

# SIXTY-THIRD DAY

---

---

THURSDAY, MAY 5, 2005

---

---

## PROCEEDINGS

---

The Senate met at 9:30 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, Harris, Hinojosa, Jackson, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent-excused: Gallegos, Janek.

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

The Reverend Denise M. Bloomquist, First Christian Church, Mertzon, offered the invocation as follows:

It's only one moment of calm in the midst of the session's roar, and yet we pray that in this moment enlightenment, hope, perseverance, strength, honesty, charity, humor, leadership, and peace will fill the hearts and minds of all who are here today. Guard these Senators from partisanship and political pressure. Help them to hear the voices of all people. May unity, equity, and harmony be realized for the least as well as the greatest, the poor as well as the rich, the young as well as the aged, the liberal as well as the conservative, and for those in the shadows as well as those in the limelight. And when they speak, may their dialogue be mutually respectful, inclusive, and free from all prejudice so that each one's thoughts are fully considered and true justice for every citizen prevails. Finally, I pray that these men and women will take from this moment such courage that they meet the tasks before them with the confidence required to take the bold steps which must be taken to solve the problems that must be solved. And when this day is ended, may they carry with them the knowledge that our state is better because of the work they have done together, and may all citizens know it, too. Amen.

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

The motion prevailed without objection.

### LEAVES OF ABSENCE

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

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

### CO-AUTHOR OF SENATE BILL 1016

On motion of Senator Deuell, Senator Williams will be shown as Co-author of **SB 1016**.

### CO-AUTHOR OF SENATE BILL 1142

On motion of Senator Carona, Senator Zaffirini will be shown as Co-author of **SB 1142**.

### CO-AUTHOR OF SENATE BILL 1381

On motion of Senator Shapiro, Senator Williams will be shown as Co-author of **SB 1381**.

### BILLS SIGNED

The President announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read: **SB 461, SB 571, SB 1298**.

### MESSAGE FROM THE HOUSE

#### HOUSE CHAMBER

Austin, Texas

May 5, 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 120**, 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.

**HB 905**, Relating to the powers and duties of the state auditor in connection with state contracts.

**HB 1146**, Relating to contingent payment clauses in certain construction contracts.

**HB 1208**, Relating to a limitation on the use of eminent domain by municipal utility districts.

**HB 1358**, Relating to the jurisdiction of the Texas Commission on Environmental Quality over certain water supply or sewer service corporations.

**HB 1476**, Relating to regulation of certain sexually suggestive performances at public school events.

**HB 1577**, Relating to the provision of health care services by a physician assistant during a disaster.

**HB 1611**, Relating to the use of money for the low-income vehicle repair assistance, retrofit, and accelerated vehicle retirement program.

**HB 1831**, Relating to the definition of "convicted" for purposes of eligibility to carry a concealed handgun.

**HB 1867**, Relating to the transfer of money appropriated to provide care for certain persons in nursing facilities to provide community-based services to those persons.

**HB 2018**, Relating to nonsubstantive additions to and corrections in enacted codes, to the nonsubstantive codification or disposition of various laws omitted from enacted codes, and to conforming codifications enacted by the 78th Legislature to other Acts of that legislature.

**HB 2019**, Relating to the nonsubstantive revision of certain local laws concerning special districts, including conforming amendments.

**HB 2767**, Relating to the release of a criminal defendant in certain cases and the eligibility of certain individuals to act as sureties on bail bonds.

**HB 2902**, Relating to the maintenance and repair of courthouses that have benefited from the historic courthouse preservation program.

**HB 3111**, Relating to authorizing the presiding officer of a political subdivision to order an evacuation in certain emergency circumstances.

**HB 3386**, Relating to the possession or shooting of a handgun on the land of the Lower Colorado River Authority by a person licensed to carry a concealed handgun.

**HJR 80**, Proposing a constitutional amendment clarifying that certain economic development programs do not constitute a debt.

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

**HB 965** (non-record vote)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

#### PHYSICIAN OF THE DAY

Senator Van de Putte was recognized and presented Dr. James Charles Martin of San Antonio as the Physician of the Day.

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

**GUESTS PRESENTED**

Senator Shapleigh was recognized and introduced to the Senate seventh- and eighth-grade students from Terrace Hills and Morehead middle schools in El Paso, accompanied by their teachers.

The Senate welcomed its guests.

**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.

**MESSAGES FROM THE GOVERNOR**

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

Austin, Texas  
May 2, 2005

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

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

Texas Small Business Industrial Development Corporation

Nathaniel Willis Parker IV - Flower Mound

Appointment Date: 11/15/2004

Expiration Date: Pleasure of the Governor

A. Mario Castillo - San Angelo

Appointment Date: 11/15/2004

Expiration Date: Pleasure of the Governor

Nancy R. Kudla - San Antonio

Appointment Date: 11/15/2004

Expiration Date: Pleasure of the Governor

Respectfully submitted,

/s/Rick Perry  
Governor

Austin, Texas  
May 3, 2005

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

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

To be a member of the Texas School Safety Center Board for a term to expire February 1, 2007:

Lucy Rubio

Corpus Christi, Texas

(Ms. Rubio is being reappointed)

Respectfully submitted,

/s/Rick Perry

Governor

Austin, Texas

May 4, 2005

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

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

To be members of the Brazos River Authority Board of Directors for terms to expire February 1, 2011:

Christopher D. DeCluitt

Waco, Texas

(replacing Joe Bob Hinton of Crawford whose term expired)

Christopher Steve Adams, Jr.

Granbury, Texas

(replacing Janet K. Sparks of Cleburne whose term expired)

Robert Manning Christian

Jewitt, Texas

(replacing M. Lance Phillips of Mexia whose term expired)

Roberta Jean Killgore

Somerville, Texas

(replacing Celeste Kotter of Marlin whose term expired)

Carolyn H. Johnson

Freeport, Texas

(Ms. Johnson is being reappointed)

Truman Otis Blum

Clifton, Texas

(replacing Carl Lynn Elliott of Navasota whose term has expired)

Respectfully submitted,

/s/Rick Perry

Governor

## GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate board members of the State Employee Golf Association.

The Senate welcomed its guests.

## HOUSE CONCURRENT RESOLUTION 145

The President laid before the Senate the following resolution:

WHEREAS, Since leaving her post as director of the Legislative Reference Library in 1998, Sally Reynolds has allegedly retired to lead a life of leisure in Rockport, although the number of miles she racks up in her car between that coastal community and Austin whenever the legislature comes to town would seem to dismiss any notion that she's permanently gone fishin'; and

WHEREAS, Mrs. Reynolds directed the Capitol's Legislative Reference Library for 12 years, during which time she proved that there is much more to the task of running a library than merely shushing its patrons; initiating numerous positive and productive changes that have benefited legislators, their staffs, and the public, she helped to establish the library as a top-notch legislative research facility and enabled many a harried legislative staffer charged with a seemingly impossible task to live to work another day; and

WHEREAS, Currently employed as "Queen Bee" of the Johnson and Johnson Law Firm, Mrs. Reynolds continues to demonstrate the same M.O. for which she was known while employed by the state, calmly dispatching each new task she is given with characteristic excellence and professionalism; when feigning retirement, she devotes her spare time to pursuing her hobbies, including spending time in her garden, reading up on Civil War history, doing needlepoint, and keeping the Texas Maritime Museum shipshape as a member of its board of trustees and recording secretary; and

WHEREAS, Devoted to her family, Mrs. Reynolds has taken dotting to great heights in her affection for her goddaughter, Lillyan, and she is also one who is known to enjoy her creature comforts, namely Nora and Einstein, her beloved pets; and

WHEREAS, Sally Reynolds was never formally recognized for the vital contributions she made to the Lone Star State in its employ for more than three decades, and a non-session-year retirement is no excuse to let her slip away without a tangible reminder of the high esteem in which she continues to be held by all who have had the pleasure to work with her through the years; now, therefore, be it

RESOLVED, That the 79th Legislature of the State of Texas hereby honor Sally Ann Reynolds for her remarkable career in state government and extend to her sincere best wishes for continued happiness leading the busy, challenging, rewarding life she has built for herself in retirement; and, be it further

RESOLVED, That an official copy of this resolution be prepared for Mrs. Reynolds as an expression of high regard by the Texas House of Representatives and Senate.

ARMBRISTER

HCR 145 was read.

On motion of Senator Armbrister and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution except as follows:

Absent-excused: Gallegos, Janek.

### **GUEST PRESENTED**

Senator Armbrister was recognized and introduced to the Senate Sally Reynolds, former Director of the Legislative Reference Library, currently Executive Assistant of Johnson and Johnson Law Firm.

The Senate welcomed its guest.

### **SENATE RESOLUTION 794**

Senator Jackson offered the following resolution:

**SR 794**, In memory of the life of Norman Lee Malone of La Porte.

The resolution was read.

Senator Jackson was recognized and introduced to the Senate family members of Norman Lee Malone: his widow, Mary Ann Malone; his daughter, Georgia Malone; his son, Scott Malone; and his granddaughters, Meghan Malone, Jessica Malone, and Jennifer Malone.

The Senate welcomed its guests and extended its sympathy.

On motion of Senator Jackson, **SR 794** was adopted by a rising vote of the Senate.

In honor of the memory of Norman Lee Malone of La Porte, the text of the resolution is printed at the end of today's *Senate Journal*.

### **(Senator Armbrister in Chair)**

### **SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The Presiding Officer announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Lindsay.

Senator Lindsay moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The Presiding Officer asked if there were requests to sever nominees.

There were no requests offered.

### **NOMINEES CONFIRMED**

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 29, Nays 0.

Absent-excused: Gallegos, Janek.

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 Mummme 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.

### **SENATE BILL 374 WITH HOUSE AMENDMENT**

Senator Jackson called **SB 374** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

#### **Amendment**

Amend **SB 374** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the repeal of the statutory provision regarding the adoption and use by the Texas Water Development Board of a capital spending plan for certain state-funded water-related programs under the board's jurisdiction.



BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 6.110, Water Code, is repealed.

SECTION 2. This Act does not affect the amount or use of money in any fund administered by the Texas Water Development Board, including the agricultural water conservation fund authorized by Section 50-d, Article III, Texas Constitution.

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

The amendment was read.

Senator Jackson moved to concur in the House amendment to **SB 374**.

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

Absent-excused: Gallegos, Janek.

### CONCLUSION OF MORNING CALL

The Presiding Officer, Senator Armbrister in Chair, at 10:23 a.m. announced the conclusion of morning call.

### COMMITTEE SUBSTITUTE SENATE BILL 837 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 837** at this time on its third reading and final passage:

**CSSB 837**, Relating to the insanity defense.

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

Absent-excused: Gallegos, Janek.

### SENATE BILL 1450 ON SECOND READING

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1450** at this time on its second reading:

**SB 1450**, Relating to judgment interest.

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: Gallegos, Janek.

### SENATE BILL 1450 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 **SB 1450** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

#### **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 1450**, 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 1450** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

#### **SENATE CONCURRENT RESOLUTION 21 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration **SCR 21** at this time on its second reading:

**SCR 21**, Authorizing the naming of the natatorium at the Texas School for the Deaf in Austin for LeRoy Colombo.

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 except as follows:

Absent-excused: Gallegos, Janek.

#### **COMMITTEE SUBSTITUTE SENATE BILL 185 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **CSSB 185** at this time on its second reading:

**CSSB 185**, Relating to the powers and duties of the border commerce coordinator.

The motion prevailed.

Senators Estes, Nelson, Shapiro, and Staples asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 185** (committee printing), as follows:

(1) In SECTION 2 of the bill, in the recital (page 2, line 3), strike "772.0102, and 772.0103" and substitute "and 772.0102".

(2) In SECTION 2 of the bill, strike added Section 772.0103 (page 2, lines 60-64).

(3) On page 2, between lines 64 and 65, insert the following SECTION 3 and renumber subsequent SECTIONS of the bill accordingly:

SECTION 3. This Act takes effect only if a specific appropriation for the implementation of this Act is provided in S.B. No. 1 or H.B. No. 1 (General Appropriations Act), Acts of the 79th Legislature, Regular Session, 2005. If no specific appropriation is provided in the General Appropriations Act, this Act has no effect.

The amendment to **CSSB 185** 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: Gallegos, Janek.

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

**CSSB 185** 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, Nelson, Shapiro, Staples.

Absent-excused: Gallegos, Janek.

**COMMITTEE SUBSTITUTE  
SENATE BILL 185 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 185** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 24, Nays 5.

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

Nays: Estes, Nelson, Shapiro, Staples, Wentworth.

Absent-excused: Gallegos, Janek.

#### **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 185**, 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 185** 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 25, Nays 4.

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

Nays: Estes, Nelson, Shapiro, Staples.

Absent-excused: Gallegos, Janek.

#### **HOUSE BILL 1025 ON SECOND READING**

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1025** at this time on its second reading:

**HB 1025**, Relating to the powers and duties of the Texas Optometry Board and to contact lens prescriptions and the dispensing of contact lenses.

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: Gallegos, Janek.

**HOUSE BILL 1025 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1025** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

**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 1025**, 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 1025** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

**COMMITTEE SUBSTITUTE  
SENATE BILL 952 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 952** at this time on its second reading:

**CSSB 952**, Relating to medical support for a child.

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: Gallegos, Janek.

**COMMITTEE SUBSTITUTE  
SENATE BILL 952 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 **CSSB 952** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

**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 952**, 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 952** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

**SENATE BILL 1843 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1843** at this time on its second reading:

**SB 1843**, Relating to the creation of the International Management District; providing authority to levy an assessment, impose taxes, and issue bonds.

The bill was read second time.

Senator Ellis offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **SB 1843** as follows:

(1) On page 4, by striking lines 40-42; and

(2) On page 4, by striking lines 1-6 and substituting the following:

- "(1) Ha Duong
- (2) Haroon R. Shaikh
- (3) Shiraz G. Ali
- (4) Wea H. Lee
- (5) D. W. Tan
- (6) Ashok Dhingra
- (7) Nancy Phool Trikha
- (8) Fred Bhandara
- (9) Adrian K. Collins"

ELLIS  
GALLEGOS

The amendment to **SB 1843** 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 except as follows:

Absent-excused: Gallegos, Janek.

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

**SB 1843** 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: Gallegos, Janek.

### **SENATE BILL 1843 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1843** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

### **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 1843**, 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 1843** would

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

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

**COMMITTEE SUBSTITUTE  
SENATE BILL 978 ON SECOND READING**

On motion of Senator Barrientos and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 978** at this time on its second reading:

**CSSB 978**, Relating to the collection of certain costs, fees, and fines in criminal cases.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 978** as follows:

(1) Strike SECTION 1 of the bill (committee printing, page 1, line 12, through page 2, line 18) and substitute the following:

SECTION 1. Chapter 103, Code of Criminal Procedure, is amended by adding Article 103.0033 to read as follows:

Art. 103.0033. COLLECTION IMPROVEMENT PROGRAM. (a) In this article:

(1) "Office" means the Office of Court Administration of the Texas Judicial System.

(2) "Program" means the program to improve the collection of court costs, fees, and fines imposed in criminal cases, as developed and implemented under this article.

(b) This article applies only to:

(1) a county with a population of 50,000 or greater; and

(2) a municipality with a population of 100,000 or greater.

(c) Unless granted a waiver under Subsection (h), each county and municipality shall develop and implement a program that complies with the prioritized implementation schedule under Subsection (h). A county program must include district, county, and justice courts.

(d) The program must consist of:

(1) a component that conforms with a model developed by the office and designed to improve in-house collections through application of best practices; and



(2) a component designed to improve collection of balances more than 60 days past due, which may be implemented by entering into a contract with a private attorney or public or private vendor in accordance with Article 103.0031.

(e) Not later than June 1 of each year, the office shall identify those counties and municipalities that:

(1) have not implemented a program; and

(2) are able to implement a program before April 1 of the following year.

(f) The comptroller, in cooperation with the office, shall develop a methodology for determining the collection rate of counties and municipalities described by Subsection (e) before implementation of a program. The comptroller shall determine the rate for each county and municipality not later than the first anniversary of the county's or municipality's adoption of a program.

(g) The office shall:

(1) make available on the office's Internet website requirements for a program; and

(2) assist counties and municipalities in implementing a program by providing training and consultation, except that the office may not provide employees for implementation of a program.

(h) The office, in consultation with the comptroller, may:

(1) use case dispositions, population, revenue data, or other appropriate measures to develop a prioritized implementation schedule for programs; and

(2) determine whether it is not cost-effective to implement a program in a county or municipality and grant a waiver to the county or municipality.

(i) Each county and municipality shall at least annually submit to the office and the comptroller a written report that includes updated information regarding the program, as determined by the office in cooperation with the comptroller. The report must be in a form approved by the office in cooperation with the comptroller.

(j) The comptroller shall periodically audit counties and municipalities to verify information reported under Subsection (i) and confirm that the county or municipality is conforming with requirements relating to the program. The comptroller shall consult with the office in determining how frequently to conduct audits under this section.

(2) In SECTION 2 of the bill, in proposed Subsection (e), Section 133.058, Local Government Code (committee printing, page 2, lines 23, 25, and 29), strike "103.0032" each place it appears and substitute "103.0033".

(3) In SECTION 3 of the bill, in proposed Subsection (c-1), Section 133.103, Local Government Code (committee printing, page 2, lines 47, 49, and 53), strike "103.0032" each place it appears and substitute "103.0033".

(4) In Subsection (a), SECTION 4, of the bill (committee printing, page 2, lines 55-56 and 63), strike "Subsection (d), Article 103.0032" each place it appears and substitute "Subsection (e), Article 103.0033".

(5) In Subsection (a), SECTION 4, of the bill (committee printing, page 2, line 60), strike "103.0032" and substitute "103.0033".

(6) In Subsection (b), SECTION 4, of the bill (committee printing, page 2, line 68), strike "103.0032" and substitute "103.0033".

(7) In Subsection (b), SECTION 4, of the bill (committee printing, page 2, line 69), strike "(f)" and substitute "(g)".

The amendment to **CSSB 978** 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: Gallegos, Janek.

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

**CSSB 978** 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: Gallegos, Janek.

### **COMMITTEE SUBSTITUTE SENATE BILL 978 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 978** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

#### **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 978**, 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 978** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

**SENATE BILL 1846 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 1846** at this time on its second reading:

**SB 1846**, Relating to the powers and duties of the Karnes County Hospital 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: Gallegos, Janek.

**SENATE BILL 1846 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 1846** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

**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 1846**, 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 1846** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

**SENATE BILL 1692 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1692** at this time on its second reading:

**SB 1692**, Relating to storage of wine by the holder of a winery permit.

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: Gallegos, Janek.

**SENATE BILL 1692 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 **SB 1692** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

**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 1692**, 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 1692** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1860 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1860** at this time on its second reading:

**CSSB 1860**, Relating to the creation of the Montrose Community Improvement District; providing authority to levy an assessment, impose a tax, and issue bonds.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 1860** in SECTION 1 of the bill by adding the following appropriately numbered section to Subchapter E of added Chapter 3842, Special District Local Laws Code:

Sec. . DISSOLUTION; CONTINUATION BY RESOLUTION. (a) Unless continued in existence by the adoption of a resolution by the governing body of the municipality where the district is located, the district is dissolved September 1, 2011.

(b) If the district is dissolved under this section, the district shall remain in existence until all debts are paid and the remaining assets are transferred to the municipality where the district is located. The dissolution is effective when all assets have been transferred and all debts have been discharged.

(c) The governing body of the municipality where the district is located may adopt a resolution continuing the district only if the governing body finds that:

(1) the district continues to serve a public use and benefit; and

(2) land and other property included in the district will continue to benefit from the improvements and services provided by the district.

(d) The governing body of the municipality shall specify in the resolution continuing the district a date on which the district will be dissolved. The governing body may not specify a date that occurs later than the sixth anniversary of the date of the resolution. The district is dissolved on the date specified in the resolution unless the governing body adopts a subsequent resolution extending the existence of the district under the procedures described by this section.

(e) Not later than the 30th day after the date a resolution is adopted under this section, the governing body of the municipality shall file a copy of the resolution continuing the district with the Texas Commission on Environmental Quality.

The amendment to **CSSB 1860** 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: Gallegos, Janek.

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

**CSSB 1860** 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: Gallegos, Janek.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1860 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1860** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

**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 1860**, 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 1860** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 304 ON SECOND READING**

Senator Deuell moved to suspend the regular order of business to take up for consideration **CSHB 304** at this time on its second reading:

**CSHB 304**, Relating to conditions of employment for police officers employed by certain municipalities.

The motion prevailed by the following vote: Yeas 19, Nays 9.

Yeas: Armbrister, Averitt, Barrientos, Brimer, Deuell, Ellis, Eltife, Estes, Harris, Hinojosa, Lindsay, Lucio, Madla, Ogden, Shapleigh, Van de Putte, Wentworth, Williams, Zaffirini.

Nays: Carona, Duncan, Fraser, Jackson, Nelson, Seliger, Shapiro, Staples, West.

Absent: Whitmire.

Absent-excused: Gallegos, Janek.

The bill was read second time.

Senator Brimer offered the following amendment to the bill:

### **Floor Amendment No. 1**

Amend **CSHB 304** by adding a new appropriately numbered section to read as follows and renumbering the existing sections accordingly.

SECTION \_\_\_\_\_. Section 143.3015, Local Government Code is amended by adding subsection (i) to read as follows:

(i) Notwithstanding subsection (a) and (h), a municipality with a population of less than 560,000 that has not recognized an association as the sole and exclusive bargaining agent as provided by Section 143.304 before September 1, 2005, may adopt rules for police officers converting vacation and sick leave days to hours that supersedes the provisions of Section 142.0015, Section 143.045, and Section 143.046 provided that:

(A) A police officer is entitled to earn one hundred twenty (120) hours of vacation leave each year with pay, as a minimum, if the officer has been regularly employed in the department or departments for at least one year.

(B) In computing the length of time a police officer may be absent from work on vacation leave, only those hours that the person would have been required to work if not on vacation may be counted as vacation leave.

(C) A police officer shall be granted the same number of vacation hours and holiday hours, or hours in lieu of vacation hours or holiday hours, granted to other municipal employees who work the same number of hours in a regular work day and have worked for the municipality for the same number of years.

(D) A police officer shall be granted sick leave with pay accumulated at the rate of 4.61 hours for each full month employed in a calendar year, so as to total one hundred twenty (120) hours to the person's credit each twelve months.

(E) A police officer who leaves the classified service for any reason is entitled to receive in a lump-sum payment the full amount of the person's salary for accumulated sick leave if the person has accumulated not more than 720 hours of sick leave, the person's employer may limit payment to the amount that the person would have received if the person had been allowed to use 720 hours of accumulated sick leave during the last six months of employment. The lump-sum payment is computed by compensating the police officer for the accumulated time at the highest permanent pay classification for which the person was eligible during the last six months of employment. The police officer is paid for the same period for which the person had taken the sick leave but does not include additional holidays and any sick leave or vacation time that the person might have accrued during the 720 hours.

The amendment to **CSHB 304** 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: Gallegos, Janek.

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

**CSHB 304** 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 except as follows:

Nays: Carona, Duncan, Fraser, Jackson, Nelson, Ogden, Seliger, Shapiro, Staples, West.

Absent-excused: Gallegos, Janek.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 5, 2005

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**SB 424**, Relating to the deadline for passing the examination for a license to practice medicine in this state.

**SB 1006**, Relating to the period of time during which a person may be supervised in a pretrial intervention program and the fee that may be charged for the program.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### HOUSE BILL 1285 ON SECOND READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1285** at this time on its second reading:

**HB 1285**, Relating to the exception from required disclosure under the public information law of certain audit working papers.

The bill was read second time.



Senator Wentworth offered the following committee amendment to the bill:

**Committee Amendment No. 1**

Amend **HB 1285** as follows:

(1) On page 1, lines 5-10, strike Section 1 of the bill and insert the following appropriately numbered sections:

SECTION \_\_\_\_\_. Section 552.116(a), Government Code, is amended to read as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency, an institution of higher education as defined by Section 61.003, Education Code, a county, ~~or~~ a municipality, or a joint board operating under Section 22.074, Transportation Code, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

SECTION \_\_\_\_\_. Section 552.116(b)(1), Government Code, is amended to read as follows:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States, the charter or an ordinance of a municipality, an order of the commissioners court of a county, or a resolution or other action of a joint board described by Subsection (a) and includes an investigation.

(2) Renumber existing sections of the bill accordingly.

The amendment to **HB 1285** 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 except as follows:

Absent-excused: Gallegos, Janek.

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

**HB 1285** 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 except as follows:

Absent-excused: Gallegos, Janek.

**GUESTS PRESENTED**

Senator West was recognized and introduced to the Senate students from W. H. Atwell Middle School in Dallas, accompanied by their teachers.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1379 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **CSSB 1379** at this time on its second reading:

**CSSB 1379**, Relating to a statewide initiative regarding the prevention and treatment of obesity-related health concerns.

The motion prevailed by the following vote: Yeas 21, Nays 7.

Yeas: Armbrister, Barrientos, Carona, Deuell, Duncan, Ellis, Eltife, Harris, Hinojosa, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Brimer, Estes, Fraser, Jackson, Shapiro, Staples, Williams.

Absent: Averitt.

Absent-excused: Gallegos, Janek.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

### **Floor Amendment No. 1**

Amend **CSSB 1379** (committee printing) as follows:

(1) In SECTION 1 of the substitute, in added Section 161.901, Health and Safety Code (page 1, between lines 28 and 29), insert Subsection (c) to read as follows:

(c) A meeting held under this section is not subject to the provisions of the open meetings law, Chapter 551, Government Code.

(2) In SECTION 2 of the substitute, strike added Section 22.004(a), Agriculture Code (page 3, lines 10-12), and substitute the following:

(a) The commissioner shall establish a public school nutrition policy in accordance with this chapter. Any changes made to the public school nutrition policy shall be made by rule.

(3) In SECTION 2 of the substitute, strike added Section 22.005, Agriculture Code (page 3, lines 22-26), and substitute:

Sec. 22.005. ACCESS TO CERTAIN BEVERAGES. A beverage that is a food of minimal nutritional value, as defined by 7 C.F.R. part 210, may not be sold on a public school campus in a container larger than 12 ounces. Not more than 30 percent of beverages in vending machines on a public school campus may be beverages that are foods of minimal nutritional value as defined in 7 C.F.R. part 210.

(4) In SECTION 8 of the bill, strike Subsection (e) (page 5, lines 52-58) and reletter subsequent subsections of SECTION 8 appropriately.

The amendment to **CSSB 1379** was read and was adopted by the following vote: Yeas 16, Nays 10.

Yeas: Armbrister, Barrientos, Carona, Deuell, Duncan, Ellis, Hinojosa, Lucio, Madla, Nelson, Shapleigh, Van de Putte, Wentworth, West, Whitmire, Zaffirini.

Nays: Brimer, Eltife, Estes, Fraser, Harris, Jackson, Seliger, Shapiro, Staples, Williams.

Absent: Averitt, Lindsay, Ogden.

Absent-excused: Gallegos, Janek.

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

**CSSB 1379** 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: Brimer, Eltife, Estes, Fraser, Harris, Jackson, Seliger, Shapiro, Staples, Williams.

Absent-excused: Gallegos, Janek.

### **BILLS SIGNED**

The Presiding Officer, Senator Armbrister in Chair, announced the signing of the following enrolled bills in the presence of the Senate after the captions had been read:

**HB 297, HB 708, HB 760, HB 901, HB 1154.**

### **COMMITTEE SUBSTITUTE SENATE BILL 410 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 410** at this time on its second reading:

**CSSB 410**, Relating to the continuation and functions of the Texas State Board of Pharmacy; providing administrative penalties.

**(Senator Shapiro in Chair)**

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: Gallegos, Janek.

### **COMMITTEE SUBSTITUTE SENATE BILL 410 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 410** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

### **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 410**, 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 410** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

### **GUESTS PRESENTED**

Senator Estes was recognized and introduced to the Senate fourth-grade students from McGaha Elementary School in Wichita Falls, accompanied by their teachers.

The Senate welcomed its guests.

### **SENATE BILL 760 ON SECOND READING**

On motion of Senator Armbrister and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 760** at this time on its second reading:

**SB 760**, Relating to the classification of open-space land into categories for purposes of appraising the land for ad valorem tax purposes.

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: Gallegos, Janek.

### **SENATE BILL 760 ON THIRD READING**

Senator Armbrister moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 760** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

### **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 760**, 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 760** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

**COMMITTEE SUBSTITUTE**  
**SENATE BILL 1038 ON SECOND READING**

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1038** at this time on its second reading:

**CSSB 1038**, Relating to authorizing a special events trust fund to support certain Olympic events, including training and development activities.

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: Gallegos, Janek.

**COMMITTEE SUBSTITUTE**  
**SENATE BILL 1038 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 1038** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Gallegos, Janek.

### 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 1038**, 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 1038** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth  
Senator, District 25

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

Absent-excused: Gallegos, Janek.

### COMMITTEE SUBSTITUTE SENATE BILL 349 ON SECOND READING

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSSB 349** at this time on its second reading:

**CSSB 349**, Relating to the jurisdiction of a court with respect to an action involving a testamentary trust.

The motion prevailed.

Senators Duncan and Estes 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: Duncan, Estes.

Absent-excused: Gallegos, Janek.

**(President in Chair)****MOTION TO PLACE  
COMMITTEE SUBSTITUTE  
SENATE BILL 237 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **CSSB 237** at this time on its second reading:

**CSSB 237**, Relating to requirements applicable to purchase agreements for certain funeral, cemetery, and crematory services.

Senator Carona withdrew further consideration of **CSSB 237**.

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

On motion of Senator Armbrister and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Natural Resources might consider **SB 1839** 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 Subcommittee on Base Realignment and Closure might meet and consider **HB 2340** today.

**SENATE RULES SUSPENDED  
(Posting Rules)**

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

**SB 1452, SB 1780, SB 1809, SB 1883.**

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Lucio 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 today:

**SB 1737, SB 1744, HB 775, HB 1924, HCR 13.**

**SENATE RULE 11.13 SUSPENDED  
(Consideration of Bills in Committees)**

On motion of Senator Lucio and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate is meeting today.

## MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 12:53 p.m. agreed to adjourn, in memory of the life of Norman Lee Malone of La Porte, upon completion of the introduction of bills and resolutions on first reading, until 9:30 a.m. tomorrow.

**(Senator Fraser in Chair)**

## HOUSE BILLS ON FIRST READING

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

- HB 135** to Committee on Business and Commerce.
- HB 159** to Committee on Education.
- HB 283** to Committee on Education.
- HB 629** to Committee on Business and Commerce.
- HB 664** to Committee on Intergovernmental Relations.
- HB 853** to Committee on Business and Commerce.
- HB 1048** to Committee on Criminal Justice.
- HB 1095** to Committee on Criminal Justice.
- HB 1172** to Subcommittee on Higher Education.
- HB 1235** to Committee on Business and Commerce.
- HB 1249** to Committee on Criminal Justice.
- HB 1426** to Committee on State Affairs.
- HB 1579** to Committee on State Affairs.
- HB 1706** to Committee on State Affairs.
- HB 1919** to Committee on Intergovernmental Relations.
- HB 1986** to Committee on Transportation and Homeland Security.
- HB 2135** to Committee on Intergovernmental Relations.
- HB 2241** to Committee on Intergovernmental Relations.
- HB 2405** to Committee on State Affairs.
- HB 2581** to Committee on Business and Commerce.
- HB 2623** to Committee on Transportation and Homeland Security.
- HB 2799** to Committee on Transportation and Homeland Security.
- HB 2966** to Committee on Intergovernmental Relations.
- HB 3115** to Committee on Transportation and Homeland Security.

## RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

### Memorial Resolutions

- SR 795** by Armbrister, In memory of Cherie Shelton Von Dohlen of Goliad and Austin.
- HCR 102** (Wentworth), In memory of G. W. Worth, Jr., of San Antonio.

### Congratulatory Resolutions

- SR 793** by Seliger, Congratulating the basketball team of Morton High School in Morton for winning a state championship.



**SR 796** by Williams, Recognizing the Westminster Presbyterian Church in Beaumont on the occasion of its 125th anniversary.

**SR 797** by Barrientos, Recognizing El Taller Gallery in Austin on the occasion of its 25th anniversary.

**SR 798** by Barrientos, Recognizing William Seth Adams on the occasion of his retirement.

### ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 1:04 p.m. adjourned, in memory of the life of Norman Lee Malone of La Porte, until 9:30 a.m. tomorrow.

---

### APPENDIX

---

### COMMITTEE REPORTS

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

May 5, 2005

CRIMINAL JUSTICE — **SB 615, SB 951, HB 225, HB 546, HB 1239, HB 1695, HB 1759**

BUSINESS AND COMMERCE — **CSSB 757, HB 168, HB 210, HB 2171, HB 1531, HB 1982, HB 2298, HB 2553**

INTERGOVERNMENTAL RELATIONS — **HB 263, HB 352, HB 596, HB 1471, HB 1913, HB 2549, HCR 24, HCR 128**

HEALTH AND HUMAN SERVICES — **SB 1767, HB 409, HB 614, HB 894, HB 1677, HB 1752, HB 1912, HB 1970, HB 2475, HCR 37**

CRIMINAL JUSTICE — **CSHB 1326**

JURISPRUDENCE — **HB 81, HB 203, HB 204, HB 230, HB 307, HB 413, HB 678, HB 723, HB 858, HB 1174, HB 1182, HB 1190, HB 1191, HB 1418, HB 1501, HB 1686, HB 2231, HB 2256, HB 3240, HB 3475, HB 3489**

NATURAL RESOURCES — **HB 373**

HEALTH AND HUMAN SERVICES — **CSHB 162, CSSB 1749, CSSB 1685**

### SENT TO GOVERNOR

May 5, 2005

**SB 461, SB 571, SB 1298**

**In Memory**  
**of**  
**Norman Lee Malone**  
**Senate Resolution 794**

WHEREAS, The Senate of the State of Texas joins the citizens of La Porte in mourning the loss of Norman Lee Malone, who died on April 30, 2004, at the age of 76; and

WHEREAS, Born on July 23, 1927, Norman Malone "Notche" served as mayor of the City of La Porte for almost 20 years, and he was considered one of the city's most popular public servants; and

WHEREAS, Norman Malone earned a bachelor of science degree and a master's degree in education from the University of Houston; he shared a long and loving marriage with Ann Malone, and the couple was blessed with three children; and

WHEREAS, He worked for Shell Chemical for 11 years and retired from the Pasadena Independent School District after 30 years of service, including 17 years as a vocational director; and

WHEREAS, Prior to serving as the mayor of La Porte, Norman was the mayor of the City of Lomax from 1975 through 1980; after that city was consolidated with La Porte, he served on the La Porte City Council until 1985, when he became La Porte's mayor; he won all subsequent elections to the position and was still mayor of La Porte at the time of his death; and

WHEREAS, Mayor Malone was beloved and respected by the people of La Porte; he served as La Porte's voice of leadership during numerous key periods in its development and was dedicated to his work on behalf of the city and its citizens; and

WHEREAS, Norman Malone lived his life to the fullest and was a devoted husband and father, and he leaves behind memories that will be treasured forever by his family and many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 79th Legislature, hereby extend sincere condolences to the bereaved family of Norman Malone: his wife of 53 years, Mary Ann Uloth Malone; his sons, Scott and Todd Malone; his daughter, Georgia Malone; his brother, James Vernon "Paddy" Malone; and his four grandchildren; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the members of his family as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Norman Malone.

JACKSON