

SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE — FIRST CALLED SESSION

AUSTIN, TEXAS

PROCEEDINGS

FOURTH DAY

(Continued)

(Tuesday, July 25, 2017)

AFTER RECESS

The Senate met at 10:04 a.m. and was called to order by the President.

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

Gracious Father, thank You so much for this day that You've given and granted us. Thank You for allowing me to stand before such great men and women in this room who speak and care about our state and our country. I pray that You grant them the wisdom, the knowledge, and peace in all the plans and decisions that you have set before them and made this day. Give them strength and not grow tired, take time to just breathe in the midst of tough decisions, and joy in the journey You have each one traveling on. I ask Your protection and blessing over our military and first responders who sacrificially stand in the gap for us, individually and our nation. I pray that no one in this room walks alone but recognizes that our hope is built on a solid rock, and because of You being a good, good Father, it is well with our souls. With respect to all beliefs, I pray in Jesus' name. Amen.

MOTION TO PLACE

SENATE BILL 3 ON SECOND READING

Senator Kolkhorst moved to suspend the regular order of business to take up for consideration **SB 3** at this time on its second reading:

SB 3, Relating to the regulation of certain facilities and activities of political subdivisions, including public school districts, and open-enrollment charter schools.

POINT OF ORDER

Senator Watson raised a point of order that consideration of **SB 3** was in violation of Article III, Section 40 of the Texas Constitution.

POINT OF ORDER RULING

The President stated that the point of order was respectfully overruled.

Senator Watson requested an explanation of the ruling by the Chair.

The President said an explanation* would be provided and placed in the Journal.

Senator Watson also asked if there were precedents supporting the ruling.

*Explanation of Point of Order Ruling (SB 3)

Senator Watson raised a point of order against consideration of Senate Bill 3 under Article III, Section 40 of the Texas Constitution on the grounds the bill legislates upon a subject not designated in the proclamation of the Governor. Article III, Section 40 provides that when the Legislature is "convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor".

Well-settled legislative precedents and court decisions long-ago established that the Legislature's jurisdiction when convened in a special session is as broad as at a regular session. See Long v. State, 127 S.W. 208 (Tex. Crim. App. 1910). Article III, Section 40 constitutes a narrow exception to the Legislature's otherwise plenary law-making prerogative, subject to strict construction; allowing the Governor to present the subjects for legislation in a general way, and thus confine the Legislature's business to those subjects. The Legislature may then address the agenda in such way as the Legislature deems necessary, unless clearly inhibited by the subject-matter limitation. See generally Baldwin v. State, 3 S.W. 109 (Tex. Civ. App. 1886); Brown v. State, 32 Tex. Crim. 119 (1893).

Properly understood, Article III, Section 40 allows the Governor's proclamation to serve as a "designation of subject", rather than a narrow prescription for policy. That the Legislature may only enact legislation in part in relation to the subject does not invalidate an act, nor is it necessary that the whole subject-matter should be acted on by the Legislature. See Brown v. State, 32 Tex. Crim. 119 (1893). However, it is not the Chair's position that the Legislature's latitude is limitless or that the Constitution leaves the Governor without meaningful influence during a special session. The Chair respectfully acquiesces to the Governor's constitutional veto power in that regard.

Viewed in this light, the Chair's analysis of Senator Watson's point of order rests on whether Senate Bill 3 falls within the general subject established by the Governor. In making this determination, the Chair is obligated to evaluate the proclamations and the bill as a whole, giving a constitutional construction to the entirety of the bill, if possible.

In the present case, the Governor issued multiple proclamations presenting subjects for legislation during this called session. The proclamation issued on July 20, 2017, and referenced by Senator Watson, authorizes the consideration of legislation "regarding the use of multi-occupancy showers, locker rooms, restrooms, and changing rooms." The first proclamation came ten days earlier, on July 10, 2017. The initial proclamation sets the date of the special session for July 18, provides for the consideration of a group of bills under the Texas Sunset Act, and further states the intent of the Governor to later expand the call to an additional 11 listed subjects. Of note, the July 10 proclamation does not list the facilities included in the later proclamation ("multi-occupancy showers, locker rooms, restrooms and changing rooms"), but instead refers to the subject generally as "privacy." This initial proclamation also references a list of items announced by the Governor on June 6,

2017, when first alerting the Legislature of his intent to call a special session. And again, the June 6 list of items uses the term "privacy" without reference to any facilities.

The Chair notes that the Governor's use of the term "multi-occupancy" in the July 20 proclamation, as distinguished from the term "single-occupancy", is also relevant. Why would the Governor call for legislation to only regulate multi-occupancy facilities without explaining the distinction? In reading the entirety of the messages, the most practical conclusion is that the Governor is concerned with protecting an individual's intimate privacy.

Senate Bill 3 provides that each multi-occupancy restroom, shower and changing facility of a political subdivision, including school districts and open-enrollment charter schools, must be designated for and used only by persons of the same sex as stated on a person's birth certificate. The bill also prevents a political subdivision, including school districts and open-enrollment charter schools, from adopting or enforcing an order, ordinance, policy, or other measure to protect a class of persons from discrimination, except in accordance with federal or state law, to regulate (1) access to multi-occupancy restrooms, showers, or changing facilities; or (2) participation in athletic activities. The athletic provision is the basis for Senator Watson's point of order.

At first glance, the athletic provision may seem to exceed the tighter boundaries assumed in the list of facilities described by the Governor's later proclamation. Yet, it is inescapable that participation in athletic activities does not stop on the playing field. Full team-sport participation often involves locker rooms and their inherent personal facilities. Moreover, some sports by their very nature involve physical contact, raising intimacy concerns. The athletic provision does not attempt to regulate athletic participation directly but instead seeks to only prohibit political subdivisions from circumventing the act by misapplying federal or state laws designed to protect a class of persons from discrimination. Given these circumstances, Senate Bill 3's athletic provision is a safeguard squarely aimed at protecting intimate privacy.

After careful consideration, the Chair finds that the provisions of Senate Bill 3 are designed to protect the intimate privacy of individuals by limiting the use of certain facilities to persons of the same sex. The legislation, taken as a whole, is within the general subject of privacy as set forth by the Governor and does not run afoul of the constitutional limitation established by Article III, Section 40.

Accordingly, the point of order is respectfully overruled.

MOTION TO APPEAL POINT OF ORDER RULING

Senator Watson moved to appeal the point of order ruling by the President.

Question: Shall the point of order ruling be sustained?

AT EASE

The President at 10:50 a.m. announced the Senate would stand At Ease subject to the call of the Chair.

The President vacated the chair.

IN LEGISLATIVE SESSION

Senator Hancock at 11:15 a.m. called the Senate to order as In Legislative Session.

Question: Shall the point of order ruling be sustained?

Senators West, Huffman, Kolkhorst, Taylor of Collin, Hughes, Watson, and Rodríguez spoke on the ruling by the President.

The point of order ruling by the President was sustained by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

(President in Chair)

(Senator Campbell in Chair)

(President in Chair)

SENATE BILL 3 ON SECOND READING

Senator Kolkhorst again moved to suspend the regular order of business to take up for consideration **SB 3** at this time on its second reading:

SB 3, Relating to the regulation of certain facilities and activities of political subdivisions, including public school districts, and open-enrollment charter schools.

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

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

The bill was read second time.

Question: Shall **SB 3** be passed to engrossment?

RECESS

On motion of Senator Whitmire, the Senate at 3:53 p.m. recessed until 4:10 p.m. today.

AFTER RECESS

The Senate met at 4:10 p.m. and was called to order by the President.

Question: Shall **SB 3** be passed to engrossment?

Senator Kolkhorst offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 3** (senate committee printing) in SECTION 2 of the bill, by striking added Section 250.009(b), Local Government Code (page 1, lines 35 through 45), and substituting the following:

(b) In an effort to ensure the right of each person to participate in athletic activities and have access to restrooms, locker rooms, showers, and changing facilities with privacy, dignity, and safety, and except in accordance with federal law as enacted by Congress and interpreted in controlling federal case law and state law as enacted by the legislature and interpreted in controlling case law of this state, a political subdivision, including a public school district, or an open-enrollment charter school may not adopt or enforce an order, ordinance, policy, or other measure that:

(1) relates to the designation or use of a multiple-occupancy restroom, shower, or changing facility;

(2) requires a private entity to adopt, or prohibits the entity from adopting, a policy on the designation or use of the entity's multiple-occupancy restrooms, showers, or changing facilities; or

(3) allows a person whose birth certificate states their sex as male to participate in athletic activities designated for a person whose birth certificate states their sex as female.

The amendment to **SB 3** was read.

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

Floor Amendment No. 2

Amend Floor Amendment No. 1 (Kolkhorst) to **SB 3**, in added Section 250.009(b), Local Government Code, by striking "as enacted by Congress and interpreted in controlling federal case law and state law as enacted by the legislature and interpreted in controlling case law of this state" and substituting "and state law".

The amendment to Floor Amendment No. 1 to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Question recurring on the adoption of Floor Amendment No. 1 to **SB 3**, the amendment was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Senator Campbell offered the following amendment to the bill:

Floor Amendment No. 3

Amend **SB 3** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 250.009, Local Government Code, add the following appropriately lettered subsection and reletter subsequent subsections accordingly:

() A private entity that leases or contracts to use a building owned or leased by a political subdivision, including a public school district, or an open-enrollment charter school is not subject to Subsection (a). A political subdivision, including a public school district, or an open-enrollment charter school may not require the private entity to adopt, or prohibit the private entity from adopting, a policy on the designation or use of restrooms, showers, or changing facilities located in the building.

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

SECTION ____ . Subchapter Z, Chapter 2252, Government Code, is amended by adding Section 2252.909 to read as follows:

Sec. 2252.909. CONSIDERATION OF CERTAIN POLICIES PROHIBITED. In awarding a contract for the purchase of goods or services, a political subdivision, including a public school district, or an open-enrollment charter school may not consider whether a private entity competing for the contract has adopted a policy relating to the designation or use of the entity's bathrooms or changing facilities.

The amendment to **SB 3** was read and was adopted by the following vote: Yeas 22, Nays 9.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Hinojosa, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 4

Amend **SB 3** (senate committee printing) in SECTION 2 of the bill, in added Section 250.009, Local Government Code, by adding the following appropriately lettered subsection and relettering subsequent subsections accordingly:

() This section does not preclude a political subdivision, including a public school district, or an open-enrollment charter school from adopting an ordinance, order, policy, or other measure regarding the use of a restroom, shower, or changing facility by a person not of the designated sex to:

(1) assist in the restroom, shower, or changing facility:

(A) a person with a disability;

(B) a child under the age of eight; or

(C) an elderly person.

(2) be assisted in the restroom, shower, or changing facility, if the person is a person described by Subdivision (1)(A), (B), or (C);

(3) render medical or other emergency assistance; or

(4) maintain the restroom, shower, or changing facility when the restroom, shower, or changing facility is not in use.

() This section does not prohibit a political subdivision, including a public school district, or an open-enrollment charter school from providing an accommodation, including a single-occupancy restroom, shower, or changing facility or the controlled use of a faculty restroom, shower, or changing facility, on request due to special circumstances.

The amendment to **SB 3** was read and was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Senator Huffman offered the following amendment to the bill:

Floor Amendment No. 5

Amend **SB 3** (senate committee printing) in SECTION 2 of the bill, in added Section 250.009(a), Local Government Code (page 1, line 34), by striking "birth certificate" and substituting the following:

:

(1) birth certificate; or

(2) driver's license, personal identification certificate, or license to carry a handgun, issued to the person by the Department of Public Safety of the State of Texas

The amendment to **SB 3** 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. 5.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 6

Amend **SB 3** (senate committee printing) in SECTION 2 of the bill, in added Section 250.009(a), Local Government Code (page 1, line 34), between "birth certificate" and the underlined period, by inserting ", driver's license, personal identification certificate, or license to carry a handgun, issued to the person by the Department of Public Safety of the State of Texas".

The amendment to **SB 3** was read.

Senator Zaffirini withdrew Floor Amendment No. 6.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 7

Amend **SB 3** (senate committee printing) in SECTION 2 of the bill, in added Section 250.009, Local Government Code, by adding the following appropriately lettered subsection and relettering subsequent subsections accordingly:

() A building that is owned or leased by a political subdivision, including a public school district, or an open-enrollment charter school and that is primarily used for rental or lease by private entities on a short-term basis for events is not at any time subject to Subsection (a), regardless of whether a public or private entity is using the building at that time.

The amendment to **SB 3** was read.

Senator Menéndez withdrew Floor Amendment No. 7.

Senator Rodríguez offered the following amendment to the bill:

Floor Amendment No. 8

Amend **SB 3** (senate committee printing) in SECTION 2 of the bill, in added Section 250.009, Local Government Code, by adding the following appropriately lettered subsection and relettering subsequent subsections accordingly:

() A designation of a multiple-occupancy restroom, shower, or changing facility under this section does not apply to a person who identifies as transgender, regardless of whether the person's birth certificate is amended to reflect the person's sex.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Watson offered the following amendment to the bill:

Floor Amendment No. 9

Amend **SB 3** (senate committee report) in SECTION 2 of the bill, in added Section 250.009(a), Local Government Code (page 1, line 34), between "certificate" and the underlined period, by inserting ", except that a person may use a multiple-occupancy restroom, shower, or changing facility that corresponds with the person's sincerely held gender identity even if the person's sincerely held gender identity conflicts with the sex recorded on the person's birth certificate".

The amendment to **SB 3** was read.

Senator Watson withdrew Floor Amendment No. 9.

Senator West offered the following amendment to the bill:

Floor Amendment No. 10

Amend **SB 3** (senate committee printing) in SECTION 2 of the bill, in added Section 250.009, Local Government Code (page 1, lines 29-49), by adding the following appropriately lettered subsection and relettering subsequent subsections accordingly:

() The state shall reimburse each public school district and open-enrollment charter school for any administrative, personnel, and training costs associated with the collection and verification of birth certificates as necessary to implement this section.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Watson offered the following amendment to the bill:

Floor Amendment No. 11

Amend **SB 3** (senate committee printing) in SECTION 2 of the bill as follows:

(1) In the heading to added Section 250.009, Local Government Code, strike "AND ACTIVITIES".

(2) In added Section 250.009, Local Government Code, strike Subsection (b) and reletter subsequent subsections accordingly.

WATSON
MILES

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Watson offered the following amendment to the bill:

Floor Amendment No. 12

Amend **SB 3** (senate committee report) in SECTION 2 of the bill, in added Section 250.009(c), Local Government Code, between "section" and the underlined period by adding "in an amount not to exceed \$250,000 for each action".

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Watson offered the following amendment to the bill:

Floor Amendment No. 13

Amend **SB 3** (senate committee printing) in SECTION 2 of the bill, in added Section 250.009, Local Government Code, by adding the following appropriately designated subsection to that section and redesignating existing subsections accordingly:

() At the sole expense of the state, the attorney general shall defend a political subdivision, including a public school district, or an open-enrollment charter school against an action challenging this section under the Texas Constitution, the United States Constitution, or federal law. The state is solely liable for any damages, costs, or attorney's fees awarded to a plaintiff in such an action.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Rodríguez offered the following amendment to the bill:

Floor Amendment No. 14

Amend **SB 3** (senate committee report) as follows:

(1) In the recital to SECTION 2 of the bill (page 1, line 28), strike "Section 250.009" and substitute "Sections 250.009 and 250.010".

(2) In SECTION 2 of the bill, immediately following added Section 250.009, Local Government Code (page 1, between lines 49 and 50), insert the following new section:

Sec. 250.010. REQUIRING IDENTIFICATION PROHIBITED. An employee of a political subdivision, including a public school district, or an open-enrollment charter school may not require a person to produce the person's birth certificate, driver's license, or other form of identification that includes the person's sex:

(1) as a condition for entering or using a multiple-occupancy restroom, shower, or changing facility; or

(2) to confirm the person entered a multiple-occupancy restroom, shower, or changing facility consistent with the person's sex as stated on the identification.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Rodríguez offered the following amendment to the bill:

Floor Amendment No. 15

Amend **SB 3** (senate committee report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Title 4, Civil Practice and Remedies Code, is amended by adding Chapter 100B to read as follows:

CHAPTER 100B. LIABILITY ARISING FROM DISCRIMINATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 100B.001. DEFINITIONS. In this chapter:

(1) "Aggrieved person" includes any person who:

(A) claims to have been injured by a discriminatory practice; or

(B) believes that he or she will be injured by a discriminatory practice

that is about to occur.

(2) "Discriminatory practice" means an act prohibited by this chapter.

(3) "Gender identity or expression" means having or being perceived as having gender-related identity, appearance, expression, or behavior, regardless of whether that identity, appearance, expression, or behavior is different from that commonly associated with the individual's actual or perceived sex.

(4) "Public accommodation" means a business or other entity that offers to the general public food, shelter, recreation, or amusement, or any other goods, service, privilege, facility, or accommodation.

(5) "Religious organization" means:

(A) a religious corporation, association, or society; or

(B) a school, institution of higher education, or other educational institution, not otherwise a religious organization, that:

(i) is wholly or substantially controlled, managed, owned, or supported by a religious organization; or

(ii) has a curriculum directed toward the propagation of a particular religion.

(6) "Sexual orientation" means the actual or perceived status of an individual with respect to the individual's sexuality.

Sec. 100B.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter does not apply to a religious organization.

(b) This chapter applies to activities conducted by a religious organization for profit to the extent that those activities are subject to federal taxation under Section 511(a), Internal Revenue Code of 1986, as that section existed on July 1, 2017.

SUBCHAPTER B. DISCRIMINATION IN PUBLIC ACCOMMODATIONS

PROHIBITED

Sec. 100B.051. PUBLIC ACCOMMODATIONS. (a) Except as provided by Subsection (b), a person commits a discriminatory practice and violates this chapter if the person, because of the sexual orientation or gender identity or expression of an individual:

(1) denies that individual full and equal accommodations in any place of public accommodation in this state, subject only to the conditions and limitations established by law and applicable to all persons; or

(2) otherwise discriminates against or segregates or separates the individual based on sexual orientation or gender identity or expression.

(b) A person does not commit a discriminatory practice or violate this chapter under Subsection (a) if segregation or separation of an individual is necessary to provide a service that:

- (1) provides acceptance, support, and understanding to the individual;
- (2) assists the individual with coping with the individual's sexual orientation or gender identity or expression, maintaining social support, and exploring and identifying the individual's identity; or
- (3) provides support to an individual undergoing a gender transition.

(c) The services described by Subsection (b)(2) include a sexual orientation-neutral intervention for preventing or addressing unlawful conduct or unsafe sexual practices if the intervention does not seek to change the individual's sexual orientation or gender identity or expression.

SUBCHAPTER C. CAUSE OF ACTION

Sec. 100B.101. CIVIL ACTION. An aggrieved person may file a civil action in district court not later than the second anniversary of the occurrence of the termination of an alleged discriminatory practice under this chapter to obtain appropriate relief with respect to the discriminatory practice.

Sec. 100B.102. RELIEF GRANTED. In an action under this subchapter, if the court finds that a discriminatory practice has occurred or is about to occur, the court may award to the plaintiff:

- (1) actual and punitive damages;
- (2) reasonable attorney's fees;
- (3) court costs; and
- (4) any permanent or temporary injunction, temporary restraining order, or other order, including an order enjoining the defendant from engaging in the practice or ordering other appropriate action.

SECTION ____ . Subchapter A, Chapter 2155, Government Code, is amended by adding Section 2155.0065 to read as follows:

Sec. 2155.0065. PROHIBITION AGAINST DISCRIMINATION BY STATE CONTRACTOR BASED ON SEXUAL ORIENTATION OR GENDER IDENTITY OR EXPRESSION. (a) In this section:

- (1) "Employee" means an individual who is employed by a contractor or subcontractor for compensation.
- (2) "Gender identity or expression" means having or being perceived as having a gender-related identity, appearance, expression, or behavior, regardless of whether that identity, appearance, expression, or behavior is different from that commonly associated with the individual's actual or perceived sex.
- (3) "Sexual orientation" means the actual or perceived status of an individual with respect to the individual's sexuality.

(b) A state agency contracting with a contractor under this subtitle shall require the contractor to adopt and apply an employment policy under which the contractor and any subcontractor may not, because of sexual orientation or gender identity or expression:

- (1) fail or refuse to hire an individual, discharge an individual, or discriminate in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limit, segregate, or classify an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

(c) Each contract entered into between a state agency and a contractor under this subtitle must include terms that:

(1) authorize an employee of a contractor or subcontractor, or an applicant for employment with the contractor or subcontractor, to make a verbal or written complaint to the state agency regarding the contractor's or subcontractor's noncompliance with an employment policy required by Subsection (b);

(2) explain that, on confirmation of a contractor's noncompliance with an employment policy required by Subsection (b) that is the subject of a complaint, the state agency shall provide to the contractor written notice of the noncompliance by hand delivery or certified mail;

(3) inform a contractor that the state agency may impose an administrative penalty if the contractor fails to comply with an employment policy required by Subsection (b) after the date on which the contractor receives notice under Subdivision (2); and

(4) explain that an amount equal to the amount of the administrative penalty may be withheld from a payment otherwise owed to a contractor under a contract.

(d) The amount of an administrative penalty imposed under Subsection (c)(3) is \$100 per day for each employee or applicant for employment who is discriminated against in violation of an employment policy required by Subsection (b).

(e) Each state agency shall develop procedures for the administration of this section.

SECTION _____. Section 21.002, Labor Code, is amended by adding Subdivisions (9-a) and (13-a) to read as follows:

(9-a) "Gender identity or expression" means having or being perceived as having a gender-related identity, appearance, expression, or behavior, regardless of whether that identity, appearance, expression, or behavior is different from that commonly associated with the individual's actual or perceived sex.

(13-a) "Sexual orientation" means the actual or perceived status of an individual with respect to the individual's sexuality.

SECTION _____. Section 21.051, Labor Code, is amended to read as follows:

Sec. 21.051. DISCRIMINATION BY EMPLOYER. An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, ~~or~~ age, sexual orientation, or gender identity or expression the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

SECTION _____. Section 21.052, Labor Code, is amended to read as follows:

Sec. 21.052. DISCRIMINATION BY EMPLOYMENT AGENCY. An employment agency commits an unlawful employment practice if the employment agency:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual because of race, color, disability, religion, sex, national origin, ~~or~~ age, sexual orientation, or gender identity or expression; or

(2) classifies or refers an individual for employment on the basis of race, color, disability, religion, sex, national origin, ~~or~~ age, sexual orientation, or gender identity or expression.

SECTION _____. Section 21.053, Labor Code, is amended to read as follows:

Sec. 21.053. DISCRIMINATION BY LABOR ORGANIZATION. A labor organization commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, ~~or~~ age, sexual orientation, or gender identity or expression the labor organization:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership or classifies or fails or refuses to refer for employment an individual in a manner that would:

(A) deprive or tend to deprive an individual of any employment opportunity;

(B) limit an employment opportunity or adversely affect in any other manner the status of an employee or of an applicant for employment; or

(C) cause or attempt to cause an employer to violate this subchapter.

SECTION _____. Section 21.054(a), Labor Code, is amended to read as follows:

(a) Unless a training or retraining opportunity or program is provided under an affirmative action plan approved under a federal law, rule, or order, an employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, or committee discriminates against an individual because of race, color, disability, religion, sex, national origin, ~~or~~ age, sexual orientation, or gender identity or expression in admission to or participation in the program.

SECTION _____. Section 21.059(a), Labor Code, is amended to read as follows:

(a) An employer, labor organization, employment agency, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if the employer, labor organization, employment agency, or committee prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, ~~or~~ age, sexual orientation, or gender identity or expression; and

(2) concerns an employee's status, employment, or admission to or membership or participation in a labor union or training or retraining program.

SECTION _____. Section 21.102(c), Labor Code, is amended to read as follows:

(c) This section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, ~~age~~, sexual orientation, or gender identity or expression.

SECTION _____. Section 21.112, Labor Code, is amended to read as follows:

Sec. 21.112. EMPLOYEES AT DIFFERENT LOCATIONS. An employer does not commit an unlawful employment practice by applying to employees who work in different locations different standards of compensation or different terms, conditions, or privileges of employment that are not discriminatory on the basis of race, color, disability, religion, sex, national origin, ~~age~~, sexual orientation, or gender identity or expression.

SECTION _____. Section 21.113, Labor Code, is amended to read as follows:

Sec. 21.113. IMBALANCE PLAN NOT REQUIRED. This chapter does not require a person subject to this chapter to grant preferential treatment to an individual or a group on the basis of race, color, disability, religion, sex, national origin, ~~age~~, sexual orientation, or gender identity or expression because of an imbalance between:

(1) the total number or percentage of persons of that individual's or group's race, color, disability, religion, sex, national origin, ~~age~~, sexual orientation, or gender identity or expression:

(A) employed by an employer;

(B) referred or classified for employment by an employment agency or labor organization;

(C) admitted to membership or classified by a labor organization; or

(D) admitted to or employed in an apprenticeship, on-the-job training, or other training or retraining program; and

(2) the total number or percentage of persons of that race, color, disability, religion, sex, national origin, ~~age~~, sexual orientation, or gender identity or expression in:

(A) a community, this state, a region, or other area; or

(B) the available work force in a community, this state, a region, or other area.

SECTION _____. Section 21.120(b), Labor Code, is amended to read as follows:

(b) Subsection (a) does not apply to a policy adopted or applied with the intent to discriminate because of race, color, sex, national origin, religion, age, ~~disability~~, sexual orientation, or gender identity or expression.

SECTION _____. Section 21.122(a), Labor Code, is amended to read as follows:

(a) An unlawful employment practice based on disparate impact is established under this chapter only if:

(1) a complainant demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, sex, national origin, religion, ~~disability~~, sexual orientation, or gender identity or expression and the respondent fails to demonstrate that the challenged practice is job-related for the position in question and consistent with business necessity; or

(2) the complainant makes the demonstration in accordance with federal law as that law existed June 4, 1989, with respect to the concept of alternative employment practices, and the respondent refuses to adopt such an alternative employment practice.

SECTION _____. Section 21.124, Labor Code, is amended to read as follows:

Sec. 21.124. PROHIBITION AGAINST DISCRIMINATORY USE OF TEST SCORES. It is an unlawful employment practice for a respondent, in connection with the selection or referral of applicants for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of employment-related tests on the basis of race, color, sex, national origin, religion, age, ~~or~~ disability, sexual orientation, or gender identity or expression.

SECTION _____. The heading to Section 21.125, Labor Code, is amended to read as follows:

Sec. 21.125. CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, SEX, NATIONAL ORIGIN, RELIGION, AGE, ~~OR~~ DISABILITY, SEXUAL ORIENTATION, OR GENDER IDENTITY OR EXPRESSION IN EMPLOYMENT PRACTICES.

SECTION _____. Section 21.125(a), Labor Code, is amended to read as follows:

(a) Except as otherwise provided by this chapter, an unlawful employment practice is established when the complainant demonstrates that race, color, sex, national origin, religion, age, ~~or~~ disability, sexual orientation, or gender identity or expression was a motivating factor for an employment practice, even if other factors also motivated the practice, unless race, color, sex, national origin, religion, age, ~~or~~ disability, sexual orientation, or gender identity or expression is combined with objective job-related factors to attain diversity in the employer's work force.

SECTION _____. Section 21.126, Labor Code, is amended to read as follows:

Sec. 21.126. COVERAGE OF PREVIOUSLY EXEMPT EMPLOYEES OF THE STATE OR POLITICAL SUBDIVISION OF THE STATE. It is an unlawful employment practice for a person elected to public office in this state or a political subdivision of this state to discriminate because of race, color, sex, national origin, religion, age, ~~or~~ disability, sexual orientation, or gender identity or expression against an individual who is an employee or applicant for employment to:

- (1) serve on the elected official's personal staff;
- (2) serve the elected official on a policy-making level; or
- (3) serve the elected official as an immediate advisor with respect to the exercise of the constitutional or legal powers of the office.

SECTION _____. Section 21.152(a), Labor Code, is amended to read as follows:

(a) A political subdivision or two or more political subdivisions acting jointly may create a local commission to:

- (1) promote the purposes of this chapter; and
- (2) secure for all individuals in the jurisdiction of each political subdivision freedom from discrimination because of race, color, disability, religion, sex, national origin, ~~or~~ age, sexual orientation, or gender identity or expression.

SECTION _____. Section 21.155(a), Labor Code, is amended to read as follows:

(a) The commission [~~Commission on Human Rights~~] shall refer a complaint concerning discrimination in employment because of race, color, disability, religion, sex, national origin, [~~or~~] age, sexual orientation, or gender identity or expression that is filed with that commission to a local commission with the necessary investigatory and conciliatory powers if:

(1) the complaint has been referred to the commission [~~Commission on Human Rights~~] by the federal government; or

(2) jurisdiction over the subject matter of the complaint has been deferred to the commission [~~Commission on Human Rights~~] by the federal government.

SECTION _____. Section 301.003, Property Code, is amended by amending Subdivision (6) and adding Subdivisions (9-a) and (10-a) to read as follows:

(6) "Disability" means a mental or physical impairment that substantially limits at least one major life activity, a record of the impairment, or being regarded as having the impairment. The term does not include current illegal use of or addiction to any drug or illegal or federally controlled substance [~~and does not apply to an individual because of an individual's sexual orientation or because that individual is a transvestite~~].

(9-a) "Gender identity or expression" means having or being perceived as having a gender-related identity, appearance, expression, or behavior, regardless of whether that identity, appearance, expression, or behavior is different from that commonly associated with the individual's actual or perceived sex.

(10-a) "Sexual orientation" means the actual or perceived status of an individual with respect to the individual's sexuality.

SECTION _____. Sections 301.021(a) and (b), Property Code, are amended to read as follows:

(a) A person may not refuse to sell or rent, after the making of a bona fide offer, refuse to negotiate for the sale or rental of, or in any other manner make unavailable or deny a dwelling to another because of race, color, religion, sex, familial status, [~~or~~] national origin, sexual orientation, or gender identity or expression.

(b) A person may not discriminate against another in the terms, conditions, or privileges of sale or rental of a dwelling or in providing services or facilities in connection with a sale or rental of a dwelling because of race, color, religion, sex, familial status, [~~or~~] national origin, sexual orientation, or gender identity or expression.

SECTION _____. Section 301.022, Property Code, is amended to read as follows:

Sec. 301.022. PUBLICATION. A person may not make, print, or publish or effect the making, printing, or publishing of a notice, statement, or advertisement that is about the sale or rental of a dwelling and that indicates any preference, limitation, or discrimination or the intention to make a preference, limitation, or discrimination because of race, color, religion, sex, disability, familial status, [~~or~~] national origin, sexual orientation, or gender identity or expression.

SECTION _____. Section 301.023, Property Code, is amended to read as follows:

Sec. 301.023. INSPECTION. A person may not represent to another because of race, color, religion, sex, disability, familial status, [~~o~~ national origin, sexual orientation, or gender identity or expression that a dwelling is not available for inspection for sale or rental when the dwelling is available for inspection.

SECTION _____. Section 301.024, Property Code, is amended to read as follows:

Sec. 301.024. ENTRY INTO NEIGHBORHOOD. A person may not, for profit, induce or attempt to induce another to sell or rent a dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, disability, familial status, [~~o~~ national origin, sexual orientation, or gender identity or expression.

SECTION _____. Section 301.026(a), Property Code, is amended to read as follows:

(a) A person whose business includes engaging in residential real estate related transactions may not discriminate against another in making a real estate related transaction available or in the terms or conditions of a real estate related transaction because of race, color, religion, sex, disability, familial status, [~~o~~ national origin, sexual orientation, or gender identity or expression.

SECTION _____. Section 301.027, Property Code, is amended to read as follows:

Sec. 301.027. BROKERAGE SERVICES. A person may not deny another access to, or membership or participation in, a multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or discriminate against a person in the terms or conditions of access, membership, or participation in such an organization, service, or facility because of race, color, religion, sex, disability, familial status, [~~o~~ national origin, sexual orientation, or gender identity or expression.

SECTION _____. Sections 301.042(a) and (c), Property Code, are amended to read as follows:

(a) This chapter does not prohibit a religious organization, association, or society or a nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society from:

(1) limiting the sale, rental, or occupancy of dwellings that it owns or operates for other than a commercial purpose to persons of the same religion; or

(2) giving preference to persons of the same religion, unless membership in the religion is restricted because of race, color, sex, disability, familial status, [~~o~~ national origin, sexual orientation, or gender identity or expression.

(c) This chapter does not prohibit a person engaged in the business of furnishing appraisals of real property from considering in those appraisals factors other than race, color, religion, sex, disability, familial status, [~~o~~ national origin, sexual orientation, or gender identity or expression.

SECTION _____. Section 301.068, Property Code, is amended to read as follows:

Sec. 301.068. REFERRAL TO MUNICIPALITY. (a) Subject to Subsection (b), the [The] commission may defer proceedings under this chapter and refer a complaint to a municipality that has been certified by the federal Department of Housing and Urban Development as a substantially equivalent fair housing agency.

(b) The commission may not defer proceedings and refer a complaint under Subsection (a) to a municipality in which the alleged discrimination occurred if:

(1) the complaint alleges discrimination based on sexual orientation or gender identity or expression; and

(2) the municipality does not have laws prohibiting the alleged discrimination.

SECTION _____. Section 301.171(a), Property Code, is amended to read as follows:

(a) A person commits an offense if the person, without regard to whether the person is acting under color of law, by force or threat of force intentionally intimidates or interferes with a person:

(1) because of the person's race, color, religion, sex, disability, familial status, ~~or~~ national origin, sexual orientation, or gender identity or expression and because the person is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling or applying for or participating in a service, organization, or facility relating to the business of selling or renting dwellings; or

(2) because the person is or has been or to intimidate the person from:

(A) participating, without discrimination because of race, color, religion, sex, disability, familial status, ~~or~~ national origin, sexual orientation, or gender identity or expression, in an activity, service, organization, or facility described by Subdivision (1); ~~or~~

(B) affording another person opportunity or protection to so participate; or

(C) lawfully aiding or encouraging other persons to participate, without discrimination because of race, color, religion, sex, disability, familial status, ~~or~~ national origin, sexual orientation, or gender identity or expression, in an activity, service, organization, or facility described by Subdivision (1).

SECTION _____. (a) Section 2155.0065, Government Code, as added by this Act, applies only to a contract for which a state agency first advertises or otherwise solicits bids, proposals, offers, qualifications, or other similar expressions of interest on or after the effective date of this Act.

(b) The changes in law made by this Act to Chapter 21, Labor Code, apply to conduct occurring on or after the effective date of this Act. Conduct occurring before that date is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

(c) The changes in law made by this Act to Chapter 301, Property Code, apply only to a complaint filed with the Texas Workforce Commission on or after the effective date of this Act. A complaint filed before that date is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 16

Amend **SB 3** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Article 42.01, Code of Criminal Procedure, is amended by adding Section 14 to read as follows:

Sec. 14. In addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0132.

SECTION _____. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0132 to read as follows:

Art. 42.0132. FINDING THAT OFFENSE WAS COMMITTED BECAUSE OF GENDER NONCONFORMING CHARACTERISTICS. In the trial of an offense under Title 5, Penal Code, that was committed on the premises of a restroom, shower, or changing facility, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if at the guilt or innocence phase of the trial, the judge or the jury, whichever is the trier of fact, determines beyond a reasonable doubt that the defendant intentionally selected the person against whom the offense was committed because of the person's gender nonconforming behavior, appearance, or other characteristics.

SECTION _____. Subchapter D, Chapter 12, Penal Code, is amended by adding Section 12.501 to read as follows:

Sec. 12.501. PENALTY IF OFFENSE COMMITTED BECAUSE OF GENDER NONCONFORMING CHARACTERISTICS. If an affirmative finding under Article 42.0132, Code of Criminal Procedure, is made in the trial of an offense, other than a first degree felony or a Class C misdemeanor, the punishment for the offense is increased to the punishment prescribed for the next higher category of offense.

SECTION _____. Article 42.0132, Code of Criminal Procedure, and Section 12.501, Penal Code, as added by this Act, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Uresti offered the following amendment to the bill:

Floor Amendment No. 17

Amend **SB 3** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering SECTIONS of the bill accordingly:

SECTION _____. Chapter 341, Health and Safety Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. SANITATION AND SAFETY IN STATE BUILDINGS

Sec. 341.101. DEFINITION. In this subchapter, "state building" has the meaning assigned by Section 2165.301, Government Code.

Sec. 341.102. REQUIRED DIAPER CHANGING STATIONS. (a) A person who engages in or contracts for the construction or renovation of a state building with one or more restrooms accessible to the general public shall provide a diaper changing station in at least one restroom designated for each gender or, if applicable, in at least one restroom not designated by gender.

(b) This section does not apply to the renovation of a state building to include a restroom described by Subsection (a) if providing a diaper changing station in the restroom would limit the accessibility of the restroom to a person with a disability.

Sec. 341.103. OPTIONAL ADULT CHANGING STATIONS. (a) A person who engages in or contracts for the construction or renovation of a state building may provide an adult changing station in one or more restrooms if the state building:

- (1) has one or more restrooms accessible to the general public; and
- (2) is frequently visited by persons with a mobility impairment.

(b) If a person chooses to provide an adult changing station under Subsection (a), the person must provide an adult changing station in at least one restroom designated for each gender or, if applicable, in at least one restroom not designated by gender.

Sec. 341.104. SIGN REQUIREMENTS. A person required to provide a diaper changing station under Section 341.102 or who chooses to provide an adult changing station under Section 341.103 in a state building shall post in a conspicuous place a sign with clear language indicating the location in the building of each restroom with a diaper changing station or adult changing station, as applicable.

SECTION _____. Subchapter G, Chapter 341, Health and Safety Code, as added by this Act, applies only to the construction or renovation of a state building with restrooms accessible to the general public that begins on or after the effective date of this Act.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 18

Amend **SB 3** (senate committee printing), in SECTION 2 of the bill, in added Section 250.009, Local Government Code, as follows:

(1) In the heading (page 1, line 30), between "ACTIVITIES" and the period, insert "; ELECTION TO DETERMINE CONTINUED APPLICATION OF LAW AUTHORIZED".

(2) Add the following appropriately lettered subsection and reletter existing subsections appropriately:

() A political subdivision may hold an election on the question of whether Subsections (a)-(c) should continue to apply in the political subdivision as provided by this subsection. The election must be held in conjunction with the next political subdivision election that occurs after the effective date of this section and allows sufficient time to comply with applicable provisions of law. The ballot should be printed to permit voting for or against the proposition: "Authorizing the continued application of S.B. No. 3, Acts of the 85th Legislature, 1st Called Session, 2017, in _____ (name of political subdivision) to regulate access to multiple-occupancy restrooms, showers, and changing facilities or participation in athletic activities." If a majority of the votes cast favor the proposition, Subsections (a)-(c) continue to apply in the political subdivision. If less than a majority of the votes cast favor the proposition, Subsections (a)-(c) are no longer effective in the political subdivision.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 19

Amend **SB 3**, in SECTION 2 of the bill, in added Section 250.009, Local Government Code, as follows:

(1) In the heading, between "ACTIVITIES" and the period, insert "; ELECTION FOR IMPLEMENTATION REQUIRED IN CERTAIN COUNTIES".

(2) Add the following appropriately lettered subsection and reletter existing subsections appropriately:

() Subsections (a)-(c) do not apply to a county with a population of more than 1.5 million in which more than 75 percent of the population lives in a single municipality or a political subdivision primarily located in that county until the county holds an election on the question of whether those subsections should be implemented

in the county and the political subdivisions primarily located in the county. The election shall be held in conjunction with the next county election that occurs after the effective date of this section, including a general election for state and county officers, a bond election, or a special election, and that allows sufficient time to comply with applicable provisions of law. The ballot shall be printed to permit voting for or against the proposition: "Authorizing the implementation of S.B. No. 3, Acts of the 85th Legislature, First Called Session, 2017, in _____ County (name of county) to regulate access to multiple-occupancy restrooms, showers, and changing facilities or participation in athletic activities." If a majority of the votes cast favor the proposition, Subsections (a)-(c) are effective in the county and political subdivisions primarily located in the county.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 20

Amend **SB 3** (senate committee printing), in added Section 250.009, Local Government Code, by adding the following appropriately lettered subsection and relettering subsequent subsections accordingly:

() This section does not apply to a public school district or open-enrollment charter school that:

(1) is located primarily in a county that has a population of more than 1.5 million in which more than 75 percent of the population lives in a single municipality; and

(2) adopted on or before December 1, 2017, a policy or other measure that would allow a person to:

(A) access or use a restroom, shower, changing facility, or similar accommodation of the district or school that corresponds to the person's gender identity; or

(B) participate in athletic activities of the district or school in a manner that corresponds to the person's gender identity.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Rodríguez offered the following amendment to the bill:

Floor Amendment No. 21

Amend **SB 3** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the SECTIONS of the bill accordingly:

SECTION _____. Section 250.009, Local Government Code, as added by this Act, does not apply to a political subdivision or open-enrollment charter school that adopted, on or before July 1, 2017, an order, ordinance, policy, or other measure that would allow a person to access or use a restroom, shower, changing facility, or similar accommodation of the political subdivision or open-enrollment charter school or participate in the political subdivision's or school's athletic activities in a manner that corresponds to the person's gender identity.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 22

Amend **SB 3** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering the SECTIONS of the bill accordingly:

SECTION _____. Section 250.009, Local Government Code, as added by this Act, does not apply to a political subdivision or open-enrollment charter school that adopted, on or before December 1, 2017, an order, ordinance, policy, or other measure that would allow a person to access or use a restroom, shower, changing facility, or similar accommodation of the political subdivision or open-enrollment charter school or participate in the political subdivision's or school's athletic activities in a manner that corresponds to the person's gender identity.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Miles offered the following amendment to the bill:

Floor Amendment No. 23

Amend **SB 3**, by inserting the following new section where appropriate and renumber accordingly:

Sec. _____ . FINDING OF SIGNIFICANT JOB LOSS. (a) the comptroller of public accounts must provide a cumulative assessment of all economic activity and employment opportunities that were lost to the state as a direct result of the passage of Senate Bill 3, 85th First Called Special Legislative Session, or similar legislation;

(b) the assessment shall include an aggregate accounting of attributable economic and employment losses, a breakdown of those losses by business sector, broken down by county;

(c) the comptroller shall present its findings to the governor, lieutenant governor, and speaker of the house of representatives no later than September 1 of every year, beginning in 2018;

(d) should the findings by the comptroller confirm the loss of \$100 million in economic activity or the loss of 1000 jobs due to the legislation, the Secretary of State shall suspend this Act in its entirety no later than December 1 of that year, pending further action by the legislature;

(e) should the comptroller fail to submit its findings by September 1 of any year, the Secretary of State shall suspend this Act no later than December 1 of that year.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Miles offered the following amendment to the bill:

Floor Amendment No. 24

Amend **SB 3**, by inserting the following new section where appropriate and renumber accordingly:

Sec. _____ . FINDING OF SIGNIFICANT JOB LOSS. (a) the comptroller of public accounts must provide a cumulative assessment of all economic activity and employment opportunities that were lost to the state as a direct result of the passage of Senate Bill 3, 85th First Called Special Legislative Session, or similar legislation;

(b) the assessment shall include an aggregate accounting of attributable economic and employment losses, a breakdown of those losses by business sector, broken down by county;

(c) the comptroller shall present its findings to the governor, lieutenant governor, and speaker of the house of representatives no later than September 1 of every year, beginning in 2018.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Miles offered the following amendment to the bill:

Floor Amendment No. 25

Amend **SB 3**, by inserting the following new section where appropriate and renumber accordingly:

Sec. _____. FINDING OF LOSS OF SIGNIFICANT EVENT. (a) the governor's office of Economic Development and Tourism shall report all conventions, events, conventions and performances lost to the state as a direct result of the passage of Senate Bill 3, 85th First Called Special Legislative Session, or similar legislation;

(b) the report shall include a listing of all such events which declined to take place in the state due to the passage of the legislation, including the estimated economic activity and estimated employment that would have been gained if the loss of the event had not occurred. The report shall include a breakdown of those losses by business sector, broken down by county;

(c) office of Economic Development and Tourism shall present its findings to the governor, lieutenant governor, and speaker of the house of representatives no later than September 1 of every year, beginning in 2018;

(d) should the findings by the office of Economic Development and Tourism confirm the loss of a major event due to the legislation no later than December 1 of that year, pending further action by the legislature;

(e) for the purpose of this subsection, a "major event" is defined as a super bowl, NBA all-star game, NFL Draft Event, MLB all-star game, NFL pro bowl, NCAA college football playoff game, or men's or women's NCAA Final Four in basketball;

(f) should the governor's office of Economic Development and Tourism fail to submit its findings by September 1 of any year, the Secretary of State shall suspend this Act no later than December 1 of that year.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Miles offered the following amendment to the bill:

Floor Amendment No. 26

Amend **SB 3**, by inserting the following new section where appropriate and renumber accordingly:

Sec. _____. GENDER DETERMINATION. (a) no later than December 1, 2017, the Texas Department of State Health Services (DSHS) shall form a task force of medical experts to study the issue of gender determination in instances when the gender cannot be determined at the time of birth;

(b) no later than June 1, 2018, DSHS shall report to the governor, lieutenant governor and speaker of the house of representatives on its findings regarding a new process for gender determination, including recommendations for statutory change;

(c) no later than June 1, 2018 the Department of Information Resources and the state auditor's office shall review the process by which vital statistics data is submitted through the Texas Electronic Registrar system and submit recommendations to ensure that proper cyber security precautions are followed;

(d) this subsection shall sunset on July 1, 2018.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 27

Amend **SB 3** (senate committee printing) by adding the following appropriately numbered SECTION to the bill, and renumbering SECTIONS of the bill accordingly:

SECTION _____. The changes in law made by this Act apply only on or after the date on which the comptroller of public accounts publishes a report describing the estimated economic impact the passage of this Act will have on this state.

The amendment to **SB 3** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

SB 3 as amended was passed to engrossment by the following vote: Yeas 21, Nays 10.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

REMARKS ORDERED PRINTED

On motion of Senator Rodríguez and by unanimous consent, the remarks regarding the point of order raised on **SB 3** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Watson: Mr. President, I rise to raise a point of order against consideration of Senate Bill 3 under Article III, Section 40 of the Texas Constitution, on the grounds that no action may be taken on legislation that addresses subjects not contained in the proclamation of the Governor for the First Called Session of the 85th Legislature. Mr. President, Article III, Section 40 of the Texas Constitution provides that when the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session or presented to them by the Governor, and no such session shall be of longer duration than 30 days. Senate Bill 3 legislates upon a subject not contained in the Governor's proclamation. The only portion of the Governor's proclamation that is, the proclamations that's relevant to Senate, Senate Bill 3, allows the Legislature to consider, and I quote, legislation regarding the use of multi-occupancy showers, locker rooms, restrooms, and changing rooms, close quote. Senate Bill 3 is outside this very specific call. Senate Bill 3 deals with the subject of athletic activities. Specifically, added Section 250.009(b) of the Local Government Code provides in relevant part, and it was, as suggested and laid out, except in accordance with certain federal and state law, a political subdivision, including a public school district or an open-enrollment charter school, may not adopt or enforce an order, ordinance, policy, or other measure to protect a class of persons from discrimination to the extent that the order, ordinance, policy, or other measure regulates participation in athletic activities. Multi-occupancy bathroom and changing facilities is a completely different subject than participation in athletic activities. Determining who can use what facilities does not tell you who can play on what sports teams or any other matter related to orders regulating athletics. Senate Bill 3 has, has two separate subjects ever since it was introduced. And it's clear that has been the intent behind Senate Bill 3, to address an issue outside the call. For example, Senator Kolkhorst's statement of intent for Senate Bill 3 states in relevant part, quote, the bill prohibits a political subdivision, including a school, from establishing a policy or ordinance designed to protect a class of persons from discrimination to the extent that the policy relates, and again, accessing to multi-occupancy restrooms, shower, and changing facility, or participation in extracurricular athletic activities. Similarly, Senator Kolkhorst tweets about the bill, having expressly mentioned Title IX advancements in women's athletics and female athletes. And in laying out her bill in committee, Senator Kolkhorst specifically mentioned female athletes, whether it's fair to allow boys to play in girls' sports, the gains female athletes have made under Title IX, and giving guidance to our UIL programs. Just now, as she laid out the bill, she pointed out that Senate Bill 3 is, quote, more than a bathroom bill. She also pointed out that it is about women's athletics, it gives guidance to athletic programs involving sports and UIL events. She pointed out that it is not fair for boys to compete against girls, and she, at the end of her presentation, she indicated that this was to protect the advancement in women's athletics. Our Senate precedents provide that the Legislature, quote, has the authority to determine the specific details of legislation as long as they come generally within the call, close quote. So, we do have some latitude when it comes to passing bills during a special session, but, importantly, that latitude only exists when we are legislating upon a subject including, included in the Governor's proclamation. Senate Bill 3 does not adhere to this principle because the subject itself, participation in

athletic activities, is wholly absent from anything in the Governor's call. Further, our Senate precedents make clear that this point of order, quote, may be raised at any time, close quote, and if sustained, prevents any further consideration of the bill by the Senate. Thus, the defect cannot be cured. The bill is outside the Senate's current jurisdiction and authority. Mr. President, in conclusion, Article III, Section 40 of the Texas Constitution prohibits the Senate from considering Senate Bill 3 because it contains a subject which is not on the Governor's call. And I submit my point of order.

President: Give us a chance to review your point of order.

(Discussion at podium)

President: Senator Watson, if you'd come forward, please.

(Discussion at podium)

President: Members, the point of order's respectfully overruled.

Senator Watson: Parliamentary inquiry, Mr. President. Parliamentary inquiry.

President: State your inquiry.

Senator Watson: Mr. President, could you cite the provision in the gubernatorial proclamations that you are relying on in order to overrule a point of order that indicates this is outside the call?

President: Senator Watson, after much discussion, and we, we took your point of order seriously, we believe it's in the scope of the call, and we will be happy to write something up as we go through the day for you.

Senator Watson: Mr. President, for purposes of our meeting today, in addressing this issue, including the constitutional issues, will you be willing to provide me with a citation of what is in the gubernatorial proclamations that would make a bill related to women's athletics a part of the call?

President: As I just said to you, we will write something up for the Journal.

Senator Watson: Well, but for purposes of, parliamentary inquiry.

President: State your inquiry.

Senator Watson: We are entitled, as part of taking up and considering this bill, to know what the basis of rulings are so we, as a Senate, may determine whether or not we want to take different action than the Presiding Officer. With that being said, are you able and willing to give a citation for me and the Senate of what is the basis and foundation of your ruling that a bill related to women's athletics is within the gubernatorial proclamations?

(Pause)

President: Senator, with all due respect, I have made the ruling. I'm not going to hear, debate it with you here. We will put something in Journal, and that, hopefully, you will respect that decision.

Senator Watson: Parliamentary inquiry, Mr. President.

President: Pardon?

Senator Watson: Parliamentary—

President: And of cour— and, of course, the Senate has a, you have the right to appeal the ruling, but we, we made the decision. Yes, Sir. State your inquiry.

Senator Watson: Parliamentary inquir— my, my inquiry is, are you, will you provide the Senate with a statement of any precedent that indicates that a bill of this breadth can be ruled to be within the call when the call is so specific with regard to bathrooms, showers, things of that nature?

President: Senator, I'll repeat that we will provide a written statement, and because it is important, we want to be sure that that statement is written well.

Senator Watson: Well, with respect, Mr. President, and, and, and I sincerely mean that with respect, be, it would be helpful to the Senate, when we're dealing with a matter of this importance, if we would have a specific ruling. That being said, Mr. President, pursuant to Rules 1.01 and 20.02, I respectfully appeal the ruling of the Chair and ask for a vote of the Senate with regard to the ruling.

(Pause)

President: Members, as you know, in the rules an appeal is an automatic motion. And so, I will step out of the Chair, and Senator Hancock will oversee the debate. Members, we'll stand At Ease for five minutes.

(Senator Hancock in Chair)

(Discussion at podium)

Presiding Officer: Members, the question before the body is whether the President's decision regarding the point of order shall be sustained. It is a debatable motion. The Chair intends to proceed with the debate. Senator West, for what purpose?

Senator West: Parliamentary inquiry.

Presiding Officer: State your inquiry.

Senator West: Mr. President, Rule 1.01, Members, talks about the Presiding Officer of the Senate, and let me read it into the record. Lieutenant Governor of the State of Texas shall by virtue of office be President of the Senate and decide all questions of order subject to appeal by any Member. President shall control, shall have control of such parts of the Capitol as have been or may be set apart for the use of the Senate and its offices. The President shall have the right to name a Member to perform the duties of the Chair, but such substitution shall not extend beyond such time as a majority of the Senate present votes to elect another Member to preside, and if a majority of the Senators present so vote, the Member called to the Chair by the Lieutenant Governor or by the President Pro Tem then shall vacate the Chair, and the Member elected by the majority shall preside until the Lieutenant Governor, frankly, returns. And so, my question is, is whether or not the President, whether or not Senator Hancock was so elected pursuant to Rule 1.01, or whether or not there's another procedure that that was done pursuant to 1.01, kind of the first rule of the Senate?

Presiding Officer: Thank you, Senator West. 1.01 states the President shall have the right to name a Member to perform the duties.

Senator West: But there's a comma behind that. It's subject, but such substitutions shall not extend beyond such time as a majority of the Senate, a majority of the Senators present vote to elect another Member to preside. So, is that, how does that comply with this particular rule? The appointment of Senator Hancock, if it's done pursuant to this particular rule, it would seem as though, that the appointment would be subject to a vote of the membership. Am I right or wrong about that?

Presiding Officer: Yes, Senator West, is a custom in history of the Senate for the Presiding Officer not to preside over such issues regarding the Presiding Officer.

Senator West: May we, may we approach?

Presiding Officer: Regarding an, regarding an appeal of the Presiding Officer.

Senator West: May we approach?

Presiding Officer: Senate Bill 1.01, it is in the authority to name the Presiding Officer.

Senator West: I know it's in the authority, but it also lists the conditions upon which a person can be elected or selected.

Presiding Officer: In that section, it gives the Senate the right to object to the appointment, Senator West.

Senator West: Object to the appointment? I'm talk, okay, well. It says, the Members called by, to the Chair by the Governor, Chair by the Governor, Lieutenant Governor or by the President Pro Tem of the Senate shall vacate the Chair and the Members elected by a majority shall preside until the Lieutenant Governor or the President Pro Tempore shall take the gavel and preside. It seems as though that there is a process in place for vacating of the Chair by, there is a rule, not custom, there is a rule by which the Chair, the President, Lieutenant Governor, vacates the Chair, and the process for vacating of the Chair, and the selection of a person to take his or her position while the Chair has been vacated, and that's by a individual selected, nominated, I think, by the Lieutenant Governor and elected by the Members of the body. If I'm wrong about it—

Presiding Officer: Again, Senator West, in the rule it allows the Presiding Officer to make this decision or, so there are two options.

Senator West: Where is the "or"? I mean, I'm, I'm, let me read this the way I see it. The President shall, mandatory, have the right to name a Member—Members, y'all need to read this, too, now—to perform the duties of the Chair, but such substitution should not extend beyond such time as a majority of the Senators present vote to elect another Member to preside. I don't see a comma there anywhere.

Presiding Officer: So, let me point out, in that, the specific words, but some, such substitution shall not extend beyond such time, so the key word there is "shall," and "beyond."

Senator West: What? Uh—

Presiding Officer: That's not occurred at this point, Senator West.

(Discussion at podium)

Presiding Officer: Members, we're back on the debate. Senator Huffman, for what purpose?

Senator Huffman: I rise in, to debate in support of the President's motion to sustain the point of order.

Presiding Officer: Recognized.

Senator Huffman: Alright, thank you. Members, I think the rules are very clear and case law that is in support of the President's ruling. It's, it's pretty simple, and we have this information in our rule book, if anyone wants to look at it. A lot of the information that I'm going to go over is on page 119. But, actually, the, the gist of it is, is that the, the Legislature is not held to strict interpretation of subjects submitted in the Governor's call but rather has the authority to determine the specific details of legislation as long as they come generally within the call. We have a long line of cases, and they, they are old, but old cases are still good as long as they haven't been overruled, and that is the case in these instances. We have a case from 1893, the Brown case, that states the intent of this section and that's the, the part of the Constitution that gives the Legislature authority to hear the, the calls from the special session, calls from the Governor. And it says that the intent of this section is not to require the Governor to define with precision the detail of the legislation but only in general ways by this call to confine the business to particular subjects. That's an 1893 case. That was sustained in 1910 with the Long case. The Brown case also went on to say that it is not necessary or proper for the Governor to suggest in detail the legislation desired. It is for the Legislature to determine what the legislation shall be. And then, I'd say one of the most telling cases, that's 1886 *Baldwin v. State* case that's still current law, says the Constitution does not require the, the proclamation of the Governor to define the character and scope of legislation which may be enacted at a special session, but only in a general way to present the subjects for legislation and thus confine the business to a particular field which may be covered in such ways as the Legislature may determine. The particular point that we are discussing, that was on the Governor's call, stated legislation regarding the use of multi-occupancy showers, locker rooms, restrooms, and changing rooms. Article IX specifically refers to facilities, and Senator Kolkhorst is going to follow up with that and link how that specifically is related in, at, my argument is the legal argument that we are certainly within the boundaries of what the law allows and the Constitution allows. So, Members, again, I would urge you to sustain the ruling of our President. Thank you, Members.

Presiding Officer: Thank you, Senator Huffman.

(Discussion at podium)

Presiding Officer: Chair recognizes Senator Watson.

Senator Watson: Thank you, Mr. President, Members. Members, we need to be careful with what we're doing right now. And I know that many times it's even joked about how loose we might be with the rules or how the Senate really doesn't have any rules, or we'll, we'll deal with that and, and, and fix it at some other point, or when,

when we get into a tight spot on something that we really, really want, we figure out a way around it. But we're in a special session where the Constitution tells us how we can proceed. We ought to take that seriously and as a Senate not do damage to this body by trying to get around something that is an inconvenience to us on something this important. Members, the Constitution is very clear. It says that when the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session. In the Governor, so, so it's very, it's, it's simple, we have to look at what are the subjects in the Governor's call. You're, you'll remember that there are two proclamations. The first proclamation dealt with Sunset matters, and it was very specific. It dealt with five provisions of the Occupation Code, and it dealt with timing of the agencies that are referenced in those five provisions. Clearly, women's athletics does not fall within that call. There was a second proclamation and, Members, the proclamation was general in some instances, and it was specific in others. I don't think there's any debate on this floor, or would be any debate on this floor, that this legislation falls within the call of dealing with average salary, increasing the average salary and benefits of TRS-Care or establishing a statewide commission to study and recommend improvements to the current public school finance system or to empower parents of children with special needs or educational disadvantages to choose an educational provider that's best for their child or laws governing ad valorem property taxes or using population growth and inflation to establish a spending limit for state government or using population growth and inflation to establish a spending limit for political subdivisions or protecting the private property rights of landowners from political subdivision rules, regulations, or ordinances that interfere with certain things or expediting the issuances of permits by political divisions or preventing political subdivision from imposing on private property additional or enhanced regulations, preempting local regulation of the use of hand-held mobile device, communication devices, prohibiting state or local government entities from deducting labor union or employee organization membership fees or dues, prohibiting financial transactions between a governmental entity and an abortion provider, restricting health plan and health benefit plan coverage for abortions, strengthening laws applicable to the reporting of abortions and abortion complications, enhancing patient protections contained in the procedures and requirements for do-not-resuscitate orders, enhancing the detection, prosecution, and elimination of mail-in ballot fraud, continuing the operation expanding the duties of the Maternal Mortality and Morbidity Task Force, and legislation adjusting the scheduling of Sunset Commission review of state agencies. There's one other on the second proclamation, and that is specifically legislation regarding the use of multi-occupancy showers, locker rooms, restrooms, and changing rooms. In other words, that specific proclamation, that specific, as our Constitution says, subject is the bathroom bill. That is what it has been called, that is what it has been addressed as, that is how it has been argued in the media. It deals with very specific showers, locker rooms, restrooms, and changing rooms, a specific subject of the call. Senate Bill 3 goes beyond that call. Senate Bill 3 is, is pretty specific itself. What Senate Bill 3 does is it says it will address, well, I'll read it. The bill prohibits a political subdivi— this is from the statement of intent filed by the author of Senate Bill 3. Quote, the bill prohibits a political subdivision, including a school,

from establishing a policy or ordinance designed to protect a class of persons from discrimination to the extent that policy relates to, now listen, please listen, accessing a multi-occupancy restroom, shower, and changing facility. That is where the bill addresses the subject of the call that is in the Governor's proclamation. But it goes on and it says, or participation in extracurricular athletic activities. Members, there is nothing at all, general or otherwise, in the Governor's proclamation that addresses participation in extracurricular athletic activities. Members, when you look at the entire bill and the language of the bill itself, the provision related to extracurricular activities that's in the statement of intent, the statement of intent tells us it's going outside the specific subject of the call. But then, when you look at the bill, the bill says, the language of the bill says, and I'll just read the pertinent parts, one, access to, listen for it, multiple-occupancy restrooms, showers, or changing facilities. That mimics the language of the call. But then it goes on and it says, or participation in athletic activities. Members, there is no way it can be argued that participation in athletic activities is part of the Governor's proclamation. It may be something that people want to address in the same legislation, but it is not subject of the call. Now, it's been pointed out that there's some real old cases that say the Governor shouldn't be specific in what legislation he wants. Well, all that does is allows freedom for Senator Kolkhorst to craft the specific legislation related to multi-occupancy showers, locker rooms, restrooms, and changing rooms. She can draft that legislation. And as I said when I made my point of order, there is some flexibility in trying to determine what legislation you want to file on a specific call such as multi-occupancy showers, locker rooms, restrooms, and changing rooms, but that, that, as has been pointed by Senator Huffman, that general allowance doesn't allow you to say something completely different falls within that call. And, folks, I know everybody in this room, and everybody in this room did not leave their common sense at home this morning. And your common sense and a common reading says that activity in extracurricular athletic activities doesn't mean multi-occupancy showers, locker rooms, restrooms, and changing rooms. Now, let me take that one step further. I've cited to you what the legislative intent that was filed by Senator Kolkhorst says, and I have quoted for you what you can look at with your own eyes, the statute, the, the bill that's in front of you, Senate Bill 3, which addresses something very specific that is outside, that is outside the specific call. But if you also listen to what she said that was the intent of her bill in committee, she says, she specifically mentioned female athletes and whether it's fair to allow boys to play in girls' sports, the gains female athletes have made under Title IX, and giving guidance to our UIL programs. Now, I bring that up in part to point out that she, the author of the bill, has told us what she means. If you want, if you want to say, oh, that's a general, the Governor had a general call, he, he had a general call and somehow extracurricular activities falls under it, no, because the author of the bill has told you what she meant. And what she meant was to address whether it's fair to allow boys to play in girls' sports. Members, that ain't nowhere in the call. When she, in that bill, when that bill talks about engagement in athletic activities, whether boys get to play in girls' sports has nothing to do with the call. The gains of female athletes have made under Title IX has nothing to do with the call. Giving guidance to our UIL programs is not in the call. And then today, during the layout of the bill, during the layout of the bill, Senator Kolkhorst

was very candid with regard with what she intended to do. She intended to pass legislation that would deal with protecting the advancement of women's athlete-athletics. To address the very issues that she mentioned yesterday or a couple of days ago in the Senate committee hearing about boys playing in girls' sports and the gains of female athletes and what they've made under Title IX. My point being there's really no good way to argue, even if we look at very old case law and say, well, it can be general. There's really no good way to argue that participation in extracurricular, curricular activities and whether boys ought to play in girls' sports or vice versa falls within a specific call of the use of multi-occupancy showers, locker rooms, restrooms, and changing rooms. So, you can follow the case law, you can follow the precedent. That is why I ask, and with all due respect to our President, that is why I ask can you cite as part of your overruling my point of order, can you cite for me what it is you're relying upon in the call or that the breadth of this bill would somehow fall within the call? Members, again, deepest respect for the Presiding Officer's right to rule, but that's why we have rule that allows for us to decide how we're going to go forward. We should not, with the terms of this bill and with the terms of what Senator Kolkhorst has said this bill's about and with the clear, concise language of the call related to this, we should not as a Senate say that we're willing to basically void that provision and go outside that call. The Governor has twice expanded the call this session. Twice the Governor has expanded the call this session to deal with similar problems. He added TRS-Care, he added annexation. Also, Senator Taylor had indicated we couldn't consider Sunset. I want, I wanted to point out, Senator Taylor indicated we couldn't consider Sunset policy changes because the call subject was too narrow. And I agree with him. Why would we not be consistent now? Why would we not be consistent now? Members, I know that for many this is an, a bill that is important to get passed. People want it to get passed. But we ought to hold ourselves accountable and make sure that before we're passing such an important piece of legislation, one that many would argue is the whole reason we're in a special session, we as Senators ought to hold ourselves accountable and make sure we're following the rules of the Constitution. There is simply no way to, with a straight face, argue that whether boys get to play girls' sports falls within the confines of that call. I ask you to vote that this is, that this point of order be sustained, that this is outside the call. I know for many of you that is a hard vote, but this can't be cured simply by turning a blind eye to what the Constitution says. There are other ways for this to be dealt with, including a new proclamation. Thank you, Mr. President.

Presiding Officer: Thank you, Senator Watson. Senator Kolkhorst, for what purpose?

Senator Kolkhorst: Thank you. I rise to answer some of the questions that have been brought up and, obviously, to talk about whether the decision by the President should be sustained.

Presiding Officer: Senator Kolkhorst is on the question.

Senator Kolkhorst: Thank you. Members, when I laid out the bill today, I talked specifically about why we find ourselves here today with Senate Bill 3 and prior Senate Bill 6. And I referenced Title IX many times because the letter that was received on May the 13th, 2016, from President Obama's Department of Justice and

Department of Education was specifically rewriting Title IX, specifically rewriting. That letter has since been rescinded, and then the current administration, General Sessions, said this is left to a state's decision. Now, the argument before us today is not that we can decide what to do on this particular matter, but is it specifically within the call. Senator Huffman has argued in the Baldwin case, and I would read from that again, the Constitution does not require the proclamation of the Governor to define the character, the character, and scope of legislation which may be enacted at a special session, but only in general way, in a general way, to present the subjects for legislation, the subjects, and thus confine the business to a particular field which may be covered in such ways as the Legislature may determine. The gist of these opinions is that the Legislature is not held to strict interpretation of subject submitted in the Governor's call but rather that it has an authority to determine the specific details of legislation as long as they are, they come generally within the call, generally within the call. And it seems clear that the Governor cannot restrict the Legislature to a particular bill or plan of legislation. So, let me talk about how facilities and participation in sports are tied together because that is the question presented to us at this point. Specifically, I'm going to read from Title IX, a Q&A from the NCAA. And it says, Title IX does not require identical athletic programs for males and females, rather Title IX requires that the athletic programs meet the interest and abilities. Under Title IX one team is not compared to the same team in each sport. It goes through to say, rather, Title IX requires that the men and women's programs receive the same level of service, facilities, specifically stated, I say again, facilities, supplies, and et cetera. Variations within men's and women's programs are allowed as long as variations are justified. Throughout the Title IX argument, facilities are mentioned. No, a question might, might be asked of, does Title IX require that equal dollars be spent on men and women's sports? And it says, no, the provision requires the same dollars be spent proportionately to participation, scholarships, otherwise male and female student athletes must receive equitable treatment and benefits, which again, ties back to facilities. And it goes on to talk about the different costs of equipment, or even management expenditures, facilities are re- are related to Title IX in, in throughout the Title IX description. And so, I would argue, and don't think for a second that I didn't have many, many, many lawyers look at this legislation before it was crafted. I had a conversation with the Governor whether or not it was within the call. He and I have had that private conversation before today. And, clearly, when we talk about participating in sports, facilities are a part of that. Dressing rooms and locker rooms are synonymous with sports and how you prepare to go out on those athletic playing fields. So, while I show great reference and deference to my colleague in Senator Watson, which I knew that this would potentially be raised, I tied back to Title IX, which specifically talks about facilities as it, as it is related to sex, not gender, as I have repeatedly. And I know that we have heard from our colleague every word that I have uttered on this subject matter and every word I have uttered on this subject matter has gone back to Title IX because I argue today we would not be standing here arguing this bill had that letter, the Dear Colleague letter, not been issued to our schools. I argue today that this was a step back. In Senate Bill 3, to say this is a state purview, and these are the things that we're going to set in policy here in the State of Texas. So, how it relates and how it ties into the broad call, whether you

argue the Baldwin case, which again, in our own rule book talks about that the gist of these opinions is that the Legislature is not held to a strict interpretation of the subject submitted in the Governor's call but rather it has the authority to determine the specific details of legislation. And I am giving specific details of legislation as it ties to Title IX and facilities, because you cannot participate in sports without facilities. Thank you, Mr. President.

Presiding Officer: Thank you, Senator Kolkhorst. Senate, Senator Van Taylor on the question, for what purpose?

Senator Taylor of Collin: I'd like to make a few comments on this discussion, Mr. President.

Presiding Officer: Senator Taylor on the question.

Senator Taylor of Collin: Thank you, Members. I'm not an attorney, but I'm often accused of being one, and I, I think I want to begin with the Constitution, go to the case law, and then go to our rule book, if I could. Not, I'm just, I'm really going to be reading some things. I think it's important to educate ourselves as we come up on this topic, you know, I'm trying to skim through the rule book, and my staff finds the cases. But I think it's, I think with the end of this you're going to be pretty clear, it's very clear in my mind where our rules take us and where our laws and our Constitution. But so, Article III, Section 40, you know, it's been read a few times. But I, I just point out that there's a key word here, when the Legislature should be convened in a special session there should be no legislation upon subjects other than those designated in the proclamation of the Governor. And I think what's really important here, and this is, this is original, this is, this is, this is the 18, this is when the, the Constitution was actually, was actually written. It's, it's, it's, you know, was adopted April 15, 1876. And the, they use the word "subject," they don't use the word "statute," they don't use the Gover— I mean, you know, I mean, you know, there are, you know, the State of Virginia, the Governor actually, after session goes in and writes amendments to bills, and the Legislature comes back again and decides whether or not to take his amendments, and if they don't take his amendments, the bill goes down. We don't do that here. We, the, we, we say, no, the Governor will give us subjects, the word "subject." And, obviously, thi— this is subject to some interpretation, and there were some lawsuits, subsequently, right, so that came in 1876. The first case was the Baldin, *Baldwin v. State*, it actually happened in 1886, right? So, so shortly after, the Constitution was, was adopted by the State of Texas. And let me just read what the opinion said, quote, this it seems to us embraces the whole subject taxation, authorizing any and all such legislation upon that subject to be as may be deemed necessary by the Legislature. So, in that case, it, it, it, the, the, the court in its interpretation of this gave very broad authority to the Legislature to determine what that was. I'll read another part of the, the, the opinion here. It was not necessary, nor would it have been proper for him, and they're referring to the Governor here, in his proclamation to have suggested the detailed legislation desired. And finally, is, this is nothing but a clear violation of the Constitution, a clear usurpation of the power prohibited would justify the judicial department in pronouncing an act of Legislature department unconstitutional and void. So, I think, you know, here they certainly, in this case, they certainly came in and said, look, if the call, you know, if the, if they're

on, on the subject, and I think that's the key word here for this whole thing, "subject." What is the subject, and are we consistent with that? There was another case, a year later in 1887, was the *Deveraux v. City of Brownsville*. And in, this is what, this is what the opinion said, quote, too great latitude of construction might undoubtedly abrogate the restriction of the Constitution, but on the other hand, a too rigid requirement in this regard would disastrously embarrass the executive and the Legislature, so that the former could never, with accuracy, foretell what the legislative mind would adopt as pertinent to the general subject. And another part of the opinion, besides, it would be conferring on the Governor legislative powers never contemplated by the Constitution to permit him to restrict the Legislature as to the details or characters of its enactment. It, so I think, so that, again, and then, the final case, what I think is interesting, you know, in our rule book, is that these are the cases that are cited, the ruling, this is, in this case is in 1893. So, really, you're watching a very short period of time, 15 years or so. You're watching some litigation over what this, what this particular piece of the Constitution means. And it really hasn't been lit—there hasn't been much since then. So, and I'll read this quote, it was not necessary nor would have been proper for the Governor's proclamation to suggest in detail the legislation desired. It was for the Legislature to determine what the legislation should be. I'll say that again. It was for the Legislature to determine what the legislation should be. And I think then, you know, based on these cases, and these are very old cases, right? I mean, these are 1880s, we have in our rule book. And I think that the summation here is perhaps the best summation, and Senator Kolkhorst just read this, but I think this really cuts to the, cuts to the core. And this is in the appendix of our rule book, there's a, a, quite a, quite a lengthy explanation, but I think the core is right here. The gist of these opinions, and they're actually referring to the opinions I was just reading to you, these three different opinions, the gist of these opinions is that the Legislature is not held to strict interpretation of quote, unquote, subject submitted in the Governor's call, but rather it has the authority to determine the specific details of legislation as long as they generally, as long as they come generally within the call. And it seems clear the Governor cannot restrict the Legislature to a part of a bill or plan of legislation. And I'll reiterate this again, this is right out of our own rule book. We've all, all voted to adopt this. It says, and I, again, the gist of these opinions of the Legislature is not held to a strict interpretation of quote, unquote, subject submitted in the Governor's call. And I think, with that, if you look at the Constitution, the subsequent interpretive case law, and our own rule book, you can only come to the conclusion that the Governor gets to give us topics, and then within that we get to go and make the decisions that we want to make as a Legislature. Therefore, I believe the President made a good ruling, and I certainly plan to vote to support that ruling. Thank you, Members. Thank you, Mr. President.

Presiding Officer: Thank you, Senator Taylor. Senator Hughes, for what purpose?

Senator Hughes: Mr. President, thank you, to briefly speak on the matter and to speak in favor of sustaining the ruling of the Chair.

Presiding Officer: Senator Hughes is recognized to briefly speak on the question. Thank you, Sir.

Senator Hughes: Thank you, Mr. President. I'm sure the Members thank you for that, as well. It's been said very well, and we know the merits. Let me just humbly ask this, and each one here has been involved in this process at least as long as I have, most here a lot longer. Let's for a moment step away from this bill and from this call and from this Governor. I really like the Governor, I really like this bill, and, but regardless of that, this really implicates that bedrock, constitutional principle of separation of powers, doesn't it? We're the Legislature, we're the upper house of the Legislature, and we've been elected by the people of Texas. We worked hard, every one of us, some harder than others, to get to this place and to stay here, to listen to our constituents, to advocate for them. And the rules have been stated very clearly. The Governor tells us the field and then, it's been said so well, I'll emphasize it, and we pass legislation, quote, in such ways as the Legislature may determine. It is our duty as Members of the Senate, duly elected and entrusted by our constituents to exercise every ounce of our jurisdiction, not to cede it to any other branch, any other person, no matter how much we like them. And in this case, the Governor's actually for putting this on the call. He agrees this is in the call. That's why he phrased it like he did. And I would say it doesn't say extracurricular activities, it says sporting activities. How that's not implicated with locker rooms and showers and changing facilities, I don't know. I don't know how we could say that's not. We're not talking about the debate team or the speech team. We're talking about athletics. Clearly, we're talking about the same subject matter. We're within our jurisdiction in speaking to this. However we're going to vote on this bill, I would urge each one of us to protect the jurisdiction of the Senate and our authority under the Constitution and move forward on this topic. And I believe, in that vein, we should sustain the ruling of the Chair. Thank you, Mr. President.

Presiding Officer: Thank you, Senator Hughes. Members, anyone, one else wishing to speak on the question? Now, the Chair recognizes Senator Watson.

Senator Watson: Thank you, Mr. President.

Presiding Officer: Briefly, we will recognize the Senator, Watson.

Senator Watson: Thank you. Thank you, Mr. President. Members, by way of procedure, just to make sure we're clear, and I think Senator Taylor and Senator Hughes stated things right, but what, what, the matter we're getting ready to vote on is whether we, the ruling of the Chair will be sustained or stands. So, that, that's basically the motion. It's not really a motion, but is, we, whether the, if you vote aye you would be voting to sustain or have the ruling of the Chair stand. A vote no would be that it would not stand. I just want to be clear before I start on how, how, how we're deal, dealing with this.

Presiding Officer: Senator Watson, to be clear, the question is whether to overturn—

Senator Watson: I understand.

Presiding Officer: —the decision—

Senator Watson: But if you vote—

Presiding Officer: —of the Chair.

Senator Watson: —if you vote aye, you'll be voting to sustain the ruling of the Chair.

Presiding Officer: Correct. The question is, shall the President's ruling be sustained.

Senator Watson: That's, and I thought I'd said that, but I, I appreciate the clarification. Members, it, we've, we've had a lot of people read the same thing over and over again. So, let me boil it down. It doesn't matter if the subjects are somehow related or, as Senator Kolkhorst said, tied together. The Constitution is very clear that the subject itself must be in the call. And the subject of participating in sports, which is what this bill says, and what the author has indicated is her intent, is not in the subject of any of our calls. If you take some of the argument to its logical extreme, in other words, yeah, but there are locker rooms used in sports. Well, the call mentions restrooms. Everybody goes to the restroom, so every bill we file that impacts a person is within the call because, after all, everybody uses a restroom. It has to be in the subject and, folks, common sense does apply here. The case law that has been read by three or four, I guess, everybody that's, that wants to sustain this or has talked in sustaining it, actually supports the position I'm urging you to take. The Governor confines us to particular subjects, and then we're free to, as, I'll, and I'll quote, define the character and scope of legislation on the subjects in the call. As has been pointed out, the Governor doesn't tell us the details of the legislation, and then this is the quote, as long as the subject, as long as it's gen— the details of the legislation are generally in the call, in other words, in the subject of the call. We don't have the authority to define, wai— let me rephrase that. We have the authority to define specific details of the bills, unless their subjects are outside the call. The Governor sets the boundaries, and then we're free to operate in them. But what I'm saying to you, Members, for whatever reason, for whatever reason, this legislation goes outside the call because it does not, participation in sporting activities does not fall within legislation regarding the use of multi-occupancy showers, locker rooms, restrooms, and changing rooms. And again, I give you the language of the bill's author on what the intent is. There is a way to cure this. The Governor has given additional proclamations already this session. I urge you to protect the Senate by the Senate following the constitutional law that we should follow, and I urge you to vote no at the time of the vote. Thank you, Mr. President, and thank you, Members. I appreciate your patience.

Presiding Officer: Senator, Senator Watson, we had asked all Members, and after you began speaking, Senator Rodríguez, I guess, altered his decision. So, Senator Rodríguez, you're recognized at this time on the question.

Senator Rodríguez: Thank you, Mr. President. I, I'm not going to take a long time because I think Senator Watson has very clearly, and I might say, adequately and admirably described the position that we're in here with regard to this particular rule. I, I agree, of course, with his analysis. I can't really add anything more to that. I rise only to point out that we need to be, it seems to me, as a body consistent in our interpretation of rules. And I want to specifically refer to Senator Van Taylor with regard to the Sunset bills. We all may recall here that when we were talking about the Sunset bills, some of us thought that we ought to bring in some issues that involved the substantive Sunset bills. And Senator Taylor at one point in that discussion let me know that what I was trying to do was outside the scope of the call because he said, the Sunset bill specifically is limited to just extending the time. There's no question

that what I was trying to talk about related in terms of the subject to the Sunset process, and particularly as it pertained to these Sunset bills, the Medical Board and other boards. I think, if I recall correctly, I may be wrong about this, but Senator Taylor also wanted to have a more comprehensive discussion with regard to the Sunset matters taken up by the Sunset Commission. And again, he was told this is limited in the call only to the extension of this particular bill. So, it seems to me that, you know, on the one hand we are saying we've got to stick within the language of the call, and here on the other hand, we're saying we don't have to, all we need to do is, as long it's within the subject matter, we can really talk about anything we want and bring anything we want. So, I, I am with Senator Watson, more perturbed about what these kinds of rulings do to the Senate as a body and how the Senate has traditionally followed its rules, by and large, and yet it seems like in this session, and this is yet another example, we're willing to disregard the rules just to accomplish a particular purpose. So, I, I think we ought to think about this from that standpoint as well. I think Senator Watson made that point. And think about that as we decide issue, which is a tough one, but it seems to me, we're going to be consistent, we ought to follow the strict interpretation of these rules as we've had them in the past. So, I think that we ought to vote to not sustain the ruling of the Chair, with all due respect. Thank you, Mr. President.

Presiding Officer: Thank you, Senator Rodríguez. Members, the question is on shall the President's ruling be sus- sustained. A yes vote is to sustain the President's ruling. A nay vote is to overturn the ruling. Secretary will call the roll.

(Roll call)

Presiding Officer: Members, there being 20 ayes and 11 no votes, the President's ruling is sustained.

Senator Watson: Thank you, Mr. President, and thank you, Members.

REASON FOR VOTE

Senator Uresti submitted the following reason for vote on **SB 3**:

After hours of testimony and feedback from constituents and advocacy groups from across the state, I voted against Senate Bill 3, first and foremost, because I believe it will create a dangerous situation for transgender individuals and result in lost economic opportunity in the communities I represent.

The Texas state motto is "Friendship". Texas' status as the Friendship State is due to our friendly and inclusive manner, portrayed the world over in media and spread by word of mouth from those who are guests in our state. We damage that brand as the world judges how we treat marginalized groups of people in passing legislation such as Senate Bill 3.

Further, I have found no instances where the status quo has resulted in any negative action against anyone. My office has received no specific complaints from members of the public who have experienced a problem that this legislation will fix in regards to bathrooms.

Law enforcement in my district tell me this legislation should not be passed. Economic development and tourism officials in my district tell me this legislation should not be passed. The City of San Antonio shared they are already losing tourism

business from out of state due to the consideration of this law. Most importantly, I find comfort and solitude in seeking guidance from the Bible where in Matthew 25:40 it states 'Truly I tell you, whatever you did for one of the least of these brothers and sisters of mine, you did for me.' For these reasons, I have cast my vote in opposition to Senate Bill 3.

URESTI

STATEMENT REGARDING SENATE BILL 3

Senator Garcia submitted the following statement regarding **SB 3**:

Members I am strongly opposed to this bill and would like to put it on the record today because this Senate Bill 3 has nothing to do with privacy and everything to do with the further marginalization of transgender Texans. This bill will only increase the traumatizing and sometimes deadly experiences our transgender Texans live through on a day-to-day basis while just trying to simply survive. Tragically, 85% of transgender Texans have experienced harassment because of their gender identity or expression and 46% have experienced physical assault. And yet, there are no reported cases of a cis-gender woman being harmed in a public bathroom by a cis-gender man dressed as a woman. This bill will be emotionally and mentally traumatizing for our transgender students who already have certain inclusive policies that protect their basic rights, but will now suddenly be forced to use the restroom in front of all of their peers, or use a separate but allegedly equal bathroom.

Over and over again we heard in committee how transgender Texans are already at an exceptionally higher risk of attempting suicide because of the severity of discrimination they face. While 41% of transgender people have attempted suicide, only 4.6% of the U.S. population has attempted suicide, now you look at that huge disparity and still tell me we are doing the right thing here. This bill will only contribute to increase the marginalization of the trans community that is causing high suicide rates.

While this bill may be considered a "compromise bill" because it only affects schools versus the much broader Senate Bill 6, it is the transgender children who I am truly concerned about. 73% of Texans who were perceived as transgender at some point between Kindergarten and the 12th grade experienced some form of mistreatment, such as being verbally harassed, disciplined more harshly, or physically or sexually assaulted just because people thought they were transgender. This bill would harm Transgender students and children who are already used to certain inclusive policies that protect their basic right to use the restroom in peace. These students, with developing brains and impressionable spirits will be forced to use the restroom in front of all of their peers or use a separate but allegedly equal bathroom.

To the women senators today I ask you to imagine the horror of a little trans girl like Libby Gonzalez, who testified in the committee hearing this week. Try to put yourself in little Libby's flats for a moment. She's at school, wearing her ballerina skirt, with a little bow in her hair, standing outside of the boys restroom building up the courage to walk in. Try to feel her fear for a moment, imagine what that would have been like for you or your daughters. Or maybe she gets a "separate but equal restroom" and she has to be reminded every day that she is different and will never quite fit in with other little girls. Because, after all, she is a girl.

This legislation only moves us as a society backwards, similar to a time when we thought blacks and other people of color like myself should be separated from whites in bathrooms and water fountains. This bill leads us back to an environment of exclusion rather than inclusion, and encourages more of the discrimination that LGBTQ youth especially, already face in school and in public life. And it will lead to more profiling.

But unfortunately forcing us to vote on this very discriminatory bill without any consideration for the vulnerable communities it'll impact, reflects that this is more focused on political posturing than doing the people's work. In committee this week, we heard 11 hours of testimony from over 600 witnesses and over 90% were against Senate Bill 3. And the people who opposed this bill weren't just the transgender kids and their parents who would be affected by this, but the school administrators charged with keeping kids safe in school, and the corporations who know that our economy would be hit hard by this controversial legislation.

Plenty has been said about the economic impact of this bill, so I won't go into that today. I am standing today to simply say that this bill will achieve the very thing it claims to prevent. Senate Bill 3 will put girls in boy's restrooms and boys in girl's restrooms because trans boys are boys and trans girls are girls. We are not making anyone safer with this legislation but rather contributing to the violent deaths of our Transgender Texans.

Senator Uresti, did you know that Veronica Banks Cano, transwoman was murdered in your district on February 19, 2017. Senator Miles, Shante Thompson and Chyna Gibson, were both murdered and are from your district. Senator Buckingham and Senator Watson, Monica Loera was murdered on January 22nd this year and was from Austin. Senator Menéndez as I'm sure you know, Kenne McFadden was found murdered in the San Antonio River on April 9th of this year. And my dear friend Sen. Rodríguez, I'm sad to tell you that Erykah Tijerina was stabbed 24 times and died. She was from El Paso. These are at least 6 transgender women in Texas who have been murdered this year just for being who they are. So I must respectfully vote "NO" on SB 3 because it's bad for business, for local control, and most importantly for the safety of all of our communities.

GARCIA

ANNIVERSARY WISHES EXTENDED

Senator Bettencourt was recognized and, on behalf of the Senate, extended anniversary wishes to Senator Kolkhorst.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Tuesday, July 25, 2017 - 1

The Honorable President of the Senate

Senate Chamber

Austin, Texas

Mr. President:

I am directed by the house to inform the senate that the house has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HB 1

Gonzales, Larry

Relating to avoiding the abolishment of certain agencies subject to the Texas Sunset Act on September 1, 2017.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

(Senator Hughes in Chair)

(President in Chair)

SENATE BILL 19 ON SECOND READING

Senator Nelson moved to suspend the regular order of business to take up for consideration **SB 19** at this time on its second reading:

SB 19, Relating to bonuses and salaries for public school classroom teachers and state assistance for the Texas Public School Employees Group Insurance Program.

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

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Hinojosa, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Menéndez, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Garcia, Miles, Rodriguez.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 19** (senate committee report) as follows:

- (1) In the recital to SECTION 1 of the bill, strike "Sections 21.417 and 21.418" and substitute "Section 21.417".
- (2) In SECTION 1 of the bill, strike added Section 21.418, Education Code.
- (3) In SECTION 4 of the bill, adding transition language, strike "(a)".
- (4) In SECTION 4 of the bill, adding transition language, strike Subsection (b) of that section.

The amendment to **SB 19** 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 Menéndez offered the following amendment to the bill:

Floor Amendment No. 2

Amend **SB 19** (senate committee report) as follows:

(1) In SECTION 4 of the bill, adding transition language (page 2, lines 46 and 47), strike Subsection (b) of that section and substitute the following appropriately lettered subsection:

() Sections 21.402 and 42.2513, Education Code, as amended by this Act, Section 21.418, Education Code, as added by this Act, and the repeal by this Act of Section 21.402(c-1), Education Code, apply beginning with the 2019-2020 school year.

(2) In SECTION 5 of the bill, in the effective date language (page 2, line 48), strike "This Act" and substitute "Except as otherwise provided by this Act, this Act".

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

SECTION _____. Section 21.402, Education Code, is amended by adding Subsections (c-2), (c-3), and (d) and amending Subsection (g) to read as follows:

(c-2) Notwithstanding Subsection (a), for the 2019-2020 school year, a classroom teacher is entitled to a monthly salary that is at least equal to the sum of:

(1) the monthly salary the teacher would have received for the 2019-2020 school year under the district's salary schedule for the 2018-2019 school year, if that schedule had been in effect for the 2019-2020 school year, including any local supplement and any money representing a career ladder supplement the teacher would have received in the 2019-2020 school year; and

(2) \$100.

(c-3) Subsection (c-2) and this subsection expire September 1, 2020.

(d) A classroom teacher employed by a school district in the 2019-2020 school year is, as long as the teacher is employed by the same district, entitled to a salary that is at least equal to the salary the teacher received for the 2019-2020 school year.

(g) The commissioner may adopt rules to govern the application of this section, including rules that:

(1) require the payment of a minimum salary under this section to a person employed in more than one capacity for which a minimum salary is provided and whose combined employment in those capacities constitutes full-time employment; and

(2) specify the credentials a person must hold to be considered a [~~speech pathologist or~~] school nurse under this section.

SECTION _____. Effective September 1, 2019, Section 42.2513(a), Education Code, is amended to read as follows:

(a) A school district, including a school district that is otherwise ineligible for state aid under this chapter, is entitled to state aid in an amount equal to the sum of:

(1) the product of \$500 multiplied by the number of full-time district employees, other than administrators or employees subject to the minimum salary schedule under Section 21.402; ~~and~~

(2) the product of \$1,000 multiplied by the number of classroom teachers employed by the district; and

(3) the product of \$250 multiplied by the number of part-time district employees, other than administrators.

SECTION _____. Section 21.402(c-1), Education Code, is repealed.

The amendment to **SB 19** was read.

Senator Menéndez withdrew Floor Amendment No. 2.

Senator Watson offered the following amendment to the bill:

Floor Amendment No. 3

Amend **SB 19** (senate committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 1575.202(a), Insurance Code, as effective September 1, 2017, is amended to read as follows:

(a) Each state fiscal year, the state shall contribute to the fund an amount equal to 1.6 [~~1.25~~] percent of the salary of each active employee.

The amendment to **SB 19** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Garcia offered the following amendment to the bill:

Floor Amendment No. 4

Amend **SB 19** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) This section applies only if this state receives federal funds for the purpose of supporting this state's border security operations during the state fiscal biennium ending August 31, 2019.

(b) The appropriations from the general revenue fund to the Department of Public Safety for the purpose of border security during the state fiscal biennium ending August 31, 2019, made by S.B. 1, Acts of the 85th Legislature, Regular Session, 2017 (the General Appropriations Act), and identified in the informational listing in Section 17.07, Article IX, of that Act, are reduced by the lesser of:

(1) an amount equal to the amount of federal funds described by Subsection (a) of this section; or

(2) the total amount of those appropriations.

(c) In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2019, an amount equal to 50 percent of the amount by which appropriations are reduced under Subsection (b) of this section is appropriated from the general revenue fund to the Texas Education Agency for that state fiscal biennium for the purpose of providing bonuses and salary increases to public school classroom teachers under Sections 21.417 and 21.418, Education Code, as added by this Act.

(d) In addition to amounts previously appropriated for the state fiscal biennium ending August 31, 2019, an amount equal to 50 percent of the amount by which appropriations are reduced under Subsection (b) of this section is appropriated from the general revenue fund to the Teacher Retirement System of Texas for that state

fiscal biennium to be used by the retirement system to provide support to participants in the Texas Public School Employees Group Insurance Program authorized by Chapter 1575, Insurance Code.

The amendment to **SB 19** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Garcia, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Hinojosa, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

SB 19 as amended was passed to engrossment by the following vote: Yeas 28, Nays 3.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Hinojosa, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Menéndez, Miles, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Garcia, Rodríguez, Taylor of Collin.

REMARKS ORDERED PRINTED

On motion of Senator Garcia and by unanimous consent, the remarks by Senators Nelson and Garcia regarding **SB 19** were ordered reduced to writing and printed in the *Senate Journal* as follows:

(Remarks prior to second reading)

President: Senator Garcia, for what purpose?

Senator Garcia: Sorry, had a little difficulty getting up. To ask a, the author a couple of questions.

President: You may. I'm sure the Senators would be happy to allow you to sit, since your foot is hurting you.

Senator Garcia: No, I would not want to violate any Senate rules. Thank you for the offer.

President: Wouldn't violate a rule.

Senator Garcia: Well, there is a current rule. So, I will stand.

President: We will be happy to make an exception.

Senator Garcia: Thank you, Mr. President. I appreciate that.

President: Yes.

Senator Garcia: Senator, you know I certainly agree with you. I mean, I think there's no debate, I think probably, you know there's polls everywhere, they do want us, want us to be giving more money to our teachers, and that probably was an impetus for some of this activity, because that we are seeing here today in this item on the call. But my concern, and I expressed this to you from the first day that you

mentioned this to me, is how are we going to pay for it? And not just today, and not just in September 18th, I believe, will be the first bonus. But moving after that, because my concern is whether we will be able to, you know this will be a recurring expense, is, will it be predictable and will we have a sustaining source of funding? So, help me work through the dollars here. If the 193 million is a bonus—

Senator Nelson: Correct.

Senator Garcia: —and the first one will be September 18th.

Senator Nelson: Correct.

Senator Garcia: Do we know yet when the second one will be?

Senator Nelson: I cannot commit future Legislatures. If I'm back and I'm Finance Chairman, I will commit to you that that's going, and I don't want to speak for the Lieutenant Governor, but I've heard him say it's going to be one of his priorities, too. We're going to prioritize our teachers.

Senator Garcia: Great. So, for the moment, all we can say is that they will get a bonus September 18th. We have no assurance of anything after that.

Senator Nelson: If this bill passes, I can assure you that our teachers who are six to 10 years will get a \$600 bonus September 2018. And teachers 20, 10 years and up of experience will get a thousand dollar bonus September 2018.

Senator Garcia: And all the dollars would be coming from the state, and it would not be a, a sort of switch later that, well, maybe 300 from the state and 300—

Senator Nelson: It is—

Senator Garcia: —from the local jurisdiction.

Senator Nelson: —exactly as I laid it out. We are going to look at the managed care organization deferral to provide this. And next session, we will look at other options. Maybe the economy will pick up, and we'll have enough to pay for this out of our revenue. Well, I'm hearing moaning. But, you know, it's, the budget process is all about priorities, and you know, we have great discussions every budget cycle on where we are going to invest our money.

Senator Garcia: Oh, I certainly know about budget priorities. I oversaw five budgets in the City of Houston, so I know a little bit about that. So, that's why I'm concerned. And those 983 million will be coming, again, from the managed care deferral.

Senator Nelson: The, I'm sorry, these gentlemen over here are talking. The what is coming up from?

Senator Garcia: The money is, Senator Schwertner stated in his Q&A, is coming from the managed care deferral.

Senator Nelson: Ye— the yea— managed care organization deferral.

Senator Garcia: Correct.

Senator Nelson: Correct.

Senator Garcia: And do you feel that we will have the hundred three million to put it back into the managed care group?

Senator Nelson: Well, we have to put it back.

Senator Garcia: Well, I know we have to. But do we have any idea now that we will indeed have the 193 to give it back? Or if not, where do you think that we will be getting it from, or what cuts will we have to make to find the 193 million?

Senator Nelson: Okay. First of all it, this temporarily transfers funds that were originally appropriated from one month of managed care contracts and Medicaid to fund these issues. We can make an appropriation, and I'm just putting hypotheticals out here of, you know, depending on what the economy looks like and how much revenue we have available, we could come back next session and make a, an appropriation in the supplemental to repay. We can look at other options, but I can't tell you today. What I can tell you is, we're going to pay it back.

Senator Garcia: Well, as you said, we're going to have to.

Senator Nelson: Uh huh.

Senator Garcia: So, alright, let's move on to TRS. The 212 million, that is coming, again, from the deferrals.

Senator Nelson: That's correct.

Senator Garcia: Alright. So, that's a total of 405 million.

Senator Nelson: Correct.

Senator Garcia: And I think you also mentioned that we've already committed, in another bill that Senator Taylor was carrying, 270 million.

Senator Nelson: That's right.

Senator Garcia: So, that's for a total of 675 million that we're going to defer from managed care d-

Senator Nelson: That is correct.

Senator Garcia: Because that's a big number.

Senator Nelson: It is. It's a huge commitment from this Legislature to education.

Senator Garcia: Well, a little more importantly, it's a huge number to try to make sure that we have in the kitty to pay back on, you, I think you laid, when you laid it out, you said that they would be made whole in September of '19.

Senator Nelson: Yes.

Senator Garcia: Is that correct?

Senator Nelson: Yes.

Senator Garcia: Because at the moment at least the letter that, that the Comptroller sent us, what, last week, I think he's changed his revenue estimates and I, was it 34 or 43? The number escapes me, that we, that he said it's, we have an increase in revenue.

Senator Nelson: I don't have that number available. Forty-five? Forty-five.

Senator Garcia: Was it 45? I knew it was around there. I was, I'm a little tired, but so, again, I'm just trying to feel good, and I want to make sure that, that teachers feel good if we do this, that the rug's not going to be pulled from under them. That we're

going to say to them, well, we couldn't find the money to make the, the managed care organization or group, I forget the real title, whole. So, therefore, we cannot allot, we cannot honor our commitment.

Senator Nelson: Oh, if this bill passes, we will honor this commitment. We, they will in 2018 get those bonuses that I am talking about, and our commitment to TRS is, and I have to tell you, don't underestimate what a huge commitment it is on the part of this Legislature. If you listen to Senator Huffman's layout, I mean, we worked so hard during session to come up with the funds that, and we all should be very grateful, I don't think anyone knows how hard Senator Huffman worked to find the money to make sure that our, our retirement system was made whole. And we, we heard a lot of very frightening information about what would happen if we didn't come up with the money that, that we were facing, that we needed. And then, this request, we heard from our retired teachers. And, you know, we heard some, and I don't want to get in too much details, but Senator Huffman, some proposed that we look at the 13th check, and we look at bonuses and things for retired teachers. We couldn't do that because of the complications that arise with the actuarial soundness, and so, we, you know, how could we help them? We can help them with their health care costs. That's what we heard so strongly that they needed help with. But when we pass this, there's no going back. I mean, our commitment to our retired teachers is, we're not just going to have to pay for this now. We are going to pay for it now. But it is a commitment on the part of future Legislatures, and it's a huge commitment, but we value our retired teachers. So, yes, if this bill passes, we will give the bonuses. Yes, if this bill passes, we are going to help our retired teachers as, as spelled out. But it is, no, I mean, I can't tell you what a huge commitment it is on the part of this Legislature.

Senator Garcia: And, and, Senator, I understand that. And, and, and I know all the hard work that both you and Senator Huffman have put in, and especially Senator Huffman as we're going through the regular session. And both of you, because I've seen you in the halls, and like most of us feel right now, I saw that you were tired, and I knew what you were doing. And I appreciate that work. But I'm trying to make sure that the teachers in my district and throughout the state hear the assurance and hear what you're saying, because I still have some people back in my district who are telling me to vote no. And if I'm going to do anything, I want to make sure if I change my vote, although I'm not there yet, and I'm going to listen to the rest of the debate.

Senator Nelson: I'll get you there, Senator. Let me get you there.

Senator Garcia: I, I want to make sure that, that the teachers hear what you're telling us, because I think it is important that we reassure them that the rug won't be pulled from under them, because, you know, as I said before, I've overseen a budget in the City of Houston for five, five years. We do transfer funds. We do some of the things that you're talking about. Some people call it robbing Peter to pay Paul. Others call it transfers. I mean, you call it what it is, but we've got to make sure the money's here when we're going to need it. And that's my biggest concern.

Senator Nelson: Yes, I think the concern that bubbled up, and I've heard from Senator Whitmire, actually, for the last 10 hours I've been listening to him, but—

Senator Garcia: Well, that was—

Senator Nelson: I know. I understand—

Senator Garcia: —well, that was a blessing for you.

Senator Nelson: No. I understand the questions that are out there, and I truly believe that the confusion that's out there is that people who are calling you all and expressing discomfort are looking at the original bill. And we heard that confusion during the Finance Committee meeting. And I tried to make it very clear that this bill wasn't the bill that addressed utilization of lottery money and how we were going to pay for the teacher pay raises. So, in order to, to just avoid confusion, I took it out. I just took out all the conversation about pay raises. We're going to continue that conversation during session, because I am determined to get these poor teachers some money. You know, I always say, you, the teachers don't go into teaching because they think they're going to get rich. But they at least need to eat, and I'm going to keep working on teacher pay raise issues. But this commitment, I think that, I feel very comfortable in saying that the hesitancy is on the original bill as filed, not— These teacher bonuses, if this bill passes, on September 18 they will get this money. And if this bill passes, the commitment that Senator Huffman enumerated will go to our retired teachers. It will happen.

Senator Garcia: Well, I know that some of the folks that have called me, most recently like today, know that you took that section out, and they're happy about it. I'm happy about it. But there's still a concern about whether or not there's a sustainable, predictable plan to make sure that the rug is not pulled from under them, and I'll continue to listen. But I do want to say, like you, you know, I come from a family of teachers, and, in fact, my mother would have probably been much happier if I had become a teacher and not a lawyer. But, bless her heart, she never made, she, she didn't get to make it to my swearing-in ceremony when I became a lawyer. But, but trust me, she still would have preferred that I be a teacher, and I think y'all have met my sister every time she comes down here with her retired teachers. So, I've got a couple of factors going through my brain right now. I do appreciate all the work that you're doing, and, certainly, I know that Senator Huffman remembers meeting my sister with all her retired teachers groups. You know, I'm getting some calls, I'll be listening. But thank you for your work, and thank you for answering my questions. Thank you, Mr. President.

Senator Nelson: It is very sincere, my pledge to prioritize our educators and our education system next session. My mother, who also valued teachers, probably same era as your mother, my mother kept pounding in to me that a good education is the only thing somebody can't take away from you. They can take everything else, but they can't take away your education. And I, of course, carried that with me throughout my whole life. We need to remember that. Thank you, Senator.

(Remarks regarding Floor Amendment No. 4)

President: Senator Garcia.

Senator Garcia: Thank you, Mr. President. Members, I think we heard the exchange between the Dean and Senator Nelson about how we would pay for this and how we could assure our teachers and retirees that they could, these payments would continue and that the rug well, he didn't use the rug pulled from under them, but I did. And it's

almost like, I know that the Dean is, is very smart, but he's almost clairvoyant, because this amendment deals directly with that. He asked about the border security money. This amendment would apply only if we started receiving federal dollars to be used for border security. It would clarify that if the state received federal funding to be used for the purposes of border security, and if the state had already allocated money for border security, then the money previously allocated by the state would instead be used to fund teacher bonuses and to fix TRS. In other words, we would want to be sure that Texas, Texas taxpayer dollars are being used for state needs and that federal dollars are being used for something that the federal government should be doing anyway. And this amendment, 50 percent of the money would be used for TRS and 50 percent of the money would be used for teacher bonuses and pay raises. In this last budget, you all will recall that we allocated about \$800 million for border security. So, under this amendment, if the federal government were to fund that instead, then 800 million of taxpayer dollars would be used to improve the lives of Texas teachers and retired teachers after bonuses and improvements to TRS, which, of course, subsequently improves the public schools, our children, and the State of Texas. With that, Mr. President, I move adoption of Floor Amendment No. 4.

President: Senator Nelson.

Senator Nelson: Thank you, Mr. President. Senator Garcia, you can't imagine the number of times I have ranted that while it is very important to many of us, if not all of us, to make sure that our borders are secure and we are willing to make that financial commitment, that's money that I sure would rather be spending on some other needs, like education. And I would put that right up at the top of the list.

Senator Garcia: So, you're accepting my amendment.

Senator Nelson: However, I just don't, I'm looking at this, first of all, I think there's too many unknowns in this amendment. I don't, it, it, it wouldn't result in a reliable source of funding in the upcoming session, first of all. I'm, I'm happy to look at this issue when we return next session. I truly, we need better data on federal funding for the border. You know, is it really translating doll— how many dollars are we looking at? I want to be sure with this education money, truly, that it is a reliable, you said this earlier on another, it, it, reliable, dependable source of revenue. And, and this isn't, but I absolutely agree that I sure would be rather spending our money on our education. And the federal government needs to be paying to secure our borders. I, Mr. President, I'm sorry. I need to respectfully oppose this amendment.

SENATE BILL 9 ON SECOND READING

Senator Hancock moved to suspend the regular order of business to take up for consideration **SB 9** at this time on its second reading:

SB 9, Relating to the constitutional limit on the rate of growth of appropriations.

The motion prevailed.

Senators Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, and Zaffirini 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 the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

(Senator Bettencourt in Chair)

SENATE BILL 11 ON SECOND READING

Senator Perry moved to suspend the regular order of business to take up for consideration **SB 11** at this time on its second reading:

SB 11, Relating to general procedures and requirements for do-not-resuscitate orders.

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

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

The bill was read second time.

Senator Uresti offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 11** (senate committee printing) in SECTION 1 of the bill, in added Section 166.012(b), Health and Safety Code (page 1, line 30), by striking "including a hospital or an assisted living facility," and substituting "hospital, or assisted living facility".

The amendment to **SB 11** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Uresti offered the following amendment to the bill:

Floor Amendment No. 2

Amend **SB 11** (senate committee report) in SECTION 1 of the bill, in added Section 166.012(c)(1)(B), Health and Safety Code, by striking "at least one of whom must be a person not listed under Section 166.003(2)".

The amendment to **SB 11** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Uresti offered the following amendment to the bill:

Floor Amendment No. 3

Amend **SB 11** (senate committee printing) in SECTION 1 of the bill, in added Section 166.012(c)(1), Health and Safety Code, between "directions" and "and" on line 51, by inserting "or the provision of cardiopulmonary resuscitation or other life-sustaining treatment will not benefit the patient and an ethics or medical committee makes a determination consistent with the DNR order".

The amendment to **SB 11** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

SB 11 was passed to engrossment by the following vote: Yeas 21, Nays 10.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

REMARKS ORDERED PRINTED

On motion of Senator Buckingham and by unanimous consent, the remarks regarding **SB 11** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Perry: Thank you, Mr. President and Members. Senate Bill 11 seeks to rectify or clarify the adequate direction of patient protection for execution of a DNR order with a health care facility or in-hospice setting meaning a do-not-resuscitate order may be forced upon or secretly placed into a patient's medical file. Currently, statute addresses out-of-hospital DNRs. Doctors can have it unilaterally written DNR orders from patients without discussion, let alone consent from either the patient or the surrogate decision maker. Senate Bill 11 seeks to protect patient's right by putting them in a statute when a DNR order is valid. It may not be contrary to the directions of the patient, the attending physician who determines death is imminent or regardless of CPR or the order is issued in compliance with the following: written directions of

the patient, oral directions of the patient delivered to or observed by two witnesses, the directions of the patient's legal guardian or medical power of attorney, or a treatment decision made in accordance with existing statutory provisions relating to a person who is not provided a directive and is incompetent and incapable of communication. Notice to the family arriving at the facility is required under the bill when the person does not have an advanced directive, death is imminent, and there is no identified surrogate and the attending physician has issued a DNR. Few other medical decisions, if any, can be unilaterally made without a patient's input and permission from the patient or his surrogate. With that, move to suspend the regular order of business.

Senator Watson: Thank you, Mr. President. Thank you Senator Perry, for allowing me to ask a couple of questions. First of all, when we heard this bill in committee, one of the things that was pointed out is that if a patient wants to give an oral direction for a DNR, that it would require two witnesses, one that can be an attending physician or a nurse and another one that has to be unaffiliated, either with the hospital or, and can't be related by blood or a beneficiary of the patient's estate, anything like that. So, one of the things that was pointed out is that this process would perhaps have to invite even a stranger in to being part of the patient's DNR. Is that correct?

Senator Perry: That is correct.

Senator Watson: And during the committee hearing on Senate Bill 11, we had some confusion, even amongst the Members of the committee, as to whether the bill applies to in-home hospice care. And you agreed that the bill did apply to in-home hospice care, right?

Senator Perry: No, it does not apply to in-home hospice.

Senator Watson: But, but in the committee, we thought it—

Senator Perry: In the committee, there was several dialogues that—

Senator Watson: —and it was my understanding that you were going to have an amendment here on the floor to, to make it clear that this bill doesn't apply to hospice care that would occur in, in a private person's home.

Senator Perry: —and let me talked about, I actually had four amendments that I think I actually got them to the Members just for review. All stakeholders the last 24 hours that signed on, either on or in support of the bill, those groups have, basically as a consensus group, said we will not accept any changes to the current form coming out of the Senate. So, those four amendments that technically were cleanup and clarity, they really weren't substantive in that changed the direction of the bill. But, I believe, and as you believe, and I think any Member on the floor would agree, they just kind of make ambiguity where someone might perceive it or clarity. So, it's unfortunate that that's where I'm at, but I promised at midnight last night and earlier this morning.

Senator Watson: But—

Senator Perry: So, the House, now, let me say that the House still has a process, and, and it is, and it is a House bill that came over from the Senate. I mean, this, this was passed out of the House last session in its current form, stakeholder agreements.

So, we will hopefully see those get changed in the House. I can't commit that it will, but as of today, I'm under instructions from the bill author over in the House, as well as that committee process, that Chairman has indicated clearly.

Senator Watson: Well, I hear what you're saying, and I understand what you're saying. I'm very disappointed in that because I think you would have gotten additional votes on this bill. In fact, I even said, and Senator Uresti said in committee, that some of the testimony was very compelling, that if we could make some of the changes that you and I even talked about, that it might put us in a position where we could vote for the bill. And I really don't, it's very uncomfortable to have a Senate bill that we're getting ready to pass off the floor that we know has some flaws and some ambiguities in it, and we're going to wait to see what happens over in the House.

Senator Perry: I, I—

Senator Watson: It's just not, in my view, a great way of doing legislation.

Senator Perry: —and I do, and I do appreciate that. And if it were mine, and mine alone, to make that path, but this, this stockholder, this stakeholder groups, and I, and for one, clarity, there's not ambiguities in here that'll change the direction of the bill. I think it would have provided some clarity.

Senator Watson: We could've—

Senator Perry: I—

Senator Watson: —we could've done some things—

Senator Perry: —yeah—

Senator Watson: —to fix this bill.

Senator Perry: —yeah, absolutely. I agree and I'm hoping that it'll get changed in the House enough to go to conference and have those discussions. But I can't guarantee it. Stakeholders are in agreement that this is the bill they wanted, that were all, that the ones were on the bill are in support of the bill.

Senator Watson: Well, let me ask you about one of things that I think was some concern. This bill requires under certain circumstances that certain family members be notified, a patient's spouse, reasonably available adult children, parents. They need to be notified of a DNR being placed, depending upon their order of arrival at the facility. Is that correct?

Senator Perry: Correct.

Senator Watson: No. So, and we're not going be making any exceptions to provide for the patient's privacy in instances where perhaps the patient didn't want elderly parents to know certain things and be involved in a very difficult, hard decision when they're already at the point of grieving. So, we're, we're not making changes there either, are we?

Senator Perry: So, let's be clear. I have, am competent, capable, and I'm giving a DNR authorization, and I have a witness, and I have the physician, and that's all signed off on. Currently, the reason that this is an important law is the doctor can actually issue that without having conversations with me and not telling that

individual relative in this particular bill as outlined. So, it's that notification to the relative that is important. And to your point, you know, if I tell them expressly I wish you wouldn't do that, the law's going to require that disclosure. And that gets us out from under having a secret DNR placed on the file of the patient.

Senator Watson: Well, except for the problem that it could invade the wishes and privacy—

Senator Perry: And let me clarify that. That notification only applies if there's not an advance directive or—

Senator Watson: Sure.

Senator Perry: —I'm incompetent. If I have a DNR placed on my file, because I am, I'm sorry, I am incompetent, then it's that notification, is to those people.

Senator Watson: But if the patient had not wanted certain family members to be included in that—

Senator Perry: I'm incapable of telling—

Senator Watson: —well tell you're incapable. But, but, and previously, you may not have been. Let me ask you some questions to make—

Senator Perry: Sure.

Senator Watson: —some legislative intent on a portion of this, as opposed to just getting into the specifics of concerns about the bill. And I want to talk about the review process.

Senator Perry: Okay.

Senator Watson: The existing review process for DNRs, under Section 166.046, is used to review treatment decisions before a neutral committee, right?

Senator Perry: Correct.

Senator Watson: These reviews, what they do is they allow for those involved to discuss and address concerns when issues arise with a DNR that's ordered by a doctor in the related course of treatment.

Senator Perry: Correct.

Senator Watson: They're also useful because they provide liability and disciplinary protection for practitioners and facilities who utilize the review process.

Senator Perry: Forty-si— 046 is not changed in this bill.

Senator Watson: I just, and I want to get a little bit legislative intent because the bill does make significant changes in the way we deal with DNR, and as you know, that's got a number of physicians very nervous.

Senator Perry: Sure.

Senator Watson: Does the bill permit the use of Section 166.046, Process and Associated Liability Protection?

Senator Perry: So, regarding to liability protection, 046 does not change, but the bill's silent as to that, to that liability shield. And as you know, 046 is currently under amicus brief for, from our current Attorney General as to whether it's constitutional or not. So—

Senator Watson: I—

Senator Perry: —we didn't want to change current statute. It's under review at the AG level. There will be rules promulgated to incorporate, based on HHSC's rules as to how that 046 code will relate, if at all.

Senator Watson: Is it your intent that the bill permit the use of 046, the 046 process and—

Senator Perry: The bill does not, and I have no intention of. I would like to personally, but the bill does not go there.

Senator Watson: Okay. I just want to make clear, you're not in any way attempting to undermine the ability of 04— the 046 process to be the basis of a physician's order to withdraw medically appropriate life-sustaining treating, are you?

Senator Perry: The 046 process is for a review when a doctor may have that procedure, 046 also allows for ventilator and dialysis. The bill is silent on it, but that treatment can still be used, but is specific to a liability shield. It is silent on that issue.

Senator Watson: I understand that. But you're not attempting to in any way to undermine the ability of the 046 process to be a basis of a physician's order to withdraw medically inappropriate life-sustaining care.

Senator Perry: Still available to the physician.

Senator Watson: Alright. So, the 046 process would continue in your view to be a valid means for a physician to withdraw medically inappropriate life-sustaining treatment if the bill passes?

Senator Perry: 046 is currently available for that purpose. We did not change that in this bill.

Senator Watson: And if I understand your answer, with your previous answers, 04— the 046 process, you're not making any change to the liability protection that's associated with using the 046 process. That would continue to apply, correct?

Senator Perry: Those liabilities and those penalties under 046 stay intact.

Senator Watson: Thank you, Chairman Perry. Thank you, Mr. President.

President: Senator Uresti, what purpose?

Senator Uresti: Will the gentleman yield for a few questions?

President: Do you yield?

Senator Perry: Yes, Sir, I yield.

Senator Uresti: Thank you. Senator Perry, I want to follow on Senator Watson's questions a little bit. In committee, I, too, felt that you were going to bring some amendments to the floor to clarify and/or address some of the concerns that were raised in committee. So, I'm a little disappointed that you're not going to do that.

Senator Perry: As am I.

Senator Uresti: And, and why is it that you can't?

Senator Perry: So, honestly, the stakeholder groups on this issue, as you can attest to if you've been in the Legislature for more than even two years, this is a hotly debated issue and has been in this session and previous session for years. So, to get the stakeholder groups, the ones that are engaged in this discussion, the hospitals are not. I don't want to disillusion anybody, hospitals are not on the DR, don't like the DNR, they don't like the debate of that legislation. But all the other stakeholders involved are at least on or support of and they're agreement amongst their groups, and this started back in the last session, was we would come together, set our differences aside, and come up with something we can agree to. They did that. Now, we're in special and having it heard in Senate, and I think we all agree, heard some tweaks that would make it a little better process or a better bill, but not change it. They're at this point of, we said that we would not change it for one, or any other reason that would give an in for another discussion from a different stakeholder group for a different issue that's not included. So, it's just purely the stakeholders that this will impact, and the stakeholders are wanting this issue, as well as I think it's just good public policy not to issue secret DNRs. Basically, are all in agreement that there'll be no changes made. I have hopes that when the House gets it over there, because it was Representative Bonnen's bill that was passed out of the House unanimously in State Affairs, that these tweaks that have subsequently surfaced in some of the Senate hearing process, that there'll be amicable and work through getting them in there. But I have no guarantees of that, and as of this morning, there's no interest in making any changes at all.

Senator Uresti: Okay, so let me ask you a few questions and—

Senator Perry: Sure.

Senator Uresti: —you said there are some stakeholders that are on the bill. There's some that are opposed. Specifically, which stakeholder groups—

Senator Perry: So—

Senator Uresti: —are opposed?

Senator Perry: So, hospital association and the Catholic hospital association, those two groups are opposed. And hospitals have a, truthfully have a financial interest in that if they have to care for someone that is in a DNR situation and last a while, there's 10-day transfer rules and all that in other provisions of the code. But they have a concern there. Number two, the TMA is the medical doctors' profession, that we all love and hold dear to our hearts and represent their members well, are on the bill. That was a, an agreement they're not against it, they're not for it, but they would be on the bill as it's currently written. And then the rest, all the pro-life groups, Texas Association, I mean Texas Alliance for Life, Texas Right to Life, all of those other typical parties that are related in this life decision and legislation that we participate in are in support of the bill.

Senator Uresti: Okay. So, let me ask you a few questions, Senator Perry, just so I'm clear. If, if a physician enters into, enters a DNR into a patient's record, the bill requires the order to be disclosed to a list of individuals that includes the patient's spouse, reasonably available adult children, parents, et cetera, when they arrive at the facility, is that correct?

Senator Perry: If I am incapacitated and had no advance directive.

Senator Uresti: Correct. You're right. But then in that sequence—

Senator Perry: Then they do it in that sequence.

Senator Uresti: Okay. What if the patient has an agent or guardian under a medical power of attorney, how would this work?

Senator Perry: So, the medical power of attorney could serve as a surrogate for those decisions if there's no other one on that list that was in that, spouse, parent, adult child. And if I have medical of attorney, that would serve as one of those.

Senator Uresti: I didn't hear the last part.

Senator Perry: If I had a medical power of attorney, that would serve as one of those.

Senator Uresti: So, does the legislation require the individual providing notice to make additional disclosures and possibly violate patient privacy laws by disclosing confidential patient information to someone beyond an appointed agent or guardian?

Senator Perry: So, if I'm not capable of making those decisions, I have no advance directives, those notifications are required. If I'm capable and I have had communication with a doctor, and I engage that third-party person into the room, I say I want a DNR, and I, you need to get a witness, and I have given the authorization to have that communication with that witness, I'm not in violation of HIPAA.

Senator Uresti: I didn't hear the last part.

Senator Perry: I'm not in violation of federal HIPAA laws if I authorize that communication to ensue, I'm not in violation.

Senator Uresti: If you being the patient, correct?

Senator Perry: Me being the patient. But if I'm incapable of doing it, then two doctors can make that decision point, if they think death is imminent within 24 hours. But in the event they find, and that's assuming I didn't have an advance directive, I can't find my surrogate, but if they find a surrogate, one of those that fits that category, they have to tell them they put that DNR on file.

Senator Uresti: Senator Perry, does this bill protect physicians and hospitals from liability if they did not have actual knowledge of a DNR order or revocation?

Senator Perry: If they have the knowledge that it's in there, the good faith part of that process and those protections that exist in current law, I think you could probably argue that they're okay with that. This doesn't create, the attorneys we talked to said it doesn't create any potential cause of action.

Senator Uresti: As long as they're acting in good faith—

Senator Perry: Right.

Senator Uresti: –the physician or the hospital would be protected, that correct?

Senator Perry: Correct.

Senator Uresti: Will the second witness that would be called, would they be briefed on HIPAA requirements?

Senator Perry: So, again, that witness only comes into the room if I authorize that witness to come into the room. So, if I give, it's no different, you practice law, you understand power of attorney. CPAs have that. So, if I tell somebody this person can work on my behalf, act on my behalf, give them that information, that is not a violation of HIPAA because that's the communication that would ensue.

Senator Uresti: And is it possible that a witness could be held liable by the family should something go wrong?

Senator Perry: I wouldn't think so, with my authorization.

Senator Uresti: But the intent of this bill–

Senator Perry: Sure, no.

Senator Uresti: Okay. Let me just ask you a few more questions, and I do have a couple of amendments–

Senator Perry: Sure–

Senator Uresti: –that I'm going to be offering–

Senator Perry: –and, and I–

Senator Uresti: –as well, Senator Perry.

Senator Perry: –I think I probably know where they're going and what they are, and I probably wouldn't disagree with based on conversations, but again, I'll go back to, I'm under strict orders, no changes.

Senator Uresti: Strict orders from–

Senator Perry: Strict orders.

Senator Uresti: –State Representative–

Senator Perry: I, well, not, I respect the stakeholders. They, it has taken them a long time just to get to this point.

Senator Uresti: Okay. Is it your intent that the on– that only the attending physician is the one who issues the DNR?

Senator Perry: That is correct.

Senator Uresti: Is there any consequence for the facility's failure to give notice to the patient's family members or agent?

Senator Perry: So, under the bill, if they fail to give notice, then there's probably some liability there. If they, if they have done their due diligence and have found a surrogate, then the notice would do. But if they exhausted all of their, their means, their protocols for finding that party, and again, here's the deal, if I'm incapacitated,

hospital utilizes all its resources that they typically do to find my surrogate, my family, identify who I am, and that can't be done, two doctors, I'm within death of 24 hours, they can put those on there, the DNR on there. It's just if I show up with a surrogate, then that's when that notice comes. So, hospital just got to use normal protocol that they currently do to try to track down someone to ask or notify, I guess.

Senator Uresti: Can you tell the body what some of the examples of consequences would be?

Senator Perry: Well, if you're a physician, you can lose your license. The other, I'm sure the other civil penalties that are already in existence in the other codes would be pulled over. That was one of the questions—

Senator Uresti: It'd be what?

Senator Perry: —that was one of the questions is, where does the liability and penalties play. Well, they're not, they're not in this particular section of the code that's being added for in-hospital DNR.

Senator Uresti: That's all the questions I have for now. Thank you, Senator Perry.

Senator Perry: Appreciate it.

President: Senator Birdwell, what purpose?

Senator Birdwell: Ask the question of the bill, a couple of, ask the—

President: Do you—

Senator Birdwell: —author of the bill a couple of questions, Mr.—

President: Sen—

Senator Birdwell: —President.

President: —Senator Perry, do you yield?

Senator Perry: I yield.

Senator Birdwell: Thank you, Senator Perry. I, in our discussion that we had yesterday, I think you know the, the nature of how personal the subject is, and I won't bore the body or those watching with, with all that particular history, other than the, the thing that concerns me is that I had the experience of having two DNRs hostilely placed upon me immediately after September 11th. So, my discussion is animated by that experience, and in particular Mel's experience, and in particular my attending physician's experience. So, I wanted to ask two questions. May the spouse, assuming first degree of consanguinity, either consanguinity or affinity, vacate the DNR placed by the competent attending medical authority, once notified of the DNR, if there is not an advance directive in place giving specific guidelines? If the family's, point being, is if the family member, the spouse, is notified of the DNR, does the spouse have the ability without advance directive in place to direct the physician, the physician, the attending, to vacate the DNR?

Senator Perry: Yes, Sir.

Senator Birdwell: Okay. That was very much critical in my experience, Mel's experience, because it's one thing to be notified, it is quite another to be notified and do zero about it. Second, I believe you've already answered this question in your dialogue with Senator Uresti. But I want to make sure because the nature of the dynamics, of which you know, and my attending, Dr. Jordan at the Washington Hospital Center burn unit, if an advanced medical directive has been performed by the patient but due to time, space, distance is unknown to the attending physician, whether it be, you know, it's at my, mine is at my local 'hood, camp, Lake Granbury Medical Center. But if I'm in Beaumont for a committee hearing, something happens there, whatever the reason may be, what protections are in place in this bill or in current statute that protects the attending physician from the lack of knowledge of that advance directive, recognizing the critical time nature of the decisions they may be making in the emergency room? When I arrived at Georgetown's emergency room, I was lucid, conscious, in control of my faculties, but three to five minutes from respiratory arrest and death. So, I want to make sure that in that, recognizing that time crunch, that we're not placing an undue burden on the attending due to time, space, distance and not be able to have knowledge of a, an advance directive. What protections are in place in this bill or in statute to protect? I do think you answered the question, but I want to make clear.

Senator Perry: So, I believe if the physicians doesn't have knowledge and you didn't state clearly to him I have an advance directive that says do not resuscitate me or do everything you can, so that's the communication piece here that's critical. You know, if, if you could tell him don't resuscitate me or I have an advance directive, and trust me, it says do everything you can, that's one form of communication that's missing in the example.

Senator Birdwell: Okay.

Senator Perry: Because if, if I can state that clearly, I think, I think a doctor has to honor that in that sense. But if, if you, if he has no knowledge, if you're not able to have that conversation, and he has no knowledge that you had an advance directive outside of the place, that you may not, he may not know about till your demise, or, you know, three days in, then under the bill, acting in best faith, but if him and another physician, they can't find any surrogates, you know, they got to have that responsibility first, hey, this guy can't talk but we got to go find out where Mel is. And they can't locate Mel, they've done all their due diligence, two doctors agree that you're not going to make it in 24 hours, there more then, can put that DNR in. If that advance directive, they also, if I'm capable of saying I want a DNR, then they go out and grab a witness. So, I think we covered all the bases, but if the doctor has no knowledge of an advance directive giving the orders of directions, one way or the other, and they're acting in their best faith, they're not going to be rung up for that.

Senator Birdwell: Because I—

Senator Perry: I, I understand your concern. You don't want to punish somebody doing good, but at the same time, they have to know.

Senator Birdwell: Yeah.

Senator Perry: And if there's no way of them knowing, and it's an emergency situation, they're going to make the best calls.

Senator Birdwell: Well, and I'm the example, and, you know, our Dean always talks about putting a face on it, my wife is the face of a, a spouse not knowing, and, you know, my, our personal experience is what animates what I think you've done here so well. I absolutely support the bill. I think you're the best guy to carry it because my emotional attachment to what you're doing here, you know, I needed to step back and not, not carry something like this because of the nature of my animated—

Senator Perry: You're, you're—

Senator Birdwell: —personal experience.

Senator Perry: —you're the poster child for the need. At the same—

Senator Birdwell: Yeah.

Senator Perry: —time, I'm just glad Mel is who she is because she didn't—

Senator Birdwell: Yeah.

Senator Perry: —take no for an answer.

Senator Birdwell: Yeah. Yeah.

Senator Perry: And, and, you, you know—

Senator Birdwell: That's—

Senator Perry: —you, you way outran your punt—

Senator Birdwell: —yeah—

Senator Perry: —coverage, but—

Senator Birdwell: —yeah—

Senator Perry: —we're glad—

Senator Birdwell: —and I know, yeah—

Senator Perry: —we're glad you're here, but it's because you had a wife that just would not—

Senator Birdwell: —absolutely, first reason, and then my attending physician was a non-military doctor who had no legal obligation to obey the orders of the Surgeon General of the United States Army.

Senator Perry: Right. Well, I appreciate that testimony.

Senator Birdwell: So, I very much appreciate what you're doing here. Thank you, Sir, appreciate it, Senator.

Senator Perry: Thank you.

President: Senator Rodríguez, for what purpose?

Senator Rodríguez: To ask the author some questions—

Senator Perry: I yield.

Senator Rodríguez: –if he yields. Thank you. Thank you, Mr. President. Senator Perry, I have a few questions. I know a lot has already been asked by Senator Watson and Senator Uresti. So, let me begin here. The bill says that a DNR is an order that instructs a health care professional not to attempt lifesaving treatment. And I can imagine a situation, I think we all can, in which a person is already receiving life-sustaining treatment, already receiving it when a DNR order would be issued. Is it your intent that the bill also covers orders that withdraw life-sustaining treatment that is already being given in addition to attempts at life-sustaining treatments?

Senator Perry: If initiated by the patient, revocation by the patient, yes.

Senator Rodríguez: So, your intent is, it covers the withdrawal–

Senator Perry: If, if–

Senator Rodríguez: –as well?

Senator Perry: –if I, the patient, say take them off, then that–

Senator Rodríguez: Alright. And the bill provides several different bases for a valid DNR. For instance, there could be a patient's living will, or there could be a patient's verbal directions, what if two of these conflict?

Senator Perry: It's the document–

Senator Rodríguez: Let, let–

Senator Perry: –last in time is currently the standard.

Senator Rodríguez: –okay. If the patient's living will says one thing but the patient later says something opposite?

Senator Perry: It's the document last in time. So, here's how–

Senator Rodríguez: So, not what the patient say?

Senator Perry: –so, but, but here's the way I have explained it. Let's assume I'm in the hospital. I had an advance directive. I did 20 years ago that says keep me alive as long as you can.

Senator Rodríguez: Yes.

Senator Perry: I'm sitting in the hospital bed. I've had a change of heart, said issue me a DNR. So, I'm competent. I'm capable. I've told you what I want. At that point, the physician has to get a third-party witness and issue a valid DNR and another witness in the room. So, three witnesses, one neutral.

Senator Rodríguez: Alright. So–

Senator Perry: And I have changed it. Without that process, it's not a valid DNR.

Senator Rodríguez: Alright. So, okay. I understand what you said. So, it's not the last doc– when you said the last document–

Senator Perry: So, so where the last document comes in, let's say I have a living will–

Senator Rodríguez: Yes.

Senator Perry: —that, that speaks to maybe a medical power of attorney in there. And somewhere over here, I got an advance directive or maybe there's a DNR issued at the time I'm admitted. I say don't resuscitate me, and my wife comes up with an advance directive I did 20 years ago. Well, that DNR is the last document in time. That's my, my paper. So, you pick the last one. And that's generally the rule of what's used out there today.

Senator Rodríguez: Well, well, I understand what you say when you say the last document, but the example I'm giving, I thought you answered it, is when the patient says something opposite. The patient, kind of like in the case of Senator Birdwell that he just described, he verbally told the doctor, right?

Senator Perry: Yeah, but, this is not in place to describe the form to get to a valid DNR back when his—

Senator Rodríguez: And so, the example I'm giving is, the question I'm having is, you had a valid document, but then subsequently, as you said, the patient has a change of heart and verbally says, no, I don't want you to resuscitate me—

Senator Perry: So—

Senator Rodríguez: —after all.

Senator Perry: —so, if I—

Senator Rodríguez: Does that count?

Senator Perry: —no, if I want, if I'm capable and competent and telling you I want a DNR, at that point, you have to bring in two witnesses, and a third one has to be neutral.

Senator Rodríguez: Okay. And you—

Senator Perry: So, you change the document.

Senator Rodríguez: —create another document.

Senator Perry: You change the document.

Senator Rodríguez: Okay. I got you. So, it's, I think, I think I understand. Is there any requirement that they be dated?

Senator Perry: I haven't seen any actual DNR form. I would assume there's dates. I would assume there's attending physicians' signatures and time, I would, I would assume all of that.

Senator Rodríguez: You'll be able to tell which one—

Senator Perry: Sure.

Senator Rodríguez: —was the last in time—

Senator Perry: Sure.

Senator Rodríguez: —of course.

Senator Perry: I think so.

Senator Rodríguez: Okay. So, often a physician may be making a determination on a DNR order under very stressful circumstances, and I think that probably happens more often than not. And it may require the physician's judgment of whether directions being given are actually the patient's wishes or whether the physician is being given false information by a surrogate or other family member. Is there any protection for a physician who reasonably believes that he or she is issuing the DNR in compliance with the patient's wishes?

Senator Perry: So, if I am not capable of expressing my wishes—

Senator Rodríguez: Uh-huh.

Senator Perry: —and there is no advance directive, and no surrogates found, two physicians can, can basically put a DNR on my file if they think it's, death is imminent. But if my wishes are you do not place a DNR, I want to live at all cost and you violate those, you've got a problem.

Senator Rodríguez: Okay. Well, that was going to be my question. Would a physician or hospital be protected if they act in good faith regarding a DNR order or revocation?

Senator Perry: I think there's a big difference in good faith effort versus issuing a DNR against my wishes. And that's the discussion for the appeal panels and the liability and all the other discussions go into it.

Senator Rodríguez: So, just acting in good faith is not enough?

Senator Perry: Acting in good faith for treatment is plenty good. Acting in good faith in the context of I'm going to withhold treatment and you could live with the treatment, maybe not a good quality of life, but that was my wishes. This is all about patient wishes.

Senator Rodríguez: Yes, I understand.

Senator Perry: This is putting wishes of the patient in control of the decision process. So, the answer that is if, if nobody's around in my life and I wanted a DNR, you go get a third party that doesn't have a vested interest in my financial well-being, that doesn't have a vested interest in the hospital or the physician, is getting hired by, all of those factors, because I want that neutral party. I sign it out. If I'm not capable of doing that, no advance directive located and no surrogate located, two doctors can make that decision. But that's only the time that they have effectively. It's not unilateral, but it's only physician directed decisions at that point. But you can't come in and override my DNR if that's my wishes. If I say I don't want to, you can't come in and put a DNR on me if I say don't do it, without some potential liability.

Senator Rodríguez: I, okay, I understand what you're saying. There are provisions in the bill that say that a patient cannot convey their wishes verbally unless there are two witnesses present, one of which cannot be the attending physician, as you just mentioned earlier, any individual who benefits from the patient's estate or anyone affiliated with the hospital providing services. So, this considerably narrows the pool of individuals that can serve as a witness. What do you expect facilities to do when they need to find a second impartial witness, especially at the smaller or rural facilities that you and I are familiar with?

Senator Perry: Well, I think you'll have multiple options, I hope, that are readily available. And, unfortunately, our ER rooms have somebody, particularly in them 24-7. So, you know, that's one of those fact patterns that you can't plan on every, every, every. So, if there's absolutely nobody there, I guess you have to work with what you have. But at the same time, the intent of the bill is to have a neutral third party involved in that discussion. I think you'll find that most hospitals, even in the small rural counties I serve, typically have somebody moving through the ER process, that you could grab a family member that's waiting on a person in the room, one of those folks.

Senator Rodríguez: If, you mentioned a stranger, if a stranger is asked to serve as second witness, does that put the facility in the position of violating patient privacy laws by disclosing confidential patient information?

Senator Perry: Not if I invited that witness that—

Senator Rodríguez: Pardon me?

Senator Perry: —not if I, the patient, invited that person into that process.

Senator Rodríguez: That would not be a violation of—

Senator Perry: No, because—

Senator Rodríguez: —patient privacy?

Senator Perry: —no, because I give him authorization to hear that.

Senator Rodríguez: But what if you didn't, and, and there has to be a second witness by—

Senator Perry: There's not a second witness—

Senator Rodríguez: —a family member?

Senator Perry: —there's only, there's only the witness requirement if I have engaged the physician, said I want a DNR orally. Then at that point, you have to engage the witness. So, if that dialogue that initiated the need for the witness because I initiated it—

Senator Rodríguez: If I'm not around to initiate it in that capacity, then the witness doesn't come into play.

Senator Perry: Doesn't come into play at all. Alright. Now, the bill recognizes that individuals be notified in priority listed in your, in the statute, right?

Senator Rodríguez: If the patient's spouse, I thought there was a variation on this, but I think this different, if the patient's, if the patient's spouse arrives at the facility but is praying at the hospital's chapel, and the patient's adult children arrive, and the facility notifies them of the DNR order before the spouse, is the facility now liable for an improper disclosure by not following the prescribed order?

Senator Perry: You only have to notify one on the list, and I would assume that if it was the adult child before the spouse, that there's no liability because they fit the criteria of the list. But you only have to find one of those people.

Senator Rodríguez: So, there would be no liability?

Senator Perry: I don't think there's a liability for telling that the DNR's been placed unknowing to the patient.

Senator Rodríguez: In this case, giving it to the children because the spouse was not—

Senator Perry: Right. The hospital has provided notice to one of those three folks on—

Senator Rodríguez: Is, is there a consequence for the facility's failure to give that notice?

Senator Perry: If it's a secret DNR, yes. And so—

Senator Rodríguez: Secret DNR?

Senator Perry: —yeah, if, if there's a DNR issued on my file without knowledge of me or my list of approved contacts, and I die, and there was a DNR that nobody knew about, there's going to be liability for the hospital. That's the whole intent of the bill.

Senator Rodríguez: Will there be any risk of physician liability for effectuating an otherwise valid DNR order if the facility did not provide the proper notice?

Senator Perry: If the facility didn't do its job and notice, and again, this is not really, I think that they already have, well, they don't have to notify or we wouldn't be having the bill, but I don't know if the doctor would be liable for the facility, not—

Senator Rodríguez: Would not be liable.

Senator Perry: —I can't see where the doctor, if, if in good faith everything was done but the hospital—

Senator Rodríguez: Right.

Senator Perry: —fell short, then the facility would have the issue.

Senator Rodríguez: Alright. I think that makes sense. One other question here, if a physician uses a process under the existing law to go through the hospital's ethics committee—

Senator Perry: Um-hum.

Senator Rodríguez: —to affirm the physician's treatment decision to withdraw treatment that is medically inappropriate care, care that can actually be harming the patient, can this be a basis for a valid DNR?

Senator Perry: So, we didn't change anything that's under 046 today, that's the code section you speak to. The bill is silent as to the effect on this particular in-hospital DNR section. We didn't bring those liabilities, those penalties and those remedies, those provisions into this process. So, the bill's silent on at what level that would stand. It's going to go through ethics panel, and if the family or the person that has been harmed chooses to go through the court system, as they currently do, that would probably be the current recourse. But the bill's silent as to how 046, we didn't change it, we didn't intentionally change it, but it is silent on some of those provisions. Can it be a valid reason for issuing it? That's the purpose of the ethics panel.

Senator Rodríguez: Yeah.

Senator Perry: As a doctor goes, performs, says I want to issue a DNR, I mean, that didn't change, but the bill is silent to the impact on that particular—

Senator Rodríguez: Yeah.

Senator Perry: —process for in-hospital DNR.

Senator Rodríguez: And finally, finally, Senator, I thought I heard you say that the Texas Medical Association is on the bill.

Senator Perry: On the bill.

Senator Rodríguez: I, you've been giving the impression that they are opposed to the bill.

Senator Perry: No, TMA is on the bill. I have that letter. It's the, it's the exact version of what we have in front of us today. THA is against the bill. Catholic hospitals is against—

Senator Rodríguez: The Texas—

Senator Perry: —the bill.

Senator Rodríguez: —Hospitals Association is against the bill?

Senator Perry: Yes, but TMA is on, all the pro-life groups are o— support and Catholic, Catholic Charities is for the bill.

Senator Rodríguez: I'm looking at Dr. Carlos Cardenas', who's the president of the Texas Medical Association, letter dated July 24, 2017. Is that the letter you referring to?

Senator Perry: So, I've got a letter here dated April 28, 2017.

Senator Rodríguez: Okay, so—

Senator Perry: Ray Callas, M.D., Texas Medical Association, neutral on draft. Kyleen Wright, Texas for Life committee, supporting the draft. Jennifer Allmon, Texas Catholic Conference of Bishops. Greg Bonnen, obviously, he's the Rep that put the bill out. Coalition for Texas with Disabilities—

Senator Rodríguez: Right.

Senator Perry: —Dennis Borel, supporting the draft. Texas Alliance for Life, supporting the, Texas Right for Life, supporting the draft.

Senator Rodríguez: Yeah, no, I've seen that. But I thought in this letter, Dr. Cardenas is pointing out that—

Senator Perry: To our knowledge—

Senator Rodríguez: —is making reference to amendments that do not meet their liability requests.

Senator Perry: —so, we have not, have, we don't have any amendments in this bill.

Senator Rodríguez: Right. And that's why I'm asking whether they are just still on the bill or whether—

Senator Perry: As of—

Senator Rodríguez: –they are opposed to the bill–

Senator Perry: –as of nine–

Senator Rodríguez: –because they were interested in those amendments.

Senator Perry: –everybody was interested in them, in several of them, but none of them could be agreed on. So, as of 9:30 this morning, those stakeholders that signed that letter are in same position.

Senator Rodríguez: Alright. Alright. Well, thank you very much for–

Senator Perry: Thank you.

Senator Rodríguez: –your answering the questions. Thank you, Mr. President.

President: Yes, Senator. Senator Hall, what purpose?

Senator Hall: Ask the author a couple of questions.

President: Do you yield?

Senator Perry: I yield.

Senator Hall: Well, Senator Perry, I want to thank you very much for this bill, and as well, as you well know, we have a very serious situation in Texas that's existed for a number of years with the authorities that the hospitals have to put DNRs in patients' file without their knowledge or permission and even against their wishes. And this body has, has been there for a number of years, this body's tried to address that in the past. In fact, a few sessions back, there was a bill that when you read it, it looked like there was a real good deal for the patients. It was being put together with additional time being given for the family to relocate, hospital providing administrative assistance for them to find a place, and hearings that, that the family may be allowed to attend. And on the surface, it looked like they were really making a serious change, but when you got down to the details of it, that bill really left all the decision power in the hands of the hospital. Matter fact, it put it in the hands of the hospital administration as much as anything, as opposed to the doctors. And the panel was, really the family had no real input. There are, there was just observation. Matter fact, I think it was called SB 303, and it got the name, nickname, the, the death panels by the nature of it. But as I understand the way this bill is set up, that the family does have meaningful participation, the patient has meaning participation, and this is really just the antithesis, the opposite of what SB 303 is. Is that a reasonable assum– description?

Senator Perry: Yeah, I've slept once since 303. I remember it pretty well, but I can tell you what this bill's intent is and what it does is to engage the parents, patient's wishes and put families into that discussion and end the silent DNR process. And I think it gets there.

Senator Hall: And that is great. I mean, the patient and the family should be the final decision, the ultimate decision, and, and again, I thank you very much.

Senator Perry: Thank you.

Senator Hall: This is a much-needed bill.

Senator Perry: Yep.

President: Senator Hancock, what purpose?

Senator Hancock: Yes, thank you, Mr. President, to ask the author a question.

President: Senator Perry.

Senator Perry: I yield.

Senator Hancock: Yes, Senator Perry, I appreciate you bringing this legislation forward, and I've heard a lot of discussion regarding doctors and hospitals, but as you know, there are many times and many occasions that you have in-home hospice. Is it your intent at all that this legislation would impact that in-home hospice?

Senator Perry: No, in-home hospice is not affected, and we were, that was one of the amendments that, just to clarify, it's not intended, it doesn't get there, but it wasn't exactly as clear as we liked. But this is strictly in-hospital hospice and in-hospital DNR application. And now that we're on that subject, it's going to come up over in the House, too. The assisted living, we needed to just tweak them and quote, make sure that they're not considered a health care facility. Again, I'm hoping the House will pick that up. But those two organizations and groups are not intended for, for legislative intent, in-hospital hos- in-home hospice and assisted living facilities are not intended to be affected with this bill.

Senator Hancock: Very good. Thank you, Senator Perry.

Senator Perry: Appreciate the question.

(Senator Bettencourt in Chair)

Presiding Officer: Senator Buckingham, for what purpose do you rise?

Senator Buckingham: Will the gentleman yield for a question?

Senator Perry: I will.

Presiding Officer: Senator, will you yield?

Senator Perry: I yield.

Senator Buckingham: Thank you, Senator. So, you know, we've gotten mixed reviews on this about whether it creates a cause of action. So, was it your legislative intent to create a new cause of action?

Senator Perry: Absolutely not, and, and I'm trusting the legal minds that tell me it doesn't. I don't read that it does. It's pretty prescriptive, and I think if you stay within the confines of the script, that it couldn't create a new cause of action. But that is not the intent nor would I hope that it could be stretched to get there, but not the intent at all.

Senator Buckingham: Thank you. And in that instance, which will probably be incredibly rare and hopefully it never happens, but a physician changes their wish and goes from a do-not-resuscitate to a resuscitate, and there's no one, there's not a witness, so, the doctor would theoretically be in violation of this law, subject to liability, and all kinds of things. What would be your intent for that doctor?

Senator Perry: So, I think the, the question, the premise I need to understand, so, if I personally put the DNR on file, I authorized the DNR as the patient, I think there may be some problems. If the doctor revoked one after I orally said, hey doc, I want to live, please take that out, orally, is one means of revocation that counts. So, as a patient, again, I try to control. So, if I tell a doc, please pull that from my file, I want to live tomorrow, and that's an oral revocation, the doc is good. The doc took it upon himself to remove a valid DNR that I directed, I don't know where that puts him, to be straight up. I don't know why he'd want do that if I didn't direct him to do it to begin with. That, that I don't know.

Senator Buckingham: So, if the, if the patient has a DNR the patient enacted, they change their mind, they say, doc, I want you to resuscitate me—

Senator Perry: No witness required.

Senator Buckingham: —there's not a witness, technically, the doctor would be acting against the last document signed by the person.

Senator Perry: So, if I ask for a DNR, if I'm capable of asking and competent enough to ask for that DNR, that's where the witness requirements step in, because it needs to be a neutral party witnessing that request. So, it's not just a physician or medical personnel. So, you can't issue a DNR that I've initiated as a patient without a witness.

Senator Buckingham: But you can res— and you can—

Senator Perry: Revocation orally, I can do it orally and a doctor, we hope that a doctor, from the pro-life committee, we're hoping those revocations happen—

Senator Buckingham: Yes, Sir.

Senator Perry: —voluntarily.

Senator Buckingham: Okay. Thank you.

(President in Chair)

SENATE BILL 7 ON SECOND READING

Senator Hughes moved to suspend the regular order of business to take up for consideration **SB 7** at this time on its second reading:

SB 7, Relating to payroll deductions for state and local government employee organizations.

The motion prevailed by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

The bill was read second time.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 7** (senate committee printing) as follows:

(1) Strike SECTION 1 of the bill, amending Section 22.001(a), Education Code (page 1, lines 22-33), and renumber existing SECTIONS of the bill as appropriate.

(2) In SECTION 6 of the bill, in added Section 617.006(b)(1), Government Code (page 2, line 24), strike "or".

(3) In SECTION 6 of the bill, in added Section 617.006(b)(2)(B)(ii), Government Code (page 2, line 32), between "Code" and the underlined period, insert the following:

; or
(3) a school district under Section 22.001, Education Code

The amendment to **SB 7** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 2

Amend **SB 7** (senate committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Section 22.001(a), Education Code (page 1, lines 24-25), following "employed in a professional law enforcement capacity" insert "or is otherwise employed as a first responder, as defined by Section 403.0165(1)(4), Government Code.".

(2) In SECTION 2 of the bill, in the amended heading to Section 403.0165, Government Code (page 1, lines 37-38), strike "CERTAIN FIREFIGHTERS, POLICE OFFICERS, AND EMERGENCY MEDICAL SERVICES PERSONNEL" and substitute "FIRST RESPONDERS".

(3) Strike SECTION 4 of the bill (page 1, line 60, through page 2, line 7) and substitute the following:

SECTION 4. Section 403.0165(1), Government Code, is amended by adding Subdivisions (3) and (4) to read as follows:

(3) "Covered employee of a state agency" means an employee who is a first responder, including:

(A) an individual employed by a state agency in a professional law enforcement or firefighting capacity; or

(B) an individual employed by a state agency in a capacity that meets the definition of "emergency medical services personnel," as that term is defined by Section 773.003, Health and Safety Code.

(4) "First responder" means an individual who, in the course of employment, is:

(A) offered by the individual's employer any of the following:

(i) active shooter response training;

(ii) disaster preparedness training;

(iii) disaster response training;

(iv) self-defense training;

(v) use-of-force training; or

(vi) emergency medical training, including cardiopulmonary resuscitation training; or

(B) expected to execute duties in response to a hurricane or other storm, flood, tornado, earthquake, fire, or other natural disaster.

(4) In SECTION 7 of the bill, in amended Section 659.1031(a), Government Code (page 2, lines 40-41), strike "employed in a professional law enforcement capacity" and substitute "who is employed in a professional law enforcement capacity or is otherwise employed as a first responder as defined by Section 403.0165(1)(4)".

(5) In SECTION 8 of the bill, in the amended heading to Section 141.008, Local Government Code (page 2, lines 47-49), strike "CERTAIN MUNICIPAL FIREFIGHTERS, POLICE OFFICERS, AND EMERGENCY MEDICAL SERVICES PERSONNEL" and substitute "FIRST RESPONDERS".

(6) In SECTION 9 of the bill, in amended Section 141.008(a), Local Government Code (page 2, line 54), between "is" and the colon, insert "a first responder, as defined by Section 403.0165(1)(4), Government Code, including an employee who is".

(7) In SECTION 13 of the bill, in amended Section 155.001(a)(2), Local Government Code (page 3, line 59), between "employee" and "serves", insert "is a first responder, as defined by Section 403.0165(1)(4), Government Code, including an employee who".

The amendment to **SB 7** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 3

Amend **SB 7** (senate committee report) as follows:

(1) In SECTION 2 of the bill, in the amended heading to Section 403.0165, Government Code, strike "FIREFIGHTERS, POLICE OFFICERS, AND EMERGENCY MEDICAL SERVICES PERSONNEL" and substitute "EMPLOYEES".

(2) In SECTION 4 of the bill, at the end of added Section 403.0165(1)(3)(A), Government Code, strike "; or" and substitute ";".

(3) In SECTION 4 of the bill, at the end of added Section 403.0165(1)(3)(B), Government Code, between "Code" and the underlined period, insert the following:

;

(C) an individual employed in any of the following state agencies:

- (i) the Department of Family and Protective Services;
- (ii) the Department of State Health Services;
- (iii) the Health and Human Services Commission;
- (iv) the office of the attorney general;
- (v) the Texas School for the Blind and Visually Impaired;
- (vi) the Texas School for the Deaf;
- (vii) the Texas Department of Criminal Justice;
- (viii) the Texas Juvenile Justice Department; or
- (ix) the Texas Workforce Commission; or

(D) an individual employed at a public institution of higher education

The amendment to **SB 7** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Uresti offered the following amendment to the bill:

Floor Amendment No. 4

Amend **SB 7** (senate committee printing) in SECTION 4 of the bill as follows:

(1) At the end of added Section 403.0165(1)(3)(A), Government Code, strike "; or" and substitute ";\":

(2) At the end of added Section 403.0165(1)(3)(B), Government Code, between "Code" and the underlined period, insert the following:
; or

(C) an individual employed by the child protective services division of the Department of Family and Protective Services

The amendment to **SB 7** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Uresti offered the following amendment to the bill:

Floor Amendment No. 5

Amend **SB 7** (senate committee printing) in SECTION 6 of the bill, at the end of added Section 617.006(a), Government Code, between "professional organization" and the underlined period, by inserting ", unless the state or political subdivision determines the deduction or withholding may be made at no cost".

The amendment to **SB 7** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 6

Amend **SB 7** (senate committee report) in SECTION 6 of the bill, in added Section 617.006(b), Government Code, following the semicolon at the end of Subdivision (1) (page 2, line 23), by inserting the following appropriately numbered subdivision and renumbering any subsequent subdivisions accordingly:

() a state agency or political subdivision that:

(A) authorized deductions or withholdings on July 1, 2017; and

(B) determines that the agency or political subdivision would incur

costs to cease the authorized deductions or withholdings;

The amendment to **SB 7** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Senator Zaffirini offered the following amendment to the bill:

Floor Amendment No. 7

Amend **SB 7** (senate committee printing) in SECTION 14 of the bill, adding the effective date (page 4, line 3), by striking "2017" and substituting "2019".

The amendment to **SB 7** was read and failed of adoption by the following vote: Yeas 11, Nays 20.

Yeas: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

Nays: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

SB 7 was passed to engrossment by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Nichols, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

CO-AUTHORS OF SENATE BILL 3

On motion of Senator Kolkhorst, Senators Bettencourt, Creighton, Hall, Hancock, and Perry will be shown as Co-authors of **SB 3**.

CO-AUTHOR OF SENATE BILL 5

On motion of Senator Hancock, Senator Hall will be shown as Co-author of **SB 5**.

CO-AUTHORS OF SENATE BILL 6

On motion of Senator Campbell, Senators Nelson and Taylor of Collin will be shown as Co-authors of **SB 6**.

CO-AUTHOR OF SENATE BILL 7

On motion of Senator Hughes, Senator Taylor of Collin will be shown as Co-author of **SB 7**.

CO-AUTHOR OF SENATE BILL 10

On motion of Senator Campbell, Senator Taylor of Collin will be shown as Co-author of **SB 10**.

CO-AUTHORS OF SENATE BILL 11

On motion of Senator Perry, Senators Creighton, Hall, Hughes, and Taylor of Collin will be shown as Co-authors of **SB 11**.

CO-AUTHOR OF SENATE BILL 17

On motion of Senator Kolkhorst, Senator Garcia will be shown as Co-author of **SB 17**.

CO-AUTHORS OF SENATE BILL 19

On motion of Senator Nelson, Senators Birdwell, Schwertner, and West will be shown as Co-authors of **SB 19**.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 63 by Zaffirini, In memory of Ruben Contreras.

SR 65 by Hughes, In memory of Mickey Wayne Haisten.

Congratulatory Resolutions

SR 61 by Zaffirini, Recognizing Aunt Aggie De's Pralines on the occasion of its 30th anniversary.

SR 62 by Zaffirini, Recognizing Linda Patterson on the occasion of her retirement.

SR 66 by Hughes, Recognizing Billie Gertrude Hooks Manck on the occasion of her 100th birthday.

SR 67 by Hughes, Recognizing Bobby and Joyce Myers on the occasion of their 65th wedding anniversary.

SR 68 by Watson, Recognizing Gwen W. Grigsby on the occasion of her retirement.

SR 69 by Watson, Recognizing Sharon Sirles on the occasion of her retirement.

SR 70 by Creighton, Commending Matthew Dillon Atkinson for achieving the rank of Eagle Scout.

SR 71 by Hinojosa, Recognizing David Hall on the occasion of his retirement.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 11:34 p.m. adjourned, in memory of Joshua Michael Snowden, Bakari Henderson, De'Earlvion Whitley, and the victims of the July 23, 2017, human trafficking tragedy in San Antonio, until 11:45 p.m. today.

APPENDIX

RESOLUTIONS ENROLLED

July 24, 2017

SR 36, SR 37, SR 38, SR 39, SR 40, SR 41, SR 42, SR 43, SR 44, SR 45, SR 46, SR 47, SR 48, SR 49, SR 50, SR 51, SR 52, SR 53, SR 54, SR 55, SR 56, SR 57, SR 58, SR 59, SR 60

In Memory
of
Joshua Michael Snowden
Senate Resolution 43

WHEREAS, The Senate of the State of Texas honors and commemorates the life of United States Marine Staff Sergeant Joshua Michael Snowden, who died in the line of duty July 10, 2017, at the age of 31; and

WHEREAS, Joshua Snowden was an exemplary young man and an exceptional Marine who was widely admired for his many achievements and his dedication to duty; and

WHEREAS, He was a 2004 graduate of Highland Park High School, and he was proud to serve his country in the United States Marine Corps; he leaves behind a legacy of valor and fidelity that will continue to serve as an inspiration to all those who knew him; and

WHEREAS, Staff Sergeant Snowden demonstrated unwavering resolve and selfless courage in the performance of his duties; our state and nation are fortunate to have men and women whose love for their country inspires them to take up military service; and

WHEREAS, A man of strength and honor, he gave unselfishly to others, and his patriotic spirit, his deep and abiding faith, and his enthusiasm for living each day to the fullest will not be forgotten; and

WHEREAS, He was a devoted son and brother, and he leaves behind memories that will be treasured forever by his family and many friends; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 85th Legislature, 1st Called Session, hereby extend sincere condolences to the bereaved family of Joshua Michael Snowden; and, be it further

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

HUFFINES