

SIXTY-SECOND DAY

WEDNESDAY, MAY 4, 2005

PROCEEDINGS

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by the President.

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

Absent-excused: Lucio.

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

The Reverend Dr. Michael S. Lewis, Great Hills Baptist Church, Austin, offered the invocation as follows:

Dear heavenly Father, we humbly bow before You as we open this 79th Texas legislative session on this 4th day of May in the year of our Lord 2005. We lovingly acknowledge You as the all-wise and all-powerful God. You are the sovereign king of the universe and You are the one who has established all principalities, powers, rulers, and government bodies under Your authority. You are the father of lights from whom every good and perfect gift comes from above. You are our creator and maker who spoke and the universe came into existence. You are our redeemer who gave Your son, Jesus Christ, as the savior of the world and who reigns as the king of kings and lord of lords over this world. We call humbly upon You to guide us in all of the decisions and discussions of this session today. We recognize that we are finite beings with limited understanding, therefore we ask for Your infinite wisdom. We confess we are sinners who are like straying sheep, therefore we need You, the shepherd of our souls, to guide us in all our ways. May righteousness and compassion fill our hearts with light from above. May the laws and decisions that are established in this session bring glory and honor to Your name. May we be pleasing to You by promoting peace and spiritual prosperity for the residents of this great State of Texas. We acknowledge that all that we are and all that we have comes from You. O God, bless Texas. O God, bless America. Be with our men and women who are serving our country in our military forces in Iraq and

foreign lands this day. Lord, with respect to all those of diverse religious faiths, we humbly submit this prayer to You in the name of our lord, Jesus Christ. Amen.

Pledge of Allegiance

At the request of the President, Senators Hinojosa, Lindsay, Ogden, and Wentworth joined him at the President's Rostrum as they led the Senate in the pledge of allegiance to the flag of the United States of America.

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

The motion prevailed without objection.

LEAVE OF ABSENCE

On motion of Senator Whitmire, Senator Lucio was granted leave of absence for today on account of illness.

CO-AUTHOR OF SENATE CONCURRENT RESOLUTION 21

On motion of Senator Barrientos, Senator Wentworth will be shown as Co-author of **SCR 21**.

BILL SIGNED

The President announced the signing of the following enrolled bill in the presence of the Senate after the caption had been read: **SB 481**.

PERMISSION TO INTRODUCE BILL AND RESOLUTION

Senator Whitmire moved to suspend Senate Rule 7.07(b) and Section 5, Article III, of the Texas Constitution to permit the introduction of the following bill and resolution: **SB 1893, SJR 45**.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Lucio.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 4, 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 159, Relating to expenditures of funds by a school district to advertise a referendum.

- HB 283**, Relating to admission, assignment, and conduct of certain public school students.
- HB 664**, Relating to consideration of a bidder's principal place of business in awarding certain municipal and school district contracts.
- HB 1048**, Relating to the forfeiture of contraband used or intended to be used in the commission of certain criminal offenses.
- HB 1095**, Relating to the offense of harassment by persons in certain correctional facilities and to creating the offense of harassment of public servant.
- HB 1172**, Relating to the tuition charged to resident undergraduate students of institutions of higher education for excess credit hours and to related formula funding.
- HB 1235**, Relating to the notice required for a sale of real property under a contract lien.
- HB 1249**, Relating to criminal punishment for aggressive driving that results in the death of a person.
- HB 1426**, Relating to the confidentiality of certain information in a rabies vaccination certificate.
- HB 1579**, Relating to contributions and eligibility for benefits of and reports concerning certain retired members of the Teacher Retirement System of Texas; imposing a penalty.
- HB 1706**, Relating to requiring a voter to present proof of identification.
- HB 1919**, Relating to notice in certain real property transactions concerning public improvement districts.
- HB 1986**, Relating to the administration and powers of a coordinated county transportation authority.
- HB 2135**, Relating to the creation of a tourist-oriented directional sign program.
- HB 2241**, Relating to the authority of certain municipalities to require a contract between a municipal utility district and the municipality before the district issues obligations.
- HB 2405**, Relating to prohibiting a person not entitled to receive an early voting ballot by mail from casting that ballot; providing a criminal penalty.
- HB 2623**, Relating to the distribution by the Texas Department of Transportation of certain assistance for the repair and maintenance of county roads.
- HB 2799**, Relating to the removal of vehicles and property from a roadway in a political subdivision, to the authority of a political subdivision to establish a traffic incident management program, and to procedures regarding the removal and storage of certain vehicles.
- HB 2966**, Relating to the criminal penalty for violating certain statutes enforceable by, or ordinances, rules, or regulations of, navigation districts or port authorities.

HB 3115, Relating to certain homeland security activities, including the operation of the Critical Infrastructure Protection Council by the office of the governor.

HCR 161, Congratulating the Paris Junior College men's basketball team for winning the 2005 National Junior College Athletic Association championship.

HCR 162, Honoring Bill Foy, head basketball coach at Paris Junior College, on his selection as the Junior College Coach of the Year by the National Association of Basketball Coaches.

HCR 165, Recognizing May 4, 2005, as Paris/Lamar County Day at the State Capitol.

SB 376, Relating to a pilot program for language interpreter services under the medical assistance program.

(Amended)

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

(Amended)

SB 461, Relating to the confidentiality of and access to certain personal information in instruments recorded with a county clerk.

SB 571, Relating to the hours of sale and consumption of wine at a winery.

SB 580, Relating to the installment payment of ad valorem taxes by certain veterans.
(Committee Substitute/Amended)

SB 1298, Relating to restrictions on the transfer of a fuel tank to a metal recycling entity.

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

HB 762 (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

PHYSICIAN OF THE DAY

Senator Eltife was recognized and presented Dr. George Cathey of Quitman as the Physician of the Day.

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

GUESTS PRESENTED

Senator Jackson was recognized and introduced to the Senate students from La Marque Independent School District, accompanied by their superintendent of schools.

The Senate welcomed its guests.

SENATE BILL AND RESOLUTIONS ON FIRST READING

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

SB 1893 by Ellis

Relating to the tuition and fees charged to students of institutions of higher education.
To Committee on Education.

SCR 34 by Shapleigh

Memorializing Congress to recognize the Lipan Apache Band of Texas as a federally acknowledged Indian tribe.
To Committee on State Affairs.

SCR 35 by Lucio

Encouraging the State Board of Education to ensure that public schools teach students about Hispano contributions to the development of Texas and the United States and that all of the state's history and government textbooks include such information.
To Committee on Education.

SJR 45 by Ellis

Proposing a constitutional amendment authorizing compensation for public school employees and retired public school employees serving as members of local governing bodies.
To Committee on State Affairs.

SENATE RESOLUTION 744

Senator Wentworth offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Austin Bar Association and to proclaim May 6, 2005, Law Day in Austin; and

WHEREAS, American Bar Association president Robert Grey will address people from across the country who are attending the Law Day in Austin celebration; he will speak on one of the principles on which the nation was founded—the right to trial by jury; and

WHEREAS, Law Day is a commemoration of our great heritage of liberty, justice, and equality under the law for all; a central part of this heritage is the right to trial by jury; and

WHEREAS, Guaranteed in Article III of the Constitution of the United States and strengthened by the Fifth, Sixth, and Seventh Amendments, the right to trial by jury stands as the foundation upon which the legal system is built; and

WHEREAS, The decisions made by jurors affect millions of lives every day; few activities in civic life provide such direct contact with democracy as does jury service; and

WHEREAS, The first Congress of the United States insisted on preserving the right to a trial by jury to ensure that future generations would be judged by representatives of the people, not by government; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend the Austin Bar Association for paying tribute to the foundation of the legal system and extend best wishes to all participating in the Law Day in Austin activities; and, be it further

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

SR 744 was read and was adopted without objection.

GUESTS PRESENTED

Senator Wentworth was recognized and introduced to the Senate members of the Austin Bar Association.

The Senate welcomed its guests.

SENATE RESOLUTION 711

Senator Van de Putte offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Lieutenant General Wayne D. Marty on the occasion of his retirement from the position of adjutant general of the State of Texas; and

WHEREAS, As the adjutant general, Lieutenant General Marty has been responsible for leading over 18,000 members of the Texas military forces, which include the Texas Army National Guard, the Texas Air National Guard, the State Guard, and the Adjutant General's Department; and

WHEREAS, Units under the adjutant general's command include the 49th Armored Division, the 71st Troop Command, the 147th and 149th Fighter Wings, and the 136th Airlift Wing; and

WHEREAS, General Marty began his military career in 1965; as an active duty lieutenant, he served in Vietnam with the 192nd Assault Helicopter Company as an armed helicopter platoon commander; he went on to serve with the 2nd Armored Division Artillery, and he served as a troop commander with the 6th Squadron, 1st Cavalry; and

WHEREAS, After leaving active duty, General Marty joined the Texas National Guard in 1970; his assignments have included command of the 1st Squadron, 124th Cavalry, and command of the 49th Armored Division's Aviation Brigade; and

WHEREAS, In 1993, he was appointed to serve as the assistant adjutant general, Texas Army National Guard; he assumed the 71st Troop Command in 2000, and in 2002, he was appointed by the governor as the adjutant general; and

WHEREAS, Decorations and badges earned by Lieutenant General Marty include the Legion of Merit, the Meritorious Service Medal with two Oak Leaf Clusters, the Army Commendation Medal, the Vietnam Service Medal with three Bronze Service Stars, and the Master Army Aviator Badge; his civic affiliations include the National Guard Associations of the United States and Texas, the American Legion, and the Military Order of the World Wars; and

WHEREAS, The epitome of General Douglas MacArthur's famous motto "Duty, Honor, Country," Lieutenant General Marty has displayed deep loyalty, dedication, and commitment to his nation for 40 years, and he has served with distinction as leader of the Texas military forces; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend Lieutenant General Wayne D. Marty for his many years of outstanding service to the State of Texas and to his nation and extend to him best wishes for a fulfilling retirement; and, be it further

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

VAN DE PUTTE
LUCIO

SR 711 was read and was adopted without objection.

GUESTS PRESENTED

Senator Van de Putte was recognized and introduced to the Senate Lieutenant General Wayne D. Marty, Adjutant General, accompanied by his wife, Janie, and his daughter, Brandy, and, on behalf of Senator Lucio, presented to General Marty a Texas flag which previously had been flown over the State Capitol.

The Senate welcomed its guests.

SENATE RESOLUTION 713

Senator Van de Putte offered the following resolution:

WHEREAS, The Senate of the State of Texas joins citizens across our nation in recognizing April 30 through May 7, 2005, as the 30th anniversary of the end of the Vietnam era; and

WHEREAS, On April 30, 1975, the last Americans withdrew from the rooftop of the United States Embassy in Saigon, signaling the end of the war in Vietnam; on May 7, 1975, President Gerald R. Ford signed into law a bill officially ending the Vietnam era; and

WHEREAS, From Ia Drang to Khe Sanh, from Tet to Hue, many veterans honored this nation with their dedication and their courage, and over 58,000 citizens gave the last full measure of devotion in service to their country; and

WHEREAS, Veterans of the Vietnam era served their country valiantly under difficult circumstances; they and their families are to be praised for their service, sacrifice, and devotion to duty at a time of great turmoil and uncertainty in the history of the United States; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend the veterans of the Vietnam era and encourage Texans across our state to observe April 30 through May 7, 2005, as the 30th anniversary of the end of the Vietnam era; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of the Vietnam veterans.

VAN DE PUTTE	FRASER	OGDEN
ARMBRISTER	GALLEGOS	SELIGER
AVERITT	HARRIS	SHAPIRO
BARRIENTOS	HINOJOSA	SHAPLEIGH
BRIMER	JACKSON	STAPLES
CARONA	JANEK	WENTWORTH
DEUELL	LINDSAY	WEST

DUNCAN	LUCIO	WHITMIRE
ELLIS	MADLA	WILLIAMS
ELTIFE	NELSON	ZAFFIRINI
ESTES		

SR 713 was read and was adopted without objection.

GUESTS PRESENTED

Senator Van de Putte was recognized and introduced to the Senate Vietnam veterans Roy McCrary, Army; Joe Boatman, Navy; Cherie White, Air Force; Luther "Buster" Newberry, Marines; and Morris Hickman, Coast Guard.

The Senate welcomed its guests.

(Senator Armbrister in Chair)

SENATE RESOLUTION 741

Senator Shapiro offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Patrick and Cheryl Fries and all associated with Austin, Texas' Arrowhead Film and Video for their award-winning documentary, *In The Shadow of The Blade*; and

WHEREAS, *In The Shadow of The Blade* follows the journey of a restored UH-1 "Huey" helicopter as it traveled 10,000 miles across America; hundreds of veterans in eight states were filmed as they told their stories and reunited with the machine that served as a lifeline for combat troops in the Vietnam War; and

WHEREAS, Honoring the armed forces who served when they were called, both those who returned and those who gave the ultimate sacrifice, *In The Shadow of The Blade* has proved to be a catalyst for healing, taking veterans back into the skies for a flight in peace; and

WHEREAS, *In The Shadow of The Blade* won Best of Show and Gold Documentary at the 2004 Worldfest International Film Festival and the Vietnam Veterans of America President's Award for Outstanding Documentary Film; and

WHEREAS, Arrowhead Film and Video is a Texas-owned production house, and the film was made possible with the help of other Texas companies, including Southwest Airlines and Bell Helicopter, and the State of Texas is proud to be home to this first-rate film production company; and

WHEREAS, *In The Shadow of The Blade* was made with the help and support of many Texas Vietnam combat veterans, especially volunteer flight crew members Robert Baird and Mike Venable, and Vietnam war families who have shared and documented their stories for posterity; and

WHEREAS, Segments from the documentary and the helicopter used for this mission of healing and reconciliation are permanently displayed in the Smithsonian Museum of American History where they represent the Vietnam War in the Americans At War: The Price of Freedom Exhibit; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby commend Patrick and Cheryl Fries for their accomplishments in the field of documentary filmmaking and congratulate all who participated in the production of *In The Shadow of The Blade*; and, be it further

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

SR 741 was read and was adopted without objection.

GUESTS PRESENTED

Senator Shapiro was recognized and introduced to the Senate Vietnam veterans Lieutenant Colonel Bob Baird, Mike Venable, and Joseph Beal, accompanied by Patrick and Cheryl Fries of Arrowhead Film and Video.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The Presiding Officer, Senator Armbrister in Chair, at 12:29 p.m. announced the conclusion of morning call.

HOUSE CONCURRENT RESOLUTION 36 ON SECOND READING

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **HCR 36** at this time on its second reading:

HCR 36, Giving legislative authorization to a Vietnam War monument for the Capitol grounds, subject to state law and rules of the State Preservation Board.

The resolution was read second time and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Lucio.

COMMITTEE SUBSTITUTE SENATE BILL 1190 ON THIRD READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1190** at this time on its third reading and final passage:

CSSB 1190, Relating to certain procedures governing health care liability claims.

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

Absent-excused: Lucio.

COMMITTEE SUBSTITUTE HOUSE BILL 1503 ON SECOND READING

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1503** at this time on its second reading:

CSHB 1503, Relating to the additional exit conference required following inspection, survey, or investigation of certain facilities.

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

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

Absent-excused: Lucio.

**COMMITTEE SUBSTITUTE
HOUSE BILL 1503 ON THIRD READING**

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1503** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio.

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 **CSHB 1503**, 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 **CSHB 1503** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Lucio.

**COMMITTEE SUBSTITUTE
SENATE BILL 837 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 837** at this time on its second reading:

CSSB 837, Relating to the insanity defense.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 837** as follows:

(1) In SECTION 2 of the bill, in added Article 46C.052, Code of Criminal Procedure (Senate committee printing, page 1, line 60), strike "46C.051(b)" and substitute "46C.051".

(2) In SECTION 2 of the bill, in added Article 46C.103, Code of Criminal Procedure (Senate committee printing, page 2, lines 58-60), strike Subsection (b) and substitute the following:

(b) Notwithstanding Subsection (a), an expert may not examine the defendant for purposes of determining the defendant's sanity and may not file a report regarding the defendant's sanity if in the opinion of the expert the defendant is incompetent to proceed.

(3) In SECTION 2 of the bill, in the heading to added Article 46C.160, Code of Criminal Procedure (Senate committee printing, page 4, line 63), strike "FURTHER DETENTION OF ACQUITTED PERSON" and substitute "DETENTION PENDING FURTHER PROCEEDINGS".

(4) In SECTION 2 of the bill, in added Paragraph (A), Subdivision (2), Article 46C.254, Code of Criminal Procedure (Senate committee printing, page 6, line 68), between "outpatient" and "community-based", insert "or".

(5) In SECTION 2 of the bill, in added Subsection (d), Article 46C.263, Code of Criminal Procedure (Senate committee printing, page 10, lines 20-21), strike "the appropriate community supervision and corrections department or".

(6) In SECTION 2 of the bill, in added Subsection (a), Article 46C.267, Code of Criminal Procedure (Senate committee printing, page 11, line 27), strike "46C.256(b)" and substitute "46C.266".

(7) In SECTION 3 of the bill, in added Subdivision (1), Subsection (a), Section 533.0095, Health and Safety Code (Senate committee printing, page 13, line 14), between "Chapter 574" and the semicolon, insert "or under Chapter 46C, Code of Criminal Procedure".

(8) In SECTION 3 of the bill, in added Subdivision (2), Subsection (a), Section 533.0095, Health and Safety Code (Senate committee printing, page 13, line 16), between "Chapter 593" and the semicolon, insert "or under Chapter 46C, Code of Criminal Procedure".

(9) In SECTION 3 of the bill, in added Subsection (b), Section 533.0095, Health and Safety Code (Senate committee printing, page 13, lines 20-21), strike "the facility to which the defendant is committed" and substitute "any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome".

(10) In SECTION 3 of the bill, following added Section 533.0095, Health and Safety Code (Senate committee printing, page 13, between lines 21 and 22), insert the following:

(c) The department shall file annually with the presiding officer of each house of the legislature a written report containing the name of each person described by Subsection (a), the name and address of any facility to which the person is committed, the length of the person's commitment to the facility, and any post-release outcome.

The amendment to **CSSB 837** was read and was adopted by a viva voce vote.

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

Absent-excused: Lucio.

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

CSSB 837 as amended was passed to engrossment by a viva voce vote.

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

Absent-excused: Lucio.

REPORT OF COMMITTEE ON NOMINATIONS

Senator Lindsay submitted the following report from the Committee on Nominations:

We, your Committee on Nominations, to which were referred the following appointments, have had same under consideration and report them back to the Senate with a recommendation that they be confirmed:

Presiding Officer, Health and Human Services Council: Jerry Kane, Nueces County.

Members, Health and Human Services Council: Kathleen Angel, Travis County; Sharon J. Barnes, Brazoria County; Mi Yun "Maryann" Choi, M.D., M.P.H., Williamson County; Manson B. Johnson, Harris County; Leon J. Leach, Harris County; Ronald Thomas Luke, Travis County; Robert A. Valadez, Bexar County.

Presiding Officer, Human Rights Commission: Thomas M. Anderson, Fort Bend County.

Members, Human Rights Commission: Patricia V. Mares Asip, Collin County; Jose E. de Santiago, Sr., Harris County; John Hamice James, Midland County; Anwar Ahmed Khalifa, Smith County; Shara Michalka, Dallas County; Nila T. Wipf, Cameron County.

Presiding Officer, Aging and Disability Services Council: Teresa Durkin "Terry" Wilkinson, Midland County.

Members, Aging and Disability Services Council: Abigail Rios Barrera, M.D., Bexar County; Frances Ann "Fran" Brown, Denton County; Sharon Swift Butterworth, El Paso County; Jean L. Freeman, Ph.D., Galveston County; Thomas E. Oliver, Harris County; David E. Young, Dallas County.

Member, State Board of Barber Examiners: Terissa Johnson, Denton County.

Members, Texas School for the Deaf Governing Board: Jean F. Andrews, Ph.D., Jefferson County; Beatrice Maestas Burke, Howard County; Walter Camenisch III, Travis County; Nancy Mumme Carrizales, Harris County; Charles C. Estes, Denton County; Laura Metcalf, Bexar County.

Member, State Board of Dental Examiners: Gary W. McDonald, Harris County.

Presiding Officer, State Health Services Council: Rudy Arredondo, Ed.D., Lubbock County.

Members, State Health Services Council: Beverly Barron, Ector County; Jaime A. Davidson, Dallas County; Lewis E. Foxhall, M.D., Harris County; Glenda R. Kane, Nueces County; Jeffrey A. Ross, D.P.M., Harris County; James G. Springfield, Cameron County.

Member, Polygraph Examiners Board: Andy Sheppard, Rockwall County.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Lindsay gave notice that he would tomorrow at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

SENATE BILL 1799 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1799** at this time on its second reading:

SB 1799, Relating to the powers and duties of the Bee Groundwater Conservation District.

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

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

Absent-excused: Lucio.

SENATE BILL 1799 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1799** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio.

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 1799**, 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 1799** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Lucio.

**COMMITTEE SUBSTITUTE
SENATE BILL 1667 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1667** at this time on its second reading:

CSSB 1667, Relating to responsibilities of certain state agencies concerning radioactive substances; imposing fees and surcharges; providing administrative and civil penalties.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1667** as follows:

(1) On page 1, line 15, strike "amended by amending Subdivisions (2), (4), (5), and (6)" and substitute the following: "amended by amending Subdivisions (2), (4), (5), (6), and (15)"

(2) On page 1, lines 26-30, strike Subdivision (12-1) and substitute the following:

"(12-1) "Gross receipts includes with respect to an entity or affiliated members, owners, shareholders, limited or general partners, all receipts from the entity's operations in Texas related to disposal including any bonus, commission, or similar payment received by the entity from a customer, contractor, subcontractor, or other person doing business with the entity or affiliated members, owners, shareholders, and limited or general partners. This term does not include receipts from the entity's operations in Texas or affiliated members, owners, shareholders, and limited or general partners, for extraordinary capital reimbursements, bona fide

storage and processing, and federal or state taxes or fees on waste received uniquely required to meet the specifications of a license or contract. The commission may promulgate rules in establishing the criteria for determining gross receipts consistent with the parameters of this definition.

(3) On page 1, line 31, before SECTION 2, insert the following:

(15) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent to that county, in which a nuclear or radioactive ~~material~~ substance is or will be located; or

(B) is doing business or has a legal interest in land in the county or adjacent county.

(4) On page 1, line 42, between "persons" and ";" insert ", except oil and gas NORM".

(5) On page 1, line 43, between "material" and ";" insert "in accordance with Subchapter G".

(6) On page 1, line 51, insert new section as follows and renumber the subsequent sections accordingly:

Section 401.054, Health and Safety Code, is amended as follows:

SECTION ____ . Sec. 401.054. NOTICE AND HEARING. (a) The department or commission shall provide notice and an opportunity for a hearing on a matter under its jurisdiction as provided by its formal hearing procedures and Chapter 2001, Government Code, unless otherwise required by this chapter, on written request of a person affected by any of the following procedures:

(1) the denial, suspension, or revocation by the department or commission of a license or registration;

(2) the determination by the department or commission of compliance with or the grant of exemptions from a department or commission rule or order; or

(3) the grant or amendment by the department or commission of a specific license.

(b) A contested case hearing shall be conducted according to Section 401.239 of this chapter. This section does not apply to license or registration activities for which other notice and hearing procedures are required by this chapter.

(c) The commission may hold a contested case hearing on an application for the renewal of a license issued under this chapter provided that the change being requested would constitute a major change to the license.

(7) On page 1, line 52, strike "Subsection (b)."

(8) On page 1, line 59, insert "(f) A separate commercial storage and processing license may be issued at a site also licensed for disposal under this chapter."

(9) On page 4, line 30, strike "shall" and substitute "may".

(10) On page 4, line 34, strike "shall" and substitute "may".

(11) On page 6, line 13, between "," and "and" insert "licensed on site waste disposal associated with a licensed in situ leach uranium recovery facility."

(12) On page 7, line 32, insert new section as follows and renumber the subsequent sections accordingly:

SECTION . Sec. 401.271 STATE FEE ON RADIOACTIVE SUBSTANCES.

(a) A holder of a license issued by the commission under this chapter that authorizes the disposal of a radioactive substance from other persons shall transfer to the state general revenue fund each quarter an amount equal to 10 percent of the license holder's gross receipts received from operations under the license for disposal occurring after the effective date of this Act.

(b) Subsection (a) does not apply to compact waste as defined by Section 401.2005(1) or federal facility waste as defined in Section 401.2005(4).

Sec. 401.453. AUDIT AUTHORITY. The commission may audit a license holder's financial records and waste manifest information to ensure that the fee imposed under this chapter is accurately paid. The license holder shall comply with the commission's audit related requests for information.

(13) On page 9, lines 29-32, strike subsection (1) and substitute with the following subsection:

(1) has sole authority to regulate and issue licenses, permits, and orders, and establish fees to pay for costs to regulate the processing, storage, and disposal of oil and gas NORM waste and the decontamination and maintenance of oil field equipment; and

(14) On page 9, line 50, strike "disposal of the waste and decontamination and maintenance of equipment." and substitute "disposal of the waste, decontamination and maintenance of oil field equipment, and fees established pursuant to subsection (a) of this section."

(15) On page 9, line 63, insert new subsection as follows:

(f) In adopting a fee structure, the railroad commission may consider any factors necessary to provide for the equitable allocation among NORM operators of the costs of administering the railroad commission's oil and gas NORM program under this section. The total amount of fees estimated to be collected under rules adopted by the railroad commission under this section may not exceed the estimated costs of administering the railroad commission's oil and gas NORM program under this section.

(16) On page 9, lines 63-69 and page 10, lines 1-48, strike SECTION 34 and renumber the subsequent sections accordingly.

(17) On page 10, line 65, strike "related" and substitute "oil field".

(18) On page 11, strike lines 5-8 and substitute the following: "the permit holder to conduct minor in situ mining in the production area. The commission shall by rule define the difference between major and minor in situ mining. Notwithstanding any other provision in this act, authorization to mine or resume mining in a production area under an existing injection well permit that does not amend a previously approved restoration table, shall not be considered a major amendment."

(19) On page 11, lines 9-13, strike subsection (b) and substitute new subsection (b) as follows:

(b) A rule or provision of a permit or order of the commission that requires additional approval of the commission or an additional hearing for the permit holder to conduct minor in situ mining in the production area specified in an injection well permit, shall no longer be required after the effective date of this act. Notwithstanding

any provision of this code or a commission rule or order, an application for minor in situ authorization is not subject to a contested case hearing, regardless of when the application is submitted.

(20) On page 11, line 24, after ".", insert "An administrative law judge presiding over a licensure proceeding under this section shall expedite the procedures necessary to complete the hearing in a timely manner."

(21) On page 12, lines 3-7, strike subsection (c).

(22) On page 13, line 11, after "possible." insert the following: "The commission shall utilize progress made on any technical review or environmental analysis conducted by the department prior to the effective date of this act."

(23) On page 13, strike lines 14-15 and substitute the following: "associated by-product material that is pending with the Department of State Health Services, and was received prior to January 1, 2005, on the earlier of the 31st day after the"

(24) On page 13, line 47, insert new subsections (n) and (o) as follows:

(n) Notwithstanding the changes to Chapter 401, Health and Safety Code, made by this Act, the department shall retain jurisdiction over, and render a final decision on, an application for an amended license to store or process radioactive substances that was filed with the department on or before January 1, 2005 and that has been referred to the State Office of Administrative Hearings by the department before the effective date of this Act. A license application subject to this subsection shall be governed only by the laws of the state and the rules and regulations of the department effective at the time such application was filed. Once a final decision is rendered by the department, jurisdiction over any licensed issued shall be transferred to the commission.

(o) An application for a new license to dispose of by-product material that is filed with the department on or before January 1, 2005 and that has not been referred to the State Office of Administrative Hearings by the department before the effective date of this Act shall be processed by the commission following the effective date of this Act as follows:

(1) A license application subject to this subsection shall be governed only by the rules and regulations of the department effective at the time such application was filed;

(2) If this Act takes effect immediately, the commission shall complete any technical review of a license application subject to this subsection and issue a draft permit no later than March 1, 2006. If this Act takes effect on September 1, 2005, the commission shall complete any technical review of a license application subject to this subsection and issue a draft permit no later than June 1, 2006. The commission shall utilize progress made on any technical review or environmental analysis conducted by the department prior to the effective date of this Act. In order to meet the applicable deadline above, the commission may contract with the department or other entities for completion of any portion of the technical review that has not been completed upon the effective date of this Act. The commission may assess and collect additional fees from the applicant to recover the costs the commission incurs for technical review of a license application subject to this subsection;

(3) If this Act takes effect immediately, the commission shall render a final decision on a license application subject to this subsection no later than March 1, 2007. If this Act takes effect on September 1, 2005, the commission shall render a final decision on a license application subject to this subsection no later than June 1, 2007; and

(4) A contested case hearing held on a license application subject to this subsection that was filed with the department on or before January 1, 2005, shall not exceed one year in duration, measured from the date of referral by the commission of the application to the State Office of Administrative Hearings until the commission makes a final decision on the application. Discovery in such a hearing shall be limited to not more than sixty days in order to meet this limitation. Notice of hearing shall be provided to the applicant, the office of public interest counsel, the executive director and the person who timely requested a contested case hearing by mail at least ten days in advance of the hearing.

(25) On page 14, lines 15-24, strike SECTION 40 and renumber the subsequent sections accordingly.

(26) On page 14, lines 25-47, Strike SECTION 41 and substitute with the new section as follows:

SECTION . (a) Notwithstanding other law or any rule on the subject of timeliness of an applicant proving information pertaining to an application for a license from the commission, the applicant for a license shall assist the commission in meeting any deadlines imposed by Chapter 401, Health and Safety Code, by submitting to the commission any information the commission requires regarding the application in a prompt and timely manner.

The amendment was read.

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

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **CSSB 1667** on page 4, line 4 by striking the period and adding the following:

"as follows:

(1) 8 percent shall be transferred to the state general revenue fund; and

(2) 2 percent shall be transferred to the host county in accordance with Sec. 401.244(b) and (d), Health and Safety Code.

The amendment to Floor Amendment No.1 to **CSSB 1667** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Lucio.

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 1667**, the amendment as amended was adopted by a viva voce vote.

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

Absent-excused: Lucio.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 1667** as follows:

- (1) On page 4, line 43, strike "Subsection (a),".
- (2) On page 4, line 44, between "amended" and "to", insert "by amending Subsection (a) and adding Subsection (d)".
- (3) On page 4, between lines 48 and 49, insert:
"(d) Notwithstanding any other provision of this subchapter, the commission may license the disposal of low-level radioactive waste only if the low-level radioactive waste is generated in a state that was an initial party state of the compact under Section 403.006."

The amendment to **CSSB 1667** was read and failed of adoption by the following vote: Yeas 8, Nays 18.

Yeas: Barrientos, Ellis, Gallegos, Madla, Nelson, Shapleigh, Van de Putte, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Seliger, Shapiro, Staples, Wentworth, Williams.

Absent: Hinojosa, Ogden, West, Whitmire.

Absent-excused: Lucio.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSSB 1667** by inserting the following appropriately-numbered SECTION:

"SECTION _____. (a) In recognition of the importance of the issues relating to the importation of radioactive waste into the State of Texas, there is created the Study Commission on Radioactive Waste.

- (b) The study commission is composed of 15 members as follows:
 - (1) three members appointed by the governor;
 - (2) five members appointed by the lieutenant governor;
 - (3) five members appointed by the speaker of the house of representatives;
 - (4) the presiding officer of the commission or the presiding officer's designee; and
 - (5) the chairman of the board or the chairman's designee.
- (c) Of the members appointed under Subsection (b)(1), not more than two members may be members of the same political party.
- (d) Of the members appointed under Subsection (b)(2):
 - (1) not more than three members may be members of the same political party; and
 - (2) three members must be members of the senate.
- (e) Of the members appointed under Subsection (b)(3):
 - (1) not more than three members may be members of the same political party; and
 - (2) three members must be members of the house of representatives.

(f) Each appointed member of the study commission serves at the will of the appointing authority.

(g) The appointed senator with the most seniority and the appointed representative with the most seniority serve together as co-presiding officers of the study commission.

(h) A member of the study commission is not entitled to receive compensation for service on the study commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the study commission, as provided by the General Appropriations Act.

(i) The study commission may accept gifts and grants from any source to be used to carry out a function of the study commission.

(j) The board and the commission shall provide staff support for the study commission.

(k) The study commission shall conduct public hearings and study public policy implications of the importation of radioactive waste into the state.

(l) The study commission:

(1) shall appoint an advisory scientific committee that will:

(A) serve as impartial scientific advisors and reviewers for the study commission; and

(B) have a membership of no fewer than five and no more than nine total members chosen by the study commission to represent a variety of areas of relevant technical expertise;

(2) may appoint additional advisory committees to assist the study commission; and

(3) may draft proposed legislation to modify existing radioactive waste permitting statutes.

(m) Not later than December 1, 2006, the study commission shall issue a report summarizing:

(1) any hearings conducted by the study commission;

(2) any studies conducted by the study commission;

(3) any legislation proposed by the study commission; and

(4) any other findings and recommendations of the study commission.

(n) The study commission shall promptly deliver copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(o) The study commission shall adopt rules to administer this section.

(p) The study commission is abolished and this section expires September 1, 2007."

The amendment to **CSSB 1667** was read and failed of adoption by the following vote: Yeas 8, Nays 18.

Yeas: Barrientos, Ellis, Gallegos, Madla, Nelson, Shapleigh, Van de Putte, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Seliger, Shapiro, Staples, Wentworth, Williams.

Absent: Hinojosa, Ogden, West, Whitmire.

Absent-excused: Lucio.

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

CSSB 1667 as amended was passed to engrossment by a viva voce vote.

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

Absent-excused: Lucio.

**COMMITTEE SUBSTITUTE
SENATE BILL 1667 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1667** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio.

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 1667**, 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 1667** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Lucio.

SENATE BILL 1821 ON SECOND READING

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1821** at this time on its second reading:

SB 1821, Relating to the creation of the Flatrock Springs Municipal Management District; granting authority for taxation and the issuance of bonds.

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

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

Absent-excused: Lucio.

SENATE BILL 1821 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1821** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio.

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 1821**, 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 1821** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Lucio.

COMMITTEE SUBSTITUTE SENATE BILL 1579 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 1579** at this time on its second reading:

CSSB 1579, Relating to the prohibition of signs on certain 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 except as follows:

Absent-excused: Lucio.

**COMMITTEE SUBSTITUTE
SENATE BILL 1579 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 1579** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio.

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 1579**, 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 1579** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Lucio.

**COMMITTEE SUBSTITUTE
SENATE BILL 1698 ON SECOND READING**

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1698** at this time on its second reading:

CSSB 1698, Relating to fees and penalties for oil and gas operations.

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

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

Absent-excused: Lucio.

**COMMITTEE SUBSTITUTE
SENATE BILL 1698 ON THIRD READING**

Senator Averitt moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1698** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio.

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 1698**, 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 1698** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Lucio.

(Senator Brimer in Chair)
**COMMITTEE SUBSTITUTE
SENATE BILL 1176 ON SECOND READING**

Senator Armbrister moved to suspend the regular order of business to take up for consideration **CSSB 1176** at this time on its second reading:

CSSB 1176, Relating to systems and programs administered by the Employees Retirement System of Texas.

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

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

Nays: Barrientos, Shapleigh.

Absent-excused: Lucio.

The bill was read second time.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1176** as follows:

(1) Amend SECTION 21, Subchapter F, Chapter 815, Government Code, Section 815.514 page 5, lines 14-21 to read as follows:

Sec. 815.514. MAILINGS ON BEHALF OF NONPROFIT ASSOCIATION. The retirement system may make mailings on behalf of a nonprofit association of active or retired state employees described by Section 814.009, for purposes of association membership and research only, to annuitants identified in information contained in records that are in the custody of the system. The nonprofit association requesting a mailing shall pay the expenses of the mailing.

The amendment to **CSSB 1176** was read and was adopted by a viva voce vote.

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

Absent-excused: Lucio.

Senator Armbrister offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 1176** by inserting the following appropriately numbered section and renumbering subsequent sections accordingly:

SECTION _____. Subchapter A, Chapter 812, Government Code, is amended by adding Section 812.006 to read as follows:

Sec. 812.006. OPTIONAL MEMBERSHIP. (a) In this section, "qualified employee" means a person who:

(1) has at least three years of service credit in the retirement system in the legislative branch that was accrued before June 18, 1993;

(2) was employed by an institution of higher education, as defined by Section 61.003, Education Code, before June 18, 1993, and elected to participate in the optional retirement program under Chapter 830; and

(3) is actively participating in the optional retirement program.

(b) A qualified employee may make a one-time, irrevocable election in a manner provided by the retirement system to renew active participation in the system and cease participation in the optional retirement program.

(c) An employee who makes an election under this section is not eligible to establish service credit in the retirement system for service performed while participating in the optional retirement program.

(d) This section is contingent upon the receipt of a favorable Internal Revenue Service ruling addressing all tax issues.

(e) An election authorized by this section must be made within 90 days of the Internal Revenue Service ruling.

The amendment to **CSSB 1176** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 except as follows:

Absent-excused: Lucio.

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

CSSB 1176 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: Barrientos, Shapleigh.

Absent-excused: Lucio.

COMMITTEE SUBSTITUTE SENATE BILL 1176 ON THIRD READING

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1176** be placed on its third reading and final passage.

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

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

Nays: Barrientos, Shapleigh, Wentworth.

Absent-excused: Lucio.

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 1176**, 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 1176** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 28, Nays 2.

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

Nays: Barrientos, Shapleigh.

Absent-excused: Lucio.

**COMMITTEE SUBSTITUTE
SENATE BILL 1513 ON SECOND READING**

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1513** at this time on its second reading:

CSSB 1513, Relating to an interim study regarding the operation of certain state health insurance programs.

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

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

Absent-excused: Lucio.

**COMMITTEE SUBSTITUTE
SENATE BILL 1513 ON THIRD READING**

Senator Averitt moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1513** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Lucio.

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 1513**, 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 1513** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

Absent-excused: Lucio.

(President in Chair)

SENATE RULES SUSPENDED (Posting Rules)

On motion of Senator Harris and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Government Organization might meet and consider **SB 1651** today.

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 Staples and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Transportation and Homeland Security might meet today.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Shapleigh and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on International Relations and Trade might meet and consider the following bills and resolution tomorrow: **SB 1737, SB 1744, HB 775, HB 1924, HCR 13.**

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

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

MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 2:28 p.m. agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session, until 9:30 a.m. tomorrow.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

SR 745 by Ellis, In memory of Marlene Guess.

Congratulatory Resolutions

SR 746 by Ellis, Recognizing Kadiata Diop on the occasion of her initiation into the Omicron Theta chapter of Zeta Phi Beta Sorority, Incorporated.

SR 747 by Ellis, Recognizing Suneethia Burwell on the occasion of her initiation into the Omicron Theta chapter of Zeta Phi Beta Sorority, Incorporated.

SR 748 by Ellis, Recognizing Rachel Grove for her work in the office of Senator Rodney Ellis.

SR 749 by Ellis, Recognizing Courtney White for her work in the office of *Texas Monthly* magazine.

SR 750 by Ellis, Recognizing Wendolynn Montoya for her work in the office of Senator Rodney Ellis.

SR 751 by Ellis, Recognizing Justin Schwartz for his work in the office of Senator Rodney Ellis.

SR 752 by Ellis, Recognizing Keith Brooks for his work in the office of Representative Chuck Hopson.

SR 753 by Ellis, Recognizing Melisha Craft for her work in the office of Representative Yvonne Davis.

SR 754 by Ellis, Recognizing Derrick Davis for his work in the office of Representative Jose Menendez.

SR 755 by Ellis, Recognizing Marye Dean for her work in the office Representative Alma Allen.

SR 756 by Ellis, Recognizing Orianna Diaz for her work in the office of Senator Rodney Ellis.

SR 757 by Ellis, Recognizing Carlos Doroteo for his work in the office of Representative Melissa Noriega.

SR 758 by Ellis, Recognizing Melissa Duncan for her work in the office of Representative Craig Eiland.

SR 759 by Ellis, Recognizing Patrick Embry for his work in the office of Representative Garnet Coleman.

SR 760 by Ellis, Recognizing Shannon Garth-Rhodes for her work in the office of Representative Allan Ritter.

SR 761 by Ellis, Recognizing John Guess IV for his work in the office of Representative Sylvester Turner.

SR 762 by Ellis, Recognizing Terry James for his work in the office of Representative Rafael Anchia.

SR 763 by Ellis, Recognizing Darrell Jordan, Jr., for his work in the office of Representative Hubert Vo.

SR 764 by Ellis, Recognizing Emily King for her work in the office of Senator Kyle Janek.

SR 765 by Ellis, Recognizing Amy-Kristen Jones for her work in the office of Representative Marc Veasey.

SR 766 by Ellis, Recognizing Hendrik Maison for his work in the office of Senator Rodney Ellis.

SR 767 by Ellis, Recognizing Akilah Mance for her work in the office of Representative David Farabee.

SR 768 by Ellis, Recognizing Dolly Marchena for her work in the office of Representative Yvonne Gonzalez Toureilles.

SR 769 by Ellis, Recognizing Kelechi Meremikwu for his work in the office of Representative Joe Moreno.

SR 770 by Ellis, Recognizing Gulani Moeti for his work in the office of Representative Terri Hodge.

SR 771 by Ellis, Recognizing Xolisile Moloi for her work in the office of Representative Helen Giddings.

SR 772 by Ellis, Recognizing Shelley Morrison for her work in the committee office of Senator Rodney Ellis.

SR 773 by Ellis, Recognizing Vanessa McMahan for her work in the committee office of Senator Rodney Ellis.

SR 774 by Ellis, Recognizing Nicholas Ngcobo for his work in the office of Representative Jesse Jones.

SR 775 by Ellis, Recognizing Ephraim Ngoasheng for his work in the office of People for the American Way-Texas.

SR 776 by Ellis, Recognizing Henal Patel for his work in the office of Representative Scott Hochberg.

SR 777 by Ellis, Recognizing Simeon Popoff for his work in the office of Senator Rodney Ellis.

SR 779 by Ellis, Recognizing English Pratts for her work in the office of Representative Vicki Truitt.

SR 780 by Ellis, Recognizing Monica Ramasehla for her work in the office of Senator Royce West.

SR 781 by Ellis, Recognizing Nicholas Reed for his work in the office of Representative Vilma Luna.

SR 782 by Ellis, Recognizing Hamilton Rucker for his work in the office of Representative Joe Deshotel.

SR 783 by Ellis, Recognizing Geneza Simões for her work in the office of People for the American Way-Texas.

SR 784 by Ellis, Recognizing Valerie Simpson for her work in the office of Representative Todd Smith.

SR 785 by Ellis, Recognizing Candice Smith for her work in the office of Senator Robert Duncan.

SR 786 by Ellis, Recognizing Christopher Smith for his work in the office of Senator Rodney Ellis.

SR 787 by Ellis, Recognizing Nikki Starr for her work in the office of Representative Dawonna Dukes.

SR 788 by Ellis, Recognizing Anthony Stewart for his work in the office of Senator Leticia Van de Putte.

SR 789 by Ellis, Recognizing Kevin Vickers for his work in the office of Representative Jim Dunnam.

SR 790 by Ellis, Recognizing Rebecca Walton for her work in the office of Senator Rodney Ellis.

SR 791 by Ellis, Recognizing Bobby Williams for his work in the office of Representative Mark Strama.

SR 792 by Nelson, Recognizing Congresswoman Kay Granger for her service to her country and her state.

HCR 161 (Eltife), Congratulating the Paris Junior College men's basketball team for winning the 2005 National Junior College Athletic Association championship.

HCR 162 (Eltife), Honoring Bill Foy, head basketball coach at Paris Junior College, on his selection as the Junior College Coach of the Year by the National Association of Basketball Coaches.

Official Designation Resolution

HCR 165 (Eltife), Recognizing May 4, 2005, as Paris/Lamar County Day at the State Capitol.

RECESS

On motion of Senator Whitmire, the Senate at 2:29 p.m. recessed until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

APPENDIX

COMMITTEE REPORTS

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

May 4, 2005

EDUCATION — **SB 1120, SB 1248, CSSB 1844**

GOVERNMENT ORGANIZATION — **HB 1015, HB 1155, HB 2274, HB 2377, HB 2379, SB 452**

INTERGOVERNMENTAL RELATIONS — **SB 1880, SB 1887, SB 1888, SB 1889, SB 1892, HB 259**

GOVERNMENT ORGANIZATION — **CSHB 1820**

INTERGOVERNMENTAL RELATIONS — **CSSB 1820, SB 1856** (Amended)

EDUCATION — **HB 25** (Amended), **CSSB 1194**

NATURAL RESOURCES — **SB 901, HB 472, HB 774, HB 883, HB 1361, HB 1362, HB 1363, HB 1935, HB 2096, HB 2555**

SIGNED BY GOVERNOR

May 3, 2005

**SB 101, SB 148, SB 217, SB 235, SB 239, SB 245, SB 280, SB 348, SB 523,
SB 524, SB 581, SB 734**

SENT TO GOVERNOR

May 4, 2005

SB 481

