

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**FIFTY-SECOND DAY**

(Continued)

(Wednesday, May 4, 2011)

**AFTER RECESS**

The Senate met at 11:28 a.m. and was called to order by Senator Eltife.

Grove Norwood, The Heart of Texas Foundation, was introduced by Senator Patrick and offered the invocation as follows:

Our heavenly Father, every man and woman in this room knows that all rocks roll downhill. It's the children who are at the bottom. They have no vote, no voice, and no influence. Every single act we adults perform, execute, or legislate ultimately affects the children. Whether we act in Austin or in Amarillo, in Del Rio or Dalhart, it's our children who are ultimately impacted either for good or for bad. Father, our state is precious to all of us. Our people are precious to us. And our children are most precious of all. They are more important than anything, and it is ultimately for them that all the good we do must stand. Our God, we pray today that our decisions made in this hallowed place will, in this session more than any of those in the past, bring to our children a Texas even more kind, more gentle, more fair, and more nurturing than it has ever been. Thank you for Texas, for our Texas, for our little ones who are counting on us to keep them in mind in all we do, for it cannot be about us, it cannot be about the next election. It must be about them, the next generation. Help us to love them well, love them fairly and faithfully, and to conduct our work in this place with a unity and a glorious sense of purpose that is far above ourselves. It is You to whom we must answer. We thank You for this great responsibility and for the honor of being the ones chosen for such a time as this. God give to us Your wisdom and Your sacred heart of love, and may that love show in every debate, every opinion, and every action. And may the day soon come when Texas will have removed all the things which trip up our children and that the pace for that great movement will have begun right here and continued forward, this very day.

**PHYSICIAN OF THE DAY**

Senator Watson was recognized and presented Dr. Dana Sprute of Austin as the Physician of the Day.

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

### MESSAGE FROM THE HOUSE

#### HOUSE CHAMBER

Austin, Texas

Wednesday, May 4, 2011 - 1

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HB 90** Cook  
Relating to eligibility to obtain a driver's license.

**HB 123** Veasey  
Relating to an adult diabetes education program in certain county hospital systems and hospital districts.

**HB 2608** Harper-Brown  
Relating to the continuation and functions of the Texas Department of Housing and Community Affairs.

**HCR 42** Madden  
Expressing support for the current FBI effort to reevaluate existing policies, standards, and protocols for forensic DNA testing laboratories and expressing support for any new policies, standards, and protocols that would hold public and private labs to the same standards, audits, and review process, urging Congress to pass any necessary federal legislation that ensures continued quality in forensic science while holding public and private lab DNA analysis to the same standards, and encouraging Texas law enforcement agencies to use forensic science review methods that will eliminate DNA testing backlogs.

**HJR 98** Burkett  
Proposing a constitutional amendment denying bail to certain persons charged with a violent or sexual offense after having been previously convicted of a violent or sexual offense.

**SB 398** Duncan Sponsor: Frullo  
Relating to the board of hospital managers of the Lubbock County Hospital District.

**SB 410** Eltife Sponsor: Lavender  
Relating to the name and powers of the Red River Redevelopment Authority.

**SB 428** Huffman Sponsor: Thompson  
Relating to notice to a judgment debtor of the filing of a foreign judgment.

**SB 483** Harris Sponsor: Smith, Todd  
Relating to the powers and duties of criminal law magistrates in Tarrant County.

**SB 655** Hegar Sponsor: Keffer  
Relating to the continuation, functions, and name of the Railroad Commission of Texas.  
(Committee Substitute/Amended)

**SB 1147** Duncan Sponsor: Ritter  
Relating to the nonsubstantive revision of certain local laws concerning special districts, including conforming amendments.

**SB 1258** Duncan Sponsor: Hardcastle  
Relating to the disposal of demolition waste from abandoned or nuisance buildings in certain areas.

**SB 1269** Wentworth Sponsor: Branch  
Relating to transportation, lodging, and meals offered to and accepted by public servants.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **GUESTS PRESENTED**

Senator Hegar was recognized and introduced to the Senate a Republican Women of Yoakum delegation.

The Senate welcomed its guests.

### **SENATE RESOLUTION 901**

Senator Huffman offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join Texans across the state in observing October of 2011 as Inflammatory Breast Cancer Awareness Month; and

WHEREAS, Inflammatory breast cancer is a type of breast cancer in which cancer cells block the lymph vessels in the skin of the breast; symptoms, which may appear overnight, are similar to those of mastitis, a benign infection; this similarity sometimes results in misdiagnoses and delays in treatment, and such postponements in care often result in an eventual Stage IV diagnosis; and

WHEREAS, Accounting for less than five percent of breast cancer cases, inflammatory breast cancer is the most aggressive form of the disease, due to its faster doubling time; its five-year survival rate is approximately 40 percent, mainly because of delays in diagnosis, the disease's resistance to treatment with standard chemotherapy, and a lack of expertise in treating this rare form of cancer; and

WHEREAS, Because it does not form the characteristic lump that can alert women to the presence of breast cancer, inflammatory breast cancer can quickly spread undetected throughout the breast and is also rarely detected by mammograms or ultrasounds; and

WHEREAS, The treatment of inflammatory breast cancer differs from other breast cancer treatments, and early diagnosis by a physician with experience in caring for inflammatory breast cancer is essential; it is truly fitting that a month be set aside to raise awareness about this devastating disease through education of the general public and the medical community; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby commend those who are working to fight inflammatory breast cancer and call on Texans to observe October of 2011 as Inflammatory Breast Cancer Awareness Month; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of Inflammatory Breast Cancer Awareness Month.

**SR 901** was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator Huffman, joined by Senator Wentworth, was recognized and introduced to the Senate Terry Arnold, Ben Munoz, Dale Morris, State Senator Tim Jennings of New Mexico, and representatives from Susan G. Komen for the Cure and The University of Texas MD Anderson Cancer Center.

The Senate welcomed its guests.

#### **SENATE RESOLUTION 874**

Senator West offered the following resolution:

**SR 874**, Commending the Justin Ford Kimball High School boys basketball team on winning the 2011 University Interscholastic League Class 4A state championship.

The resolution was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator West was recognized and introduced to the Senate members of the Kimball High School boys' 2011 UIL Class 4A state championship basketball team: Austin Franklin, Jalen Jones, and Shannon Lilly; and Coaches Royce Johnson, Toby Daniels, Ryan Foppe, Robert Jacobs, and Bo Johnson.

The Senate welcomed its guests.

#### **SENATE RESOLUTION 893**

Senator Hinojosa offered the following resolution:

**SR 893**, Commending Martha L. Valencia on her contributions to the citizens of South Texas.

HINOJOSA  
LUCIO  
ZAFFIRINI

The resolution was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Hinojosa was recognized and introduced to the Senate Martha Valencia, Alejandro Arango, Jorge Arango, and Mario Garza.

The Senate welcomed its guests.

**SENATE RESOLUTION 740**

Senator Van de Putte offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the 149th Air National Guard for its valuable contributions to the people of Bexar County and this state through its mission at Lackland Air Force Base; and

WHEREAS, The federal mission of the 149th Air National Guard provides training of F-16 pilots and combat personnel for worldwide operations; and

WHEREAS, In 2009, the mission of the 149th Air National Guard at Lackland Air Force Base provided an economic impact to the San Antonio area of over \$100 million and more than 1,000 directly and indirectly related jobs; and

WHEREAS, In addition, the 149th Medical Group serves the State of Texas in several capacities; it is the on-call medical team for the Federal Emergency Management Agency Region 6 for emergencies and was the lead medical unit responding to recent hurricanes, including Hurricane Katrina; and

WHEREAS, The 149th Air National Guard is currently flying the aging F-16 airframe and is in the process of retiring it and replacing it with the F-35, Lightning II airframe in order to secure a vibrant, frontline fighter mission; and

WHEREAS, The 149th Air National Guard's mission is of supreme importance to our state and nation and has been a welcome benefit to the welfare of our state, and it is important that Texas lend its support to the F-35 airframe transition and proudly advocate that Lackland Air Force Base be on the next list of basing locations; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby extend its full support to the 149th Air National Guard's transition from the F-16 airframe to the F-35, Lightning II Fighter aircraft and advocate that the United States Department of Defense name Lackland Air Force Base to the next list of the F-35 base locations; and, be it further

RESOLVED, That a copy of this Resolution be prepared as an expression of admiration and appreciation for the 149th Air National Guard.

**SR 740** was again read.

The resolution was previously adopted on Monday, April 11, 2011.

**GUESTS PRESENTED**

Senator Van de Putte was recognized and introduced to the Senate a 149th Air National Guard delegation: Chief Master Sergeant John Mead, Major Eric Cox, Lieutenant Colonel Don Kang, Lieutenant Colonel Gordon Niebergall, and Colonel Connie McNabb.

The Senate welcomed its guests.

**SENATE RESOLUTION 895**

Senator Nelson offered the following resolution:

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

The resolution was again read.

The resolution was previously adopted on Monday, May 2, 2011.

**GUESTS PRESENTED**

Senator Nelson was recognized and introduced to the Senate Adult Protective Services program representatives.

The Senate welcomed its guests.

**SENATE RESOLUTION 902**

Senator Hinojosa offered the following resolution:

**SR 902**, Recognizing May 4, 2011, as United Technologies Corporation Legislative Day at the State Capitol.

The resolution was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Hinojosa was recognized and introduced to the Senate a United Technologies Corporation delegation.

The Senate welcomed its guests.

**SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

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

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

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

There were no requests offered.

**NOMINEES CONFIRMED**

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Member, Board of Pardons and Paroles: David G. Gutierrez, Lubbock County.

Member, Council on Sex Offender Treatment: Louis Gonzales, Williamson County.

Members, Health and Human Services Council: Kathleen O. Angel, Travis County; Maryann Miyun Choi, Williamson County; Karen Hunter Harris, Bandera County.

Independent Ombudsman, Office of Independent Ombudsman for the Texas Youth Commission: Debbie Kay Unruh, Travis County.

Member, State Board of Veterinary Medical Examiners: Richard Scott Bonner, Nueces County.

Members, State Employee Charitable Campaign Policy Committee: Gregory Scott Davidson, Lee County; Peter Paul Flores, Travis County; Louri Marie O'Leary, Travis County; Cecile Lynn Erwin Young, Travis County.

Members, State Health Services Council: Kirk Aquilla Calhoun, Smith County; David Allen Woolweaver, Cameron County.

Members, State Pension Review Board: Leslie Lynn Greco-Pool, Tarrant County; Jerry Robert Massengale, Lubbock County.

Members, Texas Board of Occupational Therapy Examiners: William N. Hale, Travis County; DeLana Kaye Honaker, Randall County; Stephanie Johnston, Montgomery County; Pamela D. Nelon, Tarrant County.

Members, Texas Board of Orthotics and Prosthetics: Rebecca Hill Brou, Aransas County; David R. Kercheval, Johnson County.

Members, Texas Commission of Licensing and Regulation: Lilian Elizabeth Norman Keeney, Harris County; Ravi Shah, Denton County.

Members, Board of Directors, Texas Health Services Authority: Frederick Buckwold, Harris County; David C. Fleeger, Travis County; Matthew J. Hamlin, Denton County; James Lloyd Martin, Travis County; Edward W. Marx, Tarrant County; Kathleen K. Mechler, Gillespie County; William A. Phillips, Bexar County; Judith Day Powell, Montgomery County; Jennifer Lynn Rangel, Travis County; J. Darren Rodgers, Dallas County; Stephen Yurco, Travis County.

Members, Texas Juvenile Probation Commission: William Player Conley, Hays County; Migdalia Lopez, Cameron County; Scott F. O'Grady, Collin County.

Members, Texas Military Preparedness Commission: Ernest Aliseda, Hidalgo County; Thomas Carl Duncavage, Galveston County; Arthur Rojas Emerson, Bexar County; Woody Francis Gilliland, Taylor County; William H. Parry, Bell County; Karen Summerfield Rankin, Bexar County; Alton F. Thomas, El Paso County.

Members, Governing Board, Texas Youth Commission: Joseph D. Brown, Grayson County; Larry Carroll, Midland County; Scott W. Fisher, Tarrant County; Manson B. Johnson, Harris County; J. Rolando Olvera, Cameron County; Toni A. Johnson Sykora, Bexar County; David Dean Teuscher, Jefferson County.

### **SENATE RESOLUTION 765**

Senator Uresti offered the following resolution:

**SR 765**, Recognizing the sixth class of the Senator Gregory Luna Legislative Scholars and Fellows Program.

The resolution was again read.

The resolution was previously adopted on Wednesday, April 13, 2011.

**(President in Chair)****GUESTS PRESENTED**

Senator Uresti, joined by the President and Senators Davis, Duncan, Estes, Hinojosa, Lucio, Rodriguez, Seliger, Van de Putte, Watson, West, and Zaffirini, was recognized and introduced to the Senate Senator Gregory Luna Legislative Scholars and Fellows Program participants: Lionel Aguirre, Ryan Alter, Roy Attwood, Ryan Delgado, Wendilyn Ilund Diaz, Andrea Garcia, Maria Garcia, Omar Gomez, Andrea Gutierrez, Matthew Hall, Cathryn Ibarra, Robert Lopez, Yesenia Lugo, Daniel Vasquez, Lissette Villerruel, Priscilla Weninger, and Elisabeth Crawford of Coatepec, Veracruz, Mexico.

The Senate welcomed its guests.

**(Senator Eltife in Chair)****SENATE RESOLUTION 878**

Senator Fraser offered the following resolution:

**SR 878**, Recognizing May 4, 2011, as Texas Environmental Excellence Awards Day at the State Capitol.

The resolution was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Fraser, joined by Senators Lucio, Rodriguez, Shapiro, Van de Putte, and Wentworth, was recognized and introduced to the Senate the 2011 Texas Environmental Excellence Awards recipients: Rockport fifth-grade students: Carson Nesloney; Kyler Friebele; Alexis Bracht; Zane Kaiser; Heavenly Flores; principal, Jeremy Saegert; and teacher, Martha McLeod; Wimberley Valley Watershed Association: David Baker; Harlingen Irrigation District-Cameron County No. 1: Wayne Halbert and Tom McLemore; Valley Proud Environmental Council: Georgiana Matz and Laura Maxwell; San Antonio Water System: Roberto Anguiano and Greg Flores; U.S. Army, Fort Bliss Directorate of Public Works of El Paso: Colonel Joseph A. Simonelli, Jr., and Lilia Lenhart; Union Pacific Railroad: Lanny A. Schmid and Mike E. Iden; and North Texas Municipal Water District: James M. Parks and Sallie Parks.

The Senate welcomed its guests.

**GUESTS PRESENTED**

Senator Watson was recognized and introduced to the Senate Honorary Senate Pages Bernard and Olivia Uechtritz, the great-nephew and great-niece of Secretary of the Senate Patsy Spaw.

The Senate welcomed its guests.

**GUEST PRESENTED**

Senator Patrick was recognized and introduced to the Senate Honorary Senate Page Graham Norwood.

The Senate welcomed its guest.

**(President in Chair)****BILL AND RESOLUTION SIGNED**

The President announced the signing of the following enrolled bill and resolution in the presence of the Senate after the caption had been read: **HB 1510, HCR 73.**

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1 ON SECOND READING**

The President laid before the Senate **CSHB 1** sponsored by Senator Ogden at this time on its second reading:

**CSHB 1**, General Appropriations Bill.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1** as follows:

**Overview**

Amend Senate Committee Substitute for House Bill 1 by adding a provision to Article IX adjusting certain appropriations previously adopted in the preceding articles. This action includes the following for the 12-13 biennium:

- Strike Art IX, Section 18.09 of Senate Committee Substitute to House Bill 1.
- Add a new provision to Article IX reducing \$1,250,000,000 in fiscal year 2013 General Revenue appropriations to Medicaid.
- Add a new provision to Article IX making a 1.2% General Revenue Related appropriation reduction in fiscal year 2013 to state agencies and institutions of higher education, excepting the Foundation School Program, with restoration contingent on certification of additional revenue by the Comptroller of Public Accounts.

**Required Action**

1. In Article IX of Senate CSHB 1, strike Section 18.09 and renumber subsequent provisions accordingly.

2. On page IX-71 of Senate CSHB 1, add the following new rider:

\_\_\_\_. **Appropriations Reduction.** Reduce certain fiscal year 2013 General Revenue appropriations made for the purpose of funding the state Medicaid program elsewhere in this Act as follows:

- a. The Department of Aging and Disability Services is hereby reduced by \$1,000,000,000; and
- b. The Health and Human Services Commission is hereby reduced by \$250,000,000.

3. On page IX-71 of Senate CSHB 1, add the following new rider:

\_\_\_\_. **Reduction to State Appropriations.** General Revenue and General Revenue-Dedicated appropriations made elsewhere in this Act to state agencies and institutions of higher education, save for appropriations to the Foundation School Program, estimated to be \$58,069,500,000 for the 2012-13 biennium, are hereby reduced by 1.2% proportional to each entity's level of appropriation herein. The total

amount of reduction is estimated to be \$690,000,000. The reduction shall be made to appropriations provided for fiscal year 2013. This reduction is subject to the following:

- 1) Appropriations made for debt service shall not be subject to this provision.
- 2) The Legislative Budget Board and the Comptroller of Public Accounts shall make a calculation of that total amount of reduction for each entity.
- 3) State agencies and institutions of higher education are directed to take the following measures, as appropriate, to achieve this savings:
  - a) Work with the Comptroller of Public Accounts to increase the efficiency and cost-effectiveness of procurement;
  - b) Institute a freeze on employment, not filling vacant positions;
  - c) Constrain or eliminate travel; and
  - d) Otherwise manage fiscal and human resources to protect the core services of the agency or institution while operating under the limitations of this and other provisions of this Act.

Should the Comptroller of Public Accounts certify any general revenue receipts in excess of the amount of probable general revenue receipts for the biennium ending August 31, 2013 (stated in the Comptroller's Biennial Revenue Estimate for 2012-2013 and as revised by the Comptroller on March 13, 2011) and as further adjusted for estimates of revenue associated with legislation enacted by the 82nd Legislature, appropriations to the state agencies and institutions of higher education reduced in this section are hereby increased by a like amount not to exceed \$690,000,000 in proportion to the reduction identified above.

The amendment to **CSHB 1** was read and was adopted 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, Wentworth, Williams.

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

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

**CSHB 1** as amended was passed to third reading by the following vote: Yeas 19, Nays 12. (Same as previous roll call)

#### **AT EASE**

The President at 1:22 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

#### **IN LEGISLATIVE SESSION**

Senator Eltife at 1:38 p.m. called the Senate to order as In Legislative Session.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1674 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **CSHB 1674** at this time on its second reading:

**CSHB 1674**, Relating to procedures for establishment, modification, and enforcement of child support obligations.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1674** (Senate Committee Printing) by adding the following SECTIONS and renumbering subsequent SECTIONS appropriately:

"SECTION \_\_\_\_\_. Section 157.263, Family Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) In rendering a money judgment under this section, the court may not reduce or modify the amount of child support arrearages but, in confirming the amount of arrearages, may allow a counterclaim or offset as provided by this title.

SECTION \_\_\_\_\_. Subchapter B, Chapter 231, Family Code, is amended by adding Section 231.124 to read as follows:

Sec. 231.124. CHILD SUPPORT ARREARAGES PAYMENT INCENTIVE PROGRAM. (a) The Title IV-D agency may establish and administer a payment incentive program to promote payment by obligors who are delinquent in satisfying child support arrearages assigned to the Title IV-D agency under Section 231.104(a).

(b) A program established under this section must provide to a participating obligor a credit for every dollar amount paid by the obligor on interest and arrearages balances during each month of the obligor's voluntary enrollment in the program. In establishing a program under this section, the Title IV-D agency by rule must prescribe:

(1) criteria for a child support obligor's initial eligibility to participate in the program;

(2) the conditions for a child support obligor's continued participation in the program;

(3) procedures for enrollment in the program; and

(4) the terms of the financial incentives to be offered under the program.

(c) The Title IV-D agency shall provide eligible obligors with notice of the program and enrollment instructions.

SECTION \_\_\_\_\_. Section 157.262, Family Code, is repealed.

SECTION \_\_\_\_\_. Subsection (b-1), Section 157.263, Family Code, as added by this Act, applies to a motion for enforcement of child support that is pending before a trial court on or filed on or after the effective date of this Act.

The amendment to **CSHB 1674** 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 Harris and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**CSHB 1674** as amended was passed to third reading by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1674 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1674** 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 1674**, 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 1674** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1564 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1564** at this time on its second reading:

**CSSB 1564**, Relating to developmental education courses and the assessment of student readiness under the Texas Success Initiative for public institutions of higher education.

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 1564 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1564** 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 1564**, 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 1564** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 346 ON SECOND READING**

Senator Gallegos moved to suspend the regular order of business to take up for consideration **CSSB 346** at this time on its second reading:

**CSSB 346**, Relating to the curriculum that must be provided by a disciplinary alternative education program.

The motion prevailed.

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

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

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

Nays: Birdwell, Deuell, Nichols, Patrick.

**COMMITTEE SUBSTITUTE**  
**SENATE BILL 346 ON THIRD READING**

Senator Gallegos moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 346** be placed on its third reading and final passage.

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

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

Nays: Birdwell, Deuell, 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 346**, 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 346** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

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

Nays: Birdwell, Deuell, Nichols, Patrick.

**SENATE BILL 1208 ON SECOND READING**

On motion of Senator Whitmire and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1208** at this time on its second reading:

**SB 1208**, Relating to the age until which juveniles placed on determinate sentence probation may be on probation.

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

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

### **SENATE BILL 1208 ON THIRD READING**

Senator Whitmire moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1208** be placed on its third reading and final passage.

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

Nays: Wentworth.

### **Reason for Vote**

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 1208**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 1208** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

### **COMMITTEE SUBSTITUTE SENATE BILL 1184 ON SECOND READING**

On motion of Senator Nichols and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1184** at this time on its second reading:

**CSSB 1184**, Relating to the creation of the Timber Springs Municipal Management District; providing authority to impose a tax, levy an assessment, and issue bonds.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1184 ON THIRD READING**

Senator Nichols moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1184** 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 1184**, 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 1184** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

**WENTWORTH**

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

**SENATE BILL 1404 ON SECOND READING**

On motion of Senator Hinojosa and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1404** at this time on its second reading:

**SB 1404**, Relating to the deadline for filing a suit to compel an appraisal review board to change an appraisal roll.

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

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

**SENATE BILL 1404 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1404** be placed on its third reading and final passage.

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

Nays: Wentworth.

**Reason for Vote**

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 1404**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 1404** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1036 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1036** at this time on its second reading:

**CSSB 1036**, Relating to notice required in connection with possessory liens on motor vehicles.

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 1036 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1036** 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 1036**, 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 1036** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

#### WENTWORTH

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

#### COMMITTEE SUBSTITUTE SENATE BILL 288 ON SECOND READING

On motion of Senator Lucio and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 288** at this time on its second reading:

**CSSB 288**, Relating to authorizing the Department of Public Safety of the State of Texas to operate one or more southbound vehicle checkpoints near the international border of this state for the purpose of preventing certain criminal offenses.

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 288 ON THIRD READING

Senator Lucio moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 288** 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 288**, 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 288** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

#### WENTWORTH

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

#### **COMMITTEE SUBSTITUTE SENATE BILL 1649 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1649** at this time on its second reading:

**CSSB 1649**, Relating to a grant program to support the prosecution of certain crimes.

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 1649 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1649** 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 1649**, 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 1649** would have occurred on the next legislative day, allowing for Texans to have learned through

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

WENTWORTH

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1546 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1546** at this time on its second reading:

**CSSB 1546**, Relating to the right to a new hearing before an appraisal review board following a failure to attend a hearing.

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 1546 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1546** 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 1546**, 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 1546** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1664 ON SECOND READING**

Senator Duncan moved to suspend the regular order of business to take up for consideration **CSSB 1664** at this time on its second reading:

**CSSB 1664**, Relating to the powers and duties of and contributions to and benefits from the systems and programs administered by the Employees Retirement System of Texas.

The motion prevailed.

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

The bill was read second time.

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 1664** (committee printing) by adding the following appropriately numbered SECTIONS and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Section 659.140(c), Government Code, is amended to read as follows:

(c) ~~The [Each member of the]~~ state policy committee must:

(1) be composed of employees and retired state employees receiving benefits under Chapter 814; and

(2) [a state employee. The membership must] represent employees at different levels of employee classification.

SECTION \_\_\_\_\_. Section 659.143(b), Government Code, is amended to read as follows:

(b) The presiding officer of a local employee committee shall recruit at least five but not more than 10 additional members. The members must represent different levels of employee classification. One or more members may be retired state employees receiving retirement benefits under Chapter 814.

SECTION \_\_\_\_\_. The heading to Section 814.009, Government Code, is amended to read as follows:

Sec. 814.009. DEDUCTION FROM ANNUITY FOR STATE EMPLOYEE ORGANIZATION.

SECTION \_\_\_\_\_. Subchapter A, Chapter 814, Government Code, is amended by adding Sections 814.0095 and 814.0096 to read as follows:

Sec. 814.0095. CHARITABLE DEDUCTION FROM ANNUITY. (a) Except as provided by Section 814.0096(c), a person who receives an annuity under this subchapter may, on a printed or electronic form filed with the retirement system, authorize the retirement system to deduct from the person's monthly annuity payment the amount of a contribution to the state employee charitable campaign in the manner and for the same purposes for which a state employee may authorize deductions to that campaign under Subchapter I, Chapter 659.

(b) An authorization under this section must direct the board of trustees to deposit the deducted funds with the comptroller for distribution as required by Section 659.132(g) in the same manner in which a state employee's deduction is distributed.

(c) An authorization under this section remains in effect for the period described by Section 659.137 unless the person revokes the authorization by giving notice to the board of trustees.

(d) The board of trustees may adopt rules to administer this section. Any rules adopted must be consistent with the comptroller's rules related to the state employee charitable campaign.

Sec. 814.0096. COORDINATION WITH STATE EMPLOYEE CHARITABLE CAMPAIGN POLICY COMMITTEE. (a) The board of trustees and the state employee charitable campaign policy committee established under Section 659.140 shall coordinate responsibility for the administration of charitable deductions from annuity payments to the state employee charitable campaign under Section 814.0095.

(b) The state policy committee is authorized to approve a budget that includes funding for as many of the expenses incurred by the retirement system associated with the implementation and administration of annuitants' participation in the state employee charitable campaign as is practicable, including notification of annuitants.

(c) Except as provided by this subsection, the board of trustees shall charge an administrative fee to cover any costs not paid under Subsection (b) in the implementation of Section 814.0095 to the charitable organizations participating in the state employee charitable campaign conducted under that section in the same proportion that the contributions to that charitable organization bear to the total of contributions in that campaign. The board of trustees shall determine the most efficient and effective method of collecting the administrative fee and shall adopt rules for the implementation of this subsection.

(d) If necessary, the board of trustees and the state policy committee may make the annuity deduction authorization under Section 814.0095(a) available in stages to subgroups of the retirement system's annuity recipients as money becomes available to cover the expenses under Subsection (b) of this section.

SECTION \_\_\_\_ . (a) The board of trustees of the Employees Retirement System of Texas, in cooperation with the comptroller and the state employee charitable campaign policy committee established under Section 659.140, Government Code, as amended by this Act, may adopt rules to implement Sections 814.0095 and 814.0096, Government Code, as added by this Act.

(b) The board of trustees of the Employees Retirement System of Texas by rule shall designate the start date on which annuity deductions begin under Sections 814.0095 and 814.0096, Government Code, as added by this Act.

The amendment to **CSSB 1664** was read and was adopted by a viva voce vote.

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

Senator Jackson offered the following amendment to the bill:

### Floor Amendment No. 2

Amend **CSSB 1664** (senate committee printing) as follows:

(1) Strike SECTION 15 of the bill, adding Section 1551.3075, Insurance Code (page 5, lines 51-64).

(2) In SECTION 17 of the bill, strike amended Section 1551.314, Insurance Code (page 6, lines 9-18), and substitute:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be made for coverages under this chapter selected by an individual who receives a state contribution[~~other than as a spouse, dependent, or beneficiary,~~] for coverages under a group benefits program provided by another state health plan or by an institution of higher education, as defined by Section 61.003, Education Code.

(3) Strike SECTION 20 of the bill (page 6, lines 37-43) and substitute the following appropriately numbered SECTION of the bill:

SECTION \_\_\_\_\_. The board of trustees of the Employees Retirement System of Texas shall develop and fully implement the plan for providing tobacco cessation coverage as required by Section 1551.226, Insurance Code, as added by this Act, not later than January 1, 2012.

(4) Renumber SECTIONS of the bill appropriately.

The amendment to **CSSB 1664** was read.

Senator Duncan moved to table Floor Amendment No. 2.

Senator Duncan withdrew the motion to table Floor Amendment No. 2.

Senator Duncan again moved to table Floor Amendment No. 2.

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

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

Nays: Fraser, Gallegos, Harris, Jackson, Lucio, Wentworth.

Senator Jackson offered the following amendment to the bill:

### Floor Amendment No. 3

Amend **CSSB 1664** (senate committee printing) as follows:

(1) In the recital to SECTION 16 of the bill (page 5, line 66), strike "Section 1551.3076" and substitute "Sections 1551.3076 and 1551.3077".

(2) In SECTION 16 of the bill, after added Section 1551.3076, Insurance Code (page 6, between lines 6 and 7), insert:

Sec. 1551.3077. PREMIUM DIFFERENTIAL BASED ON BODY MASS INDEX. (a) The board of trustees shall assess each participant in a health benefit plan provided under the group benefits program who has a body mass index of 30 or greater a premium differential to be paid in monthly installments. Except as provided by Subsection (b), the board of trustees shall determine the amount of the monthly installments of the premium differential.

(b) If the General Appropriations Act for a state fiscal biennium sets the amount of the monthly installments of the premium differential established under Subsection (a) for that biennium, the board of trustees shall assess the premium differential during that biennium in the amount prescribed by the General Appropriations Act.

(3) In SECTION 17 of the bill, strike amended Section 1551.314, Insurance Code (page 6, lines 9-18), and substitute:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be:

(1) made for coverages under this chapter selected by an individual who receives a state contribution~~[, other than as a spouse, dependent, or beneficiary,]~~ for coverages under a group benefits program provided by another state health plan or by an institution of higher education, as defined by Section 61.003, Education Code; or

(2) made for or used to pay:

(A) a tobacco user premium differential assessed under Section 1551.3075; or

(B) a premium differential based on body mass index assessed under Section 1551.3077.

(4) In SECTION 20 of the bill, in the transition provision (page 6, line 42), between "Section 1551.3075, Insurance Code, as added by this Act," and "not", insert "and the premium differential based on body mass index required under Section 1551.3077, Insurance Code, as added by this Act,".

The amendment to **CSSB 1664** was read.

On motion of Senator Duncan, Floor Amendment No. 3 was tabled by the following vote: Yeas 28, Nays 3.

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

Nays: Gallegos, Harris, Jackson.

Senator Jackson offered the following amendment to the bill:

#### **Floor Amendment No. 4**

Amend **CSSB 1664** (senate committee printing) as follows:

(1) In the recital to SECTION 16 of the bill (page 5, line 66), strike "Section 1551.3076" and substitute "Sections 1551.3076 and 1551.3077".

(2) In SECTION 16 of the bill, after added Section 1551.3076, Insurance Code (page 6, between lines 6 and 7), insert:

Sec. 1551.3077. NICOTINE CHEWING GUM USER PREMIUM DIFFERENTIAL. (a) The board of trustees shall assess each participant in a health benefit plan provided under the group benefits program who uses nicotine chewing gum a nicotine chewing gum user premium differential to be paid in monthly installments. Except as provided by Subsection (b), the board of trustees shall determine the amount of the monthly installments of the premium differential.

(b) If the General Appropriations Act for a state fiscal biennium sets the amount of the monthly installments of the nicotine chewing gum user premium differential established under Subsection (a) for that biennium, the board of trustees shall assess the premium differential during that biennium in the amount prescribed by the General Appropriations Act.

(3) In SECTION 17 of the bill, strike amended Section 1551.314, Insurance Code (page 6, lines 9-18), and substitute:

Sec. 1551.314. CERTAIN STATE CONTRIBUTIONS PROHIBITED. A state contribution may not be:

(1) made for coverages under this chapter selected by an individual who receives a state contribution[~~, other than as a spouse, dependent, or beneficiary,~~] for coverages under a group benefits program provided by another state health plan or by an institution of higher education, as defined by Section 61.003, Education Code; or

(2) made for or used to pay:

(A) a tobacco user premium differential assessed under Section 1551.3075; or

(B) a nicotine chewing gum user premium differential assessed under Section 1551.3077.

(4) In SECTION 20 of the bill, in the transition provision (page 6, line 42), between "Section 1551.3075, Insurance Code, as added by this Act," and "not", insert "and the nicotine chewing gum user premium differential required under Section 1551.3077, Insurance Code, as added by this Act,".

The amendment to **CSSB 1664** was read.

Senator Jackson withdrew Floor Amendment No. 4.

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

**CSSB 1664** as amended was passed to engrossment by the following vote: Yeas 29, Nays 2.

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

Nays: Harris, Jackson.

### **COMMITTEE SUBSTITUTE SENATE BILL 1664 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1664** be placed on its third reading and final passage.

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

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

Nays: Harris, Jackson, 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 1664**, 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 1664** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

WENTWORTH

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

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

Nays: Harris, Jackson.

**(President in Chair)**

### **GUESTS PRESENTED**

Senator Shapiro, joined by Senators Hinojosa, Van de Putte, and Watson, was recognized and introduced to the Senate a Texas Charter Schools Association delegation.

The Senate welcomed its guests.

### **SENATE RULE 3.05**

**(Applause, Outbursts, or Demonstrations)**

Senator Wentworth was recognized and asked for strict enforcement of Senate Rule 3.05.

### **MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Wednesday, May 4, 2011 - 2

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

## THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HB 114**

McClendon

Relating to designating April as Minority Cancer Awareness Month.

**HB 554**

Howard, Donna

Relating to the civil service status of emergency medical services personnel in certain municipalities.

**HB 557**

Deshotel

Relating to the addition of a county to a freight rail district.

**HB 592**

Pitts

Relating to certain counties that are not required to operate a juvenile justice alternative education program.

**HB 633**

Chisum

Relating to certain nonrefundable application fees established by the Commission on Law Enforcement Officer Standards and Education.

**HB 1113**

Raymond

Relating to the sentencing hearing or deferred adjudication hearing and conditions of community supervision for defendants convicted of certain offenses involving controlled substances.

**HB 1199**

Gallego

Relating to the penalty for certain intoxication assaults.

**HB 1224**

Reynolds

Relating to expulsion of a public school student who commits certain criminal acts involving a computer, computer network, or computer system owned by or operated on behalf of a school district.

**HB 1253**

Smithee

Relating to certain modifications of a health benefit plan.

**HB 1291**

Hochberg

Relating to the payment of tolls for highway toll projects.

**HB 1314**

Raymond

Relating to the operation and jurisdiction of certain district courts serving Webb County.

**HB 1345**

Veasey

Relating to the statute of limitations on prosecution of the offenses of kidnapping and aggravated kidnapping of a minor.

**HB 1401**

Laubenberg

Relating to who may participate in certain local option elections to prohibit or authorize the sale of alcoholic beverages.

**HB 1402**

Guillen

Relating to the applicability of the law on the consequences of a criminal conviction to law enforcement officer license holders and applicants.

- HB 1615** Brown  
Relating to the administering of medications to children in certain facilities; providing criminal penalties.
- HB 1622** Menendez  
Relating to suits to enjoin gang activity that constitutes a public nuisance.
- HB 1643** Zerwas  
Relating to the duration of a development agreement governing land in the extraterritorial jurisdiction of certain municipalities.
- HB 1789** Farias  
Relating to the payment of state funds directly to an entity that conducts a primary election under contract in certain counties.
- HB 1805** Huberty  
Relating to a public school student's eligibility for a public education grant to attend another public school.
- HB 1830** Naishtat  
Relating to the method of delivery of certain notices sent by statutory probate court associate judges.
- HB 1959** Thompson  
Relating to appeal of the certification of an area's wet or dry status.
- HB 2028** Hartnett  
Relating to an additional fee for filing civil cases in certain Rockwall County courts.
- HB 2069** Naishtat  
Relating to the authority of a pharmacist to dispense up to a 90-day supply of dangerous drugs and accelerate refills.
- HB 2189** Elkins  
Relating to the regulation of handfishing.
- HB 2256** Phillips  
Relating to abating or deferring the suspension or revocation of a license issued by the Department of Public Safety for victims of identity theft.
- HB 2265** Ritter  
Relating to a county audit of a hotel regarding the hotel occupancy tax.
- HB 2280** Eiland  
Relating to the composition of the permanent advisory committee to advise the Texas Commission on Environmental Quality regarding the implementation of the ad valorem tax exemption for pollution control property.
- HB 2310** Miller, Doug  
Relating to appointment of bailiffs for the district courts in Comal, Hays, and Caldwell Counties.
- HB 2312** Coleman  
Relating to the creation of a sickle cell disease program.

- HB 2313** Coleman  
Relating to certain notice requirements for municipalities and counties under the open meetings law.
- HB 2370** Dukes  
Relating to certain notice to applicants to provide care under the permanency care assistance program.
- HB 2387** Menendez  
Relating to the selection, compensation, and duties of the general counsel to an appraisal district.
- HB 2393** Davis, Sarah  
Relating to a request by the owner of an ownership interest in a domestic entity that the interest be uncertificated.
- HB 2422** Thompson  
Relating to the procedure for providing a copy of the final decree of dissolution of a marriage to a party who waived service of process.
- HB 2471** Phillips  
Relating to limiting the civil liability of certain persons who obtain or provide medical care and treatment for certain animals.
- HB 2490** Solomons  
Relating to the regulation of certain metal dealers; providing criminal penalties.
- HB 2516** Alvarado  
Relating to the appeal of an indefinite suspension of a municipal firefighter or police officer.
- HB 2519** Kuempel  
Relating to the regulation of certain motor vehicle auctions.
- HB 2628** Branch  
Relating to the posting of signs in school crossing zones regarding the prohibited use of a wireless communication device while operating a motor vehicle.
- HB 2630** Branch  
Relating to the formal recognition and administration of The Texas A&M University System Health Science Center.
- HB 2643** Hamilton  
Relating to safety standards for elevators, escalators, and related equipment.
- HB 2711** Thompson  
Relating to the sealing of the records of juveniles who are the victims of human trafficking and have been adjudicated to have engaged in certain delinquent conduct.
- HB 2727** Thompson  
Relating to the regulation by the Texas Department of Licensing and Regulation of the application of eyelash extensions and private beauty culture schools; providing a criminal penalty.
- HB 2758** Pena  
Relating to mandatory emergency alert systems at institutions of higher education.

- HB 2770** Smith, Wayne  
Relating to the powers and duties of navigation districts, port authorities, and certain municipalities.
- HB 2790** Hunter  
Relating to the operation of a golf cart or utility vehicle on a public highway in certain counties.
- HB 2847** Madden  
Relating to the use of video teleconferencing systems in certain criminal proceedings.
- HB 2851** Mallory Caraway  
Relating to deferral of certain surcharge payments for military personnel deployed outside of the continental United States.
- HB 2853** Davis, John  
Relating to tax increment financing.
- HB 2911** Branch  
Relating to guaranteed student loans and alternative education loans.
- HB 2978** Hunter  
Relating to the applicability of open meetings requirements to certain meetings of the governing board of a county hospital or county hospital authority.
- HB 2981** Hunter  
Relating to the operation on a highway or street of a motor vehicle that is drawing a boat or personal watercraft in or on which a person is riding; providing a penalty.
- HB 2999** Lewis  
Relating to a fixed tuition rate program for certain students who transfer to a state university after completing an associate degree program.
- HB 3033** Naishtat  
Relating to retirement under public retirement systems for employees of certain municipalities.
- HB 3076** Gallego  
Relating to the rate of the hotel occupancy tax in certain counties.
- HB 3093** Lewis  
Relating to the amendment of certain reports of political contributions and expenditures.
- HB 3099** Kolkhorst  
Relating to the office of inspector general of the Department of Public Safety.
- HB 3146** Naishtat  
Relating to consent for treatment for chemical dependency in a treatment facility and required training for the facility's intake personnel.
- HB 3179** Farias  
Relating to contributions to the fund for veterans' assistance.
- HB 3207** Davis, Yvonne  
Relating to the establishment and operation of perpetual care cemeteries by certain organized religious societies and sects in certain populous municipalities.

- HB 3246** Elkins  
Relating to public improvement districts designated by a municipality or county.
- HB 3270** Veasey  
Relating to the list of candidates compiled by a state or county party chair for a primary election.
- HB 3307** Munoz, Jr.  
Relating to the confidentiality of certain home address information in ad valorem tax appraisal records.
- HB 3309** Rodriguez, Eddie  
Relating to the authority to set maximum weights for state highways, roads, and bridges.
- HB 3342** Naishtat  
Relating to representation of and by the state and joinder of the state in certain mental health proceedings.
- HB 3384** Madden  
Relating to the penalties for repeat and habitual felony offenders.
- HB 3409** Kolkhorst  
Relating to reporting of changes in lobbying activities during a legislative session.
- HB 3478** Gallego  
Relating to the punishment for criminal mischief involving cattle, horses, and exotic livestock.
- HB 3547** Alvarado  
Relating to enforcement by a local government of fire safety standards at certain child-care facilities.
- HB 3570** Smithee  
Relating to insurance coverage requirements for certain amusement rides.
- HB 3616** Naishtat  
Relating to designating October as Disability History and Awareness Month.
- HB 3674** Eiland  
Relating to the use of an unsworn declaration.
- HB 3708** Hochberg  
Relating to the Early High School Graduation Scholarship program and to the funding of certain exemptions from tuition and fees at public institutions of higher education from savings attributable to the program.
- HB 3814** Rodriguez, Eddie  
Relating to certain financial powers and duties of the Travis-Creedmoor Municipal Utility District.
- HB 3815** Lewis  
Relating to the authority of the Ector County Hospital District to employ and commission peace officers.

- HB 3818** Geren  
Relating to a limitation on production fees on groundwater withdrawals assessed by the Northern Trinity Groundwater Conservation District.
- HB 3819** Crownover  
Relating to the creation of the Valencia Municipal Management District No. 1; providing authority to levy an assessment and issue bonds.
- HB 3821** Eiland  
Relating to temporary directors and the continuation in existence of the Bolivar Yacht Basin Water Control and Improvement District No. 1 of Galveston County.
- HB 3827** Zerwas  
Relating to the creation of the Fulshear Town Center Management District; providing authority to impose an assessment, impose a tax, and issue bonds.
- HB 3828** Hochberg  
Relating to the creation of the Gulfton Area Municipal Management District; providing authority to impose a tax, levy an assessment, and issue bonds.
- HB 3831** Marquez  
Relating to the creation of the Montecillo Municipal Management District No. 1; providing authority to levy an assessment, impose a tax, and issue bonds.
- HB 3834** Zerwas  
Relating to the creation of North Fort Bend County Improvement District No. 1; providing authority to levy an assessment, impose a tax, and issue bonds.
- HB 3835** Laubenberg  
Relating to the Rockwall County Juvenile Board.
- HB 3836** Pitts  
Relating to the creation of the Windsor Hills Municipal Management District No. 1; providing authority to levy an assessment and issue bonds.
- HB 3847** Lavender  
Relating to the Riverbend Water Resources District.
- HB 3857** Dutton  
Relating to the creation of the Near Northside Management District.
- HJR 130** Branch  
Meeting requirements of the United States Department of Education concerning federal student aid by naming private institutions of higher education in the State of Texas that are authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.
- SB 257** Carona Sponsor: Phillips  
Relating to the issuance of "Choose Life" license plates and the creation of the Choose Life account in the general revenue fund.
- SB 321** Hegar Sponsor: Kleinschmidt  
Relating to an employee's transportation and storage of certain firearms or ammunition while on certain property owned or controlled by the employee's employer.  
(Committee Substitute/Amended)

- SB 360** Fraser Sponsor: Creighton  
Relating to the composition and use of money in the rural water assistance fund.
- SB 396** Deuell Sponsor: Marquez  
Relating to the state fire marshal's investigation of the death of a firefighter who dies in the line of duty or in connection with an on-duty incident.
- SB 934** Williams Sponsor: Hilderbran  
Relating to the enforcement of tax laws; providing a criminal penalty.
- SB 1086** Estes Sponsor: Hardcastle  
Relating to the operation by the Department of Agriculture of programs for rural economic development and the marketing and promotion of agricultural and other products grown, processed, or produced in this state.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**PERMISSION TO INTRODUCE BILL 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 bill and resolution: **SB 1928, SCR 51.**

**SENATE BILL AND RESOLUTION ON FIRST READING**

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

**SB 1928** by Ellis, West

Relating to an African American Texans memorial monument on the Capitol grounds.  
To Committee on Administration.

**SCR 51** by Ellis, West

Expressing the legislature's support for the construction of a monument to African American Texans on the grounds of the State Capitol at the location approved by the State Preservation Board for a Juneteenth monument.  
To Committee on Administration.

**HOUSE BILLS AND RESOLUTION ON FIRST READING**

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

**HB 143** to Committee on Transportation and Homeland Security.

**HB 627** to Committee on Jurisprudence.

**HB 790** to Committee on Agriculture and Rural Affairs.

**HB 831** to Committee on Intergovernmental Relations.

**HB 850** to Committee on Intergovernmental Relations.

**HB 1060** to Committee on Natural Resources.

**HB 1209** to Committee on Jurisprudence.

**HB 1343** to Committee on Jurisprudence.

**HB 1390** to Committee on Business and Commerce.

**HB 1648** to Committee on Natural Resources.  
**HB 1812** to Committee on Intergovernmental Relations.  
**HB 1866** to Committee on Transportation and Homeland Security.  
**HB 2002** to Committee on International Relations and Trade.  
**HB 2040** to Committee on Transportation and Homeland Security.  
**HB 2122** to Committee on Jurisprudence.  
**HB 2141** to Committee on Transportation and Homeland Security.  
**HB 2342** to Committee on Business and Commerce.  
**HB 2488** to Committee on Jurisprudence.  
**HB 2495** to Committee on Business and Commerce.  
**HB 2538** to Committee on Open Government.  
**HB 2771** to Committee on Transportation and Homeland Security.  
**HB 2870** to Committee on Finance.  
**HB 2964** to Committee on Intergovernmental Relations.  
**HB 3004** to Committee on Business and Commerce.  
**HB 3255** to Committee on State Affairs.  
**HB 3421** to Committee on Transportation and Homeland Security.  
**HB 3487** to Committee on Business and Commerce.  
**HB 3823** to Committee on Transportation and Homeland Security.  
**HCR 99** to Committee on State Affairs.

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

On motion of Senator Lucio, Senators Davis, Harris, Hinojosa, and Patrick will be shown as Co-authors of **SB 288**.

#### **CO-SPONSORS OF HOUSE BILL 15**

On motion of Senator Patrick, Senators Carona, Deuell, Hegar, Huffman, Nelson, and Shapiro will be shown as Co-sponsors of **HB 15**.

#### **CO-SPONSOR OF HOUSE BILL 716**

On motion of Senator Fraser, Senator Birdwell will be shown as Co-sponsor of **HB 716**.

#### **CO-SPONSOR OF HOUSE BILL 1064**

On motion of Senator Eltife, Senator Carona will be shown as Co-sponsor of **HB 1064**.

#### **CO-SPONSOR OF HOUSE BILL 2831**

On motion of Senator Eltife, Senator Zaffirini will be shown as Co-sponsor of **HB 2831**.

#### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

##### **Memorial Resolutions**

**SR 914** by Lucio, In memory of Clara Bow Williams Zepeda of San Benito.  
**SR 919** by Watson, In memory of Cuth Kenneth Shepherd of Lakeway.

**SR 921** by Zaffirini, In memory of Hector H. Garcia Sr. of Laredo.

**Welcome and Congratulatory Resolutions**

**SCR 52** by Watson, Recognizing Donn and Arlene Adelman for their efforts on behalf of Crime Stoppers.

**SR 908** by West, Welcoming Debbie Reynolds to our state and recognizing her for her accomplishments.

**SR 910** by Lucio, Recognizing Pharr-San Juan-Alamo North High School for receiving a College Board Inspiration Award.

**SR 911** by Lucio, Recognizing the Port of Brownsville on the occasion of its 75th anniversary.

**SR 912** by Lucio, Recognizing Mike and Judy Muzyczyn for being named the 2011 General Aviation Airport Managers of the Year.

**SR 913** by Lucio, Recognizing the counseling master's program at The University of Texas at Brownsville for receiving full accreditation from the Council for Accreditation of Counseling and Related Educational Programs.

**SR 917** by Watson, Recognizing the Austin Symphony Orchestra on the occasion of its 100th anniversary.

**SR 918** by Watson, Recognizing Rosalio "Rabbit" Duran for his contributions to East Austin.

**SR 920** by Watson, Recognizing Arlene Lois Youngblood on the occasion of her retirement from the Texas Commission on Environmental Quality.

**ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 2:41 p.m. adjourned until 2:45 p.m. today.

