

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**FIFTY-FIRST DAY**  
(Monday, May 2, 2011)

The Senate met at 11:14 a.m. pursuant to adjournment and was called to order by Senator Eltife.

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 Presiding Officer announced that a quorum of the Senate was present.

Pastor Russ Weaver, Shepherd's Valley Cowboy Church, Cleburne, was introduced by Senator Birdwell and offered the invocation as follows:

Dear heavenly Father, we are grateful for the land You have given to "we the people," the United States of America and, specifically, the great State of Texas. You said if Your people would humble themselves and pray that You would heal our land. We're praying. You're still God. Humbly we invoke Your healing and Your blessings on our land. Our leaders are facing decisions today. This session will have an effect on our lives, decisions that will trigger Your approval and the blessings that follow or Your disapproval and the curses that come with. I ask You please to give them wisdom to see the long term and the big picture. I ask You to make their spirits sensitive to Your prompting. I ask that You help them to see past preconceived notions and that "Your will be done" be the guide through the agenda. In Jesus' name I pray. 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.

## ACKNOWLEDGMENT

The Presiding Officer acknowledged the recent victory of the United States in the War on Terrorism.

Senators Lucio, Fraser, Patrick, Hinojosa, Birdwell, and West made remarks recognizing the devotion and sacrifice of the members of the United States military.

Following the remarks, Senator Birdwell led the Senators in the Pledge of Allegiance.

**REMARKS ORDERED PRINTED**

On motion of Senator Patrick and by unanimous consent, the remarks by Senator Birdwell were ordered reduced to writing and printed in the *Senate Journal*.

On motion of Senator Ellis and by unanimous consent, all other remarks acknowledging the recent victory of the United States in the War on Terrorism were ordered reduced to writing and printed in the *Senate Journal*.

The remarks were printed in an addendum to this day's Journal.

**MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was filed with the Secretary of the Senate:

Austin, Texas  
April 29, 2011

## MESSAGE

TO THE MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES  
OF THE EIGHTY-SECOND TEXAS LEGISLATURE, REGULAR SESSION:

The Texas Constitution in Article 4, Sections 14 and 15 grants the governor power to approve or disapprove legislation passed by both houses of the legislature. Nothing in that section or the remainder of the Texas Constitution anticipates or describes the process of returning a bill to the legislature for the purpose of clerical correction and amendment once it has been delivered to the governor for review (*Teem v. State*, 79 Tex. Crim. 285, 183 S.W. 1144, 1151 (1916)).

Senate Bill No. 785 by Harris was passed by the legislature and properly transmitted to my executive office on Wednesday, April 20, 2011. The legislature has now passed and properly transmitted to me Senate Concurrent Resolution No. 48 by Harris requesting that I return Senate Bill No. 785 to the legislature so that they may correct a clerical error in the drafting of the bill.

In this instance, I have taken no formal action on Senate Bill No. 785 and I am agreeing to the request of the legislature. While I am under no obligation to comply with this request, pursuant to established practice and previous case law, I hereby return the enrolled copy of Senate Bill No. 785 with this message to the senate for further correction and consideration by the legislature.

IN TESTIMONY WHEREOF, I have signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 29th day of April, 2011.

/s/Rick Perry  
Governor of Texas

(Seal)

Attested by:

/s/Hope Andrade  
Secretary of State

**SENATE RESOLUTION 889**

Senator Van de Putte offered the following resolution:

**SR 889**, Recognizing the devotion and sacrifice of the members of the United States military who so honorably serve our country.

The resolution was read.

On motion of Senator Gallegos and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Van de Putte, the resolution was adopted without objection.

**PHYSICIAN OF THE DAY**

Senator Estes was recognized and presented Dr. Charles K. Tibbles of Decatur as the Physician of the Day.

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

**INTRODUCTION OF  
BILLS AND RESOLUTIONS POSTPONED**

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

There was no objection.

**SENATE RESOLUTION 845**

Senator Carona offered the following resolution:

**SR 845**, In memory of the life of J. D. Tippit.

The resolution was read.

On motion of Senator Carona, **SR 845** was adopted by a rising vote of the Senate.

In honor of the memory of J. D. Tippit, the text of the resolution is printed at the end of today's *Senate Journal*.

**GUESTS PRESENTED**

Senator Carona was recognized and introduced to the Senate the widow of Officer J. D. Tippit, Marie Tippit; her friend, Theresa Lozado; and Officer Rick Janich, Dallas Police Department.

The Senate welcomed its guests and extended its sympathy.

**BIRTHDAY GREETINGS EXTENDED**

Senator Wentworth was recognized and, on behalf of the Senate, extended birthday greetings to Senator Shapiro.

**SENATE RESOLUTION 884**

Senator Lucio offered the following resolution:

**SR 884**, In memory of Janie Cuellar Salinas.

The resolution was read.

On motion of Senator Lucio, **SR 884** was adopted by a rising vote of the Senate.

In honor of the memory of Janie Cuellar Salinas, the text of the resolution is printed at the end of today's *Senate Journal*.

**GUESTS PRESENTED**

Senator Lucio, joined by Senator Hinojosa, was recognized and introduced to the Senate J. D. Salinas III, Arturo Carlos Cuellar, Jr., Yolanda Cuellar, and Jena Cuellar.

The Senate welcomed its guests and extended its sympathy.

**SENATE RESOLUTION 832**

Senator Watson offered the following resolution:

WHEREAS, Between 1933 and 1945, Nazi Germany carried out the systematic persecution and annihilation of six million European Jews, as well as millions of other people, and this mass slaughter, known as the Holocaust, will forever signify the devastating results of unchecked intolerance, racism, and cruelty; and

WHEREAS, Although it is a painful and wrenching experience to reflect on the tragic events that occurred during those dark years, it is only through remembrance that we can rightfully acknowledge and honor the men, women, and children whose lives were brutally cut short; Jews became the primary victims of the state-sponsored genocide, while Roma, Poles, disabled individuals, homosexuals, Jehovah's Witnesses, Soviet prisoners of war, and political dissidents were also persecuted; ultimately, all of these groups were decimated under the tyranny of the Third Reich; and

WHEREAS, This horrific and shameful history is a powerful reminder of our responsibilities as citizens of a democracy to remain vigilant against hatred, bigotry, and violence and to defend the causes of individual freedom, national liberty, and equality and respect for every human being; moreover, we must reject the false claims of those who deny the Holocaust; and

WHEREAS, Each year, the United States Holocaust Memorial Council designates an eight-day period as the Holocaust Days of Remembrance, and this year's commemoration extends from Sunday, May 1, through Sunday, May 8, 2011; and

WHEREAS, The events of the Holocaust are inextricably linked to the obligation of people everywhere to uphold the cause of human rights, and as we, the people of Texas, recall this disturbing time in history, may we also be mindful of our duty to stand firm against all forms of injustice; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby recognize May 1 through 8, 2011, as the Holocaust Days of Remembrance, and encourage all Texans to do their part to keep the stories of Holocaust victims and survivors alive; and, be it further

RESOLVED, That a copy of this Resolution be prepared to commemorate the Holocaust Days of Remembrance.

**SR 832** was again read.

On motion of Senator Williams and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

The resolution was previously adopted on Tuesday, April 26, 2011.

#### **GUEST PRESENTED**

Senator Watson was recognized and introduced to the Senate Jay Rubin, Chief Executive Officer of the Jewish Community Association of Austin.

The Senate welcomed its guest.

#### **ACKNOWLEDGMENT**

The Presiding Officer acknowledged Senator Shapiro to read the names of her family members who lost their lives during the Holocaust: her aunt, Erna Dorffman; her grandfather, Robert Dorffman; and her grandmother, Freda Dorffman.

#### **HOUSE CONCURRENT RESOLUTION 47**

The Presiding Officer laid before the Senate the following resolution:

**HCR 47**, In memory of U.S. Army Private First Class Ira Benjamin Laningham IV of Zapata.

ZAFFIRINI

The resolution was again read.

**HCR 47** was previously adopted on Thursday, March 17, 2011.

In honor of the memory of Ira Benjamin Laningham IV, the text of the resolution is printed at the end of today's *Senate Journal*.

#### **GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate the family of Ira B. Laningham IV: his father, Enrique E. Cantu; his mother, Norma L. Cantu; his brother, Enrique Eliden Cantu; and his sister, Amanda Cantu; accompanied by relatives and friends.

The Senate welcomed its guests and extended its sympathy.

#### **CONCLUSION OF MORNING CALL**

The Presiding Officer at 12:27 p.m. announced the conclusion of morning call.

#### **SENATE BILL 539 WITH HOUSE AMENDMENT**

Senator Carona called **SB 539** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 539** (house committee printing) in SECTION 1 of the bill, at the end of amended Section 53.156, Property Code (page 1, line 13), by inserting the following:

With respect to a lien or claim arising out of a residential construction contract, the court is not required to order the property owner to pay costs and attorney's fees under this section.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 539**.

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

**SENATE BILL 646 WITH HOUSE AMENDMENT**

Senator Nichols called **SB 646** from the President's table for consideration of the House amendment to the bill.

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

**Floor Amendment No. 1**

Amend **SB 646** (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 88.103, Education Code, is amended to read as follows:

Sec. 88.103. ENFORCEMENT; APPOINTMENT OF PEACE OFFICERS. The director may appoint not to exceed 25 employees of the Texas Forest Service who are certified by the Commission on Law Enforcement Officer Standards and Education as qualified to be peace officers to serve as peace officers under the [his] direction of the director in executing the enforcement duties of that agency. The appointments must be approved by the board which shall commission the appointees as peace officers. Any officer commissioned under this section is vested with all the powers, privileges, and immunities of peace officers in the performance of the officer's [his] duties. The officer shall take the oath required of peace officers.

SECTION \_\_\_\_\_. Section 88.105, Education Code, is amended to read as follows:

Sec. 88.105. COOPERATION WITH PERSONS AND AGENCIES. On request, under the sanction of the board, and whenever the director [he] deems it essential to the best interests of the people of the state, the director shall cooperate with counties, towns, corporations, or individuals in preparing plans for the protection, management, and replacement of trees, woodlots, and timber tracts, under an agreement that the parties obtaining the assistance pay at least the field expenses of the persons [men] employed in preparing the plans. The board may cooperate with the National Forest Service under terms it deems desirable.

SECTION \_\_\_\_\_. Section 88.106(a), Education Code, is amended to read as follows:

(a) The director, under the supervision of the board, may cooperate on forestry projects with the National Forest Service and other federal agencies. ~~Subject[; and, subject]~~ to the authorization of the board, the director ~~[he]~~ may execute agreements relating to forest protection projects in cooperation with federal agencies and timberland owners and may also execute agreements with timberland owners involving supervision of forest protection and forest development projects when the projects are developed with the aid of loans from a federal agency and when the supervision by the state is required by federal statute or is deemed necessary by the federal agency.

The amendment was read.

Senator Nichols moved to concur in the House amendment to **SB 646**.

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

**COMMITTEE SUBSTITUTE**  
**SENATE BILL 462 ON THIRD READING**

Senator West moved to suspend the regular order of business to take up for consideration **CSSB 462** at this time on its third reading and final passage:

**CSSB 462**, Relating to the expunction of records and files relating to a person's arrest.

The motion prevailed by the following vote: Yeas 22, Nays 8.

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

Nays: Birdwell, Estes, Fraser, Harris, Huffman, Nelson, Nichols, Patrick.

Absent: Williams.

The bill was read third time.

Senator West moved to postpone further consideration of the bill to a time certain of 12:45 p.m. today.

The motion prevailed.

Question — Shall **CSSB 462** be finally passed?

**COMMITTEE SUBSTITUTE**  
**HOUSE BILL 15 ON SECOND READING**

Senator Patrick moved to suspend the regular order of business to take up for consideration **CSHB 15** at this time on its second reading:

**CSHB 15**, Relating to informed consent to an abortion.

The motion prevailed by the following vote: Yeas 21, Nays 10.

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

Nays: Davis, Ellis, Gallegos, Hinojosa, Rodriguez, Van de Putte, Watson, Wentworth, West, Whitmire.

The bill was read second time.

Senator Patrick offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **CSHB 15** (senate committee report) by striking all below the enacting clause and substituting the following:

SECTION 1. Section 171.002, Health and Safety Code, is amended to read as follows:

Sec. 171.002. DEFINITIONS [~~DEFINITION~~]. In this chapter:

(1) "Abortion" [~~"abortion"~~] means the use of any means to terminate the pregnancy of a female known by the attending physician to be pregnant with the intention that the termination of the pregnancy by those means will, with reasonable likelihood, cause the death of the fetus.

(2) "Abortion provider" means a facility where an abortion is performed, including the office of a physician and a facility licensed under Chapter 245.

(3) "Medical emergency" means a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(4) "Sonogram" means the use of ultrasonic waves for diagnostic or therapeutic purposes, specifically to monitor an unborn child.

SECTION 2. Section 171.012, Health and Safety Code, is amended by amending Subsections (a), (b), and (c) and adding Subsection (a-1) to read as follows:

(a) Consent [~~Except in the case of a medical emergency, consent~~] to an abortion is voluntary and informed only if:

(1) the physician who is to perform the abortion [~~or the referring physician~~] informs the pregnant woman on whom the abortion is to be performed of:

(A) the physician's name [~~of the physician who will perform the abortion~~];

(B) the particular medical risks associated with the particular abortion procedure to be employed, including, when medically accurate:

(i) the risks of infection and hemorrhage;

(ii) the potential danger to a subsequent pregnancy and of infertility; and

(iii) the possibility of increased risk of breast cancer following an induced abortion and the natural protective effect of a completed pregnancy in avoiding breast cancer;

(C) the probable gestational age of the unborn child at the time the abortion is to be performed; and

(D) the medical risks associated with carrying the child to term;

(2) the physician who is to perform the abortion or the physician's agent informs the pregnant woman that:

(A) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care;

(B) the father is liable for assistance in the support of the child without regard to whether the father has offered to pay for the abortion; and

(C) public and private agencies provide pregnancy prevention counseling and medical referrals for obtaining pregnancy prevention medications or devices, including emergency contraception for victims of rape or incest; ~~and~~

(3) the physician who is to perform the abortion or the physician's agent:

(A) provides ~~(D)~~ the pregnant woman with ~~[has the right to review]~~ the printed materials described by Section 171.014; and

(B) informs the pregnant woman~~[-]~~ that those materials:

(i) have been provided by the ~~[Texas]~~ Department of State Health Services;

(ii) ~~and~~ are accessible on an Internet website sponsored by the department;

(iii) ~~[-, and that the materials]~~ describe the unborn child and list agencies that offer alternatives to abortion; and

(iv) include a list of agencies that offer sonogram services at no cost to the pregnant woman;

(4) before any sedative or anesthesia is administered to the pregnant woman and at least 24 hours before the abortion or at least two hours before the abortion if the pregnant woman waives this requirement by certifying that she currently lives 100 miles or more from the nearest abortion provider:

(A) the physician who is to perform the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers performs a sonogram on the pregnant woman on whom the abortion is to be performed;

(B) the physician who is to perform the abortion displays the sonogram images in a quality consistent with current medical practice in a manner that the pregnant woman may view them;

(C) the physician who is to perform the abortion provides, in a manner understandable to a layperson, a verbal explanation of the results of the sonogram images, including a medical description of the dimensions of the embryo or fetus, the presence of cardiac activity, and the presence of external members and internal organs; and

(D) the physician who is to perform the abortion or an agent of the physician who is also a sonographer certified by a national registry of medical sonographers makes audible the heart auscultation for the pregnant woman to hear, if present, in a quality consistent with current medical practice and provides, in a manner understandable to a layperson, a simultaneous verbal explanation of the heart auscultation;

(5) before receiving a sonogram under Subdivision (4)(A) and ~~[(3) the woman certifies in writing]~~ before the abortion is performed and before any sedative or anesthesia is administered, the pregnant woman completes and certifies with her signature an election form that states as follows:

"ABORTION AND SONOGRAM ELECTION

(1) THE INFORMATION AND PRINTED MATERIALS DESCRIBED BY SECTIONS 171.012(a)(1)-(3), TEXAS HEALTH AND SAFETY CODE, HAVE BEEN PROVIDED AND EXPLAINED TO ME.

(2) I UNDERSTAND THE NATURE AND CONSEQUENCES OF AN ABORTION.

(3) TEXAS LAW REQUIRES THAT I RECEIVE A SONOGRAM PRIOR TO RECEIVING AN ABORTION.

(4) I UNDERSTAND THAT I HAVE THE OPTION TO VIEW THE SONOGRAM IMAGES.

(5) I UNDERSTAND THAT I HAVE THE OPTION TO HEAR THE HEARTBEAT.

(6) I UNDERSTAND THAT I AM REQUIRED BY LAW TO HEAR AN EXPLANATION OF THE SONOGRAM IMAGES UNLESS I CERTIFY IN WRITING TO ONE OF THE FOLLOWING:

I AM PREGNANT AS A RESULT OF A SEXUAL ASSAULT, INCEST, OR OTHER VIOLATION OF THE TEXAS PENAL CODE THAT HAS BEEN REPORTED TO LAW ENFORCEMENT AUTHORITIES OR THAT HAS NOT BEEN REPORTED BECAUSE I REASONABLY BELIEVE THAT DOING SO WOULD PUT ME AT RISK OF RETALIATION RESULTING IN SERIOUS BODILY INJURY.

I AM A MINOR AND OBTAINING AN ABORTION IN ACCORDANCE WITH JUDICIAL BYPASS PROCEDURES UNDER CHAPTER 33, TEXAS FAMILY CODE.

MY FETUS HAS AN IRREVERSIBLE MEDICAL CONDITION OR ABNORMALITY, AS IDENTIFIED BY RELIABLE DIAGNOSTIC PROCEDURES AND DOCUMENTED IN MY MEDICAL FILE.

(7) I AM MAKING THIS ELECTION OF MY OWN FREE WILL AND WITHOUT COERCION.

(8) FOR A WOMAN WHO LIVES 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER ONLY:

I CERTIFY THAT, BECAUSE I CURRENTLY LIVE 100 MILES OR MORE FROM THE NEAREST ABORTION PROVIDER, I WAIVE THE REQUIREMENT TO WAIT 24 HOURS AFTER THE SONOGRAM IS PERFORMED BEFORE RECEIVING THE ABORTION PROCEDURE. MY PLACE OF RESIDENCE IS: \_\_\_\_\_.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE"

~~[that the information described by Subdivisions (1) and (2) has been provided to her and that she has been informed of her opportunity to review the information described by Section 171.014]; [and]~~

(6) [(4)] before the abortion is performed, the physician who is to perform the abortion receives a copy of the signed, written certification required by Subdivision (5); and

(7) the pregnant woman is provided the name of each person who provides or explains the information required under this subsection [(3)].

(a-1) During a visit made to a facility to fulfill the requirements of Subsection (a), the facility and any person at the facility may not accept any form of payment, deposit, or exchange or make any financial agreement for an abortion or abortion-related services other than for payment of a service required by Subsection (a). The amount charged for a service required by Subsection (a) may not exceed the reimbursement rate established for the service by the Health and Human Services Commission for statewide medical reimbursement programs.

(b) The information required to be provided under Subsections (a)(1) and (2) may not be provided by audio or video recording and must be provided at least 24 hours before the abortion is to be performed:

(1) orally and [by telephone or] in person in a private and confidential setting if the pregnant woman currently lives less than 100 miles from the nearest abortion provider; or [and]

(2) orally by telephone or in person in a private and confidential setting if the pregnant woman certifies that the woman currently lives 100 miles or more from the nearest abortion provider [at least 24 hours before the abortion is to be performed].

(c) When providing the information under Subsection (a)(3) [(a)(2)(D)], the physician or the physician's agent must provide the pregnant woman with the address of the Internet website on which the printed materials described by Section 171.014 may be viewed as required by Section 171.014(e).

SECTION 3. Subchapter B, Chapter 171, Health and Safety Code, is amended by adding Sections 171.0121, 171.0122, 171.0123, and 171.0124 to read as follows:

Sec. 171.0121. MEDICAL RECORD. (a) Before the abortion begins, a copy of the signed, written certification received by the physician under Section 171.012(a)(6) must be placed in the pregnant woman's medical records.

(b) A copy of the signed, written certification required under Sections 171.012(a)(5) and (6) shall be retained by the facility where the abortion is performed until:

(1) the seventh anniversary of the date it is signed; or

(2) if the pregnant woman is a minor, the later of:

(A) the seventh anniversary of the date it is signed; or

(B) the woman's 21st birthday.

Sec. 171.0122. VIEWING PRINTED MATERIALS AND SONOGRAM IMAGE; HEARING HEART AUSCULTATION OR VERBAL EXPLANATION. (a) A pregnant woman may choose not to view the printed materials provided under Section 171.012(a)(3) after she has been provided the materials.

(b) A pregnant woman may choose not to view the sonogram images required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(4).

(c) A pregnant woman may choose not to hear the heart auscultation required to be provided to and reviewed with the pregnant woman under Section 171.012(a)(4).

(d) A pregnant woman may choose not to receive the verbal explanation of the results of the sonogram images under Section 171.012(a)(4)(C) if:

(1) the woman's pregnancy is a result of a sexual assault, incest, or other violation of the Penal Code that has been reported to law enforcement authorities or that has not been reported because she has a reason that she declines to reveal because she reasonably believes that to do so would put her at risk of retaliation resulting in serious bodily injury;

(2) the woman is a minor and obtaining an abortion in accordance with judicial bypass procedures under Chapter 33, Family Code; or

(3) the fetus has an irreversible medical condition or abnormality, as previously identified by reliable diagnostic procedures and documented in the woman's medical file.

(e) The physician and the pregnant woman are not subject to a penalty under this chapter solely because the pregnant woman chooses not to view the printed materials or the sonogram images, hear the heart auscultation, or receive the verbal explanation, if waived as provided by this section.

Sec. 171.0123. PATERNITY AND CHILD SUPPORT INFORMATION. If, after being provided with a sonogram and the information required under this subchapter, the pregnant woman chooses not to have an abortion, the physician or an agent of the physician shall provide the pregnant woman with a publication developed by the Title IV-D agency that provides information about paternity establishment and child support, including:

(1) the steps necessary for unmarried parents to establish legal paternity;

(2) the benefits of paternity establishment for children;

(3) the steps necessary to obtain a child support order;

(4) the benefits of establishing a legal parenting order; and

(5) financial and legal responsibilities of parenting.

Sec. 171.0124. EXCEPTION FOR MEDICAL EMERGENCY. A physician may perform an abortion without obtaining informed consent under this subchapter in a medical emergency. A physician who performs an abortion in a medical emergency shall:

(1) include in the patient's medical records a statement signed by the physician certifying the nature of the medical emergency; and

(2) not later than the 30th day after the date the abortion is performed, certify to the Department of State Health Services the specific medical condition that constituted the emergency.

SECTION 4. Section 171.013(a), Health and Safety Code, is amended to read as follows:

(a) The ~~[If the woman chooses to view the materials described by Section 171.014, the]~~ physician or the physician's agent shall furnish copies of the materials described by Section 171.014 to the pregnant woman ~~[her]~~ at least 24 hours before the abortion is to be performed and shall direct the pregnant woman to the Internet website required to be published under Section 171.014(e). The ~~[A]~~ physician or the physician's agent may furnish the materials to the pregnant woman by mail if the materials are mailed, restricted delivery to addressee, at least 72 hours before the abortion is to be performed.

SECTION 5. Section 171.015, Health and Safety Code, is amended to read as follows:

Sec. 171.015. INFORMATION RELATING TO PUBLIC AND PRIVATE AGENCIES. The informational materials must include [~~either~~]:

(1) geographically indexed materials designed to inform the pregnant woman of public and private agencies and services that:

(A) are available to assist a woman through pregnancy, childbirth, and the child's dependency, including:

(i) a comprehensive list of adoption agencies;

(ii) a description of the services the adoption agencies offer; [~~and~~]

(iii) a description of the manner, including telephone numbers, in which an adoption agency may be contacted; and

(iv) a comprehensive list of agencies and organizations that offer sonogram services at no cost to the pregnant woman;

(B) do not provide abortions or abortion-related services or make referrals to abortion providers; and

(C) are not affiliated with organizations that provide abortions or abortion-related services or make referrals to abortion providers; and [~~or~~]

(2) a toll-free, 24-hour telephone number that may be called to obtain an oral list and description of agencies described by Subdivision (1) that are located near the caller and of the services the agencies offer.

SECTION 6. Subchapter A, Chapter 241, Health and Safety Code, is amended by adding Section 241.007 to read as follows:

Sec. 241.007. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. A hospital shall comply with Subchapter B, Chapter 171.

SECTION 7. Subchapter A, Chapter 243, Health and Safety Code, is amended by adding Section 243.017 to read as follows:

Sec. 243.017. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. An ambulatory surgical center shall comply with Subchapter B, Chapter 171.

SECTION 8. Section 245.006(a), Health and Safety Code, is amended to read as follows:

(a) The department shall [~~may~~] inspect an abortion facility at random, unannounced, and reasonable times as necessary to ensure compliance with this chapter and Subchapter B, Chapter 171.

SECTION 9. Chapter 245, Health and Safety Code, is amended by adding Section 245.024 to read as follows:

Sec. 245.024. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. An abortion facility shall comply with Subchapter B, Chapter 171.

SECTION 10. Section 164.055(a), Occupations Code, is amended to read as follows:

(a) The board shall [~~may~~] take an appropriate disciplinary action against a physician who violates Section 170.002 or Chapter 171, Health and Safety Code. The board shall [~~may~~] refuse to admit to examination or refuse to issue a license or renewal license to a person who violates that section or chapter.

SECTION 11. Subchapter B, Chapter 164, Occupations Code, is amended by adding Section 164.0551 to read as follows:

Sec. 164.0551. COMPLIANCE WITH CERTAIN REQUIREMENTS REGARDING SONOGRAM BEFORE ABORTION. A physician shall comply with Subchapter B, Chapter 171, Health and Safety Code.

SECTION 12. The purposes of this Act include, but are not limited to:

- (1) protecting the physical and psychological health and well-being of pregnant women;
- (2) providing pregnant women access to information that would allow her to consider the impact an abortion would have on her unborn child; and
- (3) protecting the integrity and ethical standards of the medical profession.

SECTION 13. The change in law made by this Act applies only to an abortion performed on or after the 30th day after the effective date of this Act. An abortion performed before the 30th day after the effective date of this Act is governed by the law in effect on the date the abortion was performed, and the former law is continued in effect for that purpose.

SECTION 14. The Title IV-D agency shall publish the information required by Section 171.0123, Health and Safety Code, as added by this Act, not later than the 30th day after the effective date of this Act.

SECTION 15. Every provision in this Act and every application of the provisions in this Act are severable from each other. If any application of any provision in this Act to any person or group of persons or circumstances is found by a court to be invalid, the remainder of this Act and the application of the Act's provisions to all other persons and circumstances may not be affected. All constitutionally valid applications of this Act shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this Act invalid in a large or substantial fraction of relevant cases, the remaining valid applications shall be severed and allowed to remain in force.

SECTION 16. 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, 2011.

The amendment to **CSHB 15** was read.

Senator Van de Putte offered the following amendment to Floor Amendment No. 1:

**Floor Amendment No. 2**

Amend Floor Amendment No. 1 to **CSHB 15** in SECTION 1 of the amendment by striking amended Section 171.002(3), Health and Safety Code, and substituting the following:

(3) "Medical emergency" means a condition that a physician concludes, on the basis of the physician's good faith clinical judgment, complicates the medical condition of the pregnant woman and necessitates the abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function.

The amendment to Floor Amendment No. 1 to **CSHB 15** was read.

**(President in Chair)**

On motion of Senator Patrick, Floor Amendment No. 2 was tabled by the following vote: Yeas 19, Nays 12.

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

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

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

**Floor Amendment No. 3**

Amend Floor Amendment No. 1 by Patrick to **CSHB 15** (senate committee report) in SECTION 2 of the amendment as follows:

(1) In amended Section 171.012(a)(1), Health and Safety Code, strike "~~or the referring physician~~" and substitute "or the referring physician".

(2) In amended Section 171.012(a)(1)(A), Health and Safety Code, strike "physician's name ~~[of the physician who will perform the abortion]~~" and substitute "name of the physician who will perform the abortion".

(3) In amended Section 171.012(a)(3), Health and Safety Code, strike "abortion or the physician's agent:" and substitute "abortion, the referring physician, or either physician's agent:".

(4) In amended Section 171.012(a)(4)(A), Health and Safety Code, strike "abortion or an agent of the physician" and substitute "abortion, the referring physician, or an agent of either physician".

(5) In amended Section 171.012(a)(4)(B), Health and Safety Code, after "abortion", insert "or the referring physician".

(6) In amended Section 171.012(a)(4)(C), Health and Safety Code, after "abortion", insert "or the referring physician".

(7) In amended Section 171.012(a)(4)(D), Health and Safety Code, strike "abortion or an agent of the physician" and substitute "abortion, the referring physician, or an agent of either physician".

The amendment to Floor Amendment No. 1 to **CSHB 15** was read.

On motion of Senator Patrick, Floor Amendment No. 3 was tabled by the following vote: Yeas 20, Nays 11.

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

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

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

**Floor Amendment No. 4**

Amend Floor Amendment No. 1 by Patrick to **CSHB 15** (senate committee report) in SECTION 2 of the amendment as follows:

(1) In added Section 171.012(a)(4), Health and Safety Code, strike "nearest abortion provider:" and substitute "nearest abortion provider that is a facility licensed under Chapter 245:".

(2) In added Section 171.012(a)(5), Health and Safety Code, strike "NEAREST ABORTION PROVIDER" and substitute "NEAREST ABORTION PROVIDER THAT IS A FACILITY LICENSED UNDER CHAPTER 245".

(3) In amended Section 171.012(b)(2), Health and Safety Code, strike "nearest abortion provider" and substitute "nearest abortion provider that is a facility licensed under Chapter 245".

The amendment to Floor Amendment No. 1 to **CSHB 15** 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.

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

**Floor Amendment No. 5**

Amend Floor Amendment No. 1 to **CSHB 15** by:

(1) Adding the following in Section 2, on page 4, line 22, after "**IMAGES.**":

"I ELECT TO VIEW NOT TO VIEW THE SONOGRAM IMAGES."

(2) Adding the following in Section 2, on page 4, line 24, after "**HEARTBEAT.**":

"I ELECT TO HEAR NOT TO HEAR THE HEARTBEAT."

The amendment to Floor Amendment No. 1 to **CSHB 15** was read.

On motion of Senator Patrick, Floor Amendment No. 5 was tabled by the following vote: Yeas 19, Nays 12.

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

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

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

**Floor Amendment No. 6**

Amend Floor Amendment No. 1 by Patrick to **CSHB 15** (senate committee printing) as follows:

(1) In SECTION 2 of the amendment, in added Section 171.012(a)(4)(A), Health and Safety Code, strike "who is also a sonographer certified by a national registry of medical sonographers".

(2) In SECTION 2 of the amendment, in added Section 171.012(a)(4)(D), Health and Safety Code, strike "who is also a sonographer certified by a national registry of medical sonographers".

The amendment to Floor Amendment No. 1 to **CSHB 15** was read.

On motion of Senator Patrick, Floor Amendment No. 6 was tabled by the following vote: Yeas 19, Nays 12.

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

Nays: Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

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

#### **Floor Amendment No. 7**

Amend Floor Amendment No. 1 by Patrick to **CSHB 15** (senate committee printing) in SECTION 5 of the amendment, in added Section 171.015(1)(A)(iv), Health and Safety Code, between "services" and "at", by inserting ", provided by sonographers certified by a national registry of medical sonographers,".

The amendment to Floor Amendment No. 1 to **CSHB 15** was read.

On motion of Senator Patrick, Floor Amendment No. 7 was tabled by the following vote: Yeas 20, Nays 11.

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

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

Question recurring on the adoption of Floor Amendment No. 1 as amended to **CSHB 15**, the amendment was adopted by the following vote: Yeas 21, Nays 10.

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

Nays: Davis, Ellis, Gallegos, Hinojosa, Rodriguez, Van de Putte, Watson, Wentworth, West, Whitmire.

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

**CSHB 15** as amended was passed to third reading by the following vote: Yeas 21, Nays 10. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 462 ON THIRD READING**

The President laid before the Senate **CSSB 462** by Senator West on its third reading. The bill had been read third time and further consideration postponed to a time certain of 12:45 p.m. today:

**CSSB 462**, Relating to the expunction of records and files relating to a person's arrest.

Question — Shall **CSSB 462** be finally passed?

Senator Huffman offered the following amendment to the bill:

**Floor Amendment No. 1 on Third Reading**

Amend **CSSB 462** on third reading, (senate committee report) in SECTION 1 of the bill, in amended Article 55.01, Code of Criminal Procedure (page 2, between lines 13 and 14), by inserting the following new subsection (a-2) accordingly:

(a-2) Notwithstanding any other provision of this article, a defendant, who intentionally or knowingly absconds the jurisdiction after being released following arrest according to Article 17 Code of Criminal Procedure, is not eligible for an expunction under Article 55.01(a)(2)(A)(i)(a) or Article 55.01(a)(2)(B).

The amendment to **CSSB 462** 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.

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

**CSSB 462** as amended was finally passed by the following vote: Yeas 26, Nays 4.

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

Nays: Fraser, Harris, Nelson, Patrick.

Absent: Williams.

**(Senator Eltife in Chair)**

**COMMITTEE SUBSTITUTE  
SENATE BILL 1864 ON SECOND READING**

Senator Davis moved to suspend the regular order of business to take up for consideration **CSSB 1864** at this time on its second reading:

**CSSB 1864**, Relating to the awarding of contracts by the Texas Department of Transportation to private sector providers.

The motion prevailed.

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

The bill was read second time.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 1864** (senate committee report) in SECTION 1 of the bill, in added Section 223.049, Transportation Code (page 1, between lines 31 and 32), by inserting the following:

(c) This section does not apply to the procurement of professional services under Subchapter A, Chapter 2254, Government Code.

The amendment to **CSSB 1864** 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 Davis and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSSB 1864** 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, Fraser, Nelson, Nichols, Patrick.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1864 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1864** be placed on its third reading and final passage.

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

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

Nays: Birdwell, Fraser, Nelson, Nichols, 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 1864**, 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 1864** 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 26, Nays 5.

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

Nays: Birdwell, Fraser, Nelson, Nichols, Patrick.

#### **BILLS AND RESOLUTION SIGNED**

The Presiding Officer announced the signing of the following enrolled bills and resolution in the presence of the Senate after the captions had been read:

**SB 423, SB 693, HB 314, HB 367, HB 861, HB 1409, HCR 140.**

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1555 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1555** at this time on its second reading:

**CSHB 1555**, Relating to the first day of instruction in certain school districts that provide additional days of instruction financed with local funds.

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.

#### **COMMITTEE SUBSTITUTE HOUSE BILL 1555 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1555** 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 **CSHB 1555**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying

the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSHB 1555** 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.

#### REMARKS ORDERED PRINTED

On motion of Senator Gallegos and by unanimous consent, the exchange between Senators Ellis and Gallegos regarding **CSHB 1555** was ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Gallegos:** Senator Ellis, I didn't know you were going to bring this bill up today, trying to sneak it by me. I did want to, just for purposes of, is this the Apollo 20 bill?

**Senator Ellis:** Senator, let me tell you what it does, as it passed the House unanimously—

**Senator Gallegos:** —yes or no?

**Senator Ellis:** Let me walk—

**Senator Gallegos:** Is it the Apollo 20—

**Senator Ellis:** —it is.

**Senator Gallegos:** —Program bill?

**Senator Ellis:** It is.

**Senator Gallegos:** Okay, go ahead, I'm just—

**Senator Ellis:** Yeah. So what this bill does is allow a district with a student population of 150,000 or more to begin school before the fourth Monday in August at not more than 20 percent of the campuses with local funds. So for the benefit of others, I know you're very familiar with it, Senator Gallegos, but this is a bill to let low-performing schools in Houston, the Apollo Program, start school early to let those kids in these low-performing schools prepare for their standardized tests to bring those schools out. It has been very highly acclaimed in Houston, a tremendous amount of money has been donated from the private sector to help these schools. It's essentially letting these schools do what charter schools do, and do very well. The kids are graded. They will go to school on weekends. They do extensive tutoring. They have a longer school day, and, in Houston, they were able to get a waiver for the first year of the program from TEA, but a couple of these schools are now doing slightly better. They're barely off the bubble. And so, what this does is give them some certainty for these low-performing schools, to give these kids a shot at life. As

an example, in this past year, a couple of the schools, somewhere in the neighborhood of 90 percent of the kids at these schools were accepted to colleges. And these are schools that normally, the kids would, probably, unfortunately, be in the pipeline, they head to the Texas Department of Corrections, instead of going to college. So it's been tremendously successful in Houston, and this simply gives them the latitude to be able to continue this fine program. And I think that's why it managed to make it out of the House unanimously.

**Senator Gallegos:** Senator Ellis, I just saw a review that came out in the news where it had some of the data on the Apollo 20 Program was mixed. You know, and a lot of it was positive, and a lot of data is not inclusive, and a lot of data was not in. A lot of the data was not in, and that really concerned me, when you're putting that much money into a program that has some of the data that's coming in is conclusive, but the other is not conclusive. And with that much money going into these programs, it concerns me that a full analysis has not been done on these types of programs, where you're spending a lot of money on these programs, where you get an analysis that's inconclusive. I don't like inconclusive data, especially when you're, the money that you're talking about, private donations, and regular GR money that's going in. But, I think the purpose behind your bill, I do appreciate it, and I support, I just wanted it for legislative intent, that under this bill, that it is your intention that it only target low-performing schools. Is that your intent?

**Senator Ellis:** That is correct, Senator.

**Senator Gallegos:** Okay, only low-performing schools under this program.

**Senator Ellis:** Yeah, Senator, what we're trying to do is, as you will recall—

**Senator Gallegos:** That was—

**Senator Ellis:** —the No Child Left Behind Act.

**Senator Gallegos:** —that was a yes.

**Senator Ellis:** That is my intent. Yeah, under the No Child Left Behind Act, if a school is deemed unsatisfactory for a given period of time, the school district has no choice other than to close that school. So as an example, with Sam Houston High School in your district, they had to close it. And the school district spent five million dollars to implement all of the reform measures required by the Texas Education Agency because of federal law and laws we put in place. Now, that was five million dollars for one high school. In the Apollo Program, nine schools in Apollo cost 8.4 million dollars and that has been money they have raised. So I think you raise a valid point. It does cost, but it would've cost a heck of a lot more if they have to shut down those nine schools, if they would've spent on those nine schools what they spent on that one that happens to be in your district, that would've been 45 million dollars instead of spending 8.4 so that, hopefully, we won't have to close these schools down. And so far, to be honest with you, Senator, it's been a tremendous success now, if you just suppose that with having to shut down one of those schools. And we all hope, with the help of all of us here in the Legislature, we won't have to shut down any of

those schools. But, it costs far more to shut a school down and reopen, as was the case with Sam Houston in your district, than it cost us to try to keep these schools open and improve the performance.

**Senator Gallegos:** I understand what happened at Sam Houston in my district. I do understand what went on there, but I'm not here to debate Sam Houston. We're here to discuss your bill. And, I just, like I said, for legislative intent, that you are targeting low-performing schools—

**Senator Ellis:** That's correct, Senator.

**Senator Gallegos:** —okay.

**Senator Ellis:** Only low-performing schools.

**Senator Gallegos:** And I just want to make sure, clarify that, and I'm going to ask the President to put that in the Journal for legislative intent. But also, Senator Ellis, the people that are overseeing the Apollo Program, there's questions that we have asked, that we're not getting on who is being paid to oversee these programs and how much they're receiving on these programs. And, you know, I believe that the public deserves a right to know when they're overseeing a public school, in a program, when they're overseeing a public school. I believe that the public needs to know who's getting paid and how much. And who's overseeing the program, and that, you know, those are the questions that I still have not had answered. Can you get that information to me?

**Senator Ellis:** Senator, I really think, to be honest with you, that Chairwoman Shapiro might be in a better position to respond to that than I am. I know you mentioned in committee, you probably go to HISD a lot more than I do. I mean, I did tour one—

**Senator Gallegos:** I'm there every meeting that I can be.

**Senator Ellis:** —yeah. I did tour one of these Apollo schools on my way back to Austin a couple of weeks ago, but the Chairwoman, in terms of some of the legislation she has passed on accountability measures and transparency, I think—

**Senator Gallegos:** Yeah.

**Senator Ellis:** —she might be in a better position to help you get any information that you're not getting. But I'll be more than happy to ask for you.

**Senator Gallegos:** Well, when you were Chairman of Finance, and you asked how much certain people were getting paid, weren't you given that answer?

**Senator Ellis:** Senator, that was so long ago, I can't remember now. Seems like a distant memory in Senator Ogden's mind, as well as in my mind.

**Senator Gallegos:** But when you asked for that, for that question to be answered, and you asked how much money that person was making, you were given an answer, weren't you?

**Senator Ellis:** Yeah, I would think that any of us, Senator Gallegos, in terms of the transparency, if you don't get it, you can always ask for it as Senator Zaffirini did under the Open Records Law.

**Senator Gallegos:** Yeah.

**Senator Ellis:** I mean, any, if somebody won't give you something that you asked for, I just say to you—

**Senator Gallegos:** On that thought—

**Senator Ellis:** —send that request in, and they'll get it to you pretty quick.

**Senator Gallegos:** —and that's all I'm asking for, is how much money these people that are overseeing the Apollo Program in my district, some of these schools in my district they're overseeing, I'm just asking how much they're making.

**Senator Ellis:** Yeah, I don't know, but I'll work with you. If you want to do a joint letter to ask for, you do—

**Senator Gallegos:** Yeah.

**Senator Ellis:** —a draft, let me look at it—

**Senator Gallegos:** That's fine.

**Senator Ellis:** —I'll be more than happy to sign it with you.

**Senator Gallegos:** Don't have a problem. Okay.

**Senator Ellis:** Thank you.

#### **COMMITTEE SUBSTITUTE SENATE BILL 1206 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1206** at this time on its second reading:

**CSSB 1206**, Relating to medical care and public health services provided by a health care professional in a licensed freestanding emergency medical care facility.

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 1206 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 **CSSB 1206** 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 1206**, 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 1206** 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.

#### **PERMISSION TO INTRODUCE BILLS AND RESOLUTION (Motion In Writing)**

On motion of Senator Whitmire and by unanimous consent, Senate Rule 7.07(b) was suspended to permit the introduction of the following bills and resolution: **SB 1923, SB 1924, SB 1925, SB 1926, SCR 49.**

#### **NOTICE GIVEN FOR LOCAL AND UNCONTESTED CALENDAR**

Senator Uresti announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. Thursday, May 5, 2011, and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

#### **MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 3:06 p.m. agreed to adjourn, in memory of J. D. Tippit, Ira Benjamin Laningham IV, and Janie Cuellar Salinas, upon completion of the introduction of bills and resolutions on first reading, until 11:00 a.m. tomorrow.

#### **SENATE BILLS AND RESOLUTION ON FIRST READING**

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

**SB 1923** by Wentworth

Relating to providing that certain travel vouchers submitted by peace officers assigned to a protective detail are confidential.

To Committee on Open Government.

**SB 1924** by Uresti

Relating to concurrent state and federal jurisdiction over certain units of the national park system in this state.

To Committee on Agriculture and Rural Affairs.

**SB 1925** by Eltife

Relating to the designation of a portion of U.S. Highway 271 as the Sergeant Jay M. Hoskins Memorial Highway.

To Committee on Transportation and Homeland Security.

**SB 1926** by Lucio

Relating to the Colonel H. William "Bill" Card, Jr., Outpatient Clinic.

To Committee on International Relations and Trade.

**SCR 49** by Wentworth

Granting Jacqueline A. Carrizales permission to sue the San Antonio Water System.

To Committee on Jurisprudence.

**HOUSE BILLS ON FIRST READING**

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

**HB 78** to Committee on Transportation and Homeland Security.

**HB 150** to Committee on Redistricting.

**HB 232** to Committee on Intergovernmental Relations.

**HB 343** to Committee on Transportation and Homeland Security.

**HB 625** to Committee on State Affairs.

**HB 707** to Committee on Intergovernmental Relations.

**HB 718** to Committee on Criminal Justice.

**HB 782** to Committee on Intergovernmental Relations.

**HB 788** to Committee on Health and Human Services.

**HB 812** to Committee on Transportation and Homeland Security.

**HB 844** to Committee on Intergovernmental Relations.

**HB 858** to Committee on Intergovernmental Relations.

**HB 887** to Committee on Transportation and Homeland Security.

**HB 901** to Committee on Jurisprudence.

**HB 927** to Committee on Criminal Justice.

**HB 976** to Committee on Criminal Justice.

**HB 990** to Committee on Economic Development.

**HB 1048** to Committee on Jurisprudence.

**HB 1057** to Committee on Intergovernmental Relations.

**HB 1094** to Committee on State Affairs.

**HB 1103** to Committee on Criminal Justice.

**HB 1123** to Committee on Business and Commerce.

**HB 1235** to Committee on Transportation and Homeland Security.

**HB 1267** to Committee on Intergovernmental Relations.

**HB 1274** to Committee on Administration.

**HB 1371** to Committee on Intergovernmental Relations.

**HB 1385** to Committee on Transportation and Homeland Security.

- HB 1403** to Committee on Natural Resources.
- HB 1449** to Committee on Agriculture and Rural Affairs.
- HB 1450** to Committee on Agriculture and Rural Affairs.
- HB 1503** to Committee on State Affairs.
- HB 1514** to Committee on Veteran Affairs and Military Installations.
- HB 1523** to Committee on Transportation and Homeland Security.
- HB 1631** to Committee on State Affairs.
- HB 1711** to Committee on Economic Development.
- HB 2080** to Committee on Transportation and Homeland Security.
- HB 2857** to Committee on Intergovernmental Relations.
- HB 2907** to Committee on Higher Education.
- HB 3049** to Committee on Transportation and Homeland Security.

**CONFERENCE COMMITTEE REPORT ON  
SENATE BILL 18**

Senator Estes submitted the following Conference Committee Report:

Austin, Texas  
May 2, 2011

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **SB 18** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

ESTES  
DUNCAN  
HARRIS  
LUCIO  
WHITMIRE  
On the part of the Senate

GEREN  
HARDCASTLE  
OLIVEIRA  
RITTER  
SHEFFIELD  
On the part of the House

A BILL TO BE ENTITLED  
AN ACT

relating to the use of eminent domain authority.

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

SECTION 1. Section 11.155(a), Education Code, is amended to read as follows:

(a) An independent school district may, by the exercise of the right of eminent domain, acquire the fee simple title to real property [~~for the purpose of securing sites~~] on which to construct school buildings or for any other public use [~~purpose~~] necessary for the district.

SECTION 2. Chapter 2206, Government Code, is amended to read as follows:

CHAPTER 2206. ~~[LIMITATIONS ON USE OF]~~ EMINENT DOMAIN  
 SUBCHAPTER A. LIMITATIONS ON PURPOSE AND USE OF PROPERTY  
ACQUIRED THROUGH EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) This section applies to the use of eminent domain under the laws of this state, including a local or special law, by any governmental or private entity, including:

(1) a state agency, including an institution of higher education as defined by Section 61.003, Education Code;

(2) a political subdivision of this state; or

(3) a corporation created by a governmental entity to act on behalf of the entity.

(b) A governmental or private entity may not take private property through the use of eminent domain if the taking:

(1) confers a private benefit on a particular private party through the use of the property;

(2) is for a public use that is merely a pretext to confer a private benefit on a particular private party; ~~[or]~~

(3) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas under:

(A) Chapter 373 or 374, Local Government Code, other than an activity described by Section 373.002(b)(5), Local Government Code; or

(B) Section 311.005(a)(1)(I), Tax Code; or

(4) is not for a public use.

(c) This section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for:

(1) transportation projects, including, but not limited to, railroads, airports, or public roads or highways;

(2) entities authorized under Section 59, Article XVI, Texas Constitution, including:

(A) port authorities;

(B) navigation districts; and

(C) any other conservation or reclamation districts that act as ports;

(3) water supply, wastewater, flood control, and drainage projects;

(4) public buildings, hospitals, and parks;

(5) the provision of utility services;

(6) a sports and community venue project approved by voters at an election held on or before December 1, 2005, under Chapter 334 or 335, Local Government Code;

(7) the operations of:

(A) a common carrier pipeline ~~[subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act];~~  
 or

(B) an energy transporter, as that term is defined by Section 186.051, Utilities Code;

(8) a purpose authorized by Chapter 181, Utilities Code;

(9) underground storage operations subject to Chapter 91, Natural Resources Code;

(10) a waste disposal project; or

(11) a library, museum, or related facility and any infrastructure related to the facility.

(d) This section does not affect the authority of a governmental entity to condemn a leasehold estate on property owned by the governmental entity.

(e) The determination by the governmental or private entity proposing to take the property that the taking does not involve an act or circumstance prohibited by Subsection (b) does not create a presumption with respect to whether the taking involves that act or circumstance.

Sec. 2206.002. LIMITATIONS ON EASEMENTS. (a) This section applies only to an easement acquired by an entity for the purpose of a pipeline to be used for oil or gas exploration or production activities.

(b) A property owner whose property is acquired through the use of eminent domain under Chapter 21, Property Code, for the purpose of creating an easement through that owner's property may construct streets or roads, including gravel, asphalt, or concrete streets or roads, at any locations above the easement that the property owner chooses.

(c) The portion of a street or road constructed under this section that is within the area covered by the easement:

(1) must cross the easement at or near 90 degrees; and

(2) may not:

(A) exceed 40 feet in width;

(B) cause a violation of any applicable pipeline regulation; or

(C) interfere with the operation and maintenance of any pipeline.

(d) At least 30 days before the date on which construction of an asphalt or concrete street or road that will be located wholly or partly in an area covered by an easement used for a pipeline is scheduled to begin, the property owner must submit plans for the proposed construction to the owner of the easement.

(e) Notwithstanding the provisions of this section, a property owner and the owner of the easement may agree to terms other than those stated in Subsection (c).

#### SUBCHAPTER B. PROCEDURES REQUIRED TO INITIATE EMINENT DOMAIN PROCEEDINGS

Sec. 2206.051. SHORT TITLE. This subchapter may be cited as the Truth in Condemnation Procedures Act.

Sec. 2206.052. APPLICABILITY. The procedures in this subchapter apply only to the use of eminent domain under the laws of this state by a governmental entity.

Sec. 2206.053. VOTE ON USE OF EMINENT DOMAIN. (a) Before a governmental entity initiates a condemnation proceeding by filing a petition under Section 21.012, Property Code, the governmental entity must:

(1) authorize the initiation of the condemnation proceeding at a public meeting by a record vote; and

(2) include in the notice for the public meeting as required by Subchapter C, Chapter 551, in addition to other information as required by that subchapter, the consideration of the use of eminent domain to condemn property as an agenda item.

(b) A single ordinance, resolution, or order may be adopted for all units of property to be condemned if:

(1) the motion required by Subsection (e) indicates that the first record vote applies to all units of property to be condemned; and

(2) the minutes of the governmental entity reflect that the first vote applies to all of those units.

(c) If more than one member of the governing body objects to adopting a single ordinance, resolution, or order by a record vote for all units of property for which condemnation proceedings are to be initiated, a separate record vote must be taken for each unit of property.

(d) For the purposes of Subsections (a) and (c), if two or more units of real property are owned by the same person, the governmental entity may treat those units of property as one unit of property.

(e) The motion to adopt an ordinance, resolution, or order authorizing the initiation of condemnation proceedings under Chapter 21, Property Code, must be made in a form substantially similar to the following: "I move that the (name of governmental entity) authorize the use of the power of eminent domain to acquire (describe the property) for (describe the public use)." The description of the property required by this subsection is sufficient if the description of the location of and interest in the property that the governmental entity seeks to acquire is substantially similar to the description that is or could properly be used in a petition to condemn the property under Section 21.012, Property Code.

(f) If a project for a public use described by Section 2206.001(c)(3) will require a governmental entity to acquire multiple tracts or units of property to construct facilities connecting one location to another location, the governing body of the governmental entity may adopt a single ordinance, resolution, or order by a record vote that delegates the authority to initiate condemnation proceedings to the chief administrative official of the governmental entity.

(g) An ordinance, resolution, or order adopted under Subsection (f) is not required to identify specific properties that the governmental entity will acquire. The ordinance, resolution, or order must identify the general area to be covered by the project or the general route that will be used by the governmental entity for the project in a way that provides property owners in and around the area or along the route reasonable notice that the owners' properties may be subject to condemnation proceedings during the planning or construction of the project.

#### SUBCHAPTER C. EXPIRATION OF CERTAIN EMINENT DOMAIN AUTHORITY

Sec. 2206.101. REPORT OF EMINENT DOMAIN AUTHORITY; EXPIRATION OF AUTHORITY. (a) This section does not apply to an entity that was created or that acquired the power of eminent domain on or after December 31, 2012.

(b) Not later than December 31, 2012, an entity, including a private entity, authorized by the state by a general or special law to exercise the power of eminent domain shall submit to the comptroller a letter stating that the entity is authorized by the state to exercise the power of eminent domain and identifying each provision of law that grants the entity that authority. The entity must send the letter by certified mail, return receipt requested.

(c) The authority of an entity to exercise the power of eminent domain expires on September 1, 2013, unless the entity submits a letter in accordance with Subsection (b).

(d) Not later than March 1, 2013, the comptroller shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, the presiding officers of the appropriate standing committees of the senate and the house of representatives, and the Texas Legislative Council a report that contains:

(1) the name of each entity that submitted a letter in accordance with this section; and

(2) a corresponding list of the provisions granting eminent domain authority as identified by each entity that submitted a letter.

(e) The Texas Legislative Council shall prepare for consideration by the 84th Legislature, Regular Session, a nonsubstantive revision of the statutes of this state as necessary to reflect the state of the law after the expiration of an entity's eminent domain authority effective under Subsection (c).

SECTION 3. Section 251.001(a), Local Government Code, is amended to read as follows:

(a) When the governing body of a municipality considers it necessary, the municipality may exercise the right of eminent domain for a public use [~~purpose~~] to acquire public or private property, whether located inside or outside the municipality, for any of the following uses [~~purposes~~]:

(1) the providing, enlarging, or improving of a municipally owned city hall; police station; jail or other law enforcement detention facility; fire station; library; school or other educational facility; academy; auditorium; hospital; sanatorium; market house; slaughterhouse; warehouse; elevator; railroad terminal; airport; ferry; ferry landing; pier; wharf; dock or other shipping facility; loading or unloading facility; alley, street, or other roadway; park, playground, or other recreational facility; square; water works system, including reservoirs, other water supply sources, watersheds, and water storage, drainage, treatment, distribution, transmission, and emptying facilities; sewage system including sewage collection, drainage, treatment, disposal, and emptying facilities; electric or gas power system; cemetery; and crematory;

(2) the determining of riparian rights relative to the municipal water works;

(3) the straightening or improving of the channel of any stream, branch, or drain;

(4) the straightening, widening, or extending of any alley, street, or other roadway; and

(5) [~~for~~] any other municipal public use [~~purpose~~] the governing body considers advisable.

SECTION 4. Section 261.001(a), Local Government Code, is amended to read as follows:

(a) A county may exercise the right of eminent domain to condemn and acquire land, an easement in land, or a right-of-way if the acquisition is necessary for the construction of a jail, courthouse, hospital, or library, or for another public use [~~purpose~~] authorized by law.

SECTION 5. Section 263.201(c), Local Government Code, is amended to read as follows:

(c) The declaration of taking must contain:

(1) a declaration that the land or interest in land described in the original petition is taken for a public use [~~purpose~~] and for ultimate conveyance to the United States;

(2) a description of the land sufficient for the identification of the land;

(3) a statement of the estate or interest in the land being taken;

(4) a statement of the public use to be made of the land;

(5) a plan showing the land being taken; and

(6) a statement of the amount of damages awarded by the special commissioners, or by the jury on appeal, for the taking of the land.

SECTION 6. Section 273.002, Local Government Code, is amended to read as follows:

Sec. 273.002. CONDEMNATION. Condemnation of property under this chapter shall be in accordance with state law relating to eminent domain, which may be Chapter 21, Property Code, or any other state law governing and relating to the condemnation of land for public use [~~purposes~~] by a municipality.

SECTION 7. Section 21.0111, Property Code, is amended to read as follows:

Sec. 21.0111. DISCLOSURE OF CERTAIN INFORMATION REQUIRED; INITIAL OFFER. (a) An [A governmental] entity with eminent domain authority that wants to acquire real property for a public use shall, by certified mail, return receipt requested, disclose to the property owner at the time an offer to purchase or lease the property is made any and all [existing] appraisal reports produced or acquired by the [governmental] entity relating specifically to the owner's property and prepared in the 10 years preceding the date of the [used in determining the final valuation] offer.

(b) A property owner shall disclose to the [acquiring governmental] entity seeking to acquire the property any and all current and existing appraisal reports produced or acquired by the property owner relating specifically to the owner's property and used in determining the owner's opinion of value. Such disclosure shall take place not later than the earlier of:

(1) the 10th day after the date [within 10 days] of receipt of an appraisal report; or

(2) the third business day before the date of a special commissioner's hearing if an appraisal report is to be used at the [reports but no later than 10 days prior to the special commissioner's] hearing.

(c) An entity seeking to acquire property that the entity is authorized to obtain through the use of eminent domain may not include a confidentiality provision in an offer or agreement to acquire the property. The entity shall inform the owner of the property that the owner has the right to:

(1) discuss any offer or agreement regarding the entity's acquisition of the property with others; or

(2) keep the offer or agreement confidential, unless the offer or agreement is subject to Chapter 552, Government Code.

(d) A subsequent bona fide purchaser for value from the acquiring [governmental] entity may conclusively presume that the requirement of this section has been met. This section does not apply to acquisitions of real property for which an [a governmental] entity does not have eminent domain authority.

SECTION 8. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.0113 to read as follows:

Sec. 21.0113. BONA FIDE OFFER REQUIRED. (a) An entity with eminent domain authority that wants to acquire real property for a public use must make a bona fide offer to acquire the property from the property owner voluntarily.

(b) An entity with eminent domain authority has made a bona fide offer if:

(1) an initial offer is made in writing to a property owner;

(2) a final offer is made in writing to the property owner;

(3) the final offer is made on or after the 30th day after the date on which the entity makes a written initial offer to the property owner;

(4) before making a final offer, the entity obtains a written appraisal from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property;

(5) the final offer is equal to or greater than the amount of the written appraisal obtained by the entity;

(6) the following items are included with the final offer or have been previously provided to the owner by the entity:

(A) a copy of the written appraisal;

(B) a copy of the deed, easement, or other instrument conveying the property sought to be acquired; and

(C) the landowner's bill of rights statement prescribed by Section 21.0112; and

(7) the entity provides the property owner with at least 14 days to respond to the final offer and the property owner does not agree to the terms of the final offer within that period.

SECTION 9. Section 21.012, Property Code, is amended to read as follows:

Sec. 21.012. CONDEMNATION PETITION. (a) If an entity [the United States, this state, a political subdivision of this state, a corporation] with eminent domain authority [or an irrigation, water improvement, or water power control district created by law] wants to acquire real property for public use but is unable to agree with the owner of the property on the amount of damages, the [condemning] entity may begin a condemnation proceeding by filing a petition in the proper court.

(b) The petition must:

(1) describe the property to be condemned;

(2) state with specificity the public use ~~[purpose]~~ for which the entity intends to acquire ~~[use]~~ the property;

(3) state the name of the owner of the property if the owner is known;

(4) state that the entity and the property owner are unable to agree on the damages; ~~[and]~~

(5) if applicable, state that the entity provided the property owner with the landowner's bill of rights statement in accordance with Section 21.0112; and

(6) state that the entity made a bona fide offer to acquire the property from the property owner voluntarily as provided by Section 21.0113.

(c) An entity that files a petition under this section must provide a copy of the petition to the property owner by certified mail, return receipt requested.

SECTION 10. Subsection (a), Section 21.014, Property Code, is amended to read as follows:

(a) The judge of a court in which a condemnation petition is filed or to which an eminent domain case is assigned shall appoint three disinterested real property owners ~~[freeholders]~~ who reside in the county as special commissioners to assess the damages of the owner of the property being condemned. The judge appointing the special commissioners shall give preference to persons agreed on by the parties. The judge shall provide each party a reasonable period to strike one of the three commissioners appointed by the judge. If a person fails to serve as a commissioner or is struck by a party to the suit, the judge shall ~~[may]~~ appoint a replacement.

SECTION 11. Subsection (a), Section 21.015, Property Code, is amended to read as follows:

(a) The special commissioners in an eminent domain proceeding shall promptly schedule a hearing for the parties at the earliest practical time but may not schedule a hearing to assess damages before the 20th day after the date the special commissioners were appointed. The special commissioners shall schedule a hearing for the parties ~~[and]~~ at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held.

SECTION 12. Subsection (b), Section 21.016, Property Code, is amended to read as follows:

(b) Notice of the hearing must be served on a party not later than the 20th ~~[14th]~~ day before the day set for the hearing. A person competent to testify may serve the notice.

SECTION 13. Section 21.023, Property Code, is amended to read as follows:

Sec. 21.023. DISCLOSURE OF INFORMATION REQUIRED AT TIME OF ACQUISITION. An ~~[A governmental]~~ entity with eminent domain authority shall disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that:

(1) the owner or the owner's heirs, successors, or assigns may be ~~[are]~~ entitled to:

(A) repurchase the property under Subchapter E ~~[if the public use for which the property was acquired through eminent domain is canceled before the 10th anniversary of the date of acquisition]; or~~

(B) request from the entity certain information relating to the use of the property and any actual progress made toward that use; and

(2) the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain [fair market value of the property at the time the public use was canceled].

SECTION 14. Subchapter B, Chapter 21, Property Code, is amended by adding Section 21.025 to read as follows:

Sec. 21.025. PRODUCTION OF INFORMATION BY CERTAIN ENTITIES.

(a) Notwithstanding any other law, an entity that is not subject to Chapter 552, Government Code, and is authorized by law to acquire private property through the use of eminent domain is required to produce information as provided by this section if the information is:

(1) requested by a person who owns property that is the subject of a proposed or existing eminent domain proceeding; and

(2) related to the taking of the person's private property by the entity through the use of eminent domain.

(b) An entity described by Subsection (a) is required under this section only to produce information relating to the condemnation of the specific property owned by the requestor as described in the request. A request under this section must contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) The entity shall respond to a request in accordance with the Texas Rules of Civil Procedure as if the request was made in a matter pending before a state district court.

(d) Exceptions to disclosure provided by this chapter and the Texas Rules of Civil Procedure apply to the disclosure of information under this section.

(e) Jurisdiction to enforce the provisions of this section resides in:

(1) the court in which the condemnation was initiated; or

(2) if the condemnation proceeding has not been initiated:

(A) a court that would have jurisdiction over a proceeding to condemn the requestor's property; or

(B) a court with eminent domain jurisdiction in the county in which the entity has its principal place of business.

(f) If the entity refuses to produce information requested in accordance with this section and the court determines that the refusal violates this section, the court may award the requestor's reasonable attorney's fees incurred to compel the production of the information.

SECTION 15. Subsection (d), Section 21.042, Property Code, is amended to read as follows:

(d) In estimating injury or benefit under Subsection (c), the special commissioners shall consider an injury or benefit that is peculiar to the property owner and that relates to the property owner's ownership, use, or enjoyment of the particular parcel of real property, including a material impairment of direct access on or off the remaining property that affects the market value of the remaining property, but they may not consider an injury or benefit that the property owner experiences in common with the general community, including circuity of travel and diversion of

traffic. In this subsection, "direct access" means ingress and egress on or off a public road, street, or highway at a location where the remaining property adjoins that road, street, or highway.

SECTION 16. Subsections (a) and (b), Section 21.046, Property Code, are amended to read as follows:

(a) A department, agency, instrumentality, or political subdivision of this state shall ~~may~~ provide a relocation advisory service for an individual, a family, a business concern, a farming or ranching operation, or a nonprofit organization that ~~if the service~~ is compatible with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [~~Advisory Program~~], 42 U.S.C.A. 4601 [23 U.S.C.A. 501], et seq.

(b) This state or a political subdivision of this state shall ~~may~~, as a cost of acquiring real property, pay moving expenses and rental supplements, make relocation payments, provide financial assistance to acquire replacement housing, and compensate for expenses incidental to the transfer of the property if an individual, a family, the personal property of a business, a farming or ranching operation, or a nonprofit organization is displaced in connection with the acquisition.

SECTION 17. The heading to Section 21.047, Property Code, is amended to read as follows:

Sec. 21.047. ASSESSMENT OF COSTS AND FEES.

SECTION 18. Section 21.047, Property Code, is amended by adding Subsection (d) to read as follows:

(d) If a court hearing a suit under this chapter determines that a condemnor did not make a bona fide offer to acquire the property from the property owner voluntarily as required by Section 21.0113, the court shall abate the suit, order the condemnor to make a bona fide offer, and order the condemnor to pay:

- (1) all costs as provided by Subsection (a); and
- (2) any reasonable attorney's fees and other professional fees incurred by the property owner that are directly related to the violation.

SECTION 19. Subchapter E, Chapter 21, Property Code, is amended to read as follows:

#### SUBCHAPTER E. REPURCHASE OF REAL PROPERTY FROM CONDEMNING ~~GOVERNMENTAL~~ ENTITY

Sec. 21.101. RIGHT OF REPURCHASE [APPLICABILITY]. (a) A person from whom [Except as provided in Subsection (b), this subchapter applies only to] a real property interest is acquired by an [a governmental] entity through eminent domain for a public use, or that person's heirs, successors, or assigns, is entitled to repurchase the property as provided by this subchapter if:

- (1) the public use for which the property was acquired through eminent domain is ~~that was~~ canceled before the property is used for that public use;
- (2) no actual progress is made toward the public use for which the property was acquired between the date of acquisition and the 10th anniversary of that date; or
- (3) the property becomes unnecessary for the public use for which the property was acquired, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(b) In this section, "actual progress" means the completion of two or more of the following actions:

(1) the performance of a significant amount of labor to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(2) the provision of a significant amount of materials to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(3) the hiring of and performance of a significant amount of work by an architect, engineer, or surveyor to prepare a plan or plat that includes the property or other property acquired for the same public use project for which the property owner's property was acquired;

(4) application for state or federal funds to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(5) application for a state or federal permit to develop the property or other property acquired for the same public use project for which the property owner's property was acquired;

(6) the acquisition of a tract or parcel of real property adjacent to the property for the same public use project for which the owner's property was acquired;  
or

(7) for a governmental entity, the adoption by a majority of the entity's governing body at a public hearing of a development plan for a public use project that indicates that the entity will not complete more than one action described by Subdivisions (1)-(6) before the 10th anniversary of the date of acquisition of the property ~~[This subchapter does not apply to a right of way under the jurisdiction of:~~

~~(1) a county;~~

~~(2) a municipality; or~~

~~(3) the Texas Department of Transportation].~~

(c) A district court may determine all issues in any suit regarding the repurchase of a real property interest acquired through eminent domain by the former property owner or the owner's heirs, successors, or assigns.

Sec. 21.102. NOTICE TO PREVIOUS PROPERTY OWNER REQUIRED ~~[AT TIME OF CANCELLATION OF PUBLIC USE]~~. Not later than the 180th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property under Section 21.101 ~~[of the cancellation of the public use for which real property was acquired through eminent domain from a property owner under Subchapter B]~~, the ~~[governmental]~~ entity shall send by certified mail, return receipt requested, to the property owner or the owner's heirs, successors, or assigns a notice containing:

(1) an identification, which is not required to be a legal description, of the property that was acquired;

(2) an identification of the public use for which the property had been acquired and a statement that:

(A) the public use was ~~[has been]~~ canceled before the property was used for the public use;

(B) no actual progress was made toward the public use; or

(C) the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition; and

(3) a description of the person's right under this subchapter to repurchase the property.

Sec. 21.1021. REQUESTS FOR INFORMATION REGARDING CONDEMNED PROPERTY. (a) On or after the 10th anniversary of the date on which real property was acquired by an entity through eminent domain, a property owner or the owner's heirs, successors, or assigns may request that the condemning entity make a determination and provide a statement and other relevant information regarding:

(1) whether the public use for which the property was acquired was canceled before the property was used for the public use;

(2) whether any actual progress was made toward the public use between the date of acquisition and the 10th anniversary of that date, including an itemized description of the progress made, if applicable; and

(3) whether the property became unnecessary for the public use, or a substantially similar public use, before the 10th anniversary of the date of acquisition.

(b) A request under this section must contain sufficient detail to allow the entity to identify the specific tract of land in relation to which the information is sought.

(c) Not later than the 90th day following the date of receipt of the request for information, the entity shall send a written response by certified mail, return receipt requested, to the requestor.

Sec. 21.1022. LIMITATIONS PERIOD FOR REPURCHASE RIGHT. Notwithstanding Section 21.103, the right to repurchase provided by this subchapter is extinguished on the first anniversary of the expiration of the period for an entity to provide notice under Section 21.102 if the entity:

(1) is required to provide notice under Section 21.102;

(2) makes a good faith effort to locate and provide notice to each person entitled to notice before the expiration of the deadline for providing notice under that section; and

(3) does not receive a response to any notice provided under that section in the period for response prescribed by Section 21.103.

Sec. 21.103. RESALE OF PROPERTY; PRICE. (a) Not later than the 180th day after the date of the postmark on a ~~the~~ notice sent under Section 21.102 or a response to a request made under Section 21.1021 that indicates that the property owner, or the owner's heirs, successors, or assigns, is entitled to repurchase the property interest in accordance with Section 21.101, the property owner or the owner's heirs, successors, or assigns must notify the ~~governmental~~ entity of the person's intent to repurchase the property interest under this subchapter.

(b) As soon as practicable after receipt of a notice of intent to repurchase ~~the notification~~ under Subsection (a), the ~~governmental~~ entity shall offer to sell the property interest to the person for the price paid to the owner by the entity at the time the entity acquired the property through eminent domain ~~fair market value of the~~

~~property at the time the public use was canceled].~~ The person's right to repurchase the property expires on the 90th day after the date on which the ~~[governmental]~~ entity makes the offer.

SECTION 20. Section 202.021, Transportation Code, is amended by adding Subsection (j) to read as follows:

(j) The standard for determination of the fair value of the state's interest in access rights to a highway right-of-way is the same legal standard that is applied by the commission in the:

(1) acquisition of access rights under Subchapter D, Chapter 203; and  
(2) payment of damages in the exercise of the authority, under Subchapter C, Chapter 203, for impairment of highway access to or from real property where the real property adjoins the highway.

SECTION 21. Section 54.209, Water Code, is amended to read as follows:

Sec. 54.209. LIMITATION ON USE OF EMINENT DOMAIN. A district may not exercise the power of eminent domain outside the district boundaries to acquire:

(1) a site for a water treatment plant, water storage facility, wastewater treatment plant, or wastewater disposal plant;

(2) a site for a park, swimming pool, or other recreational facility, as defined by Section 49.462 ~~[except a trail];~~

~~(3) [a site for a trail on real property designated as a homestead as defined by Section 41.002, Property Code; or~~

~~(4)] an exclusive easement through a county regional park; or~~

~~(4) a site or easement for a road project.~~

SECTION 22. Section 1, Chapter 178 (S.B. 289), Acts of the 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. Except as provided by this section, and notwithstanding any other law, any [Any] nonprofit corporation incorporated under the laws of this state for purely charitable purposes and which is directly affiliated or associated with a medical center having a medical school recognized by the Council on Medical Education and Hospitals of the American Medical Association as an integral part of its establishment, and which has for a purpose of its incorporation the provision or support of medical facilities or services for the use and benefit of the public, and which is situated in any county of this state having a population in excess of six hundred thousand (600,000) inhabitants according to the most recent Federal Census shall have the power of eminent domain and condemnation for the purposes set forth in Section 2 and Section 3 of this Act. A charitable corporation described by this section may not exercise the power of eminent domain and condemnation to acquire a detached, single-family residential property or a multifamily residential property that contains eight or fewer dwelling units.

SECTION 23. (a) Section 552.0037, Government Code, is repealed.

(b) Section 21.024, Property Code, is repealed.

SECTION 24. Section 11.155, Education Code, Chapter 2206, Government Code, Sections 251.001, 261.001, 263.201, and 273.002, Local Government Code, Chapter 21, Property Code, and Section 1, Chapter 178 (S.B. 289), Acts of the 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes),

as amended by this Act, apply only to a condemnation proceeding in which the petition is filed on or after the effective date of this Act and to any property condemned through the proceeding. A condemnation proceeding in which the petition is filed before the effective date of this Act and any property condemned through the proceeding are governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 25. The change in law made by this Act to Section 202.021, Transportation Code, applies only to a sale or transfer under that section that occurs on or after the effective date of this Act. A sale or transfer that occurs before the effective date of this Act is governed by the law applicable to the sale or transfer immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 26. The changes in law made by this Act to Section 54.209, Water Code, apply only to a condemnation proceeding in which the petition is filed on or after the effective date of this Act. A condemnation proceeding in which the petition is filed before the effective date of this Act is governed by the law in effect on the date the petition was filed, and that law is continued in effect for that purpose.

SECTION 27. This Act takes effect September 1, 2011.

The Conference Committee Report on **SB 18** was filed with the Secretary of the Senate.

#### **CO-AUTHOR OF SENATE BILL 288**

On motion of Senator Lucio, Senator Williams will be shown as Co-author of **SB 288**.

#### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

##### **Memorial Resolution**

**SR 887** by Ellis, In memory of Porter Renfro, Jr., of Houston.

##### **Congratulatory Resolutions**

**SCR 50** by Watson, Congratulating Bobby R. Inman for receiving the Joe M. Kilgore Award for Public Service.

**SR 888** by Ellis, Recognizing the dedication of a Texas Historical Marker for the clubhouse in Houston of the Married Ladies Social, Art, and Charity Club of America.

**SR 890** by Harris, Recognizing Six Flags Over Texas on the occasion of its 50th anniversary.

**SR 891** by Harris, Congratulating the Marcus High School Marauders boys' basketball team for winning a state championship.

**SR 894** by Nichols, Congratulating Ray Neal McEachern of San Augustine for receiving the Pioneer Award from the San Augustine County Professional Rodeo Cowboys Association.

**Official Designation Resolutions**

**SR 886** by Nichols, Hinojosa, and Nelson, Observing May of 2011 as Fight Arthritis Pain Month in Texas.

**SR 895** by Nelson, Proclaiming May of 2011 to be Elder Abuse Prevention Month in Texas.

**ADJOURNMENT**

Pursuant to a previously adopted motion, the Senate at 3:10 p.m. adjourned, in memory of J. D. Tippit, Ira Benjamin Laningham IV, and Janie Cuellar Salinas, until 11:00 a.m. tomorrow.

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**APPENDIX**

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**COMMITTEE REPORTS**

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

May 2, 2011

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — **SB 34, SB 451, SB 1621, CSSB 1737, CSHB 447**

CRIMINAL JUSTICE — **CSSB 146, CSSB 931**

INTERGOVERNMENTAL RELATIONS — **CSSB 1234**

TRANSPORTATION AND HOMELAND SECURITY — **CSSB 1695, CSSB 1698**

GOVERNMENT ORGANIZATION — **SB 649, SB 665**

OPEN GOVERNMENT — **CSSB 1571, CSSB 669, CSSB 1907**

INTERNATIONAL RELATIONS AND TRADE — **SB 1908, SB 1922**

FINANCE — **CSHB 4**

TRANSPORTATION AND HOMELAND SECURITY — **CSSB 1696**

**BILLS ENGROSSED**

April 29, 2011

**SB 35, SB 152, SB 506, SB 530, SB 533, SB 615, SB 637, SB 710, SB 841, SB 1066, SB 1104, SB 1107, SB 1200, SB 1414, SB 1443, SB 1450, SB 1472, SB 1511, SB 1534, SB 1560, SB 1580, SB 1582, SB 1608, SB 1667, SB 1681, SB 1686, SB 1798, SB 1811**

**BILLS AND RESOLUTIONS ENROLLED**April 29, 2011**SB 423, SB 693, SR 831, SR 865, SR 875, SR 876, SR 877, SR 879, SR 880,  
SR 881, SR 882, SR 883**

**In Memory**  
**of**  
**J. D. Tippit**  
**Senate Resolution 845**

WHEREAS, The Senate of the State of Texas pays tribute to the life and heroism of Officer J. D. Tippit of the Dallas Police Department, who died November 22, 1963; and

WHEREAS, Officer Tippit was on patrol in Dallas when President John F. Kennedy was assassinated and he responded to the all-points bulletin that followed; and

WHEREAS, He intercepted Lee Harvey Oswald on a street in Oak Cliff; while Officer Tippit was attempting to question or arrest him, Lee Harvey Oswald pulled a handgun and shot Officer Tippit; and

WHEREAS, Officer Tippit was mortally wounded; Lee Harvey Oswald was subsequently apprehended when the police were alerted to the shooting of one of their comrades; and

WHEREAS, J. D. Tippit was a brave and courageous police officer who sacrificed his life in the line of duty while serving the City of Dallas and his country; his life and loss remain vivid in the hearts of those who cared for him and in the minds of those who remember the tragic happenings of the day of his death; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby honor the memory, service, bravery, and sacrifice of Officer J. D. Tippit and extend to his widow, Mrs. Marie Tippit, sincere condolences on her loss; and, be it further

RESOLVED, That a copy of this Resolution be prepared for Mrs. Tippit as an expression of deepest sympathy from the Texas Senate, and that when the Senate adjourns this day, it do so in memory of Dallas Police Officer J. D. Tippit.

CARONA

**In Memory**  
**of**  
**Ira Benjamin Laningham IV**  
**House Concurrent Resolution 47**

WHEREAS, Words cannot express the heartache felt at the loss of U.S. Army Private First Class Ira Benjamin Laningham IV of Zapata, who died in Afghanistan on January 7, 2011, at the age of 22; and

WHEREAS, Private Laningham enlisted in the army in November 2009, deploying to Afghanistan in October 2010; he bravely served his country as a member of the 2nd Battalion, 30th Infantry Regiment, 4th Brigade Combat Team, 10th Mountain Division, and his courageous actions earned him the Bronze Star Medal, the Purple Heart, and the National Defense Service Medal; and

WHEREAS, Born in Greenfield, Massachusetts, on September 1, 1988, Ben Laningham graduated from Zapata High School, where he was trumpet section leader in the marching band and lead trumpet for Mariachi Halcon; he enjoyed playing his guitar and video games and spending time with his family and friends; and

WHEREAS, Americans owe a profound debt to our nation's servicemen and servicewomen, whose courageous efforts and enormous sacrifices are deserving of their fellow citizens' deepest respect and gratitude; through his unwavering dedication to duty and honor, Ben Laningham embodied the highest ideals of the United States Army, and memories of his love and friendship will forever be cherished by all those who held him dear; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby pay tribute to the life of U.S. Army Private First Class Ira Benjamin Laningham IV and extend deepest sympathy to the members of his family: to his parents, Norma and Enrique Cantu; to his siblings, Private Joseph Cantu, Enrique Cantu, and Amanda Cantu; to his grandparents, Lauro and Olinda Guerra and Humberto and Felicitas Cantu; and to his other relatives and many friends; and, be it further

RESOLVED, That an official copy of this resolution be prepared for his family and that when the Texas House of Representatives and Senate adjourn this day, they do so in memory of Private Ira Benjamin Laningham IV.

ZAFFIRINI

**In Memory**  
**of**  
**Janie Cuellar Salinas**  
**Senate Resolution 884**

WHEREAS, The Senate of the State of Texas honors and commemorates the life of Janie Cuellar Salinas, who died June 12, 2010, at the age of 43; and

WHEREAS, Janie Cuellar was born and raised in Weslaco; she graduated from Weslaco High School in 1985 and received a bachelor's degree from North Texas State University in 1989; and

WHEREAS, Janie excelled in everything she did; she was a hardworking and dedicated employee of various businesses and was very involved in politics, campaigning successfully for family members, including her husband, J. D. Salinas III, a former Hidalgo County Judge; and

WHEREAS, She was very active in the Saint Joseph Catholic Church in Edinburg and more recently at Holy Family Catholic Church in Fort Worth; she was a positive, outgoing, and cheerful woman and made friends easily; she had already established many friendships and a sense of community in her neighborhood in Fort Worth; and

WHEREAS, Janie enjoyed cooking and scrapbooking, but most of all, she enjoyed being a mother; she was deeply involved with her children's activities and participated in races for various organizations and in fundraising for Relay for Life; and

WHEREAS, Janie Salinas was a devoted wife, mother, and sister, and she leaves behind memories that will be treasured forever by her family and her many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby pay tribute to the life of Janie Cuellar Salinas and extend sincere condolences to her bereaved family: her husband, J. D. Salinas III; her children, Nicholas, Samantha, Victoria, Gianna, and Gabriella; her brothers and sisters; and her nieces and nephews; and, be it further

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

LUCIO  
HINOJOSA

