

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

FIFTY-SIXTH DAY

(Tuesday, May 12, 2009)

The Senate met at 11:10 a.m. pursuant to adjournment and was called to order by President Pro Tempore Duncan.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

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

The Reverend Charles Patterson, Church of the Hills, Cedar Park, offered the invocation as follows:

Father in heaven, thank You for the men and women who serve in this Texas State Senate. Thank You for those who assist them as they collectively deal with the issues that remain in this legislative session. I invite You to be present with these Members who serve the people of the State of Texas. May Your wisdom and counsel prevail in their interactions and deliberations. May the decisions made here serve to enable justice and improve the quality of life for every person in this great State of Texas. I ask You to bless this state, bless its people, bless its families, and bless its economy. May this state be marked by the favor of God. Father God, I invite You to be personally present with each Member of this Senate and with his or her family. I ask that You bless their home, as well as their time and finances. May Your grace attend each person's life in body, in soul, and in spirit. I ask these things in the name of Jesus Christ. 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.

CO-AUTHOR OF SENATE BILL 237

On motion of Senator West, Senator Davis will be shown as Co-author of **SB 237**.

CO-AUTHOR OF SENATE BILL 1304

On motion of Senator Patrick, Senator Hinojosa will be shown as Co-author of **SB 1304**.

CO-SPONSOR OF HOUSE BILL 2751

On motion of Senator Duncan, Senator Hinojosa will be shown as Co-sponsor of **HB 2751**.

CO-SPONSOR OF HOUSE BILL 4127

On motion of Senator Carona, Senator Zaffirini will be shown as Co-sponsor of **HB 4127**.

CO-SPONSOR OF HOUSE BILL 4276

On motion of Senator Uresti, Senator Zaffirini will be shown as Co-sponsor of **HB 4276**.

CO-SPONSOR OF HOUSE BILL 4642

On motion of Senator Lucio, Senator Uresti will be shown as Co-sponsor of **HB 4642**.

PHYSICIAN OF THE DAY

Senator Nelson was recognized and presented Dr. Erica Sweigler of Keller as the Physician of the Day.

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

SENATE RESOLUTION 752

Senator Watson offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join the local chapters of the National Fibromyalgia Association in recognizing May 12, 2009, as National Fibromyalgia Awareness Day in Texas; and

WHEREAS, Fibromyalgia is a chronic pain disorder affecting an estimated 10 million Americans; there is no known cause or cure for the debilitating disease which results in widespread pain and fatigue that interfere with even the simplest of daily activities; and

WHEREAS, Fibromyalgia has far-reaching effects and takes a tremendous toll on patients and their families emotionally and financially; it affects their relationships with their friends and co-workers, and it places a greater burden on the health care and insurance industries; and

WHEREAS, The National Fibromyalgia Association is a nonprofit organization whose mission is to improve the quality of life for people with fibromyalgia and increase awareness of the disorder through education, diagnosis, and research; its theme for the Fibromyalgia Awareness Day campaign this year is Fibromyalgia Affects Everyone; and

WHEREAS, On National Fibromyalgia Awareness Day, people across the country will attend special events and participate in walks to bring attention to fibromyalgia and offer support and encouragement to those with the chronic pain disease; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby recognize May 12, 2009, as National Fibromyalgia Awareness Day in Texas and encourage all citizens to become better informed about the disease and the persons whose lives it affects; and, be it further

RESOLVED, That a copy of this Resolution be prepared to commemorate National Fibromyalgia Awareness Day.

SR 752 was again read.

The resolution was previously adopted on Tuesday, April 28, 2009.

GUESTS PRESENTED

Senator Watson was recognized and introduced to the Senate a delegation representing the National Fibromyalgia Association.

The Senate welcomed its guests.

BILLS SIGNED

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

SB 45, SB 543, SB 687, SB 828, SB 1054, SB 1442, SB 1540, SB 1838, SB 1969.

SENATE RESOLUTION 838

Senator Nelson offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join citizens across the state in celebrating May, 2009, as Trauma Awareness Month and in observing May 17 through 23, 2009, as Emergency Medical Services Week; and

WHEREAS, Trauma Awareness Month and Emergency Medical Services Week give citizens the opportunity to acknowledge the many contributions that emergency medical services providers offer to our society; and

WHEREAS, The theme of Emergency Medical Services Week in 2009 is "EMS: A Proud Partner in Your Community," and the slogan chosen for Trauma Awareness Month is "Kids Know Alcohol: Prevention Through Education"; and

WHEREAS, Trauma Awareness Month and Emergency Medical Services Week also provide an occasion for groups and communities to organize and participate in special activities such as blood drives, blood pressure checks, Station Appreciation Days, and Second Chance Reunions, in which survivors of cardiac arrest reunite with those who helped give them a second chance at life; and

WHEREAS, The citizens of our state benefit greatly from the skill and sacrifice of our dedicated and courageous emergency medical services providers; Trauma Awareness Month and Emergency Medical Services Week offer a chance to reflect on their professionalism and commitment in our behalf and express gratitude to them for their selfless service; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby encourage all citizens to participate in the observance of Trauma Awareness Month and Emergency Medical Services Week in 2009; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of this special occasion.

SR 838 was again read.

The resolution was previously adopted on Tuesday, May 5, 2009.

GUESTS PRESENTED

Senator Nelson was recognized and introduced to the Senate a delegation of emergency medical services representatives.

The Senate welcomed its guests.

SENATE RESOLUTION 891

Senator Davis offered the following resolution:

WHEREAS, Members of PATHS Forward are visiting the State Capitol on May 12, 2009; and

WHEREAS, PATHS Forward is a leadership development program based in Tarrant County that is designed to prepare promising African American professionals to become leaders in the community; and

WHEREAS, Over the course of nine months, participants learn basic leadership skills and more about volunteerism, gain insights into the Fort Worth/Tarrant County Metropolitan region, attend a variety of networking events, and participate in discussions with successful entrepreneurs, corporate executives, and civic leaders; moreover, they are responsible for creating a project that benefits the community; and

WHEREAS, Members who complete the program are better equipped to fulfill their potential in both the public and private sectors, having acquired improved persuasive speaking skills, an understanding of important local entities, including nonprofit organizations, an increased knowledge of entrepreneurship, and other areas of expertise; and

WHEREAS, By fostering personal growth and meaningful participation in the community, PATHS Forward is helping to create a brighter future for participants in the program as well as for the many people in Tarrant County who will benefit from the civic engagement of these dedicated volunteers; now, therefore, be it

RESOLVED, That the Senate of the 81st Texas Legislature hereby recognize PATHS Forward and extend to all those associated with the program sincere best wishes for continued success; and, be it further

RESOLVED, That an official copy of this resolution be prepared for PATHS Forward as an expression of high regard by the Texas Senate.

SR 891 was read and was adopted without objection.

GUESTS PRESENTED

Senator Davis was recognized and introduced to the Senate a delegation representing the Professional Avenues To Higher Service Forward program.

The Senate welcomed its guests.

INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED

The President Pro Tempore 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.

CONCLUSION OF MORNING CALL

The President Pro Tempore at 11:24 a.m. announced the conclusion of morning call.

SENATE RESOLUTION 796

Senator Ellis offered the following resolution:

WHEREAS, The Senate of the State of Texas is proud to recognize the Texas Legislative Internship Program on its 19 years of service to the young people of our state; and

WHEREAS, Created in 1990, the Texas Legislative Internship Program provides an opportunity for young, civic-minded students to work as interns in the Texas Legislature, in state agencies, and in public policy organizations; and

WHEREAS, Students receive academic credit hours for participating in the program, which combines academic study and research with supervised practical training; an internship lasts for one academic semester and allows students to experience the political process firsthand; and

WHEREAS, Senator Rodney Ellis serves as an advisor to the interns, and his office assists with coordinating the on-site activities; students interested in the governmental process and in the type of humanitarian service exemplified by the late Congressman Mickey Leland are encouraged to apply for the program; and

WHEREAS, The experiences of the interns often serve as a springboard for public-service careers on the federal, state, and local levels of government, as well as for professional service in the private sector; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby pay tribute to the Texas Legislative Internship Program and extend congratulations to all who have contributed to its success and to the many students who have served as participants; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of this program.

SR 796 was again read.

The resolution was previously adopted on Wednesday, April 29, 2009.

GUESTS PRESENTED

Senator Ellis was recognized and introduced to the Senate participants in the Texas Legislative Internship Program.

The Senate welcomed its guests.

COMMITTEE SUBSTITUTE SENATE BILL 1013 ON SECOND READING

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSSB 1013** at this time on its second reading:

CSSB 1013, Relating to the continuation and functions of the Texas Racing Commission, the abolishment of the Equine Research Account Advisory Committee, and the authority of Texas AgriLife Research; providing an administrative penalty.

The motion prevailed.

Senators Nelson and Patrick 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: Nelson, Patrick.

**COMMITTEE SUBSTITUTE
SENATE BILL 1013 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1013** be placed on its third reading and final passage.

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

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Nelson, Patrick.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

GUESTS PRESENTED

Senator Van de Putte was recognized and introduced to the Senate students from Robert G. Cole Middle School in San Antonio, accompanied by their Assistant Principal, Elizardo Hernandez.

The Senate welcomed its guests.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER
Austin, Texas
May 12, 2009

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 300, Relating to the continuation and functions of the Texas Department of Transportation, including the governance of the department and the transfer of certain functions of the department to the Texas Department of Motor Vehicles and the office of the governor; providing penalties.

- HB 431**, Relating to design, construction, and renovation standards for state buildings and facilities.
- HB 537**, Relating to the transportation of children in motor vehicles; creating an offense.
- HB 583**, Relating to expansion of the electronic eligibility information pilot project operated by the Health and Human Services Commission.
- HB 692**, Relating to the jurisdiction of statutory county courts.
- HB 1083**, Relating to mediation orders in certain arbitration proceedings.
- HB 1357**, Relating to the regulation of freestanding emergency medical care facilities; providing an administrative penalty; creating an offense.
- HB 2013**, Relating to tuition and laboratory fee exemptions at public institutions of higher education for certain volunteer firefighters enrolled in fire science courses.
- HB 2093**, Relating to persons certified as peace officers.
- HB 2256**, Relating to mediation of out-of-network health benefit claim disputes concerning enrollees, facility-based physicians, and certain health benefit plans; imposing an administrative penalty.
- HB 2438**, Relating to requirements regarding motor vehicle retail installment transactions.
- HB 2456**, Relating to insurance agent qualifications to sell certain products or product lines.
- HB 2536**, Relating to the floodplain management account.
- HB 2559**, Relating to the powers and duties of the Employees Retirement System of Texas.
- HB 2656**, Relating to the composition of the board of trustees of the Teacher Retirement System of Texas.
- HB 2820**, Relating to contracts by governmental entities for professional services relating to geoscience and landscape architecture.
- HB 2859**, Relating to notice requirements for a county selling surplus or salvage property.
- HB 3316**, Relating to venue for certain offenses committed at Texas Youth Commission facilities.
- HB 3477**, Relating to authorizing an emergency services district to impose an ad valorem tax for the acquisition of land, equipment, or apparatus or the construction of capital improvements.
- HB 3499**, Relating to an exemption from private security regulation for social workers engaged in the practice of social work.
- HB 3621**, Relating to certain charges included in a motor vehicle installment agreement.

HB 3634, Relating to creditable service in the Employees Retirement System of Texas and the transfer of that credit between classes of membership for certain state employees.

HB 3670, Relating to the regulation of the practice of dental assistants, including the delegation of certain dental acts.

HB 3695, Relating to fees of office for directors of certain water districts.

HB 4037, Relating to the confidentiality of information related to certified handgun instructors.

HB 4360, Relating to revenue sources for certain venue projects.

HCR 192, Congratulating Duncan Elementary School in Fort Hood on its receipt of the 2009 Texas State School of Character Award.

HCR 211, Congratulating the Blackland Research and Extension Center on its 100th anniversary.

HJR 14, Proposing a constitutional amendment to limit the public taking of private property.

HJR 83, Proposing a constitutional amendment authorizing the legislature to permit conservation and reclamation districts in Hays and Chambers Counties to issue bonds supported by ad valorem taxes to fund the development and maintenance of parks and recreational facilities.

HJR 85, Proposing a constitutional amendment to allow the legislature to provide for members of a governing board of an emergency services district to serve terms not to exceed four years.

HJR 102, Proposing a constitutional amendment to protect the right of the public to access and use public beaches.

HJR 127, Proposing a constitutional amendment to allow an officer or enlisted member of the Texas State Guard or other state militia or military force to hold other civil offices.

HJR 132, Proposing a constitutional amendment relating to the financing, including through tax increment financing, of the acquisition by municipalities and counties of buffer areas or open spaces adjacent to a military installation for certain purposes.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

**COMMITTEE SUBSTITUTE
SENATE BILL 8 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 8** at this time on its second reading:

CSSB 8, Relating to the administration, powers, and duties of the Texas Health Services Authority.

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

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

**COMMITTEE SUBSTITUTE
SENATE BILL 8 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 8** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

GUESTS PRESENTED

Senator Ellis was recognized and introduced to the Senate members of the Houston Urban Debate League and their coaches.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE
SENATE BILL 880 ON SECOND READING**

On motion of Senator Hegar and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 880** at this time on its second reading:

CSSB 880, Relating to the creation of the Fort Bend County Municipal Utility District No. 200; providing authority to impose a tax and issue bonds; granting a limited power of eminent domain.

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

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

**COMMITTEE SUBSTITUTE
SENATE BILL 880 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 880** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1304 ON SECOND READING**

Senator Patrick moved to suspend the regular order of business to take up for consideration **CSSB 1304** at this time on its second reading:

CSSB 1304, Relating to notice to students of a public institution of higher education of the required use of a portion of the tuition paid by the student to provide student financial aid.

The motion prevailed.

Senator Davis 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: Davis.

COMMITTEE SUBSTITUTE SENATE BILL 1304 ON THIRD READING

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1304** be placed on its third reading and final passage.

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

Nays: Davis.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

SENATE BILL 1966 WITH HOUSE AMENDMENT

Senator Harris called **SB 1966** from the President's table for consideration of the House amendment to the bill.

The President Pro Tempore laid the bill and the House amendment before the Senate.

Amendment

Amend **SB 1966** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to debt cancellation agreements offered in connection with motor vehicle retail installment contracts.

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

SECTION 1. Section 348.001, Finance Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Debt cancellation agreement" means a retail installment contract term or a contractual arrangement modifying a retail installment contract term under which a retail seller or holder agrees to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder on the occurrence of the total loss or theft of the motor vehicle that is the subject of the retail installment contract but does not include an offer to pay a specified amount on the total loss or theft of the motor vehicle.

SECTION 2. Section 348.005, Finance Code, is amended to read as follows:

Sec. 348.005. ITEMIZED CHARGE. An amount in a retail installment contract is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) fees for registration, certificate of title, and license and any additional registration fees charged by a full service deputy under Section 502.114, Transportation Code;

(2) any taxes;

(3) fees or charges prescribed by law and connected with the sale or inspection of the motor vehicle; and

(4) charges authorized for insurance, service contracts, ~~or~~ warranties, or a debt cancellation agreement by Subchapter C.

SECTION 3. Subchapter B, Chapter 348, Finance Code, is amended by adding Section 348.124 to read as follows:

Sec. 348.124. DEBT CANCELLATION AGREEMENTS. (a) In connection with a retail installment transaction under this chapter, a retail seller may offer to the retail buyer a debt cancellation agreement. The retail seller may not require that the purchase of a debt cancellation agreement by the retail buyer be made in order to enter into a retail installment transaction.

(b) A debt cancellation agreement is not considered an insurance product.

(c) The amount charged for a debt cancellation agreement made in connection with a retail installment contract must be reasonable.

(d) In addition to other disclosures required by state or federal law, the retail seller shall provide to the retail buyer a separate notice in connection with the retail installment contract stating that the retail buyer is not required to accept or provide a debt cancellation agreement in order to purchase the motor vehicle under a retail installment contract.

SECTION 4. Sections 348.208(b) and (c), Finance Code, are amended to read as follows:

(b) A retail installment contract may include as a separate charge an amount for:

(1) motor vehicle property damage or bodily injury liability insurance;

(2) mechanical breakdown insurance;

(3) participation in a motor vehicle theft protection plan;

(4) insurance to reimburse the retail buyer for the amount computed by subtracting the proceeds of the buyer's basic collision policy on the motor vehicle from the amount owed on the vehicle if the vehicle has been rendered a total loss; ~~or~~

(5) a warranty or service contract relating to the motor vehicle; or

(6) a debt cancellation agreement if the agreement is included as a term of a retail installment contract under Section 348.124.

(c) Notwithstanding any other law, service contracts and debt cancellation agreements sold by a retail seller of a motor vehicle to a retail buyer are not subject to Chapter 101 or 226, Insurance Code.

SECTION 5. This Act takes effect September 1, 2009.

The amendment was read.

Senator Harris moved to concur in the House amendment to **SB 1966**.

The motion prevailed by the following vote: Yeas 31, Nays 0.

COMMITTEE SUBSTITUTE
SENATE BILL 1471 ON SECOND READING

Senator Gallegos moved to suspend the regular order of business to take up for consideration **CSSB 1471** at this time on its second reading:

CSSB 1471, Relating to the evaluation of certain regional planning commissions.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Lucio, Nelson, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Huffman, Jackson, Patrick, Williams.

The bill was read second time and was passed to engrossment by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

COMMITTEE SUBSTITUTE
SENATE BILL 1471 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1471** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Lucio, Nelson, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Huffman, Jackson, Patrick, Williams.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

COMMITTEE SUBSTITUTE
SENATE BILL 1984 ON SECOND READING

On motion of Senator Uresti and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1984** at this time on its second reading:

CSSB 1984, Relating to certification of a person in certain counties as eligible for disabled parking privileges.

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

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1984 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1984** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

HOUSE BILL 1622 ON SECOND READING

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1622** at this time on its second reading:

HB 1622, Relating to a grant program to provide children at risk of hunger or obesity with increased access to nutritious foods.

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.

HOUSE BILL 1622 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 **HB 1622** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

HOUSE BILL 1510 ON SECOND READING

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 1510** at this time on its second reading:

HB 1510, Relating to including information on sudden infant death syndrome in a resource pamphlet for parents of newborn children.

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.

HOUSE BILL 1510 ON THIRD READING

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 1510** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 2223 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSSB 2223** at this time on its second reading:

CSSB 2223, Relating to authorizing the creation of regional military sustainability commissions around military installations.

The motion prevailed.

Senators Harris, Huffman, Nelson, Nichols, and Seliger asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

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

Floor Amendment No. 1

Amend **CSSB 2223** by striking all below the enacting clause, and substituting the following:

SECTION 1. Subtitle C, Title 12, Local Government Code, is amended by adding Chapter 397A to read as follows:

CHAPTER 397A. REGIONAL MILITARY SUSTAINABILITY COMMISSIONS
RELATING TO MILITARY INSTALLATIONS

Sec. 397A.001. LEGISLATIVE FINDINGS; PURPOSE. (a) The legislature finds that:

(1) the areas that surround military installations will be frequented for military, national security, and international training purposes by residents from many parts of the state, nation, and world;

(2) compatible development and use of those areas is of concern to the state and nation; and

(3) without adequate regulation, the areas will tend to become incompatible with military missions and will be used in ways that interfere with:

(A) the proper continued use of those areas as secure locations for military installations and missions; and

(B) the effective operation of the military installations and missions.

(b) The regulatory powers granted under this chapter are for the purposes of:

(1) promoting the public health, safety, and general welfare;

(2) protecting and preserving places and areas of military and national security importance and significance;

(3) protecting critical military missions and operations related to those missions; and

(4) ensuring state and national security.

(c) This chapter may not be interpreted to grant regulatory powers to administer Chapter 245 or to amend a protection or benefit provided by Chapter 245.

Sec. 397A.002. APPLICABILITY. (a) A regulation or compatible development standard adopted under this chapter does not apply to:

(1) a tract of land used for a single-family residence that is located outside the boundaries of a platted subdivision;

(2) a tract of land in agricultural use;
(3) an activity or a structure or appurtenance on a tract of land in agricultural use; or

(4) any activity or a project, as that term is defined by Section 245.001, that is:

(A) occurring or in existence on the effective date of the Act adding this chapter; or

(B) receiving the benefits of or protected under Chapter 245.

(b) In this section:

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

(2) "Agriculture" means:

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

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

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

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

(E) engaging in wildlife management.

Sec. 397A.003. CREATION OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) A county with unincorporated area located within five miles of the boundary line of a military installation, and a municipality with a population of 1.1 million or more and with extraterritorial jurisdiction located within five miles of the boundary line of a military installation, each of which, with respect to the same military installation, constitutes a defense community as defined by Section 397.001, may agree by order, ordinance, or other means to establish and fund a regional military sustainability commission under this chapter in an area that is located:

(1) in the same county as the active military installation; and

(2) in the extraterritorial jurisdiction of the municipality.

(b) Defense communities may not establish more than one commission in a county.

(c) Except as provided by Subsection (d), a commission's territory consists of the unincorporated area located within two miles of the boundary line of a military installation designated as the commission's territory when the commission is established.

(d) If a military installation is engaged in flight training at the time a commission is established under this section, the commission's territory consists of the unincorporated area located within three miles of the boundary line of the military installation.

(e) A commission is a political subdivision of the state, is subject to Section 245.006, and is entitled to immunity as described by Chapter 101, Civil Practice and Remedies Code.

(f) This chapter shall be narrowly construed in conformity with the findings and purposes under Section 397A.001.

Sec. 397A.004. HEARING ON CREATION OF COMMISSION. (a) Not earlier than the 60th day or later than the 30th day before the date the governing body of each participating governmental entity establishes a regional military sustainability commission, each governing body shall hold two public hearings to consider the creation of the proposed commission. Each governing body must, at least seven days before each public hearing, prominently post notice of the hearing in the administrative offices of the governmental entity and publish notice of the hearing in a newspaper of general circulation, if any, in the proposed territory.

(b) The notice required by Subsection (a) must:

(1) state the date, time, and place for the public hearing;

(2) identify the boundaries of the proposed territory, including a map of the proposed territory; and

(3) provide a description of the proposed commission's authority.

Sec. 397A.005. GOVERNING BODY OF REGIONAL MILITARY SUSTAINABILITY COMMISSION. (a) The governing body of a regional military sustainability commission is composed of not more than nine members.

(b) Participating governmental entities may by joint agreement determine the number, qualifications, and method of selecting members of the governing body of a commission.

(c) A member of a governing body of a commission may not be an elected official of a participating county or municipality.

Sec. 397A.006. COMMISSION REVIEW OF NEW PROJECTS. (a) In this section, "new project" means a project, as that term is defined by Section 245.001, for which an application for a permit that will establish a vesting date under Chapter 245 has not been submitted to a regulatory agency before the effective date of the Act adding this chapter, including a water contract, sewer contract, or master plan.

(b) A commission shall establish an advisory committee and appoint six members to the committee. Three of the members appointed to the committee must represent the military installation for which the commission is established and three members must represent landowners in the area surrounding the military installation. The committee shall advise the commission on protecting the critical military missions of the military installation with regard to development.

(c) On receipt of an application for a permit for a new project in the commission's territory, the governing body of the participating governmental entity shall review the application and request a report from the commission regarding the proposed project. The commission, with the advice of the advisory committee, shall review the compatibility of the new project with the military installation's military missions and related operations based on the commission's compatible development standards. The commission shall submit a report of its findings, including a recommendation regarding compatibility, to the reviewing governmental entity not later than the 30th calendar day after the date the request was made. The report must include an estimate of the fiscal impact on the affected property of any recommendations submitted by the commission, if the fiscal impact is determinable based on the project description and other information provided by the developer.

(d) The reviewing governmental entity may not take action on the permit application until it receives the report of the commission. If the commission finds that the proposed new project is not compatible with the military installation's missions and recommends denial of the permit application, the reviewing governmental entity may disapprove the permit application.

(e) On annexation of an area in the commission's territory for full or limited purposes by a municipality, the commission's authority over the area expires. The commission regains the authority in an area if the municipality disannexes the area.

Sec. 397A.007. REGIONAL COMPATIBLE DEVELOPMENT STANDARDS.

(a) Before exercising the authority granted by Section 397A.006, a commission shall recommend and adopt compatible development standards for the territory. The commission must consider and may adopt, as part of the regional compatible development standards, standards required by the Federal Aviation Administration regulations for military installations that service aircraft and helicopters. The commission shall submit compatible development standards adopted under this section to the participating governmental entities for approval.

(b) Before taking action to approve or reject the compatible development standards proposed by the commission, the participating governmental entities shall:

(1) provide notice of the commission's proposed compatible development standards to property owners in the commission's territory, as determined by the most recent county tax roll; and

(2) publish notice of the commission's proposed compatible development standards in a newspaper of general circulation, if any, in the commission's territory.

(c) The failure of notice to reach each property owner under Subsection (b) does not invalidate compatible development standards adopted under this section.

(d) The compatible development standards are final after approval by a majority vote of each participating governmental entity. Notice of the final compatible development standards must be provided to all appropriate taxing entities for filing in the real property records of the county.

(e) The commission may include in the compatible development standards a recommendation to a participating governmental entity to purchase property in the commission's territory as practical to protect a critical military mission.

(f) The commission may recommend and approve amendments to approved compatible development standards. The participating governmental entities may approve the commission's amended standards under procedures adopted by the entities.

Sec. 397A.008. COORDINATION WITH OTHER PLANS AND STUDIES.

The compatible development standards and regulations adopted under this chapter must be coordinated with:

(1) the county plan for growth and development of the participating county or a county located in the commission's territory;

(2) the comprehensive plan of the participating municipality; and

(3) the most recent Joint Land Use Study, if the commission makes a finding that the conclusions of the study accurately reflect circumstances in the territory.

Sec. 397A.009. CONFLICT WITH OTHER LAWS. Except with respect to Chapter 245, if a regulation adopted under this chapter conflicts with a standard imposed under another statute or local order or regulation, the more stringent standard controls.

Sec. 397A.010. FUNDS. (a) A commission does not have power to tax.

(b) A participating governmental entity may appropriate funds to the commission for the costs and expenses required in the performance of the commission's purposes.

(c) A commission may apply for, contract for, receive, and expend for its purposes a grant or funds from a participating governmental entity, the state, the federal government, or any other source.

Sec. 397A.011. RESTRICTIONS. (a) A commission shall comply with laws applicable to participating governmental entities relating to:

(1) reimbursement for travel expenses;

(2) nepotism;

(3) conflicts of interest; and

(4) registration of lobbyists.

(b) To the extent of a conflict between laws applicable to participating governmental entities relating to a subject described by Subsection (a), the more stringent requirement controls.

Sec. 397A.012. WITHDRAWAL FROM COMMISSION. A participating governmental entity may withdraw from a commission:

(1) by a two-thirds vote of its governing body; and

(2) after providing notice to the relevant military installation commander not later than the 45th day before the date of the vote under Subdivision (1).

Sec. 397A.013. EXPIRATION AFTER MILITARY INSTALLATION CLOSURE. A commission that regulates territory around a military installation that is closed by the federal government and the regional compatible development standards adopted by the commission may continue in effect until the fourth anniversary of the date the military installation is closed.

Sec. 397A.014. JUDICIAL REVIEW OF COMMISSION OR GOVERNMENTAL ENTITY DECISION. Notwithstanding any other provision of this chapter, a landowner aggrieved by a report submitted by the commission or by a permit application decision of the participating governmental entity under this chapter may appeal all or part of the report or permit application decision to a district court. The court may reverse or modify, wholly or partly, the report submitted by the commission or the permit application decision that is appealed.

SECTION 2. 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, 2009.

The amendment to **CSSB 2223** was read and was adopted by the following vote: Yeas 29, Nays 1.

Nays: Seliger.

Absent: Williams.

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

CSSB 2223 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: Harris, Hegar, Huffman, Nelson, Nichols, Seliger.

Absent: Williams.

COMMITTEE SUBSTITUTE SENATE BILL 2223 ON THIRD READING

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 2223** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Jackson, Lucio, Ogden, Patrick, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Huffman, Nelson, Nichols, Seliger.

Absent: Williams.

The bill was read third time and was passed by the following vote: Yeas 24, Nays 6.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hinojosa, Jackson, Lucio, Ogden, Patrick, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Hegar, Huffman, Nelson, Nichols, Seliger.

Absent: Williams.

HOUSE BILL 3661 ON SECOND READING

On motion of Senator Gallegos and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3661** at this time on its second reading:

HB 3661, Relating to standards for installing fire hydrants in certain residential areas.

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.

HOUSE BILL 3661 ON THIRD READING

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 3661** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

(Senator Eltife in Chair)

HOUSE BILL 3413 ON SECOND READING

On motion of Senator Averitt and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 3413** at this time on its second reading:

HB 3413, Relating to the sale of glassware and nonalcoholic beverages by certain wholesalers and distributors.

The bill was read second time.

Senator Averitt offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 3413**, as follows:

1) Strike Sections (e) and (f), lines 8 through 23 on page 2.

2) Line 26, page 2, change the second "or" to an "and," to read, as follows:
"produced or sold by a manufacturer of malt beverages and that bears"

The amendment to **HB 3413** was read and was adopted by a viva voce vote.

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

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

HB 3413 as amended was passed to third reading by a viva voce vote.

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

HOUSE BILL 3413 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 **HB 3413** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

SENATE BILL 2405 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 2405** at this time on its second reading:

SB 2405, Relating to a pilot program to expand access to career and technical education partnerships in rural areas.

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

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

SENATE BILL 2405 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 2405** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

SENATE BILL 2543 ON SECOND READING

On motion of Senator Hegar and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 2543** at this time on its second reading:

SB 2543, Relating to the enforcement of rules by the Harris-Galveston Subsidence District and the Fort Bend Subsidence District; providing penalties.

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

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

SENATE BILL 2543 ON THIRD READING

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 2543** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

COMMITTEE SUBSTITUTE SENATE BILL 237 ON SECOND READING

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 237** at this time on its second reading:

CSSB 237, Relating to certain procedures and requirements for the operation of property owners' associations.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 237** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 5.006(a), Property Code, is amended to read as follows:

(a) In an action based on breach of a restrictive covenant pertaining to real property or a statute pertaining to real property subject to a restrictive covenant or to restrictive covenants to which real property is subject, the court may ~~[shall]~~ allow to a prevailing party ~~[who asserted the action]~~ reasonable attorney's fees in addition to the party's costs and claim.

SECTION 2. Section 5.012, Property Code, is amended by amending Subsection (a) and adding Subsections (f) and (g) to read as follows:

(a) A seller of residential real property that is subject to membership in a property owners' association and that comprises not more than one dwelling unit located in this state shall give to the purchaser of the property a written notice that reads substantially similar to the following:

NOTICE OF MEMBERSHIP IN PROPERTY OWNERS' ASSOCIATION
CONCERNING THE PROPERTY AT
(street address) (name of residential community)

As a purchaser of property in the residential community in which this property is located, you are obligated to be a member of a property owners' association. Restrictive covenants governing the use and occupancy of the property and all [a] dedicatory instruments ~~[instrument]~~ governing the establishment, maintenance, or ~~[and]~~ operation of this residential community have been or will be recorded in the Real Property Records of the county in which the property is located. Copies of the restrictive covenants and dedicatory instruments ~~[instrument]~~ may be obtained from the county clerk.

You are obligated to pay assessments to the property owners' association. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

Section 207.003, Property Code, entitles an owner to receive copies of any document that governs the establishment, maintenance, or operation of a subdivision, including, but not limited to, restrictions, bylaws, rules and regulations, and a resale certificate from a property owners' association. A resale certificate contains information including, but not limited to, statements specifying the amount and frequency of regular assessments and the style and cause number of lawsuits to which the property owners' association is a party. These documents must be made available to you by the seller on your request.

Date: _____
Signature of Purchaser

(f) On the purchaser's request for a resale certificate from the seller, the seller shall:

- (1) promptly deliver a copy of a current resale certificate if one has been issued for the property under Chapter 207; or
- (2) if the seller does not have a current resale certificate:
 - (A) request the property owners' association or its agent to issue a resale certificate under Chapter 207; and
 - (B) promptly deliver a copy of the resale certificate to the purchaser on receipt of the resale certificate from the property owners' association or its agent.

(g) The seller or the purchaser, as agreed to by the parties, shall pay the fee to the property owners' association or its agent for issuing the resale certificate. The property owners' association may not process payment for a resale certificate requested under Chapter 207 until the certificate is available for delivery. The association may not charge a fee if the certificate is not provided in the time prescribed by Section 207.003(a).

SECTION 3. Section 202.001(1), Property Code, is amended to read as follows:

(1) "Dedictory instrument" means each document governing ~~[instrument covering]~~ the establishment, maintenance, or ~~[and]~~ operation of a residential subdivision, planned unit development, condominium or townhouse regime, or any similar planned development. The term includes:

(A) a declaration or similar instrument subjecting real property to:

(i) restrictive covenants, bylaws, or similar instruments governing the administration or operation of a property owners' association;

(ii)[, -to] properly adopted rules and regulations of the property owners' association; or

(iii)[, -or -to] all lawful amendments to the covenants, bylaws, instruments, rules, or regulations; and

(B) bylaws, rules, regulations, or guidelines adopted by a property owners' association under an instrument described by Paragraph (A).

SECTION 4. Section 202.004, Property Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) In evaluating an alleged or potential violation of a restrictive covenant, the property owners' association or other representative designated by an owner of real property may, notwithstanding any provision in a dedicatory instrument, grant a variance and in doing so not enforce the restrictive covenant if the property owners' association board, in the board's reasonable judgment, determines:

(1) the property owners' association's position is not sufficiently strong to justify taking any action or further action;

(2) the provision alleged to have been violated may be inconsistent with applicable law;

(3) the alleged violation is not of such a material or visible nature as to be objectionable to a reasonable person or to justify expending the property owners' association's resources;

(4) enforcement of the provision is not in the association's best interests, based on hardship, expense, or other reasonable criteria; or

(5) the facts of the particular circumstances, such as topography of the owner's land or unforeseen circumstances unique to the particular owner, justify the variance.

(e) A determination by the property owners' association board to grant a variance under Subsection (d) may not be considered a waiver of the association's ability to enforce any dedicatory instrument provision in the future.

SECTION 5. Section 202.006, Property Code, is amended to read as follows:

Sec. 202.006. PUBLIC RECORDS. (a) A property owners' association shall file all ~~the~~ dedicatory instruments ~~[instrument]~~ in the real property records of each county in which the property to which the dedicatory instruments relate ~~[instrument relates]~~ is located.

(b) A dedicatory instrument that is not filed in accordance with this section has no effect until filed.

SECTION 6. Chapter 202, Property Code, is amended by adding Sections 202.008, 202.010, 202.011, 202.012, 202.013, 202.014, and 202.015 to read as follows:

Sec. 202.008. ASSOCIATION'S RIGHT OF ENTRY. (a) Except as provided by this section, a provision in a dedicatory instrument that provides a property owners' association the right or authority to enter onto an owner's private property to enforce or abate an alleged violation of a restrictive covenant is void as against public policy except for entry:

(1) to cure a violation that involves an immediate threat to persons or property;

(2) after 10 days' written notice, to:

(A) perform a forced mow; or

(B) remove trash or debris; or

(3) in circumstances in which it is reasonably determined the property has been abandoned and not maintained for at least 30 days.

(b) This section does not prohibit a provision in a dedicatory instrument allowing a property owners' association a right of entry on the property of an owner that is limited to a dedicated access or other easement contained in a final plat or an easement filed of record.

(c) This section does not apply to:

(1) an association regulated under Title 7;

(2) a property owners' association that funds through assessments:

(A) insurance on residences;

(B) one or more utility payments for residences; or

(C) exterior maintenance of residences; or

(3) a property owners' association that is a mixed use master association that existed before January 1, 1974 and that does not have the authority under a dedicatory instrument or other governing document to impose fines.

Sec. 202.010. CERTAIN PARKING RESTRICTIONS PROHIBITED. (a) A provision in a dedicatory instrument that restricts or prohibits an owner from parking an operable, noncommercial, and personal automobile or truck on a public street is void as against public policy.

(b) A provision in a dedicatory instrument that restricts or prohibits an owner from parking the owner's operable, noncommercial, and personal automobile or truck in the owner's driveway is void as against public policy.

(c) For the purposes of this section, "noncommercial automobile" means a motor vehicle that may be legally driven on public roads under state law and that exhibits no commercial advertising other than standard dealer or manufacturer advertising.

(d) For the purposes of this section, a recreational vehicle, motor home, camper, all-terrain vehicle, trailer, or watercraft, a tow truck, cement mixer, or other similar commercial vehicle, or a vehicle that is more than 30 feet long is not considered to be a personal automobile or truck.

(e) This section does not apply to:

- (1) an association regulated under Title 7; or
- (2) a property owners' association that funds through assessments:
 - (A) insurance on residences;
 - (B) one or more utility payments for residences; or
 - (C) exterior maintenance of residences.

Sec. 202.011. RIGHT OF FIRST REFUSAL PROHIBITED. (a) In this section, "development period" means a period stated in a declaration during which a declarant reserves:

(1) a right to facilitate the development, construction, and marketing of the subdivision; and

(2) a right to direct the size, shape, and composition of the subdivision.

(b) To the extent a restrictive covenant provides a right of first refusal for the sale or lease of a residential unit or residential lot in favor of the property owners' association or the association's members, the covenant is void.

(c) This section does not apply to a restrictive covenant that provides a right of first refusal in favor of a developer or builder during the development period.

Sec. 202.012. REGULATION OF SOLAR ENERGY DEVICES. (a) In this section, "solar energy device" has the meaning assigned by Section 171.107, Tax Code.

(b) Except as otherwise provided by this section, a property owners' association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from installing a solar energy device.

(c) A provision that violates Subsection (b) is void.

(d) This section does not prohibit the inclusion or enforcement of a provision in a dedicatory instrument that prohibits a solar energy device that:

(1) as adjudicated by a court:

- (A) threatens the public health or safety; or
- (B) violates a law;

(2) is located on property owned or maintained by the property owners' association;

(3) is located on property owned in common by the members of the property owners' association; or

(4) is located in an area on the property owner's property other than:

- (A) on the roof of the home; or
- (B) in a fenced yard or patio maintained by the property owner.

Sec. 202.013. RENTAL RESTRICTIONS. (a) Except as provided by Subsection (b), a property owners' association may not amend a dedicatory instrument to prohibit or restrict the rental of property subject to the dedicatory instrument without the consent of at least 51 percent of the total votes allocated to property owners subject to the dedicatory instrument.

(b) An amendment to a dedicatory instrument may require:

(1) an owner to:

(A) exercise due diligence in not leasing to an occupant who is a registered sex offender or who has a history of violent crime; or

(B) terminate the possessory right of any tenant or occupant who is a registered sex offender or who has a history of violent crime;

(2) all leases to be subject to the dedicatory instruments of the property owners' association; or

(3) a minimum lease term of not more than six months.

Sec. 202.014. RESTRICTIONS REQUIRING CAPITAL IMPROVEMENTS.

(a) A dedicatory instrument may not be amended to retroactively require a person who owns property subject to the dedicatory instrument at the time the amendment is adopted to make a capital improvement to the owner's property that is not required before the amendment. A provision of a dedicatory instrument requiring an owner to make a capital improvement to the owner's property may only be adopted by a vote of at least 67 percent of the total votes allocated to property owners subject to the dedicatory instrument and may be applicable only to owners purchasing property subject to the dedicatory instrument after the provision is adopted.

(b) For the purposes of this section, "capital improvement" means items such as additional tree plantings, additional sodding, fence construction, hardscape installation, new construction, or any similar capital improvement. The term does not include repair or maintenance of existing improvements or the removal of conditions that are in violation of a dedicatory instrument.

Sec. 202.015. INJUNCTION; DAMAGES. (a) If a property owners' association or other representative designated by the property owners' association has violated, is violating, or is threatening to violate this chapter, a member of the property owners' association may bring a civil action against the property owners' association but may not bring an action against an association's officer or board member individually.

(b) A member of a property owners' association bringing an action under this section may seek:

(1) injunctive relief;

(2) damages in an amount equal to the greater of:

(A) actual damages arising from the violation; or

(B) \$1,500 for each violation; or

(3) both injunctive relief and damages as provided in this subsection.

(c) The court may increase an award under Subsection (b)(2) to an amount not to exceed three times the amount awarded under Subsection (b)(2) if the court finds that violations have occurred with a frequency that constitutes a pattern or practice.

(d) Each day a violation continues is not considered a separate violation for purposes of an assessment of damages.

(e) The court may award damages to a property owners' association for a suit brought by a member of the property owners' association that the court finds frivolous or groundless in an amount that is not more than the greater of:

(1) three times the association's actual damages; or

(2) \$4,500.

(f) On or before the 30th day before the date a person files a suit under this section, the person must provide notice to the other party of the person's intent to file suit under this section. The notice must be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

SECTION 7. Section 207.003(b), Property Code, is amended to read as follows:

(b) A resale certificate under Subsection (a) must contain:

(1) a statement of any right of first refusal, other than a right of first refusal that is prohibited by statute, and any ~~or~~ other restraint contained in the restrictions or restrictive covenants that restricts the owner's right to transfer the owner's property;

(2) the frequency and amount of any regular assessments;

(3) the amount and purpose of any special assessment that is due after the date the resale certificate is prepared;

(4) the total of all amounts due and unpaid to the property owners' association that are attributable to the owner's property;

(5) capital expenditures, if any, approved by the property owners' association for the property owners' association's current fiscal year;

(6) the amount of reserves, if any, for capital expenditures;

(7) the property owners' association's current operating budget and balance sheet;

(8) the total of any unsatisfied judgments against the property owners' association;

(9) the style and cause number of any pending lawsuit in which the property owners' association is a party, other than a lawsuit relating to unpaid property taxes of an individual member of the association ~~[defendant]~~;

(10) a copy of a certificate of insurance showing the property owners' association's property and liability insurance relating to the common areas and common facilities;

(11) a description of any conditions on the owner's property that the property owners' association board has actual knowledge are in violation of the restrictions applying to the subdivision or the bylaws or rules of the property owners' association;

(12) a summary or copy of notices received by the property owners' association from any governmental authority regarding health or housing code violations existing on the preparation date of the certificate relating to the owner's property or any common areas or common facilities owned or leased by the property owners' association;

(13) the amount of any administrative transfer fee charged by the property owners' association for a change of ownership of property in the subdivision;

(14) the name, mailing address, and telephone number of the property owners' association's managing agent, if any; ~~and~~

(15) a statement indicating whether the restrictions allow foreclosure of a property owners' association's lien on the owner's property for failure to pay assessments; and

(16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee.

SECTION 8. Section 209.003, Property Code, is amended by adding Subsection (e) to read as follows:

(e) The following provisions of this chapter do not apply to a property owners' association that is a mixed use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines:

- (1) Section 209.005(b);
- (2) Section 209.0056;
- (3) Section 209.0057;
- (4) Section 209.0058;
- (5) Section 209.00591;
- (6) Section 209.006(c);
- (7) Section 209.0062; and
- (8) Section 209.014.

SECTION 9. Chapter 209, Property Code, is amended by adding Sections 209.0035 and 209.0041 to read as follows:

Sec. 209.0035. INJUNCTION; DAMAGES. (a) If a property owners' association or other representative designated by the property owners' association has violated, is violating, or is threatening to violate this chapter, a member of the property owners' association may bring a civil action against the property owners' association but may not bring an action against an association's officer or board member individually.

(b) A member of a property owners' association bringing an action under this section may seek:

- (1) injunctive relief;
- (2) damages in an amount equal to the greater of:
 - (A) actual damages arising from the violation; or
 - (B) \$1,500 for each violation; or
- (3) both injunctive relief and damages as provided in this subsection.

(c) The court may increase an award under Subsection (b)(2) to an amount not to exceed three times the amount awarded under Subsection (b)(2) if the court finds that violations have occurred with a frequency that constitutes a pattern or practice.

(d) Each day a violation continues is not considered a separate violation for purposes of assessment of damages.

(e) The court may award damages to a property owners' association for a suit brought by a member of the property owners' association that the court finds frivolous or groundless in an amount that is not more than the greater of:

- (1) three times the association's actual damages; or
- (2) \$4,500.

(f) On or before the 30th day before the date a person files a suit under this section, the person must provide notice to the other party of the person's intent to file suit under this section. The notice must be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

Sec. 209.0041. AMENDMENT OF DEDICATORY INSTRUMENTS. (a) This section applies to a residential subdivision in which property owners are subject to mandatory membership in a property owners' association.

(b) This section applies to all dedicatory instruments regardless of the date on which the dedicatory instruments were created.

(c) This section does not apply to the amendment of a dedicatory instrument during a development period, as defined by Section 202.011.

(d) To the extent of any conflict with another provision of this title, this section prevails.

(e) Except as provided by Subsection (f), a dedicatory instrument may be amended only by a vote of at least 51 percent of the total votes allocated to property owners in the property owners' association, in addition to any governmental approval required by law.

(f) A rule or guideline that affects land owned, leased, maintained, or otherwise controlled by the property owners' association may be adopted or amended by majority vote of the association board. A rule or guideline that impacts the use and enjoyment of personal or real property owned exclusively by the owner or that may result in a fine or loss of privilege of a member of the association may be adopted or amended only by a vote of at least 51 percent of the total votes allocated to property owners who cast votes by any permissible method in an association-wide vote.

(g) A property owners' association board by majority vote may adopt ministerial, office-related procedural policies, such as payment plan guidelines under Section 209.0062, a collections policy, an enforcement policy, or other similar ministerial, office-related procedural policies. The policy may outline circumstances under which or the manner by which enforcement remedies may be carried out but may not otherwise impact the use and enjoyment of personal or real property owned exclusively by the owner. The policy may not:

(1) create a power to:

(A) levy a fine; or

(B) impose a loss of a privilege on a member of the association; or

(2) expand the association's powers beyond the powers granted by any other dedicatory instrument.

(h) All ballots cast in a vote that results in an amendment to a restrictive covenant, bylaw, or rule are records of the association subject to inspection under Section 209.005.

(i) This section supersedes any contrary requirement in a dedicatory instrument.

(j) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

SECTION 10. Section 209.005, Property Code, is amended to read as follows:

Sec. 209.005. ASSOCIATION RECORDS. (a) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(b) Notwithstanding a provision in a dedicatory instrument, a [A] property owners' association shall make the books and records of the association, including financial records, open to and reasonably available for examination by [tø] an owner [in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396 2.23, Vernon's Texas Civil Statutes)]. An owner is entitled to obtain from the association copies of information contained in the books and records.

~~(c) [(a-1) A property owners' association described by Section 552.0036(2), Government Code, shall make the books and records of the association, including financial records, reasonably available to any person requesting access to the books or records in accordance with Chapter 552, Government Code. Subsection (a) does not apply to a property owners' association to which this subsection applies.~~

~~[(b)] An attorney's files and records relating to the association, excluding invoices requested by an owner under Section 209.008(d), are not:~~

- ~~(1) records of the association;~~
- ~~(2) subject to inspection by the owner; or~~
- ~~(3) subject to production in a legal proceeding.~~

~~(d) In addition to the requirements of Subsection (b), a property owners' association shall make the association's books and records, including financial records and invoices, available in a building:~~

- ~~(1) in which the books and records are appropriately stored; and~~
- ~~(2) that is:~~

~~(A) staffed during normal business hours;~~

~~(B) accessible to members of the association during normal business~~

~~hours; and~~

~~(C) located on property commonly owned by the association within the boundaries of the subdivision governed by the association.~~

~~(e) If a building described by Subsection (d) does not exist on property described by Subsection (d), the property owners' association shall make the books and records available in accordance with Subsections (g) and (h).~~

~~(f) A party requesting association books or records shall submit the request in writing:~~

~~(1) in person by hand delivery to a current board member;~~

~~(2) to the mailing address of the association or authorized representative as provided on the most current management certificate filed under Section 209.004; or~~

~~(3) in person to a managing agent as reflected on the most current management certificate filed under Section 209.004.~~

~~(g) A property owners' association shall make books and records requested under Subsection (b) available to the requesting party within a reasonable time of the property owners' association's receipt of the request.~~

~~(h) A reasonable time for providing information requested under Subsection (b) is considered to be 10 business days after the date the property owners' association receives a request, except as otherwise provided by this section.~~

~~(i) If the property owners' association is unable to produce a requested book or record on or before the 10th business day after the date the request is received, the property owners' association must provide to the requestor written notice that:~~

~~(1) informs the requestor that the property owners' association is unable to produce the information on or before the 10th business day after the date of the receipt of the request; and~~

~~(2) states a date by which the information will be available for inspection that occurs not later than the 30th day after the date notice under this subsection is given.~~

(j) A property owners' association shall make books and records requested under this section available to the requestor in one or more of the following formats, as specified by the requestor:

(1) an electronic format:

(A) delivered to an electronic mail address provided by the requestor; or

(B) delivered in a disc or other standard electronic format:

(i) to the mailing address of the requestor; or

(ii) if the requesting party does not provide a mailing address, to the address of the requestor's property in the subdivision; or

(2) a hard-copy format:

(A) delivered to the mailing address of the requestor; or

(B) if the requesting party does not provide a mailing address:

(i) mailed to the address of the requestor's property in the subdivision; or

(ii) made available at a location not more than 25 miles from the boundary of the subdivision governed by the association.

(k) This section does not require a property owners' association to staff a building described by Subsection (d).

(l) A property owners' association may charge an owner for copies of the requested information in an amount that reasonably includes all costs related to reproducing the information, including costs of materials, labor, and overhead.

(m) Any information maintained by the association that is released under this section may not identify an individual member of an association or an individual's personal financial information. Information may be released in an aggregate manner that would not identify an individual property owner.

(n) All ballots cast in an election that results in an amendment to a dedicatory instrument, as required by Section 209.0041, are records of the property owners' association subject to inspection under this section.

(o) All ballots cast in an election of property owners' association board or other committee members are considered records of the association but may not be made available for inspection under this section except for the purposes of a recount under Section 209.0057(e) without a court order or subpoena. The association shall take reasonable measures to safeguard the security and privacy of those ballots.

(p) A property owners' association shall:

(1) keep all records as to changes to the dedicatory instruments in perpetuity;

(2) maintain and secure all ballots in association-wide elections for four years; and

(3) maintain records related to financial matters of the association, including assessments, fines, foreclosures, and enforcement actions for at least seven years.

(q) A member of a property owners' association who is denied access to or copies of association books or records to which the member is entitled under this section may file a petition with the justice of the peace of a justice precinct in which all or part of the property that is governed by the association is located, requesting

relief in accordance with this subsection. If the justice of the peace finds that the member is entitled to access to or copies of the records, the justice of the peace may grant one or more of the following remedies:

(1) a judgment against the property owners' association for a penalty of not more than \$1,500;

(2) a judgment against the property owners' association for court costs and attorney's fees incurred in connection with seeking a remedy under this section; or

(3) a judgment authorizing the owner or the owner's assignee to deduct the amounts awarded under Subdivisions (1) and (2) from any future regular or special assessments payable to the property owners' association.

(r) For the purposes of this section, "business day" means a day other than Saturday, Sunday, or a state or federal holiday.

(s) On or before the 10th day before the date a person files a suit under this section, the person must provide notice to the other party of the person's intent to file suit under this section. The notice must be sent certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service.

SECTION 11. Chapter 209, Property Code, is amended by adding Sections 209.0051, 209.0056, 209.0057, 209.0058, 209.0059, 209.00591, 209.00592, and 209.00593 to read as follows:

Sec. 209.0051. OPEN BOARD MEETINGS. (a) This section does not apply to a property owners' association that is subject to Chapter 551, Government Code, by application of Section 551.0015, Government Code.

(b) In this section, "board meeting" means a deliberation between a quorum of the voting board of the property owners' association, or between a quorum of the voting board and another person, during which property owners' association business or policy over which the board has responsibility is discussed or considered, or during which the board takes formal action. The term does not include the gathering of a quorum of the board at a social function unrelated to the business of the association, or the attendance by a quorum of the board at a regional, state, or national convention, workshop, ceremonial event, or press conference, if formal action is not taken and any discussion of association business is incidental to the social function, convention, workshop, ceremonial event, or press conference.

(c) Except as provided by this section, a meeting of the property owners' association board or a committee or subcommittee of the board is open to members of the property owners' association and shall be held in a county in which all or part of the property governed by the association is located or a county adjacent to that county.

(d) The board shall keep a record of each regular, emergency, or special board meeting in the form of written minutes or an audio recording of the meeting. A record of a meeting must state the subject of each motion or inquiry, regardless of whether the board takes action on the motion or inquiry, and indicate each vote, order, decision, or other action taken by the board. The board shall make meeting records, including approved minutes, available to a member for inspection and copying on the member's written request to the board or the board's representative. The board shall approve the minutes of a board meeting not later than the next regular board meeting.

(e) The board shall give members notice of the date, hour, place, and subject of a regular or special board meeting, including a general description of any matters to be brought up for deliberation in executive session. The notice shall be mailed to each member or:

(1) posted at least 72 hours before the start of the meeting in a conspicuous manner reasonably designed to provide notice to association members:

(A) in a place located on the association's common property or other conspicuously located property within the association, with the property owner's consent; or

(B) on any Internet website maintained by the association; and

(3) sent via email to each owner who has registered an email address with the property owners association. It is an owner's duty to keep an email address registered with the property owners association updated.

(f) If the board recesses a regular or special board meeting to continue the following regular business day, the board is not required to post notice of the continued meeting if the recess is taken in good faith and not to circumvent this section. If a regular or special board meeting is continued to the following regular business day, and on that following day the board continues the meeting to another day, the board shall give notice as required by this section of the meeting continued to that other day.

(g) If at a regular, emergency, administrative, or special meeting, a member makes an inquiry regarding a subject for which notice has not been given as required by this section, the notice provisions of this section do not apply to:

(1) a statement by the board of specific factual information given in response to the inquiry; or

(2) a recitation of existing policy in response to the inquiry.

(h) Any deliberation of or decision relating to the subject of an inquiry made under Subsection (g) shall be limited to a proposal to place the subject on the agenda for a subsequent board meeting.

(i) In the event of a reasonably unforeseen emergency or urgent necessity that requires immediate board action, the board may meet in an emergency board meeting. Notice for an emergency board meeting may be given in at least one manner prescribed by Subsection (e)(2) at least two hours before the emergency session is convened and must clearly identify the emergency or urgent necessity for which the notice is given. A board in an emergency meeting may not consider fines, foreclosures, enforcement actions, increases in assessments, or any other foreseeable business or policy over which the board has responsibility. Any action taken in an emergency board meeting must be summarized orally, including an explanation of any known actual or estimated expenditures approved at the meeting, and documented in the minutes or tape recording of the next regular or special board meeting.

(j) A property owners' association board may hold an administrative session, and that session is not subject to the notice requirements of this section. In any administrative session, the board may not take action regarding issuance of fines, commencement of foreclosure proceedings, levying of a special assessment, increases in assessments, or approval of items not previously approved in the association's budget.

(k) Before the board calls an executive session, the board shall convene in a regular or special board meeting for which notice has been given as provided by this section. During that board meeting, the presiding board member may call an executive session by announcing that an executive session will be held to deliberate a matter described by Subsection (l) and identifying the specific subdivision of Subsection (l) under which the executive session will be held. A vote or other action item may not be taken in executive session.

(l) A board of a property owners' association may meet in executive session, to which the members do not have access, to deliberate:

(1) anticipated or pending litigation, settlement offers, or interpretations of the law with the association's legal counsel;

(2) complaints or charges against or issues regarding a board member, or agent, employee, contractor, or other representative of the property owners' association;

(3) a payment plan under Section 209.0062;

(4) a foreclosure of a lien;

(5) an enforcement action against a member of the association, including for nonpayment of amounts due;

(6) the purchase, exchange, lease, or value of real property, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the association;

(7) business and financial issues relating to the negotiation of a contract, if the board determines in good faith that deliberation in an open board meeting may have a detrimental effect on the position of the association; or

(8) matters involving the invasion of privacy of an individual owner.

Sec. 209.0056. NOTICE OF ELECTION OR ASSOCIATION VOTE. (a) On or before the 30th day before the date an election or vote is held by a property owners' association, the association shall give each owner of property in the property owners' association written notice of the election or vote.

(b) This section supersedes any contrary requirement in a dedicatory instrument.

(c) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.0057. TABULATION OF VOTES. (a) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

(b) On the written petition of owners having at least 10 percent of all voting interests in a property owners' association for a vote tabulation under this subsection, received by the association at least 15 days before the first date that votes may be cast, to tabulate the votes in any matter subject to a vote of the members of a mandatory property owners' association, the association shall enter into a contract for the services of a person who is not a member of the association or related to a member of the association board within the third degree by consanguinity or affinity, as determined under Chapter 573, Government Code, and who is a current or former:

(1) county judge;

(2) county elections administrator;

(3) justice of the peace; or

(4) county voter registrar.

(c) The name of each person tabulating votes of the members of a property owners' association and the results of the tabulation must be reflected in the minutes of the association.

(d) Any owner may, not later than the fifth day after the date of the initial tabulation of votes, require a recount of the votes. A demand for a recount must be submitted in writing either:

(1) in person to a property owners' association board member;

(2) by certified mail, return receipt requested, or by delivery by the United States Postal Service with signature confirmation service to the association's mailing address on the latest management certificate filed under Section 209.004; or

(3) in person to the association's managing agent as reflected on the latest management certificate filed under Section 209.004.

(e) The property owners' association shall, at the expense of the owner requesting the recount, retain for the purpose of performing the recount, the services of a person who is not a member of the association or related to a member of the association board within the third degree of consanguinity or affinity, as determined under Chapter 573, Government Code and who is a current or former:

(1) county judge;

(2) county elections administrator;

(3) justice of the peace; or

(4) county voter registrar.

(f) Any recount under Subsection (d) must be performed on or before the 30th day after the date of receipt of a request for and payment for a recount in accordance with Subsections (d) and (e). If the recount changes the results of the election, the association shall reimburse the requesting owner for the cost of the recount. Any action taken by the board in the period between the initial election vote tally and the completion of the recount may not be affected by any recount.

Sec. 209.0058. BALLOTS. (a) Any vote cast in an election or vote by a member of a property owners' association must be in writing and signed by the member.

(b) Electronic votes cast under Section 209.00593 constitute written and signed ballots.

(c) In an association-wide election, written and signed ballots are not required for uncontested races.

Sec. 209.0059. RIGHT TO VOTE. (a) A provision in a dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

(b) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

Sec. 209.00591. PROXY VOTING. A provision in any dedicatory instrument that provides for a proxy vote in any matter subject to a vote of the members of the property owners' association is void.

Sec. 209.00592. BOARD MEMBERSHIP. (a) Except as provided by Subsection (b), a provision in a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.

(b) If a board is presented with written, documented evidence from a database or other record maintained by a governmental law enforcement authority that a board member has been convicted of a felony or crime involving moral turpitude, the board member is immediately ineligible to serve on the board of the property owners' association, automatically considered removed from the board, and prohibited from future service on the board.

Sec. 209.00593. VOTING; QUORUM. (a) The voting rights of an owner may be cast or given:

- (1) in person at a meeting of the property owners' association;
- (2) by absentee ballot in accordance with this section; or
- (3) by electronic ballot in accordance with this section.

(b) An absentee or electronic ballot:

(1) may be counted as an owner present and voting for the purpose of establishing a quorum only for items appearing on the ballot;

(2) may not be counted, even if properly delivered, if the owner attends any meeting to vote in person, so that any vote cast at a meeting by a property owner supersedes any vote submitted by absentee or electronic ballot previously submitted for that proposal; and

(3) may not be counted on the final vote of a proposal if the motion was amended at the meeting to be different from the exact language on the absentee or electronic ballot.

(c) A solicitation for votes by absentee ballot must include:

(1) an absentee ballot that contains each proposed action and provides an opportunity to vote for or against each proposed action;

(2) instructions for delivery of the completed absentee ballot, including the delivery location; and

(3) the following language: "By casting your vote via absentee ballot you will forgo the opportunity to consider and vote on any action from the floor on these proposals, if a meeting is held. This means that if there are amendments to these proposals your votes will not be counted on the final vote on these measures. If you desire to retain this ability, please attend any meeting in person. You may submit an absentee ballot and later choose to attend any meeting in person, in which case any in-person vote will prevail."

(d) For the purposes of this section, "electronic ballot" means a ballot:

(1) given by:

(A) electronic mail;

(B) facsimile; or

(C) posting on an Internet website;

(2) for which the identity of the property owner submitting the ballot can be confirmed; and

(3) for which the property owner may receive a receipt of the electronic transmission and receipt of the owner's ballot.

(e) If an electronic ballot is posted on an Internet website, a notice of the posting shall be sent to each owner that contains instructions on obtaining access to the posting on the website.

(f) This section supersedes any contrary provision in a dedicatory instrument.

(g) This section does not apply to a property owners' association that is subject to Chapter 552, Government Code, by application of Section 552.0036, Government Code.

SECTION 12. Section 209.006, Property Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), and (f) to read as follows:

(b) The notice must:

(1) describe the violation or property damage that is the basis for the suspension action, charge, or fine and state any amount due the association from the owner; ~~and~~

(2) except as provided by Subsection (d), inform the owner that the owner:

(A) is entitled to a reasonable period to cure the violation and avoid the fine [or suspension unless the owner was given notice and a reasonable opportunity to cure a similar violation within the preceding six months]; and

(B) may request a hearing under Section 209.007 on or before the 30th day after the date notice was delivered to the owner;

(3) specify the date by which the owner must cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety;

(4) specify the dollar amount of any fine the association seeks to levy;

(5) specify each provision of the dedicatory instrument the owner is alleged to have violated; and

(6) be sent by certified mail, return receipt requested, or delivered by the United States Postal Service with signature confirmation service to the owner at the owner's last known address as shown on the association's records [receives the notice].

(c) The date specified in the notice under Subsection (b)(3) must provide a reasonable period of at least 30 days for the owner to cure the violation if the violation is of a curable nature and does not pose a threat to public health or safety.

(d) Subsections (a) and (b) do not apply to a violation for which the owner has been previously given notice under this section and the opportunity to exercise any rights available under this section in the preceding six months.

(e) If the property owner does not cure the violation in the time provided under Subsection (c) and does not request a hearing under Subsection (b)(2)(B), the property owners' association may assess the fine and shall provide notice of the assessment to the owner. If the property owner cures the violation before the expiration period for cure specified under Subsection (c), any fine assessed for the violation is void.

(f) For purposes of this section, a violation is considered a threat to public health or safety if the violation could materially affect the physical health or safety of an ordinary resident.

SECTION 13. Chapter 209, Property Code, is amended by adding Sections 209.0061, 209.0062, 209.0063, and 209.0064 to read as follows:

Sec. 209.0061. ASSESSMENT OF FINES. (a) A fine assessed by the property owners' association must be reasonable in the context of the nature and frequency of the violation and the effect of the violation on the subdivision as a whole. If the association allows fines for a continuing violation to accumulate against a lot or an owner, the association must establish a reasonable maximum fine amount for a continuing violation at which point the total fine amount is capped.

(b) If a lot occupant other than the owner violates a provision of the dedicatory instrument, the property owners' association, in addition to exercising any of the association's powers against the owner, may assess a fine directly against the nonowner occupant in the same manner as provided for an owner but may not require payment from both the owner and a nonowner occupant for the same violation.

(c) If the property owners' association assesses a fine against a nonowner occupant under this section, the notice provisions of Section 209.006 and the hearing provisions of Section 209.007 apply to the nonowner occupant in the same manner as those provisions apply to an owner.

Sec. 209.0062. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN ASSESSMENTS. (a) A property owners' association shall adopt reasonable guidelines to establish an alternative payment schedule by which an owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties. For purposes of this section, monetary penalties do not include reasonable costs associated with administering the payment plan or interest.

(b) For any approved special assessment in an amount greater than the equivalent of the sum of all regular assessments payable in the year the special assessment is approved, a property owners' association shall allow partial payments of the special assessment for 12 months unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. A property owners' association may offer a reasonable discount for an owner making a one-time lump sum payment of the special assessment.

(c) For any approved special assessment in an amount greater than the equivalent of one-half the sum of all regular assessments payable in the year the special assessment is approved, a property owners' association shall allow partial payments of the special assessment for six months unless the property owner requests a shorter payment period in writing at the time the property owner requests an alternative payment plan. A property owners' association may offer a reasonable discount to an owner making a one-time lump sum payment of the special assessment.

(d) A property owners' association is not required to allow a payment plan for any amount that extends more than 12 months from the date of the owner's request for a payment plan or to enter into a payment plan with an owner who failed to honor the terms of a previous payment plan during the five years following an owner's default under a previous payment plan.

(e) A property owners' association shall file the association's guidelines under this section in the real property records of each county in which the subdivision is located.

(f) A property owners' association's failure to file as required by this section the association's guidelines in the real property records of each county in which the subdivision is located does not prohibit a property owner from receiving an alternative payment schedule by which the owner may make partial payments to the property owners' association for delinquent regular or special assessments or any other amount owed to the association without accruing additional monetary penalties, as defined by Subsection (a).

Sec. 209.0063. PRIORITY OF PAYMENTS. Unless otherwise provided in writing by the property owner at the time payment is made, a payment received by a property owners' association from the owner shall be applied to the owner's debt in the following order of priority:

(1) any delinquent assessment;

(2) any current assessment;

(3) any attorney's fees incurred by the association associated solely with assessments or any other charge that could provide the basis for foreclosure;

(4) any fines assessed by the association;

(5) any attorney's fees incurred by the association that are not subject to Subdivision (3); and

(6) any other amount owed to the association.

Sec. 209.0064. COLLECTIONS. A property owners' association must bring suit or otherwise initiate against an owner a collection action authorized by the dedicatory instruments or other law on or before the 10th anniversary of the date on which the cause of action for collection of the debt accrues. Section 16.004, Civil Practice and Remedies Code, does not apply to the collection of a debt owed by an owner to a property owners' association.

SECTION 14. Section 209.007, Property Code, is amended by amending Subsection (a) and adding Subsections (f), (g), (h), (i), and (j) to read as follows:

(a) If the owner is entitled to an opportunity to cure the violation, the owner has the right to submit a written request for a hearing to discuss and verify facts and resolve the matter in issue before a committee appointed by the board of the property owners' association or before the board if the board does not appoint a committee. The written request must contain a statement of the grounds on which the owner believes the owner is not in violation and citations of the dedicatory instrument for each violation alleged.

(f) If the parties fail to reach agreement in or after the hearing described by this section, the property owners' association must file suit to uphold and enforce any fine sought to be assessed. The suit must be filed in a justice court or small claims court not later than the 180th day after the date of the hearing described by this section or an appeal under Subsection (b), whichever is later. The complaint must list each violation and be accompanied by citation of the dedicatory instrument for each violation. If the property owners' association does not file suit within the time prescribed by this subsection, the association's right to collect the fine is considered waived.

(g) Not later than the 30th day after the date a suit is filed under Subsection (f), the court shall hold an evidentiary hearing on the matter. The parties are not entitled to any discovery.

(h) At the evidentiary hearing, the property owners' association has the burden of proving by a preponderance of the evidence that the property owner has violated a restrictive covenant.

(i) The court shall determine whether a violation has occurred and, if so, whether the fine for the violation is reasonable considering the type, duration, and severity of the violation.

(j) If the court finds that the position taken by either party is groundless or is taken in bad faith, the court may award the prevailing party's attorney's fees.

SECTION 15. Chapter 209, Property Code, is amended by adding Section 209.0091 to read as follows:

Sec. 209.0091. JUDICIAL FORECLOSURE REQUIRED. (a) Except as provided by Subsection (c), a property owners' association may not foreclose a property owners' association assessment lien unless the association first obtains a court order in an application for expedited foreclosure under the rules adopted by the supreme court under Subsection (b). A property owners' association may use the procedure described by this subsection to foreclose any lien described by the association's dedicatory instruments.

(b) The supreme court, as an exercise of the court's authority under Section 74.024, Government Code, shall adopt rules establishing expedited foreclosure proceedings for use by a property owners' association in foreclosing an assessment lien of the association. The rules adopted under this subsection must be substantially similar to the rules adopted by the supreme court under Section 50(r), Article XVI, Texas Constitution.

(c) Expedited foreclosure is not required under this section if the owner of the property that is subject to foreclosure agrees in writing at the time the foreclosure is sought to waive expedited foreclosure under this section. A waiver under this subsection may not be required as a condition of the transfer of title to real property.

(d) A provision granting a right to foreclose a lien on real property for unpaid amounts due to a property owners' association may be removed from a dedicatory instrument or adopted in a dedicatory instrument by a vote of at least 51 percent of the total votes allocated to property owners in the property owners' association. Owners holding at least 10 percent of all voting interests in the property owners' association may petition the association and require a special meeting to be called for the purposes of taking a vote for the purposes of this section.

SECTION 16. Section 209.010(a), Property Code, is amended to read as follows:

(a) A property owners' association that conducts a foreclosure sale of an owner's lot must send to the lot owner not later than the 30th day after the date of the foreclosure sale:

- (1) a written notice stating the date and time the sale occurred and informing the lot owner of the owner's right to redeem the property under Section 209.011; and
- (2) a copy of Section 209.011.

SECTION 17. Chapter 209, Property Code, is amended by adding Section 209.014 to read as follows:

Sec. 209.014. RESTRICTIONS ON OWNERSHIP VOID. A property owners' association may not prohibit an owner from owning multiple properties governed by the property owners' association if the cumulative voting rights of all of that owner's properties are 25 percent or less of all voting interests in the property owners' association. This section does not apply during a development period as defined by Section 202.011.

SECTION 18. Section 211.002(a), Property Code, is amended to read as follows:

(a) This chapter applies only to a residential real estate subdivision or any unit or parcel of a subdivision to which another chapter in this title that provides a procedure under which a subdivision's restrictions may be amended does not apply ~~[located in whole or in part within an unincorporated area of a county if the county has a population of less than 65,000].~~

SECTION 19. Section 202.004(c), Property Code, is amended to read as follows:

(c) For a violation of a restrictive covenant of a property owners' association that is a mixed use master association that existed before January 1, 1974, and that does not have the authority under a dedicatory instrument or other governing document to impose fines, a court may assess civil damages in an amount not to exceed \$200 for each day of the violation. ~~[A court may assess civil damages for the violation of a restrictive covenant in an amount not to exceed \$200 for each day of the violation.]~~

SECTION 20. (a) Section 5.006(a), Property Code, as amended by this Act, and the repeal by this Act of Section 202.004(c), Property Code, apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 5.012, Property Code, as amended by this Act, applies only to a sale of property that occurs on or after the effective date of this Act. For the purposes of this section, a sale of property occurs before the effective date of this Act if the executory contract binding the purchaser to purchase the property is executed before that date. A sale of property that occurs before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(c) Sections 202.015 and 209.0035, Property Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(d) Section 202.004(c), as amended by this Act, applies only to an action brought on or after the effective date of this Act. An action brought before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(e) Section 202.006, Property Code, as amended by this Act, and Sections 202.008, 202.010, 202.011, 202.012, 202.014, 209.0059, 209.00591, 209.00592(a), and 209.014, Property Code, as added by this Act, apply to a provision in a dedicatory instrument or a restrictive covenant enacted before, on, or after the effective date of this Act, except that any action taken before the effective date of this Act based on an unfiled dedicatory instrument is not invalidated by Section 202.006, Property Code, as amended by this Act.

(f) Section 209.005, Property Code, as amended by this Act, applies only to a request for information received by a property owners' association on or after the effective date of this Act. A request for information received by a property owners' association before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(g) Sections 209.0061, 209.0062, and 209.0064, Property Code, as added by this Act, apply only to an assessment or other debt that becomes due on or after the effective date of this Act. An assessment or other debt that becomes due before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(h) Section 209.0063, Property Code, as added by this Act, applies only to a payment received by a property owners' association on or after the effective date of this Act. A payment received by a property owners' association before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(i) Section 209.0091, Property Code, as added by this Act, applies only to a foreclosure sale that occurs after January 1, 2010. A foreclosure sale that occurs on or before January 1, 2010, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(j) Section 209.010(a), Property Code, as amended by this Act, applies only to a foreclosure sale conducted on or after the effective date of this Act. A foreclosure sale conducted before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 21. Not later than January 1, 2010, each property owners' association shall present for recording with the county clerk as prescribed by Section 202.006, Property Code, as amended by this Act, each dedicatory instrument governing the association that has not been previously recorded in the real property records of the county.

SECTION 22. Not later than January 1, 2010, the Supreme Court of Texas shall adopt rules of civil procedure under Section 209.0091, Property Code, as added by this Act.

SECTION 23. This Act takes effect January 1, 2010.

The amendment to **CSSB 237** was read and was adopted by a viva voce vote.

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

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

CSSB 237 as amended was passed to engrossment by a viva voce vote.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 237 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 237** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

(President in Chair)

**COMMITTEE SUBSTITUTE
HOUSE BILL 4476 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **CSHB 4476** at this time on its second reading:

CSHB 4476, Relating to eligibility requirements for the tuition equalization grant program.

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

Nays: Ogden.

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:

Nays: Ogden.

**COMMITTEE SUBSTITUTE
HOUSE BILL 4476 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 **CSHB 4476** be placed on its third reading and final passage.

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

Nays: Ogden.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE BILL 541 ON THIRD READING**

Senator Watson moved to suspend the regular order of business to take up for consideration **CSSB 541** at this time on its third reading and final passage:

CSSB 541, Relating to incentives for Texas renewable energy jobs and manufacturing.

The motion prevailed by the following vote: Yeas 24, Nays 7.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hegar, Hinojosa, Huffman, Lucio, Nichols, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Fraser, Harris, Jackson, Nelson, Ogden, Patrick, Williams.

The bill was read third time and was passed by the following vote: Yeas 24, Nays 7. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE BILL 1663 ON THIRD READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSSB 1663** at this time on its third reading and final passage:

CSSB 1663, Relating to the disregard or violation of a resident's advance directive by a nursing institution; providing penalties.

The motion prevailed.

Senators Duncan, Eltife, Estes, Fraser, Harris, Lucio, and Ogden asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read third time.

Senator Deuell offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend **CSSB 1663** (Senate committee report) on third reading as follows:

(1) In the recital of SECTION 2 of the bill (page 1, line 21), strike "Subsection (d)" and substitute "Subsections (d) and (f)".

(2) In SECTION 2 of the bill, strike proposed Section 242.0663(d), Health and Safety Code (page 1, lines 31-35) and substitute the following:

(d) A person, including an owner or employee of an institution, who has cause to believe that a resident's advance directive has been or may be knowingly disregarded in violation of a written policy maintained under Section 166.004 shall report such violation consistent with the requirements of Section 242.123.

(f) To the extent consistent with federal law, an institution may, on the basis of conscience, object to honoring an advanced directive if the institution includes in its policies and explains to each prospective resident before admission to the institution the circumstances under which the institution would not follow instructions of an advanced directive. The policies and explanation must include the following:

(1) a clear and precise statement of limitations that result from the institution's objection to implement advanced directives based on conscience;

(2) a description of the differences between an institution-wide policy of objection on the basis of conscience and an objection that may be raised by an individual healthcare provider; and

(3) a description of the range of medical conditions or procedures affected by an objection based on conscience.

(3) Strike Section 3 in its entirety.

The amendment to **CSSB 1663** was read and was adopted by a viva voce vote.

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

Nays: Ogden.

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

CSSB 1663 as again amended was finally passed by the following vote: Yeas 24, Nays 7.

Yeas: Averitt, Carona, Davis, Deuell, Ellis, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Duncan, Eltife, Estes, Fraser, Harris, Lucio, Ogden.

SENATE BILL 2566 ON SECOND READING

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 2566** at this time on its second reading:

SB 2566, Relating to the composition and operation of the Hunt County Juvenile Board.

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

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

SENATE BILL 2566 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 **SB 2566** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

COMMITTEE SUBSTITUTE SENATE BILL 1630 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 1630** at this time on its second reading:

CSSB 1630, Relating to the availability of information under the public information law.

The bill was read second time.

Senator Wentworth offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1630** (Senate committee printing), in SECTION 4 of the bill, by adding the following at the end of added Section 552.228(a-1), Government Code (page 2, at the end of line 34):

This subsection does not apply to real property record title information, including tax parcel identification numbers.

The amendment to **CSSB 1630** was read and was adopted by a viva voce vote.

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

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 1630** (Senate committee printing) as follows:

(1) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Section 552.008, Government Code, is amended by adding Subsections (b-1) and (b-2) to read as follows:

(b-1) A member, committee, or agency of the legislature required by a governmental body to sign a confidentiality agreement under Subsection (b) may seek a decision as provided by Subsection (b-2) about whether the information covered by the confidentiality agreement is confidential under law. A confidentiality agreement signed under Subsection (b) is void to the extent that the agreement covers information that is finally determined under Subsection (b-2) to not be confidential under law.

(b-2) The member, committee, or agency of the legislature may seek a decision from the attorney general about the matter. The attorney general by rule shall establish procedures and deadlines for receiving information necessary to decide the matter and briefs from the requestor, the governmental body, and any other interested person. The attorney general shall promptly render a decision requested under this subsection, determining whether the information covered by the confidentiality agreement is confidential under law, not later than the 45th business day after the date the attorney general received the request for a decision under this subsection. The attorney general shall issue a written decision on the matter and provide a copy of the decision to the requestor, the governmental body, and any interested person who submitted necessary information or a brief to the attorney general about the matter. The requestor or the governmental body may appeal a decision of the attorney general under this subsection to a Travis County district court. A person may appeal a decision of the attorney general under this subsection to a Travis County district court

if the person claims a proprietary interest in the information affected by the decision or a privacy interest in the information that a confidentiality law or judicial decision is designed to protect.

(b) Sections 552.008(b-1) and (b-2), Government Code, as added by this section, take effect September 1, 2010.

(2) Strike SECTION 5 of the bill (page 2, lines 35-39) and substitute the following appropriately numbered SECTION:

SECTION _____. Except as otherwise provided by this Act, 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, then except as otherwise provided by this Act, this Act takes effect September 1, 2009.

The amendment to **CSSB 1630** 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:

Nays: Williams.

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

CSSB 1630 as amended was passed to engrossment by a viva voce vote.

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

COMMITTEE SUBSTITUTE SENATE BILL 1630 ON THIRD READING

Senator Wentworth moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1630** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

HOUSE BILL 2064 ON SECOND READING

Senator Averitt moved to suspend the regular order of business to take up for consideration **HB 2064** at this time on its second reading:

HB 2064, Relating to premium discounts for certain participants in the Texas Health Insurance Risk Pool and to related tax credits for health benefit plan issuers.

The motion prevailed.

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

The bill was read second time.

Senator Averitt offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2064** (Senate committee report) as follows:

(1) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 843.342, Insurance Code, is amended by adding Subsections (m) and (n) to read as follows:

(m) Notwithstanding any other provision of this section, this subsection governs the payment of a penalty under this section. For a penalty under this section relating to a clean claim submitted by a physician or provider other than an institutional provider, the health maintenance organization shall pay the entire penalty to the physician or provider, except for any interest computed under Subsection (c), which shall be paid to the Texas Health Insurance Risk Pool. For a penalty under this section relating to a clean claim submitted by an institutional provider, the health maintenance organization shall pay 50 percent of the total penalty amount computed under this section, including interest, to the institutional provider and the remaining 50 percent of that amount to the Texas Health Insurance Risk Pool.

(n) In this section, "institutional provider" means a hospital or other medical or health-related service facility that provides care for the sick or injured or other care that may be covered in an evidence of coverage.

SECTION _____. Section 1301.137, Insurance Code, is amended by adding Subsection (l) to read as follows:

(l) Notwithstanding any other provision of this section, this subsection governs the payment of a penalty under this section. For a penalty under this section relating to a clean claim submitted by a preferred provider other than an institutional provider, the insurer shall pay the entire penalty to the preferred provider, except for any interest computed under Subsection (c), which shall be paid to the Texas Health Insurance Risk Pool. For a penalty under this section relating to a clean claim submitted by an institutional provider, the insurer shall pay 50 percent of the penalty amount computed under this section, including interest, to the institutional provider and the remaining 50 percent of that amount to the Texas Health Insurance Risk Pool.

(2) In the recital to SECTION 1 of the bill (page 1, line 13), strike "adding Subsections (e-1) and (e-2)" and substitute "adding Subsection (e-1)".

(3) In SECTION 1 of the bill, in amended Section 1506.105(e-1), Insurance Code (page 1, line 23), strike "Subsection (e-2)" and substitute "the availability of funds under Section 1506.260".

(4) In SECTION 1 of the bill (page 1, lines 38-44), strike added Section 1506.105(e-2), Insurance Code.

(5) In SECTION 2 of the bill (page 1, line 47, through page 2, line 3), strike added Section 1506.260, Insurance Code, and substitute the following new Section 1506.260, Insurance Code:

Sec. 1506.260. FUNDING FOR PREMIUM DISCOUNTS. The board shall collect penalty payments and interest paid by health maintenance organizations as provided by Section 843.342 and insurers as provided by Section 1301.137. The board may use funds collected under this section only to finance premium discounts under Section 1506.105(e-1). The board may require a health maintenance organization or an insurer to make payments under this section and make reports concerning those payments in a manner determined by the board.

(6) In SECTION 3 of the bill (page 2, line 4), insert the following between "3." and "(a)":

(a) Sections 843.342 and 1301.137, Insurance Code, as amended by this Act, apply only to a penalty or interest on a penalty owed with respect to a clean claim paid on or after the effective date of this Act. A penalty or interest on a penalty owed with respect to a clean claim paid before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

(7) In SECTION 3(a) of the bill (page 2, lines 7 and 8), strike "2010" each place it appears and substitute "2011".

(8) In SECTION 3 of the bill, strike existing Subsection (b) (page 2, lines 11-14).

(9) In SECTION 3 of the bill, reletter subsections appropriately.

The amendment to **HB 2064** 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:

Nays: Patrick.

Senator Averitt offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 2064** (Senate committee report) as follows:

(1) In SECTION 4 of the bill (page 2, line 15) strike "September 1, 2009" and substitute "January 1, 2010".

The amendment to **HB 2064** 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:

Nays: Patrick.

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

HB 2064 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: Patrick.

HOUSE BILL 2064 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 **HB 2064** be placed on its third reading and final passage.

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

Nays: Patrick.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

HOUSE BILL 2030 ON SECOND READING

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2030** at this time on its second reading:

HB 2030, Relating to the Medicaid Drug Utilization Review Program and prescription drug use under the Medicaid program.

The bill was read second time.

Senator Deuell offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 2030** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in the recital (page 1, line 12), strike "and 531.0693" and substitute "531.0693, and 531.0694".

(2) In SECTION 1 of the bill, after added Section 531.0693, Government Code (page 2, between lines 19 and 20), insert the following:

Sec. 531.0694. PERIOD OF VALIDITY FOR PRESCRIPTION. In its rules and standards governing the vendor drug program, the commission, to the extent allowed by federal law and laws regulating the writing and dispensing of prescription medications, shall ensure that a prescription written by an authorized health care provider under the Medicaid program is valid for the lesser of the period for which the prescription is written or one year. This section does not apply to a prescription for a controlled substance, as defined by Chapter 481, Health and Safety Code.

The amendment to **HB 2030** was read and was adopted by a viva voce vote.

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

Senator Deuell offered the following amendment to the bill:

Floor Amendment No. 2

Amend **HB 2030** (Senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION _____. Section 531.073, Government Code, is amended by adding Subsection (g) to read as follows:

(g) Notwithstanding any other provision of this section and subject to the limitation of this subsection, the commission shall allow a physician to write a total of 24 prescriptions each year without obtaining prior authorization for drugs that would otherwise require that authorization, and the commission shall provide reimbursement for those drugs under the Medicaid vendor drug program to the extent reimbursement would be provided if that authorization were obtained. The total number of prescriptions written for a single patient under this subsection may not exceed two per year.

The amendment to **HB 2030** was read and was adopted by a viva voce vote.

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

Senator Uresti offered the following amendment to the bill:

Floor Amendment No. 3

Amend **HB 2030** (Senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill appropriately:

SECTION _____. Section 531.071, Government Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) General information about the aggregate costs of different classes of drugs is not confidential under Subsection (a), except that a drug name or information that could reveal a drug name is confidential.

(d) Information about whether the commission and a manufacturer or labeler reached or did not reach a supplemental rebate agreement under Section 531.070 for a particular drug is not confidential under Subsection (a).

SECTION _____. Section 531.072, Government Code, is amended by adding Subsections (b-1), (b-2), and (c-1) to read as follows:

(b-1) Notwithstanding Subsection (b), the preferred drug lists may contain:

(1) a drug provided by a manufacturer or labeler that has not reached a supplemental rebate agreement with the commission if the commission determines that inclusion of the drug on the preferred drug lists will have no negative cost impact to the state; or

(2) a drug provided by a manufacturer or labeler that has reached an agreement with the commission to provide program benefits in lieu of supplemental rebates, as described by Section 531.070.

(b-2) Consideration must be given to including all strengths and dosage forms of a drug on the preferred drug lists.

(c-1) In addition to the considerations listed under Subsection (c), the commission shall consider the inclusion of multiple methods of delivery within each drug class, including liquid, tablet, capsule, and orally disintegrating tablets.

SECTION _____. Section 531.073, Government Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) The commission shall ensure that requests for prior authorization may be submitted by telephone, facsimile, or electronic communications through the Internet.

(h) The commission shall provide an automated process that may be used to assess a Medicaid recipient's medical and drug claim history to determine whether the recipient's medical condition satisfies the applicable criteria for dispensing a drug without an additional prior authorization request.

SECTION _____. Section 531.074, Government Code, is amended by amending Subsections (i) and (m) and adding Subsections (f-1) and (i-1) to read as follows:

(f-1) The committee shall meet in public and shall permit public comment before voting on any changes in the preferred drug lists. Minutes of each meeting shall be made available to the public not later than the 10th business day after the date the minutes are approved. The committee may meet in executive session to discuss confidential information as described by Subsection (i).

(i) The commission shall adopt rules governing the operation of the committee, including rules governing the procedures used by the committee for providing notice of a meeting and rules prohibiting the committee from discussing confidential information described by Section 531.071 in a public meeting. The committee shall comply with the rules adopted under this subsection and Subsection (i-1).

(i-1) In addition to the rules under Subsection (i), the commission by rule shall require the committee or the committee's designee to present a summary of any clinical efficacy and safety information or analyses regarding a drug under consideration for a preferred drug list that is provided to the committee by a private entity that has contracted with the commission to provide the information. The committee or the committee's designee shall provide the summary in electronic form before the public meeting at which consideration of the drug occurs. Confidential information described by Section 531.071 must be omitted from the summary. The summary must be posted on the commission's Internet website.

(m) The commission or the commission's agent shall publicly disclose, immediately after the committee deliberations conclude, each specific drug recommended for or against preferred drug list status for each drug class included in the preferred drug list for the Medicaid vendor drug program. The disclosure must be posted on the commission's Internet website not later than the 10th business day ~~made in writing~~ after the conclusion of committee deliberations that result in recommendations made to the executive commissioner regarding the placement of drugs on the preferred drug list. The public disclosure must include:

- (1) the general basis for the recommendation for each drug class; and
- (2) for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached under Section 531.070.

SECTION _____. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.0741 to read as follows:

Sec. 531.0741. PUBLICATION OF INFORMATION REGARDING COMMISSION DECISIONS ON PREFERRED DRUG LIST PLACEMENT. The commission shall publish on the commission's Internet website any decisions on preferred drug list placement, including:

- (1) a list of drugs reviewed and the commission's decision for or against placement on a preferred drug list of each drug reviewed;
- (2) for each recommendation, whether a supplemental rebate agreement or a program benefit agreement was reached under Section 531.070; and
- (3) the rationale for any departure from a recommendation of the pharmaceutical and therapeutics committee established under Section 531.074.

SECTION _____. Not later than December 1, 2010, the executive commissioner of the Health and Human Services Commission shall implement Subsections (g) and (h), Section 531.073, Government Code, as added by this Act.

The amendment to **HB 2030** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

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

HB 2030 as amended was passed to third reading by a viva voce vote.

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

HOUSE BILL 2030 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 **HB 2030** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Gallegos, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Estes, Fraser, Harris, Jackson, Seliger, Williams.

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

HOUSE BILL 415 ON SECOND READING

On motion of Senator Uresti and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 415** at this time on its second reading:

HB 415, Relating to the regulation of employer-based day-care 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.

HOUSE BILL 415 ON THIRD READING

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 415** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

HOUSE BILL 982 ON SECOND READING

Senator Carona moved to suspend the regular order of business to take up for consideration **HB 982** at this time on its second reading:

HB 982, Relating to the imposition of a tax on the gross receipts from admissions fees charged by sexually oriented businesses.

The motion prevailed.

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

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **HB 982** (Senate committee printing) by striking Section 5 and substituting the following:

SECTION 5. To the extent of any conflict, this Act prevails over:

(1) another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes; and

(2) any other Act of the 81st Legislature, Regular Session, 2009, regardless of the relative dates of enactment.

The amendment to **HB 982** 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:

Nays: Estes, Davis, Patrick, Seliger, Shapiro, Van de Putte, West.

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

HB 982 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: Estes, Patrick, Seliger, Shapiro, Van de Putte, West.

HOUSE BILL 982 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 982** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Shapleigh, Uresti, Watson, Wentworth, Whitmire, Williams, Zaffirini.

Nays: Estes, Patrick, Seliger, Shapiro, Van de Putte, West.

The bill was read third time.

VOTES RECONSIDERED

On motion of Senator Carona and by unanimous consent, the vote by which the Three-day Rule was suspended for **HB 982** was reconsidered.

Question — Shall the Three-day Rule be suspended for **HB 982**?

On motion of Senator Carona and by unanimous consent, the vote by which **HB 982** was passed to third reading was reconsidered.

Question — Shall **HB 982** be passed to third reading?

On motion of Senator Carona and by unanimous consent, the vote by which Floor Amendment No. 1 was adopted was reconsidered.

Question — Shall Floor Amendment No. 1 to **HB 982** be adopted?

Senator Carona withdrew Floor Amendment No. 1.

HB 982 was again 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: Estes, Fraser, Patrick, Seliger, Shapiro, Van de Putte, West.

HOUSE BILL 982 ON THIRD READING

Senator Carona again moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 982** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, Whitmire, Williams, Zaffirini.

Nays: Estes, Fraser, Patrick, Seliger, Shapiro, West.

The bill was read third time and was passed by the following vote: Yeas 24, Nays 7.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, Whitmire, Williams, Zaffirini.

Nays: Estes, Fraser, Harris, Patrick, Seliger, Shapiro, West.

COMMITTEE SUBSTITUTE SENATE BILL 2536 ON SECOND READING

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 2536** at this time on its second reading:

CSSB 2536, Relating to the powers of the West Harris County Regional Water Authority.

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

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

COMMITTEE SUBSTITUTE SENATE BILL 2536 ON THIRD READING

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 2536** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1587 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSSB 1587** at this time on its second reading:

CSSB 1587, Relating to a uniform and statewide 9-1-1 emergency services fee on the retail sale of prepaid wireless telecommunications services to consumers.

The motion prevailed.

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

The bill was read second time.

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

Floor Amendment No. 1

Amend **CSSB 1587** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 771.001(12), Health and Safety Code, is amended to read as follows:

(12) "Wireless service provider" means a provider of commercial mobile service under Section 332(d), Federal Telecommunications Act of 1996 (47 U.S.C. Section 151 et seq.), Federal Communications Commission rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), and includes a provider of wireless two-way communication service, radio-telephone communications related to cellular telephone service, network radio access lines or the equivalent, and personal communication service. The term does not include a provider of:

- (A) a service whose users do not have access to 9-1-1 service;
- (B) a communication channel used only for data transmission;
- (C) a wireless roaming service or other nonlocal radio access line

service; ~~or~~

(D) a private telecommunications service; or

(E) a prepaid wireless telecommunications service, as defined by Section 771.081, only to the extent of the sale or provision of the service.

SECTION 2. Section 771.032, Health and Safety Code, is amended to read as follows:

Sec. 771.032. APPLICATION OF SUNSET ACT. (a) The Commission on State Emergency Communications is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2011.

(b) As part of the Sunset Advisory Commission's review under Subsection (a), the Sunset Advisory Commission, in its report to the 82nd Legislature, shall include:

(1) the effect of the prepaid wireless 9-1-1 emergency services fee on revenues collected and the extent to which those revenues increased or decreased total revenues attributable to wireless telecommunications services; and

(2) whether the total of all revenues received from 9-1-1 services fees adequately fund public safety in this state at the time the review is conducted and whether the 9-1-1 services fees will continue to adequately fund public safety in future years.

SECTION 3. Section 771.056(d), Health and Safety Code, is amended to read as follows:

(d) If the commission approves the plan, it shall allocate to the region from the money collected under Sections 771.071, 771.0711, ~~and~~ 771.072, and 771.082 and appropriated to the commission the amount that the commission considers appropriate to operate 9-1-1 service in the region according to the plan and contracts executed under Section 771.078.

SECTION 4. Section 771.075, Health and Safety Code, is amended to read as follows:

Sec. 771.075. USE OF REVENUE. Except as provided by Section 771.0751, 771.0753, 771.072(e), 771.072(f), ~~or~~ 771.073(e), or 771.082(g), fees and surcharges collected under this subchapter and Subchapter D-1 may be used only for planning, development, provision, and enhancement of the effectiveness of 9-1-1 service as approved by the commission.

SECTION 5. Subchapter D, Chapter 771, Health and Safety Code, is amended by adding Section 771.0753 to read as follows:

Sec. 771.0753. USE OF PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE IN CERTAIN COUNTIES. (a) This section applies only to the use of fees and surcharges collected under Subchapter D-1 in:

(1) the county that has the highest population within a region subject to Subchapter D-1; or

(2) a county subject to Subchapter D-1 with a population of at least 700,000.

(b) In addition to use authorized or required by this subchapter, fees collected under Subchapter D-1 may be used for any costs considered necessary by the commission and attributable to:

(1) designing a 9-1-1 system; or

(2) obtaining and maintaining equipment and personnel necessary to establish and operate:

(A) a public safety answering point and related operations; or

(B) other related answering points and operations.

SECTION 6. Sections 771.077(a), (d), and (e), Health and Safety Code, are amended to read as follows:

(a) The comptroller may establish collection procedures to collect past due amounts and may recover the costs of collection from a service provider or business service user that fails to timely deliver the fees and the equalization surcharge to the comptroller. Subtitles A and B, Title 2, Tax Code, apply to the administration and collection of amounts by the comptroller under this subchapter. Section 771.084 applies to the administration and collection of amounts by the comptroller under Subchapter D-1.

(d) The comptroller shall:

(1) remit to the commission money collected under this section for fees provided by Section 771.0711 and associated late penalties;

(2) deposit to the 9-1-1 services fee account any money collected under this section for fees provided by Section 771.071 and associated late penalties; ~~and~~

(3) deposit to the account as authorized by Section 771.072 any money collected under this section for fees provided by Section 771.072 and associated late penalties; and

(4) remit to the commission any money collected under this section for fees provided by Section 771.082 and associated late penalties.

(e) The commission shall:

(1) deposit or distribute the money remitted under Subsection (d)(1) as Section 771.0711 provides for fees received under that section; ~~and~~

(2) distribute the money remitted under Subsection (d)(2) and appropriated to the commission under contracts as provided by Section 771.078(b)(1); and

(3) deposit or distribute the money remitted under Subchapter D-1 as Section 771.082 provides for fees received under that section.

SECTION 7. Section 771.078(b), Health and Safety Code, is amended to read as follows:

(b) In making contracts under this section, the commission shall ensure that each regional planning commission receives money for 9-1-1 service in three ~~two~~ separately computed amounts as provided by this subsection. The commission must provide each regional planning commission with:

(1) an amount of money equal to the total of the revenue from the emergency service fees collected under Section 771.071 that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the amount of those fees collected from the region and the denominator of which is the total amount of those fees collected in this state; ~~and~~

(2) an amount of money equal to the total of the revenue from the emergency service fee for wireless telecommunications connections under Section 771.0711 that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the population of the region and the denominator of which is the population of this state; and

(3) an amount of money equal to the total of the revenue from the prepaid wireless 9-1-1 emergency services fee under Section 771.082 that is deposited in the treasury and appropriated to the commission multiplied by a fraction, the numerator of which is the population of the region and the denominator of which is the population of this state.

SECTION 8. Section 771.079(b), Health and Safety Code, is amended to read as follows:

(b) The account consists of:

(1) fees deposited in the fund as provided by Sections 771.071, ~~and~~ 771.0711, and 771.082; and

(2) notwithstanding Section 404.071, Government Code, all interest attributable to money held in the account.

SECTION 9. Chapter 771, Health and Safety Code, is amended by adding Subchapter D-1 to read as follows:

SUBCHAPTER D-1. PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEESec. 771.081. DEFINITIONS. In this subchapter:(1) "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail transaction.(2) "Prepaid wireless 9-1-1 emergency services fee" means the fee a seller collects from a consumer in the amount required under Section 771.082.(3) "Prepaid wireless telecommunications service" means a wireless telecommunications service that allows a caller to access 9-1-1 emergency communications services that is paid for in advance at the time of purchase and that is sold:(A) in predetermined units or dollars, the number of which declines with use in a known amount; or(B) on a time period basis.(4) "Retail transaction" means an individual purchase of a prepaid wireless telecommunications service from a seller for any purpose other than resale.(5) "Seller" means a person who sells prepaid wireless telecommunications service to any person. The term includes "seller" and "retailer" as defined by Section 151.008, Tax Code.(6) "Wireless telecommunications service" means commercial mobile radio service as defined by 47 C.F.R. Section 20.3.Sec. 771.082. PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE.(a) A prepaid wireless 9-1-1 emergency services fee shall be collected by the seller from the consumer at the time of and with respect to each retail transaction of prepaid wireless telecommunications service occurring in this state. The amount of the prepaid wireless 9-1-1 emergency services fee shall be either separately stated on an invoice, receipt, or other similar document that is provided to the consumer by the seller, or otherwise disclosed to the consumer by the seller.(b) The prepaid wireless 9-1-1 emergency services fee is two percent of the cost of each prepaid wireless telecommunications service purchased, regardless of whether the service was purchased in person, by telephone, through the Internet, or by any other method. Each service purchased is a separate item for purposes of calculating a fee under this subsection.(c) For purposes of Subsection (a), a retail transaction that is effected in person by a consumer at a business location of the seller shall be treated as occurring in this state if that business location is in this state. Any other retail transaction, including a transaction over the Internet or via telecommunications service, shall be treated as occurring in this state for purposes of Subsection (a) if the transaction would be treated as occurring in this state under Section 151.061, Tax Code.(d) The prepaid wireless 9-1-1 emergency services fee is the liability of the consumer and not of the seller or of any provider, except that the seller shall be liable to remit all prepaid wireless service fees that the seller collects from consumers as provided by Section 771.084, including all such charges that the seller is deemed to collect where the amount of the charge has not been separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller.(e) The fee imposed under this subchapter is in addition to the taxes imposed under Chapter 151, Tax Code.

(f) The amount of the prepaid wireless 9-1-1 emergency services fee that is collected by a seller from a consumer, whether or not such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

(g) A seller may deduct and retain one percent of prepaid wireless 9-1-1 emergency services fees that it collects to offset its costs in administering this fee.

Sec. 771.083. EXCEPTIONS TO APPLICABILITY OF CHAPTER AND LIMITATIONS OF LIABILITY. (a) The comptroller shall establish procedures for a seller to document that a sale is not a retail transaction under this subchapter. The procedures shall substantially conform to procedures for documenting a sale for resale under Chapter 151, Tax Code.

(b) A provider or seller of prepaid wireless telecommunications service is not liable for damages to any person resulting from or incurred in connection with the provision of, or the failure to provide, 9-1-1 emergency service, or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 9-1-1 emergency service, unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(c) A provider or seller of prepaid wireless telecommunications service is not liable for damages to any person resulting from or incurred in connection with the provision of any lawful assistance to any investigative or law enforcement officer of the United States, this or any other state, or any political subdivision of this or any other state in connection with any lawful investigation or other law enforcement activity by such investigative or law enforcement officer unless the act or omission proximately causing the claim, damage, or loss constitutes gross negligence, recklessness, or intentional misconduct.

(d) Information that a provider or seller of prepaid wireless telecommunications service is required to furnish to a governmental entity in providing or selling 9-1-1 emergency service is confidential and exempt from disclosure under Chapter 552, Government Code. A provider or seller of prepaid wireless telecommunications service is not liable to any person who uses a 9-1-1 emergency service created under this chapter for the release of information furnished by the provider or seller of prepaid wireless telecommunications service in providing or selling 9-1-1 emergency service. Information that is confidential under this section may be released only for budgetary calculation purposes and only in aggregate form so that no provider-specific or seller-specific information may be extrapolated.

(e) In addition to the exemption from liability provided by Subsections (b), (c), and (d), each provider and seller of prepaid wireless telecommunications service is entitled to any other exemption from liability under this chapter, if any, that is provided to wireless service providers.

Sec. 771.084. APPLICATION OF PROVISIONS OF TAX CODE. Except as otherwise provided by this subchapter:

(1) the fee imposed by this subchapter is administered, imposed, collected, and enforced in the same manner as a tax under Chapter 151, Tax Code, is administered, imposed, collected, and enforced; and

(2) the provisions applicable to the sales tax imposed under Subchapter C, Chapter 151, Tax Code, apply to the fee imposed by this subchapter.

Sec. 771.085. ALLOCATION OF FEE. (a) After deducting an amount not greater than 10 percent of collected charges, as determined under Subsection (c), the comptroller shall deposit the money from the fees imposed by this subchapter, other than penalties and interest, to the credit of the 9-1-1 services fee account in the general revenue fund. Until deposited to the credit of the 9-1-1 services fee account as required by Subsection (b), money the comptroller collects under this subchapter remains in a trust fund with the state treasury.

(b) Money collected under this subchapter may be used only for services related to 9-1-1 and emergency services, including automatic number identification and automatic location information services. Not later than the 15th day after the last day of the month in which the money is collected, the commission shall distribute to each emergency communication district that does not participate in the state system a portion of the money that bears the same proportion to the total amount collected that the population in the area served by the district bears to the population of the state. The remaining money collected under this subchapter shall be deposited to the 9-1-1 services fee account in the general revenue fund.

(c) The commission shall annually determine by rule the percentage of collected charges, not to exceed 10 percent, that under Subsection (a) shall be deducted by the comptroller and allocated as if collected under Section 771.072.

Sec. 771.086. EXCLUSIVITY AND APPLICABILITY OF PREPAID WIRELESS 9-1-1 EMERGENCY SERVICES FEE. (a) The prepaid wireless emergency services fee shall be the only 9-1-1 funding obligation imposed with respect to prepaid wireless telecommunications service in this state, and no tax, fee, surcharge, or other charge shall be imposed by this state, any political subdivision of this state, or any intergovernmental agency, for 9-1-1 funding purposes, on any provider, seller, or consumer with respect to the sale, purchase, use, or provision of prepaid wireless telecommunications service.

(b) The emergency service fee for wireless telecommunications connections under Section 771.0711 applies to wireless telecommunications service that is not subject to the prepaid wireless 9-1-1 emergency services fee under this subchapter.

SECTION 10. This Act takes effect January 1, 2010.

The amendment to **CSSB 1587** was read.

(Senator Eltife in Chair)

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

Floor Amendment No. 2

Amend Floor Amendment No. 1 by Van de Putte to **CSSB 1587** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Subtitle A, Title 10, Business & Commerce Code, is amended by adding Chapter 307 to read as follows:

CHAPTER 307. SALE OF CERTAIN MOBILE TELEPHONES, STORAGE DEVICES, MOBILE TELEPHONE SERVICES, AND OTHER EQUIPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 307.001. DEFINITIONS. In this chapter:

- (1) "Department" means the Department of Public Safety.
- (2) "Mobile telephone" includes a cellular telephone or similar wireless communication device that can be used as a telephone.
- (3) "SIM card" means a subscriber identity module or functionally equivalent storage device.

Sec. 307.002. APPLICABILITY. (a) With respect to a mobile telephone or wireless communication service, this chapter applies only to:

(1) a mobile telephone for which access to a wireless communication service is provided to a customer without the customer being required to enter into a credit account or other contract, including a month-to-month contract, except as otherwise provided by this chapter; or

(2) wireless communication service provided to a customer without the customer being required to enter into a credit account or other contract, including a month-to-month contract.

(b) This chapter applies only to a SIM card to be purchased in connection or for use with a mobile telephone.

(c) With respect to the sale of a mobile telephone or SIM card, this chapter does not apply to a sale by:

(1) a manufacturer of a mobile telephone or SIM card to an authorized reseller;

(2) a wireless carrier to an authorized reseller; or

(3) an authorized reseller to another authorized reseller.

(d) Except as otherwise provided by this section, this chapter applies to a person who sells a mobile telephone or SIM card or provides wireless communication service to a customer in this state, regardless of the person's location.

(e) In this section:

(1) "Authorized reseller" means a person authorized by:

(A) a manufacturer to sell the manufacturer's mobile telephones or SIM cards; or

(B) a wireless carrier to sell mobile telephones or SIM cards manufactured by a certain manufacturer.

(2) "Wireless carrier" has the meaning assigned by 47 U.S.C. Section 615b.

Sec. 307.003. COSTS OF COMPLIANCE WITH CHAPTER. A person who sells a mobile telephone or SIM card to which this chapter applies or a Voice over Internet Protocol telephone or adapter may charge a customer a reasonable fee in an amount appropriate to offset the costs incurred by the person in complying with this chapter.

[Sections 307.004-307.050 reserved for expansion]

SUBCHAPTER B. INFORMATION RELATED TO SALE OR USE OF CERTAIN COMMUNICATIONS EQUIPMENT

Sec. 307.051. CERTAIN INFORMATION REQUIRED; OFFENSE. (a) Before completing a sale of a mobile telephone or SIM card to which this chapter applies, a mobile telephone for which access to a wireless communication service is provided under a month-to-month contract, or a Voice over Internet Protocol telephone or adapter, the seller shall:

(1) require the purchaser to provide:

(A) the purchaser's full name;

(B) the purchaser's complete address;

(C) the number of the driver's license or other identification issued by a governmental entity to the purchaser; and

(D) the purchaser's date of birth; and

(2) verify the information provided under Subdivision (1) by:

(A) requiring the purchaser to display the purchaser's driver's license or other government-issued identification containing the purchaser's photograph and information, if the transaction is in person; or

(B) other means, for transactions not conducted in person.

(b) A purchaser who provides false or misleading information when providing information required under this section commits an offense. An offense under this subsection is a Class A misdemeanor unless the defendant has been previously convicted of an offense under this subsection, in which event the offense is a state jail felony.

(c) For purposes of complying with Subsection (a)(2), the seller may access electronically readable information on the purchaser's driver's license or identification card.

Sec. 307.052. RECORD OF SALE; TRANSMISSION OF RECORD. (a) A person who sells a mobile telephone or SIM card to which this chapter applies shall make a record of the sale that includes:

(1) the information obtained from the purchaser under Section 307.051;

(2) the make and model of the mobile telephone;

(3) any assigned 10-digit telephone number or other subscriber or account identifier known at the time of purchase; and

(4) if applicable to the mobile telephone, SIM card, or service to be accessed by the mobile telephone:

(A) the international mobile equipment identifier (IMEI) number;

(B) the electronic serial number (ESN);

(C) the mobile equipment identifier (MEID);

(D) the international mobile subscriber identifier (IMSI);

(E) the media access control (MAC) address; and

(F) any other specific equipment or service account identifier.

(b) A person who sells a mobile telephone or SIM card to which this chapter applies shall promptly electronically transmit the record made under Subsection (a) to the provider of the wireless communication service to be accessed by the telephone. If electronic transmission of the information is not available, the person may submit the information by other means that promptly and accurately submit the information.

(c) A wireless communication service provider shall provide a transmission confirmation receipt to each person who sells a mobile telephone or SIM card to which this chapter applies on the provider's receipt of a transmission from the person under Subsection (b).

(d) Each person who sells a mobile telephone or SIM card to which this chapter applies shall promptly dispose of the record on receipt of a transmission confirmation under Subsection (c). Each wireless communication service provider to which a record is transmitted under Subsection (b) and each person who sells a mobile telephone for which access to a wireless communication service is provided under a month-to-month contract and who obtains and records information under Section 301.051 shall maintain the record until the second anniversary of the date on which the telephone or SIM card was sold.

(e) If a mobile telephone or SIM card to which this chapter applies is resold in a subsequent retail transaction or in a transaction not made in the ordinary course of the seller's legal business, the seller in that transaction shall comply with this section.

Sec. 307.053. LIMITATION ON NUMBER OF DEVICES THAT MAY BE SOLD. A person may not sell to another person in a 24-hour period more than five of any combination of the following:

- (1) mobile telephones to which this chapter applies; and
- (2) SIM cards to which this chapter applies.

Sec. 307.054. COLLECTION AND MAINTENANCE OF INFORMATION REGARDING CERTAIN DEVICES. A person who sells a Voice over Internet Protocol telephone or adapter shall record the media access control (MAC) address of each device sold and maintain the record until the second anniversary of the date on which the device was sold.

Sec. 307.055. COLLECTION OF CALL INFORMATION. (a) A wireless communication service provider shall collect, record, and maintain information relating to all communications, including telephone calls, text messages, and data transmissions and receptions, made and received using a mobile telephone to which this chapter applies and that accesses the provider's wireless communication service in the same manner as the provider collects, records, and maintains the information relating to communications made and received using a mobile telephone accessing the provider's wireless communication service that is not paid for in advance or is paid for under a credit account or other contract.

(b) A law enforcement agency may access information collected under this section only by presenting the written consent of the person to which the information pertains or a subpoena, court order, or search warrant compelling disclosure of the information.

(c) The fee charged by a wireless communication service provider for the production of information under Subsection (b) may not exceed \$200.

Sec. 307.056. COMMERCIAL USE OF INFORMATION PROHIBITED. A person may not use information obtained under this subchapter for commercial purposes unless the person to which the information pertains consents to that use by signing a document that:

(1) clearly states that information pertaining to the person will be used for commercial purposes; and

(2) is separate from any other document given to that person.

Sec. 307.057. DISCLOSURE OF INFORMATION PROHIBITED. (a) A person may not disclose information obtained under this subchapter to another person except as provided by this subchapter, court order, or other law.

(b) A person who violates Subsection (a) commits an offense. An offense under this subsection is a Class A misdemeanor.

Sec. 307.058. RESPONSIBILITY FOR ACTIONS OF OTHER PARTIES. In complying with this subchapter:

(1) a person who sells a mobile telephone or SIM card to which this chapter applies is not responsible for an act or failure to act by a wireless communication service provider; and

(2) a wireless communication service provider is not responsible for an act or failure to act by a person who sells such a mobile telephone or SIM card.

[Sections 307.059-307.100 reserved for expansion]

SUBCHAPTER C. CERTIFICATE OF REGISTRATION

Sec. 307.101. REGISTRATION REQUIRED. A person may not sell a mobile telephone or SIM card to which this chapter applies or provide wireless communication service to be accessed by such a mobile telephone unless the person is registered under this subchapter.

Sec. 307.102. ISSUANCE OF CERTIFICATE; QUALIFICATIONS. (a) The department shall issue a certificate of registration to an applicant who:

(1) completes an application form;

(2) pays the registration fee; and

(3) presents any relevant evidence relating to the applicant's qualifications as required by department rule.

(b) The department shall prescribe an application form and may establish qualifications for the holder of a certificate of registration under this chapter. The application form must require an applicant to provide the address of the applicant's place of business.

Sec. 307.103. TERM OF CERTIFICATE. (a) A certificate of registration is valid for two years after the date of issuance.

(b) The department shall adopt a system under which certificates of registration expire and are renewed on various dates.

(c) Not later than the 45th day before the date a person's certificate of registration is scheduled to expire, the department shall send written notice of the impending expiration to the person at the person's last known address according to department records.

(d) A person whose certificate of registration has expired may not sell a mobile telephone or SIM card to which this chapter applies or provide wireless communication service to be accessed by such a mobile telephone until the certificate has been renewed.

Sec. 307.104. RENEWAL OF CERTIFICATE. (a) To renew a certificate of registration, a person must submit an application for renewal in the manner prescribed by the department.

(b) A person who is otherwise eligible to renew a certificate of registration may renew an unexpired certificate by paying the required renewal fee to the department before the expiration date of the certificate.

(c) A person whose certificate of registration has been expired for 90 days or less may renew the certificate by paying to the department a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(d) A person whose certificate of registration has been expired for more than 90 days but less than one year may renew the certificate by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(e) A person whose certificate of registration has been expired for one year or more may not renew the certificate. The person may obtain a new certificate of registration by complying with the requirements and procedures for an original certificate.

Sec. 307.105. FEES. (a) The department shall prescribe fees for the issuance or renewal of a certificate of registration under this chapter. The fees may not exceed the amount necessary to cover the costs of administering this subchapter and complying with Subchapter D.

(b) A fee collected under this section shall be deposited in a separate account in the general revenue fund and may be appropriated only to the department for the purposes of administering this subchapter and complying with Subchapter D.

[Sections 307.106-307.150 reserved for expansion]

SUBCHAPTER D. DATABASE AND REPORT

Sec. 307.151. ELECTRONIC DATABASE. (a) The department shall create and maintain an electronic database containing the names of each person registered under Subchapter C.

(b) Information contained in the database is confidential and not subject to disclosure under Chapter 552, Government Code.

Sec. 307.152. REPORT TO LEGISLATURE. The department annually shall submit to both houses of the legislature a report that includes:

(1) the number of persons registered as:

(A) sellers of mobile telephones or SIM cards to which this chapter applies; and

(B) providers of wireless communication services to be accessed by the mobile telephones; and

(2) the number of mobile telephones and SIM cards sold during the year for which the report is made.

[Sections 307.153-307.200 reserved for expansion]

SUBCHAPTER E. PENALTIES

Sec. 307.201. CIVIL PENALTY. (a) A person who violates this chapter is subject to a civil penalty in an amount not to exceed the greater of:

- (1) \$1,000 for each violation; or
- (2) \$20,000.

(b) Each day that a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(c) The attorney general may bring suit to recover a penalty under this section.

Sec. 307.202. OFFENSE OF POSSESSION OF ILLEGALLY OBTAINED MOBILE TELEPHONE OR INFORMATION STORAGE DEVICE. (a) A person commits an offense if the person intentionally violates this chapter in obtaining or possessing a mobile telephone or SIM card to which this chapter applies.

(b) An offense under this section is a Class A misdemeanor.

Sec. 307.203. OFFENSE OF CREATING, USING, OR POSSESSING UNTRACEABLE MOBILE TELEPHONE. (a) A person may not alter a mobile telephone to render untraceable or unidentifiable the telephone's telephone number, electronic serial number, or mobile identification number without the consent of the mobile telephone's manufacturer.

(b) A person commits an offense if the person uses or possesses a mobile telephone that has been altered in violation of Subsection (a).

(c) An offense under this section is a Class A misdemeanor unless the defendant has been previously convicted of an offense under this section, in which event the offense is a state jail felony.

SECTION ____ . Subchapter D, Chapter 12, Penal Code, is amended by adding Section 12.50 to read as follows:

Sec. 12.50. PENALTY IF PREPAID MOBILE TELEPHONE USED TO COMMIT OFFENSE. (a) In this section, "prepaid mobile telephone" means a cellular telephone or similar wireless communication device that can be used as a telephone and for which access to a wireless communication service is paid for in advance or otherwise provided to a customer without the customer being required to enter into a credit account or other contract, including a month-to-month contract.

(b) If it is shown on the trial of an offense, other than an offense punishable as a felony of the first degree or a Class A misdemeanor, that the actor used a prepaid mobile telephone to enable the actor to commit the offense, the punishment for the offense is increased to the punishment prescribed for the next higher category of offense. If the offense is a Class A misdemeanor, the minimum term of confinement is increased to 180 days.

SECTION ____ . Section 521.126(d), Transportation Code, is amended to read as follows:

(d) The prohibition provided by Subsection (b) does not apply to a person who accesses, uses, compiles, or maintains a database of the information for a law enforcement or governmental purpose, including:

(1) an officer or employee of the department carrying out law enforcement or government purposes;

(2) a peace officer, as defined by Article 2.12, Code of Criminal Procedure, acting in the officer's official capacity;

(3) a license deputy, as defined by Section 12.702, Parks and Wildlife Code, issuing a license, stamp, tag, permit, or other similar item through use of a point-of-sale system under Section 12.703, Parks and Wildlife Code;

(4) a person acting as authorized by Section 109.61, Alcoholic Beverage Code;

(5) a person establishing the identity of a voter under Chapter 63, Election Code;

(6) a person acting as authorized by Section 161.0825, Health and Safety Code; ~~or~~

(7) a person screening an individual who will work with or have access to children if the person is an employee or an agent of an employee of a public school district or an organization exempt from federal income tax under Section 501(c)(3), Internal Revenue Code of 1986, as amended, that sponsors a program for youth; or

(8) a person acting as authorized by Section 307.051(c), Business & Commerce Code.

SECTION _____. The change in law made by Section 12.50, Penal Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

The amendment to Floor Amendment No. 1 to **CSSB 1587** was read.

Senator Carona withdrew Floor Amendment No. 2.

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 1587**, the amendment 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:

Nays: Eltife, Hegar.

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

CSSB 1587 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: Eltife, Hegar.

COMMITTEE SUBSTITUTE SENATE BILL 1587 ON THIRD READING

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1587** be placed on its third reading and final passage.

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

Nays: Eltife.

On motion of Senator Van de Putte, further consideration of **CSSB 1587** was postponed.

Question — Shall **CSSB 1587** be finally passed?

PERMISSION TO INTRODUCE BILLS

On motion of Senator West and by unanimous consent, Senate Rule 7.07(b) was suspended to permit the introduction of the following bills: **SB 2583, SB 2584.**

SENATE BILLS ON FIRST READING

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

SB 2583 by West

Relating to coverage under a meet and confer agreement for certain municipal firefighters and police officers.

To Committee on Intergovernmental Relations.

SB 2584 by Patrick

Relating to the reporting of felons incarcerated in Texas jails to federal authorities.

To Committee on Criminal Justice.

HOUSE BILLS AND RESOLUTIONS ON FIRST READING

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

HB 25 to Committee on Administration.

HB 63 to Committee on Administration.

HB 118 to Committee on Administration.

HB 124 to Committee on Criminal Justice.

HB 171 to Committee on Administration.

HB 300 to Committee on Transportation and Homeland Security.

HB 339 to Committee on Administration.

HB 456 to Committee on Health and Human Services.

HB 537 to Committee on Transportation and Homeland Security.

HB 600 to Committee on Administration.

HB 610 to Committee on Administration.

HB 764 to Committee on Administration.

HB 817 to Committee on Administration.

HB 887 to Committee on Administration.

HB 1056 to Committee on Higher Education.

HB 1082 to Committee on Administration.

HB 1111 to Committee on Intergovernmental Relations.

HB 1112 to Committee on Intergovernmental Relations.

HB 1162 to Committee on Business and Commerce.

HB 1255 to Committee on Administration.

HB 1462 to Committee on Administration.

HB 1683 to Committee on Administration.

HB 1810 to Committee on Administration.

HB 1843 to Committee on Administration.

HB 1935 to Committee on Higher Education.

HB 1973 to Committee on Administration.

HB 2173 to Committee on Administration.

HB 2242 to Committee on Administration.
HB 2276 to Committee on Administration.
HB 2304 to Committee on Administration.
HB 2324 to Committee on Administration.
HB 2559 to Committee on State Affairs.
HB 2571 to Committee on Administration.
HB 2664 to Committee on Administration.
HB 2697 to Committee on Administration.
HB 2737 to Committee on Administration.
HB 2908 to Committee on Administration.
HB 3450 to Committee on Administration.
HB 3637 to Committee on Administration.
HB 3977 to Committee on Administration.
HB 4100 to Committee on Administration.
HB 4576 to Committee on Administration.
HCR 5 to Committee on Veteran Affairs and Military Installations.
HCR 171 to Committee on Health and Human Services.
HCR 182 to Committee on Government Organization.

HOUSE BILL 2020 ON SECOND READING

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **HB 2020** at this time on its second reading:

HB 2020, Relating to parking privileges for veterans with disabilities.

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.

HOUSE BILL 2020 ON THIRD READING

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 2020** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 31, Nays 0.

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

COMMITTEE SUBSTITUTE SENATE BILL 1317 ON SECOND READING

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSSB 1317** at this time on its second reading:

CSSB 1317, Relating to education and examination requirements for the issuance of a driver's license to certain persons.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Estes, Harris, Hegar, Huffman, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Williams, Zaffirini.

Nays: Eltife, Fraser, Gallegos, Hinojosa, Jackson, Whitmire.

The bill was read second time.

Senator Patrick offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1317** (Senate committee printing) by the following:

1. On page 1, line 15, striking "25" and replacing it with "21".
2. On page 1, line 26, striking "25" and replacing it with "21".

The amendment to **CSSB 1317** was read.

Senator Wentworth moved to table Floor Amendment No. 1.

The motion to table was lost by the following vote: Yeas 13, Nays 14.

Yeas: Davis, Deuell, Ellis, Harris, Hegar, Lucio, Ogden, Shapleigh, Uresti, Van de Putte, Wentworth, Williams, Zaffirini.

Nays: Averitt, Eltife, Estes, Fraser, Gallegos, Hinojosa, Huffman, Jackson, Nelson, Nichols, Patrick, Seliger, West, Whitmire.

Absent: Carona, Duncan, Shapiro, Watson.

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 1317**, the amendment was adopted by a viva voce vote.

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

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

CSSB 1317 as amended was passed to engrossment by the following vote: Yeas 23, Nays 8.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Estes, Harris, Huffman, Lucio, Nelson, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Williams, Zaffirini.

Nays: Eltife, Fraser, Gallegos, Hegar, Hinojosa, Jackson, Patrick, Whitmire.

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

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

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

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

REPORT OF COMMITTEE ON NOMINATIONS

Senator Jackson 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:

Members, Automobile Burglary and Theft Prevention Authority: Linda W. Kinney, Hays County; Kenneth R. Ross, Harris County; Mark H. Wilson, Hill County; Margaret "Jerry" Wright, El Paso County.

Members, Board of Pardons and Paroles: Juanita M. Gonzalez, Williamson County; Thomas A. Leeper, Walker County; Rissie L. Owens, Walker County; Shanda Gillaspie Perkins, Tarrant County.

Members, Council on Cardiovascular Disease and Stroke: Pamela Ruth Wilson Akins, Travis County; Michael M. Hawkins, M.D., Travis County; Melbert Carl "Bob" Hillert, Jr., M.D., Dallas County; Sue Pope, Montgomery County; Thomas E. Tenner, Jr., Ph.D., Lubbock County; Ann Quinn Todd, Harris County; Louis West, Williamson County; Clyde W. Yancy, M.D., Dallas County.

Members, Council on Sex Offender Treatment: Frederick Liles Arnold, Collin County; Ronnie Ann Fanning, McLennan County; Joseph Richard Gutheinz, Jr., J.D., Harris County; Alida S. Hernandez, Hidalgo County; Holly A. Miller, Montgomery County; Dan Powers, Denton County.

Member, Crime Stoppers Advisory Council: William R. McDaniel, Montgomery County.

Member, Finance Commission of Texas: Lori B. McCool, Kendall County.

Members, Board, Office of Rural Community Affairs: Dora G. Alcalá, Val Verde County; David Richey Alders, Nacagdoches County; Woody Anderson, Mitchell County; Evelyn Maxine Plaster "Mackie" Bobo, Grimes County; Charles Norman Butts, Sr., Lampasas County; Nina Remelle Marlow Farrar, Foard County; Charles W. Graham, D.V.M., Bastrop County; Wallace G. Klussmann, Llano County; Patrick Lee Wallace, Henderson County.

Members, Private Sector Prison Industries Oversight Authority: Sarah Abraham, Fort Bend County; Elaine Anne Boatright, Bastrop County; Burnis Brazil, Fort Bend County; S. Roxanne Carter, Randall County; Randall R. Henderson, Travis County; Jeffrey R. LaBroski, Fort Bend County; Rigoberto Villarreal, Hidalgo County.

Members, Produce Recovery Fund Board: Doyle "Neal" Newsom III, Yoakum County; Ly H. Nguyen, Fort Bend County.

Members, Product Development and Small Business Incubator Board: Guy K. Diedrich, Travis County; Dan Hanson, Dallas County; Paul C. Maxwell, El Paso County; Harvey Rosenblum, Dallas County.

Members, State Board of Dental Examiners: Steven J. Austin, D.D.S., Potter County; Mary Lynn Baty, Harris County; William R. Birdwell, Brazos County; Maxwell D. Finn, Dallas County; Alicia Grant, Collin County; Whitney Hyde, Midland County; Rodolfo G. Ramos, Jr., D.D.S., Harris County; Jerry Romero, El Paso County; Arthur Troilo III, Travis County.

Member, State Commission on Judicial Conduct: Patti Hutton Johnson, Comal County.

Members, Texas Appraiser Licensing and Certification Board: Walker Rankin Beard, El Paso County; Robert Del "Rob" Davis, Jr., Tarrant County; Luis F. De La Garza, Jr., Webb County; Danny R. Perkins, Harris County; James B. Ratliff, Dallas County; Clinton P. Sayers, Travis County; Bill F. Schneider, Travis County; Donna Lee Walz, Lubbock County.

Members, Texas Board of Architectural Examiners: Charles H. "Chuck" Anastos, Nueces County; Corbett "Chase" Bearden, Travis County; H. L. Bert Mijares, Jr., El Paso County; Brandon Pinson, Midland County; Diane Steinbrueck, Hays County; Alfred Vidaurri, Jr., Parker County.

Members, Texas Board of Physical Therapy Examiners: Frank Wingfield Bryan, Jr., Travis County; Karen L. Gordon, Calhoun County; Kevin Lindsey, Hidalgo County; Rene Pena, El Paso County; Melinda A. Rodriguez, Bexar County; Shari C. Waldie, Gillespie County.

Members, Texas Commission on Fire Protection: Les Bunte, Brazos County; Rhea Cooper, Lubbock County; Yusuf Elias Farran, El Paso County; Carl Gene Giles, Panola County; Joseph Anthony "Jody" Gonzalez, Denton County; John W. Green, Galveston County; Micheal Leon Melton, Upshur County; Arthur L. Pertile III, Fort Bend County; Kimberly Shambley, Dallas County; Steve C. Tull, Bosque County.

Members, Texas Council on Purchasing from People with Disabilities: Les Butler, Tarrant County; Kevin M. Jackson, Travis County; Victor Kilman, Lubbock County; John W. Luna, Tarrant County; Wanda White Stovall, Tarrant County.

Commissioner of Insurance, Texas Department of Insurance: Michael S. Geeslin, Travis County.

Members, Texas Diabetes Council: Gene Fulton Bell, Lubbock County; Neil A. Burrell, D.P.M., Jefferson County; Timothy L. Cavitt, Harris County; Victor Hugo Gonzalez, Hidalgo County; John W. Griffin, Victoria County; Arthur E. Hernandez, Aransas County; Dora Rivas, Dallas County; Curtis Triplitt, Bexar County; Melissa Ann Wilson, Nueces County; Don E. Yarborough, Dallas County.

Members, Board of Directors, Texas School Safety Center: Eric J. Cederstrom, Palo Pinto County; Amy L. C. Clapper, Williamson County; Dawn DuBose, Harris County; Garry Edward Eoff, Brown County; Daniel Riley Griffith II, Travis County;

Carl A. Montoya, Cameron County; James Richard Pendell, El Paso County; Ruben Gonzales Reyes, Lubbock County; Severita Sanchez, Webb County; Jane A. Wetzel, Dallas County.

Members, Board of Regents, Texas State Technical College System: Michael F. Northcutt, Sr., Harrison County; Eugene Seaman, Nueces County; Ellis Matthew Skinner II, Burnet County.

Members, Board of Directors, Upper Guadalupe River Authority: Michael L. "Mike" Allen, Kerr County; Lester C. Ferguson, Kerr County; Claudell Smith Kercheville, Kerr County; Stan R. Kubenka, Kerr County; Scott Schreiner Parker, Kerr County; Lucy Ortiz Wilke, Kerr County.

Criminal District Attorney, Tarrant County: Joe Shannon, Jr., Tarrant County.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Jackson 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 RULES SUSPENDED (Posting Rules)

On motion of Senator West and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Intergovernmental Relations might meet and consider **SB 2583** today.

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

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

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

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

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 881 by Hinojosa, In memory of Alfonso Ramirez of Edinburg.

SR 898 by Shapiro, In memory of William "Jack" Hatchell of Collin County.

SR 899 by Hinojosa, In memory of Albert Ayarzagoitia of Corpus Christi and Robstown.

Congratulatory Resolutions

SR 882 by Hinojosa, Recognizing Nick Jimenez on the occasion of his retirement from the *Corpus Christi Caller-Times*.

SR 892 by Nelson, Recognizing H-E-B and The Meadows Foundation for their efforts in behalf of victims of family violence.

SR 893 by Zaffirini, Recognizing Gertrude Tausch Haverlah of Campbellton on the occasion of her 90th birthday.

SR 894 by Watson, Recognizing George Tamayo on the occasion of his retirement from the Office of the Comptroller of Public Accounts.

SR 896 by West, Recognizing James Albert Hill, Sr., on the occasion of his 75th birthday.

SR 897 by Hinojosa, Recognizing the 2009 Pan American Golf Association National Tournament and Convention in Corpus Christi.

HCR 211 (Fraser), Congratulating the Blackland Research and Extension Center on its 100th anniversary.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 3:36 p.m. adjourned until 11:00 a.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

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

May 12, 2009

STATE AFFAIRS — **HB 2829**

ADMINISTRATION — **SCR 67, SB 1854, SB 2001, SB 2177, SB 2406, HCR 57, HCR 176**

AGRICULTURE AND RURAL AFFAIRS — **HB 1881, HB 1949, HB 3031, HB 3032, HB 3429, HB 4006, HB 4577**

FINANCE — **HB 406, HB 1407**

HIGHER EDUCATION — **HB 1568, HB 2440**

BUSINESS AND COMMERCE — **SB 2580**

ECONOMIC DEVELOPMENT — **SB 2576**

HIGHER EDUCATION — **HB 962**

TRANSPORTATION AND HOMELAND SECURITY — **CSHB 2187**

NATURAL RESOURCES — **CSSB 2432, HB 472, HB 857, HB 1922, HB 2318, HB 2572, HB 2667, HB 3306, HB 3543, HB 4043, HB 4110, HB 4762**

STATE AFFAIRS — **SJR 41, SB 2577, HB 488, HB 567, HB 739, HB 1070, HB 1191, HB 1493, HB 3218**

BILLS AND RESOLUTION ENGROSSED

May 11, 2009

SB 382, SB 725, SB 1023, SB 1493, SB 2085, SB 2096, SB 2467, SB 2510, SB 2559, SB 2565, SB 2569, SB 2570, SJR 42

BILLS AND RESOLUTIONS ENROLLED

May 11, 2009

SB 45, SB 543, SB 687, SB 828, SB 1054, SB 1442, SB 1540, SB 1838, SB 1969, SR 799, SR 884, SR 885, SR 886, SR 887, SR 888, SR 889, SR 890

SENT TO GOVERNOR

May 12, 2009

SB 45, SB 543, SB 687, SB 828, SB 1054, SB 1442, SB 1540, SB 1838, SB 1969

SIGNED BY GOVERNOR

May 12, 2009

SB 83, SB 522, SB 715, SB 741, SB 803, SB 862, SB 1040, SB 1149, SB 1260