

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

THIRTY-SIXTH DAY

(Monday, April 4, 2011)

The Senate met at 1:39 p.m. pursuant to adjournment and was called to order by the President.

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

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

Pastor Betsy Buhler, Community Bible Church, San Antonio, offered the invocation as follows:

Our Father in heaven, I come to You today with a grateful heart. I thank You for this nation, our freedom, and allowing our dreams to become a reality. I thank You for every man and woman who serve our great country. Today I especially thank You for these who serve here in our Texas State Capitol. I ask that You give wisdom and discernment as they deal with challenges and make decisions that not only affect today but our future generations. Let each one have conviction in their hearts to do what is right. Help them to walk in one accord with each other. I ask as they serve here that You protect their homes and families. Give them peace and joy in their journey. God, You said in Your word to trust You with all our heart and lean not on our understanding, and in all our ways submit to You, and You will make our paths straight. Today we lay it at Your feet and put our trust in You. With respect to all faiths, I pray in Jesus' name. Amen.

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

The motion prevailed without objection.

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate: **HCR 79, HCR 123, HCR 125.**

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Monday, April 4, 2011 - 1

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 1 Pitts
General Appropriations Bill.

HB 4 Pitts
Relating to making supplemental appropriations and giving direction and adjustment authority regarding appropriations.

HB 71 Martinez, "Mando"
Relating to the fee charged for the Texas Airport Directory.

HB 215 Gallego
Relating to photograph and live lineup identification procedures in criminal cases.

HB 275 Pitts
Relating to making an appropriation of money from the economic stabilization fund for expenditure during the current state fiscal biennium.

HB 338 Aycok
Relating to disclaimers by certain entities promulgating lists of noxious or invasive terrestrial plant species.

HB 563 Pickett
Relating to the purposes and designation of a transportation reinvestment zone.

HB 612 Hopson
Relating to the criminal penalty for failure of a trustee to pay the beneficiaries of the trust the purchase price for timber sold by the trustee.

HB 613 Hopson
Relating to the unauthorized harvesting of standing timber; providing for the imposition of a criminal penalty.

HB 1404 Sheffield
Relating to certain temporary orders in a suit affecting the parent-child relationship during a parent's military deployment.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

**INTRODUCTION OF
BILLS AND RESOLUTIONS POSTPONED**

The President announced that the introduction of bills and resolutions on first reading would be temporarily postponed.

There was no objection.

SENATE RESOLUTION 695

Senator Lucio offered the following resolution:

SR 695, Recognizing April 4, 2011, as Maggie's Hope Day at the State Capitol.

LUCIO
SHAPIRO

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Lucio, joined by Senator Shapiro, was recognized and introduced to the Senate representatives from Maggie's Hope: Lisa Scarbrough, Al Hernandez, Maggie Scarbrough, Mia Scarbrough, and Loriana Hernandez.

The Senate welcomed its guests.

SENATE RESOLUTION 656

Senator Shapiro offered the following resolution:

SR 656, Recognizing April 2, 2011, as World Autism Awareness Day at the State Capitol.

SHAPIRO	RODRIGUEZ
DAVIS	WHITMIRE
LUCIO	ZAFFIRINI
NELSON	

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Shapiro was recognized and introduced to the Senate an Autism Speaks delegation: Cameron Whitney, Traci Whitney, Max Whitney, Tanya Gonzales, and Jordan Gonzales.

The Senate welcomed its guests.

PHYSICIANS OF THE DAY

Senator Hinojosa was recognized and presented Drs. Chris Casso and Melva Palacios of Edinburg as the Physicians of the Day.

The Senate welcomed Dr. Casso and Dr. Palacios and thanked them for their participation in the Physician of the Day program sponsored by the Texas Academy of Family Physicians.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate the Zapata High School Mariachi Halcon.

The Senate welcomed its guests.

SENATE RESOLUTION 567

Senator Jackson offered the following resolution:

SR 567, Recognizing the Pearland High School Oilers football team for winning the 2010 Class 5A Division I state championship title.

The resolution was again read.

The resolution was previously adopted on Tuesday, March 22, 2011.

GUESTS PRESENTED

Senator Jackson was recognized and introduced to the Senate members of the Pearland High School football team: Trey Anderson, Dustin Garrison, Myles Kanipes, and Sam Ukwuachu.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Fraser was recognized and introduced to the Senate members of the Wylie High School girls' basketball team.

The Senate welcomed its guests.

SENATE RESOLUTION 675

Senator Jackson offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the Pearland High School girls' softball team, which won the University Interscholastic League Class 5A state championship title for 2010; and

WHEREAS, After taking second place in 2009, the Pearland Lady Oilers came back to the finals in 2010 to win their second state title, defeating Austin's Bowie High School 4-0 and ending the season with a 37-6-1 record; and

WHEREAS, Members of the Pearland High School softball team exhibited perseverance, team unity, and respect for the highest ideals of sportsmanship; and

WHEREAS, Team members demonstrated their exceptional talent and the discipline instilled in them by head coach Laneigh Clark; and

WHEREAS, The citizens of Pearland are justifiably proud of the Lady Oilers for their hard work, their impressive skills, and their fine sportsmanship; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby commend the players, coaches, and support staff of the Pearland High School Lady Oilers softball team on their outstanding achievements and extend congratulations to them on winning the 2010 University Interscholastic League Class 5A state softball championship title; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the team as a memento of this significant accomplishment.

SR 675 was again read.

The resolution was previously adopted on Thursday, March 31, 2011.

GUESTS PRESENTED

Senator Jackson was recognized and introduced to the Senate members of the Pearland High School girls' softball team: Kirstie Barrick, Brooke Dubois, Jessica Bowden, Sara Clements, Lauren Langner, Chelsea Bennett, and Leandra Maly.

The Senate welcomed its guests.

SENATE RESOLUTION 694

Senator Harris offered the following resolution:

SR 694, Recognizing April 2011, as Scottish Heritage Month and celebrating National Tartan Day on April 6.

HARRIS
DAVIS

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Harris was recognized and introduced to the Senate a Scottish Heritage Month delegation: Carol Terry and Dorene Goodson.

The Senate welcomed its guests.

SENATE RESOLUTION 700

Senator Watson offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize Brenda Sisco Vaughan, who is being awarded a doctorate in educational administration by The University of Texas at Austin; and

WHEREAS, A native of Honey Grove, Brenda Vaughan has for many years served the Texas Senate with distinction; from serving on the staff of Senator Jeff Wentworth to tracking legislation as a bill clerk to managing up to 100 employees as messenger supervisor, she has performed her duties with exceptional efficiency and dedication, and she has won the respect and admiration, not to mention the affection and gratitude, of all those with whom she has worked; and

WHEREAS, In pursuit of her doctorate, she received the Alexander Caswell Ellis Fellowship in Education three times; she has also earned a master of science in architectural studies degree with certification in historic preservation from The University of Texas at Austin School of Architecture; as an undergraduate at Texas A&M University–Commerce, she studied interior design and business; and

WHEREAS, Brenda Vaughan has served as an example to all who know her with her perseverance and her determination to succeed in the difficult process of earning a doctorate, and she is truly deserving of recognition for this impressive achievement; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby commend Brenda Sisco Vaughan on her outstanding service to the Texas Senate and extend congratulations to her on receiving her doctorate in educational administration from The University of Texas at Austin; and, be it further

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

SR 700 was read and was adopted without objection.

GUESTS PRESENTED

Senator Watson was recognized and introduced to the Senate Brenda Sisco Vaughan; her son, Sam Vaughan; and his fiancée, Vanessa Vargas.

The Senate welcomed its guests.

(Senator Hegar in Chair)

CONCLUSION OF MORNING CALL

The Presiding Officer at 2:25 p.m. announced the conclusion of morning call.

COMMITTEE SUBSTITUTE SENATE BILL 76 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 76** at this time on its second reading:

CSSB 76, Relating to certain providers of subsidized child care.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 76** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 301.192(c), Labor Code (page 2, lines 57 and 58) strike "a hearing" and substitute "appeal the proposed corrective action".

(2) In SECTION 5 of the bill, in proposed Section 42.054(g)(4), Human Resources Code (page 3, line 34) between "42.0523" and the period insert "in which the relative child-care provider cares for the child in the child's own home".

The amendment to **CSSB 76** 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 Nelson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSSB 76 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 76 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 76** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 76**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 76** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

SENATE BILL 1150 ON SECOND READING

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1150** at this time on its second reading:

SB 1150, Relating to requiring certain non-ERCOT utilities to comply with energy efficiency goals.

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 1150 ON THIRD READING

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1150** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 1150**, because in my judgment no circumstance exists in this case to justify the

extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 1150** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

(Senator Eltife in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 871 ON SECOND READING**

Senator Lucio moved to suspend the regular order of business to take up for consideration **CSSB 871** at this time on its second reading:

CSSB 871, Relating to a stay of the requirement to provide refunds or discounts on excessive or unfairly discriminatory residential property premium rates.

The motion prevailed.

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

The bill was read second time.

Senator Hegar offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 871** (senate committee printing) by striking SECTIONS 1 and 2 of the bill (page 1, lines 14-60), substituting the following, and renumbering the subsequent SECTION of the bill accordingly:

SECTION 1. Section 2254.003, Insurance Code, is amended by amending Subsection (a) and adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a) This section applies to a rate for personal automobile insurance or residential property insurance filed on or after the effective date of Chapter 206, Acts of the 78th Legislature, Regular Session, 2003.

(a-1) If the department provides an insurer with formal written notice that a rate is excessive or unfairly discriminatory, then the insurer may file a new rate or take other corrective action to substantially address the department's concerns. The new rate or other corrective action must be filed on or before the 60th day following the date of formal written notice. At the commissioner's discretion, the commissioner may extend the deadline to file by an additional 30 days. If the department accepts the new rate or other corrective action, then the insurer shall, according to commissioner order, refund or issue a premium discount directly to each affected policyholder on the

portion of the premium found to be excessive or unfairly discriminatory, plus interest on that amount. The interest rate to be paid on refunds or discounts under this subsection is the sum of six percent and the prime rate for the calendar year in which formal written notice is given. For purposes of this subsection, the prime rate is the prime rate as published in The Wall Street Journal for the first day of the calendar year that is not a Saturday, Sunday, or legal holiday.

(a-2) If the insurer does not file or take, or the department does not accept, a new rate or other corrective action as provided under Subsection (a-1), and the commissioner issues an order disapproving the rate as excessive or unfairly discriminatory under Section 2251.104, then the insurer must refund or issue a premium discount directly to each affected policyholder on the portion of the premium found to be excessive or unfairly discriminatory, plus interest on that amount. The interest rate to be paid on refunds or discounts under this subsection is 18 percent. An insurer is not required to pay any interest penalty if the insurer prevails in an appeal of the commissioner's order under Subchapter D, Chapter 36.

(a-3) The period for the refund and interest begins on the date the department first provides the insurer with formal written notice that the insurer's filed rate is excessive or unfairly discriminatory, and interest continues to accrue until the refund or discount is paid or issued.

The amendment to **CSSB 871** was read and was adopted by a viva voce vote.

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

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

CSSB 871 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, Huffman, Nelson, Patrick.

COMMITTEE SUBSTITUTE SENATE BILL 871 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 871** be placed on its third reading and final passage.

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

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

Nays: Harris, Huffman, Nelson, Patrick, Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 871**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 871** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4.

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

Nays: Harris, Huffman, Nelson, Patrick.

SENATE BILL 385 ON SECOND READING

Senator Williams moved to suspend the regular order of business to take up for consideration **SB 385** at this time on its second reading:

SB 385, Relating to the creation of an alternative fuel program to be funded by the Texas emissions reduction plan fund.

The motion prevailed.

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

The bill was read second time.

Senator Williams offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 385** (senate committee printing) in SECTION 3 of the bill, in added Section 393.006, Health and Safety Code, as follows:

(1) In Subdivision (1) (page 2, line 54), between "actual" and "costs", insert "eligible".

(2) In Subdivision (1) (page 2, line 55), strike "in one calendar year" and substitute "within deadlines established by the commission".

The amendment to **SB 385** 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 Williams and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

SB 385 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: Birdwell, Patrick.

SENATE BILL 385 ON THIRD READING

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 385** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

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

Nays: Birdwell, Patrick, Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 385**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 385** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2.

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

Nays: Birdwell, Patrick.

SENATE BILL 899 ON SECOND READING

On motion of Senator Ogden and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 899** at this time on its second reading:

SB 899, Relating to the legislature's consent or approval of a settlement of a claim or action against this state.

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

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

SENATE BILL 899 ON THIRD READING

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 899** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 899**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 899** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1034 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1034** at this time on its second reading:

CSSB 1034, Relating to the authority of certain political subdivisions to change the date of their general elections.

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 1034 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1034** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1034**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 1034** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

**COMMITTEE SUBSTITUTE
SENATE BILL 497 ON SECOND READING**

Senator Jackson moved to suspend the regular order of business to take up for consideration **CSSB 497** at this time on its second reading:

CSSB 497, Relating to notice of the construction or expansion of a wind-powered electric generation facility located near a federally owned or operated radar installation or military installation.

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 Jackson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 497** (senate committee printing) as follows:

(1) Strike the recital to SECTION 1 of the bill (page 1, lines 14-15), and substitute "SECTION 1. Subtitle B, Title 2, Utilities Code, is amended by adding Chapter 44 to read as follows:".

(2) In SECTIONS 1 and 2 of the bill, renumber Chapter 252, Utilities Code, as Chapter 44, Utilities Code, and renumber all sections, expansion clauses, and cross-references accordingly.

(3) In SECTION 1 of the bill, strike added Section 252.001, Utilities Code (page 1, lines 19-20), and renumber sections, expansion clauses, and cross-references accordingly.

(4) In SECTION 1 of the bill, in added Section 252.002(1), Utilities Code (page 1, lines 24-25), strike "the construction or expansion is estimated to cost at least \$10,000" and substitute "the construction or expansion includes a meteorological tower or a structure that will extend 200 feet or higher above ground level".

(5) In SECTION 1 of the bill, in added Section 252.101(a), Utilities Code (page 1, line 56), between "expansion" and the period, insert "not later than the 120th day before the date the construction or expansion begins".

(6) In SECTION 1 of the bill, in added Section 252.101(a), Utilities Code (page 1, lines 56-58), strike "The commission shall set a deadline by which the notification required by this section must be provided.".

(7) In SECTION 1 of the bill, in added Section 252.102, Utilities Code (page 2, line 30), strike "and".

(8) In SECTION 1 of the bill, in added Section 252.102, Utilities Code (page 2, line 31), strike the period and substitute "; and".

(9) In SECTION 1 of the bill, in added Section 252.102, Utilities Code (page 2, between lines 31 and 32), insert the following:

(8) the Energy Siting Clearinghouse of the United States Department of Defense.

(10) In SECTION 1 of the bill, in the heading to added Subchapter D, Chapter 252, Utilities Code (page 2, line 43), after "PROCEDURES", insert "AND DELEGATION".

(11) In SECTION 1 of the bill, in added Subchapter D, Chapter 252, Utilities Code (page 2, between lines 49 and 50), insert the following:

Sec. 44.152. DELEGATION. (a) For an area in the Electric Reliability Council of Texas power region, the commission may delegate a duty assigned to the commission under this chapter to an independent organization certified under Section 39.151.

(b) For an area in this state outside the Electric Reliability Council of Texas power region, the commission may delegate a duty assigned to the commission under this chapter to an appropriate electric utility that provides electric service to a wind-powered electric generation facility or to the area in which construction of a wind-powered electric generation facility is planned.

The amendment to **CSSB 497** 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 Hinojosa offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 497** (senate committee report) as follows:

(1) In SECTION 1 of the bill, in the heading to added Chapter 252, Utilities Code (page 1, line 16), strike "NOTIFICATION OF CONSTRUCTION OR EXPANSION OF".

(2) In SECTION 1 of the bill, in the heading to added Subchapter D, Chapter 252, Utilities Code (page 2, line 43), strike "PROCEDURES" and substitute "HAZARD TO AIR NAVIGATION".

(3) In SECTION 1 of the bill, in added Section 252.151, Utilities Code (page 2, line 44), between "252.151." and "CONSULTATION", insert the following: FEDERAL AVIATION ADMINISTRATION DETERMINATION. A person may not begin construction or expansion of a wind-powered electric generation facility to which this chapter applies until the person files with the commission a determination issued by the Federal Aviation Administration under 14 C.F.R. Section 77.31 regarding whether the proposed construction or expansion would be a hazard to air navigation.

Sec. 252.152. EXCEPTION IN CASE OF EMERGENCY. (a) Section 252.151 does not apply to the emergency construction or expansion of a wind-powered electric generation facility to which this chapter applies that is prompted by an emergency involving essential public services, public health, or public safety.

(b) A person who begins emergency construction or expansion under Subsection (a) shall file the determination required by Section 252.151 not later than the fifth day after the date the person begins the construction or expansion.

Sec. 252.153. ADMINISTRATIVE PENALTY. The commission may implement penalties and other enforcement actions under Chapter 15 against a person who does not comply with this subchapter or a rule or order adopted under this subchapter.

Sec. 252.154. RULES. The commission may adopt rules and conduct proceedings necessary to administer and enforce this subchapter.

[Sections 252.155-252.200 reserved for expansion]

SUBCHAPTER E. PROCEDURES

Sec. 252.201.

HINOJOSA
DUNCAN

The amendment to **CSSB 497** 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, Seliger.

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

CSSB 497 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: Patrick.

COMMITTEE SUBSTITUTE SENATE BILL 497 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 **CSSB 497** be placed on its third reading and final passage.

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

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

Nays: Patrick, Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 497**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 497** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Patrick.

SENATE BILL 990 ON SECOND READING

Senator Carona moved to suspend the regular order of business to take up for consideration **SB 990** at this time on its second reading:

SB 990, Relating to regulation of high occupancy vehicle lanes operated, managed, or maintained by a regional transportation authority; providing penalties.

The motion prevailed.

Senator West asked to be recorded as "Present-not voting" on suspension of the regular order of business.

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

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

Present-not voting: West.

SENATE BILL 990 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 **SB 990** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1, Present-not voting 1.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Whitmire, Williams, Zaffirini.

Nays: Wentworth.

Present-not voting: West.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 990**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 990** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0, Present-not voting 1.

Present-not voting: West.

(President in Chair)

**MOTION TO PLACE
COMMITTEE SUBSTITUTE
SENATE BILL 875 ON SECOND READING**

Senator Fraser moved to suspend the regular order of business to take up for consideration **CSSB 875** at this time on its second reading:

CSSB 875, Relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.

Senator Fraser withdrew the motion to suspend the regular order of business.

(Senator Carona in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 1133 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 1133** at this time on its second reading:

CSSB 1133, Relating to a report by the Public Utility Commission of Texas on the ability of electric generators to respond to abnormal weather conditions.

The bill was read second time.

Senator Hegar offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1133** (senate committee report) in SECTION 1 of the bill as follows:

(1) Strike added Section 186.007(a), Utilities Code (page 1, lines 17-36), and substitute the following:

(a) In this section, "commission" means the Public Utility Commission of Texas.

(a-1) The commission shall analyze emergency operations plans developed by electric utilities as defined by Section 31.002, power generation companies, municipally owned utilities, and electric cooperatives that operate generation facilities in this state and prepare a weather emergency preparedness report on power generation weatherization preparedness. In preparing the report, the commission shall:

(1) review the emergency operations plans currently on file with the commission;

(2) analyze and determine the ability of the electric grid to withstand extreme weather events in the upcoming year;

(3) consider the anticipated weather patterns for the upcoming year as forecasted by the National Weather Service or any similar state or national agency; and

(4) make recommendations on improving emergency operations plans and procedures in order to ensure the continuity of electric service.

(2) In added Section 186.007(b), Utilities Code (page 1, lines 37-38), strike "a power generation company or wholesale electric generator" and substitute "an electric generation entity subject to this section".

(3) In added Section 186.007(b), Utilities Code (page 1, lines 41-42), strike "company or generator can ensure the continuity of electric utility service in the event of a weather-related forced interruption" and substitute "electric generation entity can provide adequate electric generation services".

(4) In added Section 186.007(c), Utilities Code (page 1, lines 44-45), strike "and any other rules necessary to accomplish the purposes of the report".

(5) In added Section 186.007, Utilities Code (page 1, line 61, through page 2, line 3), strike Subsection (f) and substitute the following:

(f) The emergency operations plans submitted for the report described by Subsection (a-1) and any subsequent plans submitted under Subsection (e) are public information except for the portions of the plan considered confidential under Chapter 552, Government Code, or other state or federal law. If portions of a plan are designated as confidential, the plan shall be provided to the commission in a redacted form for public inspection with the confidential portions removed. An electric generation entity within the ERCOT power region shall provide the entity's plan to ERCOT in its entirety.

(6) In added Section 186.007, Utilities Code (page 2, lines 4-9), strike Subsection (g).

The amendment to **CSSB 1133** 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 Hegar and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSSB 1133 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 1133 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 1133** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 1133**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 1133** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed.

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

WENTWORTH

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

SENATE BILL 1187 ON SECOND READING

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1187** at this time on its second reading:

SB 1187, Relating to the effect of indexing notices of lis pendens.

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 1187 ON THIRD READING

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1187** be placed on its third reading and final passage.

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

Nays: Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 1187**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 1187** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

(President in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 655 ON SECOND READING**

Senator Hegar moved to suspend the regular order of business to take up for consideration **CSSB 655** at this time on its second reading:

CSSB 655, Relating to the abolition of the Railroad Commission of Texas, the creation of the Texas Oil and Gas Commission, and the transfer of the powers and duties of the railroad commission to the oil and gas commission.

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

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Patrick, Rodriguez, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Ogden, Seliger.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 655** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, in amended Section 81.001(2), Natural Resources Code (page 1, lines 23 and 24), strike "the commissioner [~~any member~~]" and substitute "a member".

(2) In SECTION 3 of the bill, in added Section 81.003(2), Natural Resources Code (page 1, line 32), strike "the commissioner" and substitute "a member".

(3) In SECTION 5 of the bill, strike amended Section 81.01002, Natural Resources Code (page 1, lines 43 through 46), and substitute the following:

Sec. 81.01002. ELECTION AND TERMS OF COMMISSIONERS; CHAIRMAN. (a) The commission is governed by three elected commissioners.

(b) The commissioners serve staggered six-year terms, with the term of one commissioner expiring on January 1 of each odd-numbered year.

(c) The commissioners shall elect one commissioner as the chairman.

(4) Strike SECTIONS 6 and 7 of the bill (page 1, lines 47 through 61).

(5) In SECTION 8 of the bill, in added Section 81.010045(b), Natural Resources Code (page 2, line 4), strike "The commissioner" and substitute "A commissioner".

(6) In SECTION 8 of the bill, in added Section 81.010045(c), Natural Resources Code (page 2, line 13), strike "other than the commissioner" and substitute "other than a commissioner".

(7) In SECTION 8 of the bill, in added Section 81.010045(c)(1)(A), Natural Resources Code (page 2, line 19), strike "the commissioner's office" and substitute "a commissioner's office".

(8) In SECTION 9 of the bill, in amended Section 81.01005(a), Natural Resources Code (page 2, lines 29 and 30), strike "The commission is [~~commissioners are~~] known [~~collectively~~]" and substitute "The commissioners are known collectively".

(9) Strike SECTIONS 10, 11, 12, 13, 14, 15, and 16 of the bill (page 2, line 35, through page 3, line 9).

(10) Strike SECTIONS 20 and 21 of the bill (page 3, line 57, through page 4, line 14).

(11) In SECTION 50 of the bill, in amended Section 102.006(d), Utilities Code (page 12, line 36), strike "a member of" and substitute "a member of".

(12) In SECTION 55 of the bill (page 13, lines 48 through 52), strike Subsections (c) and (d) of the section and substitute the following:

(c) The initial elected commissioners of the Texas Oil and Gas Commission shall be elected at the general election for state and county officers in 2012. The members elected shall draw lots to determine which member's term expires January 1, 2015, which member's term expires January 1, 2017, and which member's term expires January 1, 2019.

(d) The initial elected commissioners of the Texas Oil and Gas Commission shall take office January 1, 2013.

(13) In SECTION 56 of the bill, in Subsection (a)(10) of the section (page 14, line 13), strike "the commissioner" and substitute "a member".

(14) Renumber the SECTIONS of the bill accordingly.

The amendment to **CSSB 655** was read.

On motion of Senator Hegar, Floor Amendment No. 1 was tabled by the following vote: Yeas 29, Nays 2.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Patrick, Rodriguez, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Ogden, Seliger.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 655** (senate committee printing) as follows:

(1) Between SECTIONS 4 and 5 of the bill (page 1, between lines 40 and 41), insert the following:

SECTION 4A. (a) Section 81.01001, Natural Resources Code, is amended to read as follows:

Sec. 81.01001. SUNSET PROVISION. The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2023 [~~2011~~].

(b) If Section 4 of this Act takes effect, that section prevails over this section to the extent of any conflict.

(2) Between SECTIONS 8 and 9 of the bill (page 2, between lines 26 and 27), insert the following:

SECTION 8A. (a) Subchapter B, Chapter 81, Natural Resources Code, is amended by adding Section 81.010045 to read as follows:

Sec. 81.010045. CERTAIN POLITICAL CONTRIBUTIONS RESTRICTED.
(a) In this section, "political contribution" has the meaning assigned by Section 251.001, Election Code.

(b) A commissioner may not knowingly accept a political contribution given or offered with the intention that it be used in connection with a campaign for or the holding of a statewide or federal office, including the office of commissioner, except:

(1) beginning one year before the date of the next general election at which the commissioner's office is filled; and

(2) ending on the 30th day before the date the first regular legislative session of the commissioner's succeeding term convenes.

(c) A person other than a commissioner may not knowingly accept a political contribution given or offered with the intention that it be used in connection with a campaign for the office of commissioner, except:

(1) during the period:

(A) beginning one year before the date of the next general election at which a commissioner's office is filled; and

(B) ending on the 30th day before the date the first regular legislative session of the commissioner's succeeding term convenes; or

(2) during the period beginning on the date a vacancy in the office of commissioner occurs and ending on the date that vacancy is filled.

(b) If Section 8 of this Act takes effect, that section prevails over this section to the extent of any conflict.

(3) Between SECTIONS 49 and 50 of the bill (page 12, between lines 4 and 5), insert the following:

SECTION 49A. (a) Section 756.126, Health and Safety Code, is amended to read as follows:

Sec. 756.126. SAFETY STANDARDS AND BEST PRACTICES. The Railroad Commission of Texas shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. Section 6105 et seq., relating to the prevention of damage by a person to a facility, including an interstate or intrastate pipeline facility, under the jurisdiction of the commission.

(b) If Section 49 of this Act takes effect, that section prevails over this section to the extent of any conflict.

(4) Between SECTIONS 50 and 51 of the bill (page 12, between lines 45 and 46), insert the following:

SECTION 50A. (a) Section 102.006, Utilities Code, is amended to read as follows:

Sec. 102.006. POWERS AND DUTIES OF STATE OFFICE OF ADMINISTRATIVE HEARINGS [IN CONTESTED CASES]. (a) ~~The [railroad commission by rule shall provide for administrative hearings in contested cases to be conducted by one or more members of the railroad commission, by railroad commission hearings examiners, or by the utility division of the State Office of Administrative Hearings. The rules must provide for a railroad commission hearings examiner or the utility division of the]~~ State Office of Administrative Hearings shall ~~[to]~~ conduct each hearing in a contested case under this subtitle [that is not conducted by one or more members of the railroad commission]. A hearing must be conducted in accordance with the rules and procedures adopted by the railroad commission.

(b) The railroad commission may delegate to ~~[a railroad commission hearings examiner or to the utility division of]~~ the State Office of Administrative Hearings the authority to make a final decision and to issue findings of fact, conclusions of law, and other necessary orders in a proceeding in which there is not a contested issue of fact or law.

(c) The railroad commission by rule shall define the procedures by which it delegates final decision-making authority under Subsection (b) [~~to a railroad commission hearings examiner or to the utility division of the State Office of Administrative Hearings~~].

(d) For purposes of judicial review, an administrative law judge's [~~the~~] final decision [~~of a railroad commission hearings examiner or an administrative law judge of the State Office of Administrative Hearings in a matter delegated~~] under Subsection (b) has the same effect as a final decision of the railroad commission unless a member of the commission requests formal review of the decision.

~~[(e) The State Office of Administrative Hearings shall charge the railroad commission a fixed annual rate for hearings conducted by the office under this section only if the legislature appropriates money for that purpose. If the legislature does not appropriate money for the payment of a fixed annual rate under this section, the State Office of Administrative Hearings shall charge the railroad commission an hourly rate of not more than \$90 per hour for hearings conducted by the office under this section.]~~

(b) If Section 50 of this Act takes effect, that section prevails over this section to the extent of any conflict.

(5) In SECTION 55 of the bill, in Subsection (a) of the section (page 13, lines 35 and 36), strike "the effective date of this Act" and substitute "January 1, 2012".

(6) Strike SECTIONS 57 and 58 of the bill (page 14, lines 27 through 40) and substitute the following:

SECTION 57. (a) Except as otherwise provided by this Act, this Act takes effect September 1, 2011.

(b) Sections 1-4, 5-8, 9-16, 20, 21, 48, 49, 50, 55, and 56 of this Act take effect January 1, 2012, but only if the constitutional amendment proposed by the 82nd Legislature, Regular Session, 2011, repealing the provision of the Texas Constitution relating to the governance of the Railroad Commission of Texas is approved by the voters. If that amendment is not approved by the voters, Sections 1-4, 5-8, 9-16, 20, 21, 48, 49, 50, 55, and 56 of this Act have no effect.

The amendment to **CSSB 655** was read.

On motion of Senator Hegar, Floor Amendment No. 2 was tabled by the following vote: Yeas 24, Nays 7.

Yeas: Birdwell, Carona, Davis, Deuell, Ellis, Eltife, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Rodriguez, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Duncan, Estes, Fraser, Lucio, Ogden, Patrick, Seliger.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 655** (senate committee report) as follows:

(1) Between SECTIONS 48 and 49 of the bill (page 11, between lines 64 and 65), insert the following appropriately numbered SECTIONS and renumber subsequent SECTIONS accordingly:

SECTION _____. Effective January 1, 2012, Section 382.011(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 382.042, the [The] commission shall:

- (1) administer this chapter;
- (2) establish the level of quality to be maintained in the state's air; and
- (3) control the quality of the state's air.

SECTION _____. Effective January 1, 2012, Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Section 382.042 to read as follows:

Sec. 382.042. JURISDICTION OF TEXAS OIL AND GAS COMMISSION OVER EMISSIONS OF AIR CONTAMINANTS FROM OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION. (a) This section is effective on the date that delegation of authority under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas has been transferred to the Texas Oil and Gas Commission and is published in the Texas Register. Not later than the 10th day after the date the executive director receives notice from the United States Environmental Protection Agency of the transfer of delegation of authority, the executive director shall provide the secretary of state with a copy of the notice for publication in the Texas Register.

(b) The Texas Oil and Gas Commission is the successor agency for all powers and duties under this chapter related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas previously under the jurisdiction of the commission.

(c) A reference in law to the commission relating to a power or duty described by Subsection (a) means the Texas Oil and Gas Commission.

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

SECTION _____. Section 81.051, Natural Resources Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) The commission is the state's lead agency for the regulation of oil and gas development in this state. It is the intent of the legislature that the commission seek authorization for and be authorized to administer any federal law related to the exploration for and development and production of oil or gas in this state by delegation of that authority or other means.

(d) If the federal entity responsible for a delegation of authority under Subsection (c) does not timely respond to a commission request for the delegation, the attorney general shall institute an appropriate legal action seeking the delegation of authority to and for the commission.

(e) The commission shall comply with applicable federal requirements to submit for review and approval any rules or program revisions adopted by the commission under a federal law after authority is delegated to the commission to administer the federal law in this state.

SECTION _____. (a) The Texas Commission on Environmental Quality shall seek from the United States Environmental Protection Agency the transfer to the Texas Oil and Gas Commission of delegation of authority under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas.

(b) If the United States Environmental Protection Agency does not timely respond to the request under Subsection (a) of this section for the transfer of delegation or rejects the request, the attorney general shall institute an appropriate legal action seeking the transfer to the Texas Oil and Gas Commission of delegation of authority under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas.

SECTION _____. (a) In this section:

(1) "Commission on environmental quality" means the Texas Commission on Environmental Quality.

(2) "Oil and gas commission" means the Texas Oil and Gas Commission.

(b) On the 120th day after the effective date of Section 382.042, Health and Safety Code, as added by this Act, the following are transferred to the oil and gas commission:

(1) all powers, duties, functions, programs, activities, obligations, and liabilities of the commission on environmental quality under Chapter 382, Health and Safety Code, related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas;

(2) all equipment and property of the commission on environmental quality used solely for the administration of or in relation to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas;

(3) all unobligated and unspent funds appropriated to the commission on environmental quality designated for the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas; and

(4) all files and other records of the commission on environmental quality kept by that commission for the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas.

(c) A rule or form of the commission on environmental quality adopted before the date specified by Subsection (b) of this section relating to a power, duty, function, program, or activity transferred by that subsection is a rule or form of the oil and gas commission on that date and remains in effect until amended or repealed by the oil and gas commission.

(d) On delegation to the oil and gas commission of authority under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas, a reference in law to the commission on environmental quality relating to a power, duty, function, program, activity, obligation, or liability transferred by Subsection (b) of this section means the oil and gas commission.

(e) On delegation to the oil and gas commission of authority under the federal Clean Air Act (42 U.S.C. Section 7401 et seq.) related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas, the commission on environmental quality and the oil and gas commission shall enter into a memorandum of understanding that:

(1) identifies in detail the applicable powers and duties that are transferred to the oil and gas commission by this Act; and

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the commission on environmental quality that are used for the purposes of the commission's powers and duties related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas.

(f) In the period beginning on the effective date of this Act and ending on the 120th day after the effective date of Section 382.042, Health and Safety Code, as added by this Act, the commission on environmental quality shall continue to perform the functions and activities under Chapter 382, Health and Safety Code, related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas, and the former law is continued in effect for that purpose.

(g) The changes in law made by this Act that relate to the authority to conduct a hearing related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas apply only to a hearing for which a request is submitted to the oil and gas commission on or after the effective date of Section 382.042, Health and Safety Code, as added by this Act.

(h) A request for a hearing submitted to the commission on environmental quality related to the regulation of emissions of air contaminants from the exploration for and development and production of oil or gas that was submitted before the effective date of Section 382.042, Health and Safety Code, as added by this Act, is governed:

(1) by the law in effect on the date the request was submitted, and that law is continued in effect for that purpose; or

(2) as provided by an interagency memorandum of understanding entered into by the commission on environmental quality and the oil and gas commission under Subsection (e) of this section.

The amendment to **CSSB 655** was read.

On motion of Senator Hegar, Floor Amendment No. 3 was tabled by the following vote: Yeas 23, Nays 8.

Yeas: Birdwell, Carona, Davis, Deuell, Ellis, Eltife, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Nelson, Nichols, Rodriguez, Seliger, Shapiro, Van de Putte, Watson, West, Whitmire, Zaffirini.

Nays: Duncan, Estes, Lucio, Ogden, Patrick, Uresti, Wentworth, Williams.

Senator Hegar offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSSB 655** (senate committee printing) as follows:

(1) In SECTION 55 of the bill (page 13, lines 35-44), strike Subsection (a) of the section, substitute the following subsections, and reletter the subsequent subsections of SECTION 55 of the bill accordingly:

(a) On the effective date of this Act, the member of the Railroad Commission of Texas who was most recently elected to a six-year term as a member of that commission becomes the initial commissioner of the Texas Oil and Gas Commission. The initial commissioner serves until the person appointed by the governor to serve as the commissioner under Subsection (b) of this section takes office.

(b) As soon as possible after the effective date of this Act, the governor shall appoint a person to serve as the commissioner of the Texas Oil and Gas Commission for a term that expires January 1, 2013. The governor may appoint as the commissioner the person who becomes the initial commissioner under Subsection (a) of this section.

(2) In SECTION 56 of the bill, in Subsection (a) of the section (page 13, lines 53 and 54), strike "On the date the initial commissioner of the Texas Oil and Gas Commission takes office" and substitute "On the effective date of this Act".

(3) In SECTION 57 of the bill (page 14, line 27), strike "The Railroad Commission of Texas shall adopt" and substitute "The Texas Oil and Gas Commission shall adopt".

The amendment to **CSSB 655** 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. 4 except as follows:

Nays: Ogden, Seliger.

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

CSSB 655 as amended was passed to engrossment by a viva voce vote.

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

Nays: Ogden, Seliger.

COMMITTEE SUBSTITUTE SENATE BILL 655 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 655** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 3.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Patrick, Rodriguez, Shapiro, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Ogden, Seliger, Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 655**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has

already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 655** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Patrick, Rodriguez, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Ogden, Seliger.

SENATE BILLS ON FIRST READING

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

SB 1890 by Rodriguez

Relating to the creation of the Montecillo Municipal Management District No. 1; providing authority to levy an assessment, impose a tax, and issue bonds.
To Committee on Intergovernmental Relations.

SB 1891 by Hegar

Relating to the creation of North Fort Bend County Improvement District No. 1; providing authority to levy an assessment, impose a tax, and issue bonds.
To Committee on Intergovernmental Relations.

HOUSE BILLS ON FIRST READING

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

HB 1 to Committee on Finance.

HB 4 to Committee on Finance.

HB 74 to Committee on Veteran Affairs and Military Installations.

HB 275 to Committee on Finance.

HB 367 to Committee on Transportation and Homeland Security.

HB 699 to Committee on International Relations and Trade.

HB 801 to Committee on Natural Resources.

HB 861 to Committee on Education.

HB 1383 to Committee on Intergovernmental Relations.

HB 1409 to Committee on Transportation and Homeland Security.

HB 1510 to Committee on Business and Commerce.

COMMITTEE SUBSTITUTE
SENATE BILL 875 ON SECOND READING

Senator Fraser again moved to suspend the regular order of business to take up for consideration **CSSB 875** at this time on its second reading:

CSSB 875, Relating to compliance with state and federal environmental permits as a defense to certain actions for nuisance or trespass.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, Whitmire, Williams.

Nays: Davis, Ellis, Gallegos, Rodriguez, Van de Putte, Watson, West, Zaffirini.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 875** (Senate Committee Report) as follows:

- 1) On line 1-15, after "TRESPASS." and before "A person," add "(a)"
- 2) On line 1-33 add a new subsection (b) to added Sec. 7.257 as follows
"(b) This section does not apply to nuisance actions related to a noxious odor."

The amendment to **CSSB 875** 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 Duncan offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 875** (Senate Committee Report) as follows:

- 1) On line 1-25, after the word "in", strike "general" and insert "substantial".

The amendment to **CSSB 875** was read and was adopted by a viva voce vote.

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

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

CSSB 875 as amended was passed to engrossment by the following vote: Yeas 23, Nays 8.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, Whitmire, Williams.

Nays: Davis, Ellis, Gallegos, Rodriguez, Van de Putte, Watson, West, Zaffirini.

COMMITTEE SUBSTITUTE
SENATE BILL 875 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 875** be placed on its third reading and final passage.

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

Yeas: Birdwell, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, Whitmire, Williams.

Nays: Davis, Rodriguez, Watson, Wentworth, West, Zaffirini.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 875**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 875** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 23, Nays 8.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Wentworth, Whitmire, Williams.

Nays: Davis, Ellis, Gallegos, Rodriguez, Van de Putte, Watson, West, Zaffirini.

SENATE RULE 7.12(a) SUSPENDED
(Printing of Bills)

On motion of Senator Eltife and by unanimous consent, Senate Rule 7.12(a) was suspended and the committee reports were ordered not printed for the following bills: **SB 1147**, **SB 1303**.

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

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

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

On motion of Senator West and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Finance Subcommittee on Higher Education Funding might meet tomorrow.

BIRTHDAY GREETINGS EXTENDED

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

CO-AUTHOR OF SENATE BILL 26

On motion of Senator Zaffirini, Senator Uresti will be shown as Co-author of **SB 26**.

CO-AUTHOR OF SENATE BILL 73

On motion of Senator Nelson, Senator West will be shown as Co-author of **SB 73**.

CO-AUTHOR OF SENATE BILL 315

On motion of Senator Carona, Senator Zaffirini will be shown as Co-author of **SB 315**.

CO-AUTHOR OF SENATE BILL 1648

On motion of Senator Watson, Senator Hinojosa will be shown as Co-author of **SB 1648**.

CO-AUTHOR OF SENATE BILL 1843

On motion of Senator Carona, Senator Estes will be shown as Co-author of **SB 1843**.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 686 by Whitmire, In memory of Homer Leon O'Fallin, Jr.

SR 704 by Birdwell, In memory of the life of Alphonso Steele.

Congratulatory Resolutions

SR 685 by Whitmire, Recognizing Willie B. Baker of Houston on the occasion of his 69th birthday.

SR 687 by Jackson, Recognizing Ruth Hinkle Kicklighter on the occasion of her retirement from La Porte High School.

SR 690 by Wentworth, Recognizing the Daughters of the Republic of Texas for its stewardship of the Alamo.

SR 691 by Duncan, Recognizing the Paducah High School Dragons boys' basketball team for winning the University Interscholastic League Class 1A Division II state championship.

SR 692 by Zaffirini, Recognizing Poth Hermann Sons Lodge 272-2 on the occasion of its 100th anniversary.

SR 697 by Watson, Recognizing Brenda S. Kalapach on the occasion of her retirement from the Texas Department of Transportation.

SR 698 by Watson, Recognizing Harmony Public Schools on the occasion of its 10th anniversary.

SR 699 by Watson, Recognizing Patrick Swint for his service to his country.

HCR 150 (Carona), Honoring Sam Houston for his statesmanship on the 150th anniversary of his refusal to take the oath of allegiance to the Confederate States of America.

Official Designation Resolutions

SR 379 by Duncan, Recognizing April 4, 2011, as Leadership Plainview Day at the State Capitol.

SR 688 by Birdwell, Duncan, Eltife, Estes, Fraser, and Lucio, Recognizing April 7, 2011, as Texas State Technical College Day at the State Capitol.

HCR 64 (Fraser), Recognizing April 13, 2011, as Leadership Highland Lakes Day at the State Capitol.

HCR 65 (Fraser), Recognizing April 13, 2011, as Leadership Killeen Day at the State Capitol.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 5:41 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:

April 4, 2011

HEALTH AND HUMAN SERVICES — **CSSB 7**

ADMINISTRATION — **CSSB 202**

BUSINESS AND COMMERCE — **CSSB 980, CSSB 1501, CSSB 1153, CSSB 986**

HEALTH AND HUMAN SERVICES — **CSSB 8**

EDUCATION — **CSSB 1214**

BUSINESS AND COMMERCE — **CSSB 773, CSSB 1087**

NATURAL RESOURCES — **CSSB 694**

HEALTH AND HUMAN SERVICES — **CSSB 223, CSSB 797**

EDUCATION — **CSSB 226, SB 1042, SB 1484**

OPEN GOVERNMENT — **CSSB 442, CSSB 935, CSSB 1613**

HEALTH AND HUMAN SERVICES — **CSSB 293**

TRANSPORTATION AND HOMELAND SECURITY — **SB 922, SB 1578, SB 1719, CSSB 20, CSSB 295, CSSB 469, CSSB 650, CSSB 1650, SB 1885**

INTERGOVERNMENTAL RELATIONS — **SB 412, SB 577, SB 732, SB 915, SB 917, CSSB 233, CSSB 234, CSSB 402, CSSB 714, CSSB 1030, CSSB 1251, CSSB 1352**

EDUCATION — **CSSB 6**

BILLS AND RESOLUTIONS ENGROSSED

March 31, 2011

SB 36, SB 86, SB 199, SB 238, SB 310, SB 311, SB 349, SB 364, SB 410, SB 438, SB 475, SB 479, SB 480, SB 482, SB 483, SB 512, SB 519, SB 525, SB 548, SB 564, SB 569, SB 579, SB 623, SB 629, SB 642, SB 683, SB 684, SB 731, SB 760, SB 791, SB 802, SB 813, SB 819, SB 855, SB 887, SB 934, SB 957, SB 1003, SB 1008, SB 1020, SB 1124, SB 1160, SB 1166, SB 1220, SJR 26, SJR 28

RESOLUTIONS ENROLLED

March 31, 2011

SR 601, SR 671, SR 675, SR 676, SR 677, SR 678, SR 679, SR 680, SR 681, SR 682, SR 683, SR 684

SIGNED BY GOVERNOR

April 1, 2011

SCR 28, SCR 29