

SIXTIETH DAY

MONDAY, MAY 2, 2005

PROCEEDINGS

The Senate met at 1:30 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

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

The Reverend Keith Born, Immanuel Lutheran Church, Pflugerville, offered the invocation as follows:

Dear Lord, the men and women gathered on the floor of this Chamber are elected by the people of Texas to serve. Give them Your strength so they are able to faithfully fulfill their responsibility. Keep them mindful that they are but servants of the people of Texas, sent here not so much to represent a certain political platform, but rather to help set direction for the greatest good for all the people of our state. Bless this gathering with Your presence and grace their deliberations with patience and a willingness to work together. We offer this, and all our prayers in and through Your most holy name. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of Friday, April 29, 2005, be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 1253

On motion of Senator Brimer, Senator Lucio will be shown as Co-author of **SB 1253**.

CO-AUTHOR OF SENATE BILL 1685

On motion of Senator Janek, Senator Estes will be shown as Co-author of **SB 1685**.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 2, 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 161, Relating to an exemption from the sales tax for nonvehicular fuel cells.

HB 261, Relating to possession of or access to a grandchild and designation of other relatives as managing conservators.

HB 312, Relating to the additional tax imposed on land appraised for ad valorem taxation as timber land that is claimed as part of a residence homestead or diverted to certain other uses.

HB 381, Relating to the service area of the Blinn College District.

HB 505, Relating to the discharge of a firearm across a property line; providing a penalty.

HB 525, Relating to the creation of homestead preservation districts, reinvestment zones, and other programs to increase home ownership and provide affordable housing.

HB 616, Relating to a landowner's liability for injuries incurred during certain recreational activities.

HB 703, Relating to the deferral of adjudication in cases involving certain misdemeanor traffic offenses.

HB 788, Relating to the jurisdiction of the district court and the transfer of cases from the county courts in the 50th Judicial District to the district court.

HB 831, Relating to the eligibility of certain appellate judges to retire with full benefits.

HB 841, Relating to the rates charged by a municipally owned utility to certain recreational vehicle parks for potable water or wastewater service.

HB 853, Relating to the return of merchandise; providing a civil penalty.

HB 868, Relating to the establishment of a Center for Excellence in Deaf Studies and Deaf Education at Lamar University.

HB 877, Relating to certain complaints and information with respect to certain child-care facilities and family homes and to procedures for certain disciplinary actions against certain child-care facilities; providing a criminal penalty.

- HB 920**, Relating to protective and guardianship services for elderly and disabled persons.
- HB 989**, Relating to recovery of certain transmission investments of electric utilities.
- HB 1118**, Relating to operating a motor vehicle with a person riding in a boat or personal watercraft being drawn by the vehicle; creating an offense.
- HB 1244**, Relating to specialty license plates for classic travel trailers.
- HB 1248**, Relating to erecting an off-premise sign adjacent to and visible from certain roads.
- HB 1255**, Relating to an increased penalty for certain privileged parking offenses.
- HB 1274**, Relating to the service area of the Ranger Junior College District.
- HB 1345**, Relating to the removal of a sign on a state highway right-of-way by a local law enforcement agency; authorizing a removal fee.
- HB 1391**, Relating to the creation and availability of a list of builders who provide certain types of building services.
- HB 1398**, Relating to the waiver of penalties and interest on a delinquent ad valorem tax.
- HB 1403**, Relating to the board of port commissioners of the Port of Beaumont Navigation District of Jefferson County.
- HB 1409**, Relating to the authority to change the name of component institutions of The Texas A&M University System.
- HB 1455**, Relating to hospital and medical care required to be provided by the Maverick County Hospital District.
- HB 1458**, Relating to the creation of the Airline Improvement District; providing authority to impose a tax and issue a bond or similar obligation.
- HB 1508**, Relating to reporting of expenditures by persons registered as lobbyists.
- HB 1589**, Relating to the administration of polygraph examinations to certain applicants for positions in the Department of Public Safety.
- HB 1606**, Relating to the level of municipal participation in contracts with developers for public improvements.
- HB 1647**, Relating to the appointment of a campaign treasurer and the filing of reports by a political party's county executive committee that accepts or makes a certain amount of political contributions or expenditures.
- HB 1653**, Relating to the approval, certification, and oversight of the private sector prison industries program.
- HB 1659**, Relating to the designation of certain areas of this state as enterprise zones under the enterprise zone program.
- HB 1800**, Relating to corrected reports, registrations, and statements filed with the Texas Ethics Commission.

- HB 1893**, Relating to authorizing a consumer credit reporting agency to provide certain information if the information is needed to avoid a violation of federal law.
- HB 1997**, Relating to the creation of an appellate judicial system for the Eleventh Court of Appeals District.
- HB 2027**, Relating to the use of certain weapons in or on the beds or banks of certain rivers and streams in particular counties; providing a penalty.
- HB 2037**, Relating to the seizure and disposition of property for the offense of hunting or fishing without landowner consent.
- HB 2045**, Relating to incorporation of a water supply and sewer service corporation as a nonprofit corporation.
- HB 2068**, Relating to the designation of certain state agencies as voter registration agencies.
- HB 2069**, Relating to contracts to provide election services to a political party.
- HB 2071**, Relating to the designation of U.S. Highway 281 as the American Legion Memorial Highway.
- HB 2200**, Relating to the appointment of certified court interpreters.
- HB 2202**, Relating to prohibited conflicts of interest of registered lobbyists.
- HB 2223**, Relating to the making of a notation on and the processing of a forged check by a financial institution.
- HB 2243**, Relating to the regulation of locksmiths and locksmith companies under the Private Security Act.
- HB 2257**, Relating to the speed limit on certain highways in rural counties.
- HB 2293**, Relating to the disposition of seized weapons.
- HB 2322**, Relating to the electronic administration of state funds used for voter registration.
- HB 2335**, Relating to certain duties of state agencies with regard to members of the United States armed forces and their dependents and the communities in which they reside.
- HB 2348**, Relating to construction on a highway under the jurisdiction of the Texas Department of Transportation by certain transit departments.
- HB 2374**, Relating to the retirement system for firefighters and police officers in certain municipalities.
- HB 2414**, Relating to jury service in certain counties.
- HB 2466**, Relating to recycling market development.
- HB 2491**, Relating to the administration and collection of ad valorem taxes, including the transfer of an ad valorem tax lien and a contract for foreclosure of an ad valorem tax lien; amending, correcting, and clarifying the Tax Code, Property Code, and Civil Practice and Remedies Code.

- HB 2511**, Relating to the filing of a personal financial statement by a former state officer whose successor has not qualified for office.
- HB 2518**, Relating to the requirements of a mental health court program.
- HB 2574**, Relating to the waiver of civil process continuing education requirements for constables and deputy constables by the Commission on Law Enforcement Officer Standards and Education.
- HB 2581**, Relating to the regulation of a perpetual care cemetery and the sale of interment rights in a mausoleum before completion of construction.
- HB 2622**, Relating to boating safety.
- HB 2656**, Relating to the establishment of a state airport in Central Texas by the Texas Department of Transportation.
- HB 2671**, Relating to the assignment of certain visiting judges.
- HB 2677**, Relating to certain employment records maintained by the Commission on Law Enforcement Officer Standards and Education; providing an administrative penalty.
- HB 2685**, Relating to the acceptance of gratuities by certain employees of the Parks and Wildlife Department.
- HB 2746**, Relating to the examination requirements for mold assessors and remediators.
- HB 2806**, Relating to the regulation of career schools and colleges.
- HB 2807**, Relating to vouchers for tuition and required fees at certain institutions of higher education for students who sound "Taps" at a veteran's funeral.
- HB 2828**, Relating to the powers and duties of a navigation district or port authority.
- HB 2900**, Relating to the eligibility of certain persons for burial in the state cemetery.
- HB 2918**, Relating to resumption of employment within the Texas Municipal Retirement System by a person who has filed an application for retirement.
- HB 2928**, Relating to projects that may be undertaken by certain development corporations with respect to business enterprises or business development.
- HB 2942**, Relating to license fees for commercial fish dealers and shrimp boats.
- HB 3113**, Relating to performance incentive awards for certain employees of state agencies who provide services to veterans.
- HB 3163**, Relating to the membership of the Texas Military Preparedness Commission.
- HB 3227**, Relating to the management of state agency vehicle fleets.
- HB 3262**, Relating to the validation of a governmental act or proceeding of the Town of South Padre Island.
- HB 3263**, Relating to the powers and duties of the district attorney and county attorney in Fort Bend County.

HB 3469, Relating to the establishment of a program to provide grants to be used to reduce emissions of diesel exhaust from school buses and to the use of the Texas emissions reduction plan to fund the program.

HB 3485, Relating to the establishment of criminal law hearing officers in Cameron County.

SJR 7, Proposing a constitutional amendment authorizing line-of-credit advances under a reverse mortgage.
(Committee Substitute)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

PHYSICIAN OF THE DAY

Senator Armbrister was recognized and presented Dr. Robert Allen Youens of Weimar as the Physician of the Day.

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

INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED

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

There was no objection.

SENATE RESOLUTION 727

Senator Barrientos offered the following resolution:

WHEREAS, The Texas Senate is pleased to recognize Adrian Alaniz of The University of Texas at Austin Longhorns for his outstanding achievement in pitching a no-hitter against the Oklahoma Sooners on Saturday, April 16, 2005; and

WHEREAS, The first Longhorn freshman since 1984 to throw a no-hitter, Adrian closed the game in classic fashion by striking out the final batter; his no-hitter was the third in Big 12 Conference history; and

WHEREAS, A single walk shy of a perfect game, Adrian was in complete control of his fastball, curveball, and slider all night; he struck out six batters and surrendered only two hard-hit balls; and

WHEREAS, His no-hitter was the first at Disch-Falk Field in six seasons, and Texas shut out Oklahoma 4-0 before a sellout crowd; and

WHEREAS, This victory gave the Longhorns much-needed momentum in the Big 12 Conference race and dropped the Sooners to seventh place; and

WHEREAS, With a 48-1 record while he was at Sinton High School, Adrian is the son of Emi and Norma Alaniz; his brothers are Andres Alaniz and Emi Alaniz III; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby congratulate Adrian Alaniz for the rare feat of pitching a no-hitter; and, be it further

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

SR 727 was read and was adopted without objection.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate The University of Texas at Austin Longhorns baseball team member Adrian Alaniz and his parents, Emi and Norma Alaniz, accompanied by Coach Augie Garrido.

The Senate welcomed its guests.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

SB 129, SB 177, SB 407, SB 541, SB 574, SB 692, SB 693, SB 766, SB 796, SB 1342, SCR 20, SCR 26, SCR 28, HCR 3.

COMMITTEE SUBSTITUTE SENATE BILL 386 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 386** at this time on its second reading:

CSSB 386, Relating to the ability of public school employees to communicate with members of a school district board of trustees.

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

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

COMMITTEE SUBSTITUTE SENATE BILL 520 ON SECOND READING

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 520** at this time on its second reading:

CSSB 520, Relating to the provision of health care services by a physician assistant during a disaster.

The bill was read second time.

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 520** as follows:

(1) In Section 1 of the bill, in added Section 204.2045(a), Occupations Code (committee printing page 1, line 18), strike "a disaster" and substitute "an emergency or a disaster".

(2) In Section 1 of the bill, in added Section 204.2045(c), Occupations Code (committee printing page 1, line 29), between "the" and "disaster", insert "emergency or".

The amendment to **CSSB 520** was read and was adopted by a viva voce vote.

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

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

CSSB 520 as amended was passed to engrossment by a viva voce vote.

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

COMMITTEE SUBSTITUTE SENATE BILL 520 ON THIRD READING

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 520** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 520**, 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 520** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

SENATE BILL 1870 ON SECOND READING

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1870** at this time on its second reading:

SB 1870, Relating to the board of directors of the Permian Basin Underground Water Conservation District; validating certain district actions and proceedings.

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.

SENATE BILL 1870 ON THIRD READING

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1870** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 1870**, 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 1870** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**SENATE CONCURRENT RESOLUTION 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 **SCR 15** at this time on its second reading:

SCR 15, Requesting the Texas Department of Transportation to designate the new causeway bridge connecting Galveston Island and the Texas mainland as the Purple Heart Memorial Bridge.

The resolution was read second time and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

SENATE BILL 1677 ON SECOND READING

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1677** at this time on its second reading:

SB 1677, Relating to the powers and duties of the board of hospital managers of the Travis County Hospital District and to employee benefits for certain employees of that district.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 1677** (Senate committee printing) as follows:

(1) On page 1, between lines 42 and 43, insert the following appropriately numbered section and renumber the subsequent sections accordingly:

SECTION _____. Subchapter A, Chapter 157, Local Government Code, is amended by adding Section 157.008 to read as follows:

Sec. 157.008. NO INSURANCE POOL OR COMPANY CREATED. Unless a county enters into a contract under Chapter 172, Local Government Code, if a county provides for medical care and hospitalization or provides for compensation, accident, hospital, and disability insurance to the persons listed in section 157.002(a)(1), Local Government Code, the county shall not be construed as creating an insurance pool with a district or other governmental entity. If a county provides for medical care and hospitalization or provides for compensation, accident, hospital, and disability insurance to the persons listed in Section 157.002(a)(1), Local Government Code, the county shall not be construed as an insurance company subject to the requirements of the Texas Insurance Code and to regulation by the Texas Department of Insurance as such.

(2) On page 2, between lines 19 and 20, insert the following appropriately numbered section and renumber the subsequent sections accordingly:

SECTION _____. Subchapter F, Chapter 157, Local Government Code, is amended by adding Section 157.106 to read as follows:

Sec. 157.106. NO INSURANCE POOL OR COMPANY CREATED. Unless a county enters into a contract under Chapter 172, Local Government Code, if a county provides for medical care and hospitalization or provides for compensation, accident, hospital, and disability insurance to the persons listed in section 157.101(a)(1), Local Government Code, the county shall not be construed as creating an insurance pool with a district or other governmental entity. If a county provides for medical care and hospitalization or provides for compensation, accident, hospital, and disability insurance to the persons listed in Section 157.101(a)(1), Local Government Code, the

county shall not be construed as an insurance company subject to the requirements of the Texas Insurance Code and to regulation by the Texas Department of Insurance as such.

The amendment to **SB 1677** was read and was adopted by a viva voce vote.

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

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

SB 1677 as amended was passed to engrossment by a viva voce vote.

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

SENATE BILL 1677 ON THIRD READING

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1677** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 1677**, 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 1677** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 24 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 24** at this time on its second reading:

CSSB 24, Relating to the creation of a donor education, awareness, and registry program, the establishment of an organ donor and tissue council, and anatomical gift donation.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 24** as follows:

1. In SECTION 8 of the bill, in Section 502.1745, Transportation Code (Senate committee report page 7, lines 49-50), strike "Department of Public Safety" and substitute "department".

2. In SECTION 9 of the bill (Senate committee report page 8, lines 3-5), strike "Subsection (g), Section 521.421, and Subsection (c), Section 521.422, Transportation Code, as amended by this Act and".

3. In SECTION 9 of the bill (Senate committee report page 8, lines 3-5), strike "may be appropriated to the Texas Department of Transportation" and substitute "may be deposited in the state highway fund".

4. In SECTION 12 of the bill, (Senate committee report page 8, line 48), strike "June 1, 2006" and substitute "September 1, 2005".

The amendment to **CSSB 24** was read and was adopted by a viva voce vote.

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

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

CSSB 24 as amended was passed to engrossment by a viva voce vote.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 24 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 24** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 24**, 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 24** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

BIRTHDAY GREETINGS EXTENDED

The President, on behalf of the Senate, extended birthday greetings to Senator Shapiro.

COMMITTEE SUBSTITUTE SENATE BILL 1319 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 1319** at this time on its second reading:

CSSB 1319, Relating to participation of certain annuitants and their dependents in the state employees group benefits program.

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.

(Senator Brimer in Chair)

COMMITTEE SUBSTITUTE SENATE BILL 229 ON SECOND READING

Senator Lucio moved to suspend the regular order of business to take up for consideration **CSSB 229** at this time on its second reading:

CSSB 229, Relating to the Advisory Oversight Community Outreach Committee in the Department of Public Safety of the State of Texas.

The motion prevailed by the following vote: Yeas 24, Nays 4, Present-not voting 1.

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

Nays: Estes, Ogden, Shapiro, Wentworth.

Present-not voting: Brimer.

Absent: Duncan, Whitmire.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 229**, in SECTION 1 of the bill, in newly added Section 411.0197 (committee printing version) as follows:

On page 1, lines 21-22, strike the last sentence of subsection (a).

On page 1, line 26, strike "and".

On page 1, line 28, between "States" and the ":" insert ", representatives of law enforcement agencies, and representatives of the general public".

On page 1, line 44, between "States" and "and" insert ", safety to the traveling public, preservation of the highway system, applicable federal laws and regulations,".

On page 1, line 45, strike "affected by the actions of department personnel".

The amendment to **CSSB 229** was read and was adopted by a viva voce vote.

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

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

CSSB 229 as amended was passed to engrossment by a viva voce vote.

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

Nays: Estes, Ogden, Shapiro, Wentworth.

Present-not voting: Brimer.

COMMITTEE SUBSTITUTE SENATE BILL 229 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 229** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 4, Present-not voting 1.

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

Nays: Estes, Ogden, Shapiro, Wentworth.

Present-not voting: Brimer.

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 229**, 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 229** 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 26, Nays 4, Present-not voting 1. (Same as previous roll call)

COMMITTEE SUBSTITUTE SENATE BILL 447 ON SECOND READING

Senator Janek moved to suspend the regular order of business to take up for consideration **CSSB 447** at this time on its second reading:

CSSB 447, Relating to the sale of tax receivables by a local government.

The motion prevailed by the following vote: Yeas 21, Nays 8.

Yeas: Averitt, Brimer, Deuell, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Nelson, Seliger, Shapiro, Staples, Van de Putte, West, Zaffirini.

Nays: Armbrister, Barrientos, Carona, Madla, Ogden, Shapleigh, Wentworth, Williams.

Absent: Duncan, Whitmire.

The bill was read second time and was passed to engrossment by the following vote: Yeas 20, Nays 9.

Yeas: Averitt, Brimer, Deuell, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Janek, Lindsay, Lucio, Nelson, Seliger, Shapiro, Staples, Van de Putte, West, Zaffirini.

Nays: Armbrister, Barrientos, Carona, Jackson, Madla, Ogden, Shapleigh, Wentworth, Williams.

Absent: Duncan, Whitmire.

**COMMITTEE SUBSTITUTE
SENATE BILL 1089 ON SECOND READING**

On motion of Senator Madla and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1089** at this time on its second reading:

CSSB 1089, Relating to the distribution by the Texas Department of Transportation of certain assistance for the repair and maintenance of county roads.

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

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1089 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1089** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1089**, 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 1089** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 1716 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 **CSSB 1716** at this time on its second reading:

CSSB 1716, Relating to the sale of instructional materials to students of institutions of higher education.

The bill was read second time.

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

Floor Amendment No. 1

Amend **CSSB 1716** (Senate committee printing) in SECTION 2 of the bill, between Subsections (a) and (b) (page 1, between lines 59 and 60), by inserting the following new subsection and relettering existing Subsection (b) as Subsection (c):

(b) This Act does not affect the terms of a contract entered into before the effective date of this Act.

The amendment to **CSSB 1716** was read and was adopted by a viva voce vote.

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

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

CSSB 1716 as amended was passed to engrossment by a viva voce vote.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1716 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 **CSSB 1716** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1716**, 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 1716** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

(Senator Armbrister in Chair)

SENATE BILL 697 ON SECOND READING

Senator Estes moved to suspend the regular order of business to take up for consideration **SB 697** at this time on its second reading:

SB 697, Relating to the validation of the boundaries of certain school districts.

The motion prevailed.

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

Senators Harris, Nelson, and Williams asked to be recorded as "Present-not voting" on suspension of the regular order of business.

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

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

Nays: Brimer.

Present-not voting: Harris, Nelson, Williams.

SENATE BILL 697 ON THIRD READING

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 697** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 2, Present-not voting 3.

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

Nays: Brimer, Wentworth.

Present-not voting: Harris, Nelson, 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 697**, 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 697** 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 27, Nays 1, Present-not voting 3.

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

Nays: Brimer.

Present-not voting: Harris, Nelson, Williams.

REMARKS ORDERED PRINTED

On motion of Senator Brimer and by unanimous consent, the remarks by Senators Brimer, Estes, and Nelson regarding **SB 697** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Brimer: Senator Estes, this is an issue that affects both of our districts and I want to clear up a few things before we proceed. You and I have met with both the Carroll Independent School District and the Northwest Independent School District on several occasions and it appears that progress is being made in solving this dispute and might come to a compromise by the end of the session. Do you agree that it's possible to end this local dispute without legislation?

Senator Estes: Well, I do agree with you, Senator Brimer, that this dispute can reach a compromise if both parties are willing to meet to reach a possible resolution. I do believe that this legislation is needed at this time to solidify the boundary lines in dispute.

Senator Brimer: I have a commitment from the Carroll Independent School District that they will meet every day with Northwest to continue to negotiate in good faith in this dispute. Will you give me your commitment that you will insist that Northwest Independent School District continue to negotiate regardless of whether or not this bill becomes law?

Senator Estes: Absolutely, I do think it is very important that these two groups continue to negotiate regardless of the outcome of this legislation. This Legislature should always be used as a last resort in settling local disputes that can truly be accomplished and resolved at the local level. I will partner with you and sit down with both school districts and insist that the sides commit to work together to find common ground.

Senator Brimer: Finally, will you request that both parties consider other dispute resolution means, possibly even voter annexation, if the residents of both areas agree, the Carroll Independent School District and Northwest, to work together?

Senator Estes: Sure, there are other dispute resolutions that the school districts should consider. I know the parties have mentioned possible annexation of disputed areas that the school districts and area constituents would have to approve. Again, Senator Brimer, I do feel that a compromise is possible within the next month or so. I will do everything I can to ensure that both parties can walk away with a compromise that the residents of Carroll Independent School District and Northwest Independent School District can approve.

Senator Nelson: Thank you, Senator Estes, and I really appreciate the exchange that you and Senator Brimer just had, because, as you know, I represent both of these school districts, both Carroll and Northwest Independent School District, and they are both excellent school districts that perform at extremely high levels. Any student would be fortunate to attend schools in either of those communities. There are strong feelings on both sides of this issue, as there was on the legal dispute that we had, as you know, Senator Estes, on the borders between Denton and Tarrant counties. The good news is that all parties are at the negotiating table and it is very possible, I believe, that a solution can be reached on the local level. Senator Brimer's encouragement makes me feel even better about a solution that might be out there. I have asked, Senator, because I represent both of these districts, to be recorded as "Present-not voting" on this issue. But I am most grateful to you and Senator Brimer for encouraging these school districts to try to come to some result on this.

Senator Estes: Well, you are welcome, Senator, and I understand completely and realize that both Senator Brimer and I are very dedicated to seeing this come to a fruitful conclusion. Thank you very much.

HOUSE BILL 965 ON SECOND READING

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 965** at this time on its second reading:

HB 965, Relating to a prohibition on the regulation of emissions from certain residential water heaters.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 965** as follows:

(1) In SECTION 1 of the bill, in the proposed heading to Section 382.0275, Health and Safety Code (committee printing page 1, line 15), strike "PROHIBITION ON".

(2) In SECTION 1 of the bill, strike proposed Subsection (b), Section 382.0275, Health and Safety Code (committee printing page 1, lines 21-23), and substitute the following:

(b) The commission shall direct the executive director to perform a study, to be completed by December 31, 2005, regarding the technical and economic feasibility of regulating residential water heaters. If the executive director's study shows that regulation of residential water heaters is technically or economically infeasible, the executive director shall recommend to the commission that the rules concerning water heaters be repealed not later than December 31, 2006, and shall propose emission reductions to offset the loss of state implementation plan credits from the rules. The commission shall provide notice of and hold a public hearing on the study.

The amendment to **HB 965** was read and was adopted by a viva voce vote.

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

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

HB 965 as amended was passed to third reading by a viva voce vote.

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

HOUSE BILL 965 ON THIRD READING

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 965** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **HB 965**, 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 **HB 965** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE
SENATE BILL 1528 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1528** at this time on its second reading:

CSSB 1528, Relating to the payment of tuition and fees at public institutions of higher education and the determination of Texas residency for that purpose.

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

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

COMMITTEE SUBSTITUTE
SENATE BILL 1528 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1528** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1528**, 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 1528** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed.

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

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 1090 ON SECOND READING**

Senator Madla moved to suspend the regular order of business to take up for consideration **CSSB 1090** at this time on its second reading:

CSSB 1090, Relating to the powers and duties of a defense base development authority.

The motion prevailed.

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

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

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

Nays: Brimer.

**COMMITTEE SUBSTITUTE
SENATE BILL 1090 ON THIRD READING**

Senator Madla moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1090** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

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

Nays: Brimer, Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1090**, 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 1090** 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 1.

Nays: Brimer.

SENATE BILL 1713 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 1713** at this time on its second reading:

SB 1713, Relating to the creation of a study commission on transportation financing.

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.

SENATE BILL 1713 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 1713** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 1713**, 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 1713** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed.

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

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 1538 ON SECOND READING**

Senator Barrientos moved to suspend the regular order of business to take up for consideration **CSSB 1538** at this time on its second reading:

CSSB 1538, Relating to the creation of the individual development account program to provide savings incentives and opportunities to eligible low-income, working individuals or households.

The motion prevailed.

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

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

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

Nays: Wentworth.

**COMMITTEE SUBSTITUTE
SENATE BILL 1538 ON THIRD READING**

Senator Barrientos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1538** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1538**, 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 1538** 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 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE BILL 1529 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **CSSB 1529** at this time on its second reading:

CSSB 1529, Relating to policies and measures to promote timely graduation of students from public institutions of higher education.

The motion prevailed.

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

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 1

Amend the committee report for **CSSB 1529** by adding the following, on page 1, line 34 after "graduation" and renumbering accordingly:
, including the development of an online student degree progress report which compares the courses taken and credit received by a student to the courses completed and needed for degree and graduation requirements for each academic term,

The amendment to **CSSB 1529** 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.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 1529** as follows:

(1) In SECTION 3 of the bill, in Section 61.0515(a), Education Code (committee printing, page 2, lines 44-45), by striking "under standards prescribed by the board".

(2) In SECTION 3 of the bill, by striking Section 61.0515(b), Education Code (committee printing, page 2, lines 46-51), and renumbering accordingly.

The amendment to **CSSB 1529** 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 motion of Senator Zaffirini and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSSB 1529 as amended was passed to engrossment by a viva voce vote.

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

Nays: Lindsay.

**COMMITTEE SUBSTITUTE
SENATE BILL 1529 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1529** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

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

Nays: Lindsay, Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1529**, 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 1529** 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 1.

Nays: Lindsay.

**COMMITTEE SUBSTITUTE
SENATE BILL 1227 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1227** at this time on its second reading:

CSSB 1227, Relating to enrollment in public and private postsecondary educational institutions, to payment of the costs of attending those educational institutions, and to financial aid and other measures to assist students to pay those costs.

The bill was read second time.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1227** by adding the following new SECTIONs to the bill, appropriately numbered, and renumbering the subsequent SECTIONs of the bill accordingly:

SECTION _____. Subsection (c), Section 52.91, Education Code, is amended to read as follows:

(c) The board shall repay bonds issued by the board to fund the Texas B-On-time student loan program using legislative appropriations and money collected by the board as repayment for Texas B-On-time student loans awarded by the board. The board may use tuition set aside under Section 56.465 to repay bonds issued by the board for the Texas B-On-time student loan program. The board may not use money collected by the board as repayment for student loans awarded by the board under Subchapter C to repay bonds issued by the board for the Texas B-On-time student loan program under Section 56.464(b).

SECTION _____. Subsection (b), Section 56.463, Education Code, is amended to read as follows:

(b) Money in the Texas B-On-time student loan account may be used only to pay any costs of the coordinating board related to the operation of the Texas B-On-time loan program and as otherwise provided by this subchapter.

SECTION _____. Subsection (b), Section 56.465, Education Code, is amended to read as follows:

(b) The amount of tuition set aside under Subsection (a) shall be deposited to the credit of the Texas B-On-time student loan account established under Section 56.463 or to the interest and sinking fund established by the coordinating board under Section 52.91(b) in accordance with the resolution of the board establishing such fund.

SECTION _____. The Texas Higher Education Coordinating Board shall, as necessary, adopt rules consistent with Sections 52.91, 56.463, and 56.465, Education Code, as amended by this Act, as soon as practicable after this Act takes effect. For that purpose, the coordinating board may adopt the rules in the manner provided by law for emergency rules.

The amendment to **CSSB 1227** 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.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 1227** (Senate committee printing) as follows:

(1) Add the following appropriately numbered SECTIONS to the bill:

SECTION _____. Subchapter M, Chapter 56, Education Code, is amended by adding Section 56.3071 to read as follows:

Sec. 56.3071. EFFECT OF ELIGIBILITY FOR TUITION EQUALIZATION GRANT. (a) Notwithstanding Section 56.307, the total amount of financial aid that a student enrolled in a private or independent institution of higher education is eligible to receive in a state fiscal year from TEXAS grants awarded under this subchapter may not exceed the maximum amount the student may receive in tuition equalization grants in that fiscal year as determined under Subchapter F, Chapter 61.

(b) Notwithstanding any other law, a student enrolled in a private or independent institution of higher education may not receive a TEXAS grant under this subchapter and a tuition equalization grant under Subchapter F, Chapter 61, for the same semester or other term, regardless of whether the student is otherwise eligible for both grants during that semester or term. A student who but for this subsection would be awarded both a TEXAS grant and a tuition equalization grant for the same semester or other term is entitled to receive only the grant of the greater amount.

SECTION _____. Section 61.227, Education Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding any other law, a student enrolled in a private or independent institution of higher education may not receive a tuition equalization grant under this subchapter and a TEXAS grant under Subchapter M, Chapter 56, for the same semester or other term, regardless of whether the student is otherwise eligible for both grants during that semester or term. A student who but for this subsection would be awarded both a tuition equalization grant and a TEXAS grant for the same semester or other term is entitled to receive only the grant of the greater amount.

SECTION _____. Subsection (h), Section 56.307, Education Code, is repealed.

SECTION _____. The change in law made this Act to Section 61.227, Education Code, applies beginning with grants for the 2005-2006 academic year, but only for grants awarded on or after the effective date of this Act. A grant awarded before the effective date of this Act is governed by the law in effect immediately before the effective date, and the former law is continued in effect for that purpose.

(2) Strike SECTION 38 of the bill (page 13, lines 25-29) and substitute the following appropriately numbered SECTION:

SECTION _____. The change in law made by this Act to Subchapter M, Chapter 56, Education Code, applies beginning with the 2005-2006 academic year, but does not affect the amount of or entitlement to any grant awarded before the effective date of this Act.

(3) Renumber the other SECTIONS of the bill accordingly.

The amendment to **CSSB 1227** 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.

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 1227** (Senate committee printing) as follows:

(1) Add the following appropriately numbered SECTIONS to the bill:

SECTION __. Section 56.301, Education Code, is amended to read as follows:

Sec. 56.301. DEFINITIONS. In this subchapter:

(1) "Coordinating board" means the Texas Higher Education Coordinating Board.

(2) "Eligible institution" means ~~[-~~ ~~(A)~~ an institution of higher education that offers one or more undergraduate degree or certification programs ~~[- or~~

~~[- (B) a private or independent institution of higher education].~~

(3) "Public junior college" ~~["Private or independent institution of higher education," "public junior college,"]~~ and "public technical institute" have the meanings assigned by Section 61.003.

SECTION __. Section 56.302(b), Education Code, is amended to read as follows:

(b) The purpose of this subchapter is to provide a grant of money to enable eligible students to attend public ~~[and private]~~ institutions of higher education in this state.

(2) In the recital to SECTION 14 of the bill (page 5, lines 7-8), strike the recital and substitute "Subsections (a) and (e), Section 56.304, Education Code, are amended to read as follows:".

(3) In SECTION 14 of the bill, between the recital and amended Subsection (e), Section 56.304, Education Code (page 5, between lines 8 and 9), insert the following:

(a) To be eligible initially for a TEXAS grant, a person must:

(1) be a resident of this state as determined by coordinating board rules;

(2) meet either of the following academic requirements:

(A) be a graduate of a public or accredited private high school in this state who graduated not earlier than the 1998-1999 school year and who completed the recommended or advanced high school curriculum established under Section 28.002 or 28.025 or its equivalent; or

(B) have received an associate degree from a public or private ~~[an eligible]~~ institution of higher education not earlier than May 1, 2001;

(3) meet financial need requirements as defined by the coordinating board;

(4) be enrolled in an undergraduate degree or certificate program at an eligible institution;

(5) be enrolled as:

(A) an entering undergraduate student for at least three-fourths of a full course load for an entering undergraduate student, as determined by the coordinating board, not later than the 16th month after the date of the person's graduation from high school; or

(B) an entering student for at least three-fourths of a full course load for an undergraduate student as determined by the coordinating board, not later than the 12th month after the month the person receives an associate degree from a public or private ~~[an eligible]~~ institution of higher education;

(6) have applied for any available financial aid or assistance; and

(7) comply with any additional nonacademic requirement adopted by the coordinating board under this subchapter.

(4) In SECTION 15 of the bill, in proposed Paragraph (B), Subdivision (2), Subsection (e), Section 56.305, Education Code (page 5, line 43), between "attempted at" and "institutions", insert "public or private".

(5) In the recital to SECTION 16 of the bill (page 5, line 61), strike "Subsections (b)" and substitute "Subsections (a)".

(6) In SECTION 16 of the bill, strike amended Subsection (b), Section 56.307, Education Code (page 5, lines 63-69), and substitute the following:

(a) The amount of a TEXAS grant for a semester or term for a person enrolled full-time at an eligible institution other than an institution covered by Subsection [(b);] (c)[;] or (d) is the amount determined by the coordinating board as the average statewide amount of tuition and required fees that a resident student enrolled full-time in a baccalaureate degree program would be charged for that semester or term at general academic teaching institutions.

(7) Add the following appropriately numbered SECTION to the bill:

SECTION __. Subsections (b) and (h), Section 56.307, Education Code, are repealed.

(8) Strike SECTION 38 of the bill (page 13, lines 25-29) and substitute the following appropriately numbered SECTION:

SECTION __. The change in law made by this Act to Subchapter M, Chapter 56, Education Code, applies beginning with the 2005-2006 academic year, but does not affect the amount of or entitlement to any grant awarded before the effective date of this Act.

(9) Renumber other SECTIONS of the bill accordingly.

The amendment was read.

On motion of Senator Shapiro, Floor Amendment No. 3 to **CSSB 1227** was tabled by the following vote: Yeas 18, Nays 13.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Nelson, Ogden, Seliger, Shapiro, Staples, Williams.

Nays: Barrientos, Duncan, Ellis, Gallegos, Hinojosa, Lucio, Madla, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

(President in Chair)

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSSB 1227** (Senate committee printing) as follows:

(1) On page 11, line 27 strike "and".

(2) On page 11, line 29 strike "." and after "year" add "; and" and insert "(3) has earned an overall grade point average of at least 2.5 on a four-point scale or the equivalent on coursework previously attempted at public or private institutions of higher education."

The amendment was read.

(Senator Armbrister in Chair)**(President in Chair)**

Senator Wentworth offered the following amendment to Floor Amendment No. 4:

Floor Amendment No. 5

Amend Floor Amendment No. 4 to **CSSB 1227** as follows:

1. On page 1, line 6, strike "2.5" and substitute "2.0" therefor.

The amendment to Floor Amendment No. 4 to **CSSB 1227** was read and failed of adoption by the following vote: Yeas 12, Nays 18.

Yeas: Brimer, Duncan, Ellis, Estes, Fraser, Harris, Lindsay, Madla, Shapleigh, Van de Putte, Wentworth, Whitmire.

Nays: Armbrister, Averitt, Carona, Deuell, Eltife, Gallegos, Hinojosa, Jackson, Janek, Lucio, Nelson, Ogden, Seliger, Shapiro, Staples, West, Williams, Zaffirini.

Absent: Barrientos.

Question recurring on the adoption of Floor Amendment No. 4 to **CSSB 1227**, the amendment was adopted by the following vote: Yeas 26, Nays 4.

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

Nays: Brimer, Harris, Shapleigh, Wentworth.

Absent: Barrientos.

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

CSSB 1227 as amended was passed to engrossment by a viva voce vote.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1227 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1227** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1227**, 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 1227** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 2, 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 2266, Relating to the authority of municipalities to enact a requirement that establishes the sales price for certain housing units or residential lots.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 771 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 771** at this time on its second reading:

SB 771, Relating to the criteria for designation of a reinvestment zone for purposes of tax increment financing and to the powers of a municipality that has created a reinvestment zone.

The bill was read second time.

Senator West offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **SB 771** as follows, on page 2, lines 6-7, strike the words "or underused"

The amendment to **SB 771** was read and was adopted by a viva voce vote.

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

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

SB 771 as amended was passed to engrossment by a viva voce vote.

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

SENATE BILL 771 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 771** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 771**, 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 771** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE
SENATE BILL 1741 ON SECOND READING**

Senator Staples moved to suspend the regular order of business to take up for consideration **CSSB 1741** at this time on its second reading:

CSSB 1741, Relating to an exemption for certain interbasin transfers of water from certain priority requirements.

The motion prevailed.

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

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

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

Nays: Fraser.

**COMMITTEE SUBSTITUTE
SENATE BILL 1741 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 1741** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

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

Nays: Fraser, Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1741**, 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 1741** 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 1.

Nays: Fraser.

REMARKS ORDERED PRINTED

On motion of Senator Williams and by unanimous consent, the remarks regarding **CSSB 1741** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Staples: Senators, there's been a great deal of concentration on meeting the future water needs of our state this particular legislative session. Senate Bill 1741 addresses an issue that has been a bit controversial in the last few years, but, in fact, is an issue in regarding to the interbasin transfer of water. I believe water policy in our state should be one that encourages the transfer of water where there is water surplus, or water-rich areas. But, also, it should discourage the transfer of water from water-short or water-needy areas. Senate Bill 1741 will provide a process by which water may be moved to truly water-needy areas while promoting the ironclad protections for the basin-of-origin currently held in the Water Code. The legislation will allow water transferred by contract from a basin with a significant surplus beyond the water required to meet in-basin demand and allow that water to meet its senior priority date. The legislation allows for a contract extension if the above criteria are continued to be met. And I believe this bill will distinguish between legitimate water transfers and protecting the basins-of-origin between those that are just based on water profiteering.

Senator Williams: Senator Staples, the bill, as you've drafted it, which rivers in the state would it apply to?

Senator Staples: Well it'll apply to all basins in the state that meet the criteria of the 50-year demand being met, 125 percent of the 50-year demand. I haven't run calculations on all rivers in the state, but I would suspect that it would be probably the Sabine, possibly the Trinity, and maybe the Neches and Angelina.

Senator Williams: OK. So there's maybe four rivers in the state, I've heard maybe just two rivers, the Neches and the Sabine are the only ones with those significant amounts of extra water. I just wanted to clarify what you're trying to do here, and, why do you think this legislation is necessary?

Senator Staples: Well I think for a number of years we have heard people attack the junior water rights provision that was currently codified in the Water Code in Senate Bill 1 in 1997. And these opponents to the junior water rights provisions failed to mention that the junior provisions have actually been in place in this state since 1913. And, in fact, in a Supreme Court decision in 1966, the Court gave a two-part standard for evaluating interbasin transfers. One was that the I.B.T. could not impair any existing right. And the second was that they must leave enough water in the basin to protect the basin-of-origin needs. And, so I think we have individuals in this state who are trying to deviate from practice and court decisions that date back to 1913. And I think we need to say, we want to be good neighbors in this state, but we want to maintain, we don't want to transfer one set of problems from one part of the state to

another. And, so this legislation says, if you have surplus water above your projected needs that, on a contractual basis, that water under contract could be sold to meet those needs.

Senator Williams: So the water right itself would stay vested in the basin-of-origin and there would merely be a contract. So can you, you know, I'm curious about why you think this legislation is necessary because the Sabine River Authority has been doing the very thing that your legislation permits since the 1960s. And, so they've been selling water under contract to the Dallas area for a long, long time. So help me understand why this is, why it's important to do this.

Senator Staples: I agree with you. Under the existing junior water rights provisions in our law, water can be transferred from one area of the state to the other, and all it does is ensure that there's ample water that's there. There're some who disagree with that, and, so this would allow for that transfer. I would also add that should there be new capacity built, new reservoirs built in certain areas on an on-channel reservoir that has a firm yield, you might have some areas that would actually benefit from this legislation by using it when, if there's new reservoir capacity built.

Senator Williams: Are there any reservoirs that we can reasonably expect to be built during the next 25 years from any of the four rivers that you named that might be eligible?

Senator Staples: Well there are a number of reservoirs proposed in the statewide water plan—

Senator Williams: Well I know there're some proposed, but my question was, do you think there're any of those that'll be reasonably, be built?

Senator Staples: I don't know. You know, it's so hard to build new capacity in this state, but I'll tell you, if we do not build new capacity and you have good water policy, that we have certain areas in this state that will be in trouble in the out years.

Senator Williams: And, finally, for the purposes of legislative intent, I just want to be clear that there's nothing that you're doing here, or that you intend to do that would in any way impair the junior water rights in the basin-of-origin, those statutes. What you're really just putting into statute, a practice that's already going on with some of the rivers, and maybe in some areas there's people that think it's not possible to do this under current law.

Senator Staples: That's my intent, in no way to change the junior water right provisions currently codified in the code. And if this legislation in any way does that, you know, if they change it in any way in the House that's not acceptable, and change that intent, I'll not bring it back up.

Senator Williams: I'm confident of your intentions. I'm a little nervous about what might happen to this bill in the House. And I appreciate you giving me an opportunity to ask you these questions.

Senator Averitt: Senator Staples, I've never heard you represent this bill as a statewide solution to some of the water issues that we're dealing with today. This is not a statewide solution as you presented it.

Senator Staples: I'm, was this a question for me, or—

Senator Averitt: Question.

Senator Staples: OK, what's your question?

Senator Averitt: You're not presenting this bill as a statewide solution to transferring water to the places all over the state that needs to be, where water is needed at, today in Texas.

Senator Staples: Well what I'm presenting this bill as, there are those that say that the junior water rights provision prohibits the transfer of water from one basin to another in the state. I believe the junior water rights provision allows for the transfer of water from one basin to the other, as long as there is no harm done to the basin-of-origin. So this bill is really to meet the charges that the junior water rights provision prohibits the transfer of water.

Senator Averitt: I applaud, Senator Staples, your diligence, your continued efforts in working on these complicated and emotional water issues. I'm going to support your bill, of course. I believe it's something, probably, that's going to be very beneficial to your area, and I believe the City of Dallas is going to be on the other end of that, is that correct?

Senator Staples: I, no, I want to—

Senator Averitt: Not sure?

Senator Staples: Clear up that misconception, because today, under the current water laws with the junior rights provisions in place, there are already conversations that are taking place that will make a sale of water from the Toledo Bend reservoir to the North Texas area and build a pipeline to do that. There's another proposed reservoir in East Texas on the Neches River that is being contemplated that will move water out of that basin to another basin. And, so I believe that—

Senator Averitt: Piece by piece, we're putting together a statewide plan to meet the water needs of all Texans. And this is one piece of that puzzle.

Senator Staples: I believe that this meets the charges that the junior prohibits the transfer, because this would allow that senior priority date to carry forward. But under a very important, I believe, element, and that is that there is enough water to meet the needs of that basin before it's transferred.

Senator Averitt: Once again, Senator Staples, I do applaud you for your continued efforts and your diligence in this area. And I know that you and Senator Williams are dedicated to the proposition of protecting the basins-of-origin and developing a good statewide water policy. And I know that one of these days we're going to figure out how to transfer water in those areas of the state where water is not so plentiful. And yet there is, obviously, still a need. And, so I pledge to work with both of y'all on those propositions and I do support your bill.

Senator Staples: Thank you, Senator.

Senator Averitt: Thank you.

Senator Staples: I appreciate your efforts.

Senator Fraser: This, I think this issue we talked about in Committee, and I just want to clarify. If someone does a contractual, has a contractual obligation on water and for some reason, even though there's a surplus of water, we get to a situation, we have a drought-of-record where the water's not sufficient, is this contract, is it interruptable, and are those rights, do they remain junior to the senior rights in a basin?

Senator Staples: The contract will be based on the drought-of-record. And, so the contract is going to be based on the drought-of-record, so if you have that drought-of-record, the contract will only be possible if there's enough water yield to meet the basin's demands, 125 percent of the basin's demands, based on drought-of-record. So if it's, say it's worse than a drought-of-record, and then that water is not there, it's not an interruptable contract, but the contract cannot be extended beyond that 50-year time period should that occur.

Senator Fraser: OK. I'm missing what you're saying. You're saying if, the whole basis of a junior-senior agreement is that the rights of the people within the basin are senior to other water rights, and the reason you have a junior-senior agreement is that if their rights are junior to the senior right, to the people in the basin, and there was a drought-of-record, there wasn't sufficient water to fulfill the needs of the people in the basin, that the rights of that contract then would become junior.

Senator Staples: Well, actually, on your permitted water you could have water leaving the basin that is, under current law today, that's actually senior to water that is in-basin under, you know, if you had a water right that was, water, say, 1955, like the Blackburn Dam project, Lake Palestine, that was sold—

Senator Fraser: It was grandfathered water.

Senator Staples: Yeah, right. Well, it, actually, it was just first-in-time, first-in-line concept is what it maintains. And, so they have a senior date to a project that might be built today, which one is being contemplated, as a matter of fact.

Senator Fraser: OK, well the position the Legislature's taken on junior-senior rights is, preserving the rights of the basin being senior to others. And the reason you have that is to preserve the rights in case there was a drought-of-record. And I know you're trying to sell surplus rights, but in the case that that surplus disappeared in a drought-of-record, why would we want to give up our rights to those junior, the junior-senior provisions?

Senator Staples: Because of, for very important reasons that we've articulated in the bill. And, I don't know, that's a great point, and I want to go ahead and read those today so that we'll be very clear on what we're doing. The bill will codify, I believe, the existing basin-of-origin protections, and here's how. The transfer must originate from an on-channel reservoir. A reservoir is the most reliable source of water in the state. It can be intentionally operated to store and release specific water quantities in management strategies that will meet the demands placed on them. So, number one, it has to be based on a firm yield from a reservoir. And the contract term is limited to 50 years or less. We wanted this to coincide with the statewide water plan that has the 50-year management strategy and identifies all the needs. And, so that 50-year planning horizon is consistent with the basin that this water's going to be moved from.

The basin-of-origin must have enough water to meet the demands in the basin for 50 years or more, based on the drought-of-record. And I think this is the key that ties us in, that's based on the most severe drought-of-record. And this contract has to address that situation and assume that there's enough water in that basin to meet the water needs based on the drought-of-record. The originating reservoir must have capacity to store enough water to fulfill the contractual terms in that drought-of-record, and it only allows for a contract extension above those criteria if those criteria continue to be met.

Senator Fraser: Is this a statewide policy, or is it only addressing—

Senator Staples: It has statewide applications, but it's limited to basins that have 125 percent or more of their water needs on a 50-year planning horizon based on the drought-of-record.

Senator Fraser: Drought-of-record is a 50-year drought—

Senator Staples: Drought-of-record was the drought in, like, the 1950, 1956, which is the most severe drought that we've recorded since that time. And you and I know we all in recent years have been through some pretty tough droughts. But this is based on that drought-of-record, 1956, that water would be available if we had those types of conditions, 125 percent of that water would actually be available. So that's the protection, I think, that is pretty much ironclad.

Senator Fraser: With the assumption that we're never going to have another drought worse than 1956.

Senator Staples: Well that's why I have the 125 percent built in rather than, say, 110. It's because you and I know that planning for 50 years is pretty tough. But we also—

Senator Fraser: And, so anyone buying water, the basin-of-origin would have to have a surplus of 125 percent of the drought-of-record.

Senator Staples: Based on a 50-year planning horizon, that's right.

Senator Fraser: And you're saying that if they do that, then they could contractually obligate themselves, where it would be an uninterruptable flow.

Senator Staples: That's correct. But that the contract could not be extended if the 125 percent of the 50-year planning horizon could not be met.

Senator Fraser: And the contract is a 50-year supply?

Senator Staples: Um-hum. And that's consistent with our statewide water plan on a 50-year planning horizon. And if you think about it, the kind of infrastructure that's contemplated, I think, in Senate Bill 3 and in the water plans and in the existing statewide water plan, it's hard to finance something of the magnitude that we're talking about, shorter than that timeframe. I might add, of course, stakeholders in East Texas have testified in favor of the bill. We had support from the North Texas Municipal Water District and the San Jacinto River Authority who submitted cards in support of this. And we worked with stakeholders around the state to ensure that this was sound public policy. Obviously, my district, Senator Williams' district, are fine

with the law the way it is. I think it's important that we demonstrate that the junior provisions in the Water Code are not prohibiting transfers if you don't want to damage areas of the state.

Senator Fraser: And I think the concern is, and we talked about this on a lot of legislation, that's the camel's nose into the tent. We fought real hard to protect the junior-senior rights, and by doing this, this is a very clear exemption to those rights. And even though you're trying to put a pretty good size hurdle to jump over, it still acts as an exemption to the junior rights, and I guess I'm questioning whether we really want to do that.

Senator Staples: Well, believe me, from an area that this is probably the most passionate issue that we deal with, and talking with Senator Eltife, in the Northeast Texas area as well, we know that, and I want to clarify one thing: this is not dealing with a water right. This is dealing with a contractual sale of water, and that's a clear distinction, and I in no way intend for this to be a weakening, and I don't believe it's a compromise of the current junior water rights protections in law. What this is is an attempt to say our policy should be, we should encourage the transfer of water where there's water surplus, but that we should discourage the transfer of water where there's a water shortage or water-needy areas of the state. I think that's what it says, and I believe what it also says is, in Texas we're not going to transfer one set of problems from one region of the state to the other, whether it's water, whether it's education, whether it's transportation, or whatever the issue might be. And I believe this falls in line with those concepts.

Senator Williams: Senator Staples, you clarified at the end of your remarks with Senator Fraser here that we're not dealing with a water right. Now I want to explore this issue of uninterruptable water supply. If we find ourselves in a 1956-era drought, my main concern is, really, three things. I've got a lot of rice farmers that depend on this water and the rivers in East Texas for their water supply. I'm concerned about the industry along the Gulf Coast that is critical to our nation's supply of gasoline and jet fuel, and they require a lot. For every barrel of oil they refine they need a barrel of water to make that happen, and then they put that water back instream again. And, then, finally, and maybe most importantly, I'm concerned about the health of Trinity and Galveston Bay and the freshwater inflows there. And, so when you talked about an uninterruptable supply of water, what I want to know is, if we had a drought and the needs of the basin-of-origin, when does that take priority over the contract again? I want to just be sure I understand what you're accomplishing with this bill, because it was my understanding that we continue to protect the basin-of-origin here. So under what circumstances could that contract—

Senator Staples: Well on a contractual arrangement, that contracted water right on the basis that it's transferred out on an annual basis will be done. But it's based on the drought-of-record in 1956. You have to have some definitive measuring stick, and this is under the most severe conditions with a margin of 25 percent—

Senator Williams: Right—

Senator Staples: We—

Senator Williams: But aren't you also one of the, let me interrupt you, if I could, on your answer and—

Senator Staples: Sure.

Senator Williams: Be sure you're really only talking about water that's in a reservoir.

Senator Staples: That's right.

Senator Williams: You're not talking about instream flows, you can't—

Senator Staples: I'm not—

Senator Williams: I want to get that for the record, it's something that I'm just—

Senator Staples: Yes.

Senator Williams: I want to be sure that we understand here.

Senator Staples: Thank you for making that clarification. This is specifically limited to those on-channel reservoirs and does in no way include run-of-the-river rights or anything else. Senator Fraser, I probably should have made that distinction when we were talking, as well, that this pertains to on-channel reservoirs with a firm yield and does not impact river rights, run-of-the-river rights or any other water source other than what is defined in Section, Subdivision 15 of the bill.

Senator Williams: So we can take the reservoir to the bed of the reservoir and then that's, they can't go and get any water out of the river—

Senator Staples: That's right.

Senator Williams: Under one of these contracts, is that what—

Senator Staples: You cannot go get water out of the river, and I don't even think on the bed of the reservoir, you know, those are managed and planned. And you have other water rights in that reservoir that I'm assuming, and I, you know, the bill doesn't address this because it's a contractual situation. But, so, you know, you have preexisting contractual obligations for that water reservoir and, depending on how the contracts are written, that probably is going to be the end of the line on moving that water out of there if you have preexisting rights.

Senator Williams: So those other more senior rights that might be a part of the reservoir would be protected. The right doesn't transfer with the contract, that remains—

Senator Staples: The water right does not—

Senator Williams: In the reservoir—

Senator Staples: Transfer—

Senator Williams: Or in the basin-of-origin.

Senator Staples: It is a contracted sale of water only.

Senator Williams: OK, thank you.

Senator Staples: Thank you for that important clarification.

Senator Shapleigh: Senator Staples, you indicated that you intended for this to have statewide application. Is that right, basically?

Senator Staples: Well this legislation is not bracketed to any part of the state.

Senator Shapleigh: So when you talk about an on-channel reservoir, you mean an open body of water that is created by a dam that obstructs the flow of water in a stream and whose primary source of water is runoff from that stream.

Senator Staples: That's correct.

Senator Shapleigh: And there are—

Senator Staples: If you don't have an on-channel reservoir in your basin then, I guess, this wouldn't apply.

Senator Shapleigh: Well there are certain rivers that have these open bodies of water to which we have water rights that are in other states. It is not your intention to affect existing water rights as they relate to those open bodies of water in other states to which entities in Texas have a claim, is it?

Senator Staples: These, since this does not affect those water rights, this is the contracted sale of water only, and it shouldn't have an impact.

Senator Shapleigh: Thank you.

COMMITTEE SUBSTITUTE SENATE BILL 1071 ON SECOND READING

Senator West moved to suspend the regular order of business to take up for consideration **CSSB 1071** at this time on its second reading:

CSSB 1071, Relating to a person's eligibility for an order of nondisclosure with respect to certain criminal history records and to certain law enforcement duties that result from the issuance of an order.

The motion prevailed.

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

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1071** (committee printing) in SECTION 1 of the bill, in proposed Section 411.081(d), Government Code, on page 1, line 35, by striking "an agency" and substituting "for criminal justice or regulatory licensing purposes, an agency or entity".

The amendment to **CSSB 1071** was read and was adopted by a viva voce vote.

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

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

CSSB 1071 as amended was passed to engrossment by a viva voce vote.

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

Nays: Ogden.

**COMMITTEE SUBSTITUTE
SENATE BILL 1071 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 1071** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

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

Nays: Ogden, Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1071**, 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 1071** 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 1.

Nays: Ogden.

**MOTION TO PLACE
SENATE BILL 1500 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **SB 1500** at this time on its second reading:

SB 1500, Relating to the allocation of federal funds directed to be used to support graduate medical education in connection with the state Medicaid program.

Senator Lucio withdrew further consideration of **SB 1500**.

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

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

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

On motion of Senator West and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Subcommittee on Higher Education might consider **SB 1883** today.

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

On motion of Senator Whitmire and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Criminal Justice might consider **SB 1182** tomorrow.

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

On motion of Senator Shapiro and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Education might consider **SB 1194** tomorrow.

MOTION TO RECESS AND ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 6:15 p.m. agreed to recess, upon completion of the introduction of bills and resolutions on first reading, until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

The Senate further agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session, until 11:00 a.m. tomorrow.

SENATE BILLS ON FIRST READING

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

SB 1890 by Armbrister

Relating to the territory of the Plum Creek Conservation District. (Local Bill)
To Committee on Natural Resources.

SB 1891 by Armbrister

Relating to the creation of the La Salle Water Control and Improvement District No. 1; providing the authority to impose a tax and issue bonds; granting the power of eminent domain. (Local Bill)
To Committee on Natural Resources.

SB 1892 by Madla

Relating to the creation of the Espada Development District; providing authority to provide water and wastewater services and to impose assessments and taxes and to issue bonds. (Local Bill)
To Committee on Intergovernmental Relations.

HOUSE BILLS ON FIRST READING

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

HB 511 to Committee on Business and Commerce.

HB 628 to Committee on Business and Commerce.

HB 857 to Committee on Intergovernmental Relations.

HB 1006 to Committee on Finance.

HB 1021 to Committee on Business and Commerce.

HB 1153 to Committee on Jurisprudence.

HB 1214 to Subcommittee on Higher Education.

HB 1568 to Subcommittee on Agriculture and Coastal Resources.

HB 2110 to Committee on Criminal Justice.

HB 2313 to Committee on Natural Resources.

HB 2340 to Subcommittee on Base Realignment and Closure.

HB 2438 to Committee on Business and Commerce.

HB 2481 to Committee on Natural Resources.

HB 2579 to Committee on Health and Human Services.

HB 2680 to Committee on Health and Human Services.

HB 2808 to Committee on Education.

HB 2940 to Committee on Natural Resources.

HB 3010 to Committee on Jurisprudence.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 731 by Wentworth, In memory of Harold Frederick Olmstead of San Antonio.

SR 733 by Averitt, In memory of Olin Nickleberry of Navarro County.

Congratulatory Resolutions

SR 728 by Ellis, Recognizing Amy-Kristen Charisse Jones on the occasion of her graduation from Prairie View A&M University.

SR 729 by Ellis, Recognizing Connie and Abraham Abdalla, Jr., on the occasion of their 50th wedding anniversary.

SR 730 by Wentworth, Congratulating the San Antonio area Gold Medal winners of the 2005 Texas Council of Engineering Companies Engineering Excellence Awards.

SR 732 by West, Recognizing the Baylor College of Dentistry on the occasion of its 100th anniversary.

SR 734 by Barrientos, Recognizing Larry Niemann on the occasion of his retirement.

SR 735 by Lucio, Congratulating Thomas A. Garza for raising the Grand Champion Steer of the Rio Grande Valley Livestock Show.

SR 736 by West, Commending B5 for their performance honoring the students of Lancaster High School.

Official Designation Resolutions

SR 726 by Barrientos, Recognizing May 2 through 7, 2005, as North American Occupational Safety and Health Week in Texas.

HCR 136 (Wentworth), Designating May 2005 as Texas Natural Resources Month.

RECESS

Pursuant to a previously adopted motion, the Senate at 6:29 p.m. recessed until 8:00 a.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

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

May 2, 2005

JURISPRUDENCE — **CSSB 978, CSSB 1875, CSHB 1077**

STATE AFFAIRS — **CSSB 1738**

EDUCATION — CSHB 2

GOVERNMENT ORGANIZATION — CSSB 1547

CRIMINAL JUSTICE — CSSB 337, CSSB 1582, CSSB 1675

JURISPRUDENCE — CSSB 504, CSSB 952, CSSB 1152, CSSB 1657, CSSB 1768

INTERGOVERNMENTAL RELATIONS — CSSB 724, CSSB 1772, CSSB 1800, CSSB 1801, CSSB 1802, CSSB 1803, CSSB 1804, CSSB 1805, CSSB 1806, CSSB 1807, CSSB 1808, CSSB 1813, CSSB 1814, SB 1843 (Amended), CSSB 1855, CSSB 1860, CSSB 1865, CSSB 1866

NATURAL RESOURCES — HB 943, SB 1876, HB 942, HB 2131, HB 2949, HB 3340, SB 1810, SB 1811

BUSINESS AND COMMERCE — HCR 59, HB 74, HB 207, HB 532, HB 1201, HB 1328, HB 2565, CSSB 831, CSSB 1291, SB 1564

INTERGOVERNMENTAL RELATIONS — SB 760, SB 828, SB 892, SB 1458, SB 1692, SB 1846, SB 1872, SB 1873, SB 1884, SJR 44

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — HB 685, HB 1076, SB 1852

BUSINESS AND COMMERCE — CSHB 1817, CSHB 2987

STATE AFFAIRS — SB 623, SB 1739, CSSB 727, HB 256, HB 604, HB 736, HB 737, HB 738, HB 739, HB 740, HB 741, HB 742, HB 743, HB 744, CSHB 755, HB 1285 (Amended), HB 1602

CRIMINAL JUSTICE — CSSB 112

SENT TO GOVERNOR

May 2, 2005

SB 129, SB 177, SB 407, SB 541, SB 574, SB 692, SB 693, SB 766, SB 796, SB 1342, SCR 20, SCR 26, SCR 28