ellis: Well that was before you all had me start drinking the Kool-Aid and everybody's Kum Ba Yahing now, as you know, so I, you know, but I won't belabor that point, but, I just, I seriously want to make it, I don't think it was a good precedent, because if we all did it on every major bill that came along, you know, you're really kind of setting the stage for what I assume others will argue about if this bill ends up in court. Just one last point, maybe walk through, for some Members might be concerned. We talked about the issue of retroactivity, and your reference was these pathways that people would go through, and if you would, I think it would just be helpful for some other Members, if you just sort of walk through the attempt you made to deal with the issue of, of retroactivity.

Senator Janek: Sure, I'd be glad to do that. And it was other point on the, the preamble. Justice Rehnquist's comments were not construed as, nor represented in the findings, to advocate for a state solution. He was advocating for a national solution, but I think we're fairly clear on the quote, in which he said that this was a situation that has reached critical dimensions and is getting worse. We're just saying that no, no less than a Justice on the U.S. Supreme Court has said, this is a national issue, and, so that was all in the laying out the reason for, for doing what we're doing. As to the criteria themselves, we put some, we put some very careful safeguards in place for those people who filed prior to certain dates and for those people who will file cases going forward. In general terms, we actually softened the criteria, the medical criteria required to clear that hurdle, for those people who had, who, on the effective date of the bill, will be what we call pending cases. And many of those, if they start trial within 90 days after the effective date of this Act, the effective date being September 1, then they don't even have to file a report. So we put careful safeguards in there for people. In general terms, the biggest discernment that we will make, in terms of the medical criteria, is that for those pending cases, we will have what's called a, the hurdle will be for a 1/0 chest x-ray. Now, the way these chest x-rays are read according to I.L.O., International Legal Organization, standards, they are, a zero means a good chest x-ray, meaning normal, 1 means there's some evidence of exposure, 2 is a little uglier chest x-ray, and then there's a slash, and the number underneath that, the denominator, means what it might be. So a 1/0 means that there may be some evidence of asbestos exposure, slash, but it could be a 0. So we allowed for a 1/0 chest x-ray for those people who are pending cases and for those cases going forward after the case is filed, after the effective date, then it is, it becomes a 1/1. Now once somebody has met that chest x-ray criteria, retroactive, or going forth, once they've met that chest x-ray criteria, they can go to court, they can continue in that process if they can demonstrate that they have a series of things. If they have a pulmonary function test, which is a medical device commonly available, widely used, and well thought out in its interpretation, that shows that they've got some restrictive lung disease, which is the kind of lung impairment that asbestos causes, so if they can show the chest x-ray criteria and some restrictive lung disease, by a pulmonary function test, meaning an abnormal test, they can go forward. If they cannot meet that chest x-ray standard, but they do have abnormal pulmonary function test, we'd allow them a second pathway, and that second pathway says, show us some CT scans, some computerized tomography evidence, that you've got asbestos exposure, combine that with your bad pulmonary function test, and you may go forward. If they do not have abnormal pulmonary function test, but they do have a worse chest x-ray, meaning a 2/1, then they can go forward. And all of this, the ultimate backstop, Senator Ellis, to all of this is that if one cannot meet that criteria, and one is in front of the multi-district litigation judge, that we have provided for an exceptional pathway, an individual, case-by-case basis, an individual can go to the M.D.L. judge and say, Your Honor, there is a reason: I have a letter from my doctor explaining to you in medical terms why it is that I can't meet that pulmonary function test criteria and why my case should be considered as an exceptional case. So we took A.B.A. criteria, with a couple of pathways in it, we added a couple of more pathways and then, for good measure, we put another backstop that allows for exceptional cases to go before the

M.D.L. judge and allow him or her to make that distinction based on the medical evidence presented in that court. So I think we've gone way out of our way to make sure that we encompass the full spectrum of the human condition, for those people who simply lie outside the normal ranges that you find in medical textbooks.

Senator Ellis: Thank you, thank you for your fine work.

Senator Janek: Thank you.

Senator Gallegos: Thank you, Senator, and I do want to thank you and Senator Duncan for the long hours. I know y'all have been putting in a lot of hours with the parties that are, obviously, interested in this issue, but I do want to ask you some questions, and I know you worked a long time on this bill. And I know you brought your wife in here to try to water me down on this bill, but, and that always works, sometimes. But let me ask you for, on a meso case like my father's, let's say that case was filed before September 1st, 2003. How would that be handled under this bill?

Senator Janek: Prior to September 1st, which in our working discussions we've always called those pre-HB 4 cases, we have for those cases, prior to House Bill 4's enactment, there was no M.D.L., so they were not required to go to the M.D.L. And we send those on, we treat them just as if they were just exactly that, pre-House Bill 4 cases, we do not subject them to the multi-district litigation panel with its uniformity of rules. In addition, I didn't give you a complete answer, the other thing that we provided them is preferential setting at trial, which doesn't exist in current law.

Senator Gallegos: OK, but let's say that I go to the doctor, I go to the oncologist and I'm, and I'm diagnosed with meso in the first stage, or whatever stage. Under this bill, how would that work if, you know, I mean, meso is, obviously, automatic, as far as death. There's no treatment that I know of, or do you know of any?

Senator Janek: None, none effective.

Senator Gallegos: OK. Then, how would, let's say an individual going in to the oncologist, diagnosed with first stage of mesothelioma cancer, can he or she seek relief immediately through the courts?

Senator Janek: We treat them in this bill no differently than they are treated under current law with the exception of, we try to get them out of the M.D.L. and give them preferential setting at trial. So pre-House Bill 4 cancers don't go to the M.D.L. before this bill, they will not go to the M.D.L. after this bill becomes law, if it does, and I hope that it does. Those mesotheliomas and other cancers that were filed after the effective date of House Bill 4 currently go to the M.D.L. That's already happening, we didn't make it happen with this legislation, it is what currently occurs. Now what is different in this is that, again, we try to speed up the process for those people to be able to get out of the M.D.L. and get to trial. They're, when they get out of the M.D.L., they go back to the trial court, and we put in the provision that says they should get preferential setting at trial.

Senator Gallegos: So the spouse or the family members could, at the detection of mesothelioma cancer, could seek relief. That'd be, that, you're saying under, under this bill, they'll be treated to the front of the line. Is that, is that a—

Senator Janek: That would be—

Senator Gallegos: For lack of a better word?

Senator Janek: That, I think that, I think that is a better word, let me be clear. Once a diagnosis of cancer is made, Senator Gallegos, there's no medical criteria, there's no pulmonary function test, there's nothing except that letter that says, this man or this woman has cancer. They'll already, under current law, go to the M.D.L. If they filed before there was an M.D.L., they don't go into the M.D.L. All we're doing is trying to help them speed up that case.

Senator Gallegos: All right, let me ask you, let's talk about other cancer. The cases would, how would those cases be handled, let's say, you know, silica cases, or those that have determined some kind of asbestos cancer? How, would they be handled the same way?

Senator Janek: We handle those the same way.

Senator Gallegos: OK.

Senator Janek: And there is that one other condition that is not cancer, but is a very serious illness called acute silicosis. It's not a cancer, but these folks are seriously ill, they do have, also, a short period of time to live, and we've given them some preferential treatment in here, as well.

Senator Gallegos: So they'd both be handled the same way. Asbestos, what I say, asbestos and silica under—

Senator Janek: That's correct.

Senator Gallegos: Under your bill.

Senator Janek: That's correct.

Senator Gallegos: OK. Let me ask you, Senator, and I know they, that Senator Carona, Senator Ellis already asked you, but I'd like you to promise me in this Senate that if the bill comes in a different shape or form from the House, that you're going to pull it down.

Senator Janek: Yes, I will.

Senator Gallegos: You're promising me?

Senator Janek: I'm promising you.

Senator Gallegos: OK. Thank you.

Senator Carona: When I spoke to you earlier, Senator Janek, I recognized that, literally, there might be something that were to come back that would correct punctuation or might correct an incorrect reference or something, but you've answered it, and as long as we all understand that both sides would agree to any changes, it's taken care of. But, thank you very much, appreciate the information that you provided.

Senator Janek: Thank you. Senator Carona, as I'm sure you know, with the number of contracts that you deal with, sometimes a little bitty old comma may make a whole big old difference. So we're going to be very studious in making sure that what this floor sees again will be this bill with the floor amendment attached, and that if there are necessary changes, then we'll get those worked out or else we won't.

NOTICE GIVEN FOR LOCAL AND UNCONTESTED CALENDAR

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

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 tomorrow.

SENATE RULES SUSPENDED (Posting Rules)

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

SB 724, SB 1814, SB 1843, SB 1860.

SENATE RULES SUSPENDED (Posting Rules)

On motion of Senator Ellis and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Government Organization might meet and consider **SB 1547** today.

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 1450, SB 1768.**

RESOLUTION SIGNED

The President announced the signing of the following enrolled resolution in the presence of the Senate: **HCR 9**.

MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 3:11 p.m. agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session, until 11:00 a.m. tomorrow.

RESOLUTION OF RECOGNITION

The following resolution was adopted by the Senate:

Congratulatory Resolution

SR 700 by West, Recognizing Cecilia Moreno McKay on the occasion of her retirement from the Dallas Concilio of Hispanic Service Organizations.

RECESS

On motion of Senator Whitmire, the Senate at 3:12 p.m. recessed until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

APPENDIX

COMMITTEE REPORTS

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

April 27, 2005

TRANSPORTATION AND HOMELAND SECURITY — **SCR 15, CSSB 24**

HEALTH AND HUMAN SERVICES — **SCR 21, HB 224, HB 801, HB 802, HB 1604**

INTERGOVERNMENTAL RELATIONS — **CSSB 1828**

GOVERNMENT ORGANIZATION — **HB 22, HB 1025, SB 1645**

SENT TO GOVERNOR

April 27, 2005

SB 245

