

# SENATE JOURNAL

EIGHTY-EIGHTH LEGISLATURE — THIRD CALLED SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**FOURTH DAY**

(Continued)

(Tuesday, October 31, 2023)

**AFTER RECESS**

The Senate met at 2:00 p.m. and was called to order by President Pro Tempore Schwertner.

## **SENATOR ANNOUNCED PRESENT**

Senator Bettencourt, who had previously been recorded as "Absent-excused," was announced "Present."

## **MESSAGE FROM THE GOVERNOR**

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

STATE OF TEXAS

OFFICE OF THE GOVERNOR

MESSAGE

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE EIGHTY-EIGHTH TEXAS LEGISLATURE, THIRD CALLED SESSION:

WHEREAS, the people of Texas through their state constitution have placed in the hands of the governor the power to call and set the agenda for special sessions of the legislature; and

WHEREAS, pursuant to a gubernatorial proclamation issued on October 5, 2023, the members of the 88th Legislature have convened in a Third Called Session to consider the subjects designated in that proclamation;

NOW, THEREFORE, I, GREG ABBOTT, Governor of the State of Texas, by the authority vested in me by Article III, Section 40, and Article IV, Section 8, of the Texas Constitution, do hereby present the following additional subjects to the 88th Legislature, Third Called Session, for consideration:

Legislation relating to primary and secondary education, including the establishment of an education savings account program, the certification, compensation, and health coverage of certain public school employees, the public school finance system, special education in public schools, measures to support the education of public school students that include certain

educational grant programs, reading instruction, and early childhood education, the provision of virtual education, and public school accountability.

Legislation related to school safety measures and related state funding mechanisms.

Respectfully submitted,

/s/Greg Abbott

Governor

Austin, Texas  
October 31, 2023

**COMMITTEE SUBSTITUTE  
SENATE BILL 6 ON SECOND READING**

Senator Huffman moved to suspend Senate Rule 7.12 to take up for consideration **CSSB 6** at this time on its second reading:

**CSSB 6**, Relating to an appropriation for border security.

The motion prevailed by the following vote: Yeas 17, Nays 11.

Yeas: Bettencourt, Birdwell, Campbell, Creighton, Flores, Hall, Hancock, Huffman, Hughes, King, Kolkhorst, Middleton, Parker, Perry, Schwertner, Sparks, Springer.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, LaMantia, Menéndez, Miles, West, Zaffirini.

Absent-excused: Nichols, Paxton, Whitmire.

The bill was read second time.

Senator Johnson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 6** (senate committee report) in SECTION 1 of the bill, in Subsection (b) of that section (page 1, lines 44 and 45), by striking "to preserve public safety and security in the Colony Ridge development in Liberty County, Texas".

The amendment to **CSSB 6** was read and failed of adoption by the following vote: Yeas 11, Nays 17.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, LaMantia, Menéndez, Miles, West, Zaffirini.

Nays: Bettencourt, Birdwell, Campbell, Creighton, Flores, Hall, Hancock, Huffman, Hughes, King, Kolkhorst, Middleton, Parker, Perry, Schwertner, Sparks, Springer.

Absent-excused: Nichols, Paxton, Whitmire.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSSB 6** (senate committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. REPORTING REQUIREMENTS. (a) Not later than March 31 and September 30 of each year during the two-year period beginning on the effective date of this Act, each state agency that receives money appropriated by this Act shall submit to the Legislative Budget Board semiannual reports on the cost-effectiveness of the expenditures made by the agency using money appropriated by this Act.

(b) Each report submitted under Subsection (a) of this section must include:

(1) a cost-benefit analysis comparing the amount spent on border security efforts to the outcomes achieved, including at a minimum the following outcomes:

(A) the number of apprehensions and arrests;

(B) the number of drug seizures and contraband interceptions;

(C) any reduction in human trafficking incidents;

(D) any reduction in incidents of violence and harm to migrants;

(E) any improvement in response times to border security incidents;

(F) any increase in cooperation and information sharing with federal

agencies;

(G) the effectiveness of community engagement and trust-building initiatives;

(H) any return on investment for technology deployments, such as drones, sensors, or surveillance systems; and

(I) any reduction in costs associated with emergency medical care and law enforcement operations resulting from enhanced border security; and

(2) metrics specific to walls and other physical barriers, including:

(A) the cost per mile of constructing and maintaining walls and other physical barriers;

(B) the number of unauthorized border crossings prevented or deterred by walls and other physical barriers;

(C) the impact of walls and other physical barriers on wildlife conservation and other environmental concerns; and

(D) the cost of mitigating any negative environmental impacts resulting from the construction of walls and other physical barriers.

(c) Each state agency that receives money appropriated by this Act shall collaborate with the Legislative Budget Board to establish standardized reporting templates and data collection methods to ensure consistency and comparability among reports required under this section.

(d) A state agency shall make each report the agency submits under this section readily accessible to the public on the agency's Internet website.

ZAFFIRINI  
BLANCO  
HINOJOSA  
LAMANTIA

The amendment to **CSSB 6** was read and failed of adoption by the following vote: Yeas 11, Nays 17.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, LaMantia, Menéndez, Miles, West, Zaffirini.

Nays: Bettencourt, Birdwell, Campbell, Creighton, Flores, Hall, Hancock, Huffman, Hughes, King, Kolkhorst, Middleton, Parker, Perry, Schwertner, Sparks, Springer.

Absent-excused: Nichols, Paxton, Whitmire.

Senator Eckhardt offered the following amendment to the bill:

### **Floor Amendment No. 3**

Amend **CSSB 6** (senate committee report) in SECTION 1 of the bill, making an appropriation, immediately following Subsection (b) of that section (page 1, line 45), by adding the following appropriately lettered subsection:

( ) Money appropriated by Subsection (a) of this section may not be spent to construct physical border barrier infrastructure along this state's international border with Mexico unless the state agency spending the appropriated money, or an entity with whom that agency contracts, has:

(1) conducted or contracted with a qualified entity to conduct an environmental impact study on the proposed infrastructure; and

(2) consulted with the Parks and Wildlife Department and any indigenous tribes in the area in which the proposed infrastructure would be located to determine whether the proposed infrastructure would impact important habitats, wildlife, cultural artifacts, or dedicated lands.

The amendment to **CSSB 6** was read and failed of adoption by the following vote: Yeas 11, Nays 17.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, LaMantia, Menéndez, Miles, West, Zaffirini.

Nays: Bettencourt, Birdwell, Campbell, Creighton, Flores, Hall, Hancock, Huffman, Hughes, King, Kolkhorst, Middleton, Parker, Perry, Schwertner, Sparks, Springer.

Absent-excused: Nichols, Paxton, Whitmire.

Senator Menéndez offered the following amendment to the bill:

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

Amend **CSSB 6** (senate committee report) in SECTION 2 of the bill, prohibiting certain uses of appropriated money, as follows:

(1) At the end of Subdivision (3) of the section (page 1, line 54), strike "or".

(2) In Subdivision (4) of the section (page 1, line 56), between "state" and the period, insert the following:

; or

(5) separate members of a family unit

MENÉNDEZ

JOHNSON

BLANCO	LAMANTIA
ECKHARDT	MILES
HINOJOSA	ZAFFIRINI

The amendment to **CSSB 6** was read and failed of adoption by the following vote: Yeas 11, Nays 17.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, LaMantia, Menéndez, Miles, West, Zaffirini.

Nays: Bettencourt, Birdwell, Campbell, Creighton, Flores, Hall, Hancock, Huffman, Hughes, King, Kolkhorst, Middleton, Parker, Perry, Schwertner, Sparks, Springer.

Absent-excused: Nichols, Paxton, Whitmire.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend **CSSB 6** (senate committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. SMART BORDER INFRASTRUCTURE. (a) In this section, "smart border infrastructure" includes advanced surveillance systems, unmanned aerial vehicles, sensors, and other cutting-edge technologies designed to monitor and secure the border.

(b) Of the amount appropriated by SECTION 1 of this Act, the Trusteed Programs within the Office of the Governor shall use \$385,000,000 to enhance the state's border security through the use of smart border infrastructure. The trusteeed programs shall prioritize:

- (1) deployment of high-resolution surveillance cameras equipped with night vision capabilities along key border regions to enhance situational awareness;
- (2) use of unmanned aerial vehicles equipped with advanced imaging and real-time data transmission capabilities for border surveillance;
- (3) implementation of ground-based radar systems and sensors to detect unauthorized border crossings and potential threats; and
- (4) integration of artificial intelligence and machine learning technologies for automated threat detection, alerting, and response.

(c) The Trusteed Programs within the Office of the Governor shall submit to the Legislative Budget Board and make publicly available an annual report on the progress, expenditures, and outcomes of the use of smart border infrastructure using money allocated by Subsection (b) of this section.

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 HINOJOSA  
 LAMANTIA

The amendment to **CSSB 6** was read and failed of adoption by the following vote: Yeas 11, Nays 17.

Yeas: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, LaMantia, Menéndez, Miles, West, Zaffirini.

Nays: Bettencourt, Birdwell, Campbell, Creighton, Flores, Hall, Hancock, Huffman, Hughes, King, Kolkhorst, Middleton, Parker, Perry, Schwertner, Sparks, Springer.

Absent-excused: Nichols, Paxton, Whitmire.

**CSSB 6** was passed to engrossment by the following vote: Yeas 17, Nays 11.

Yeas: Bettencourt, Birdwell, Campbell, Creighton, Flores, Hall, Hancock, Huffman, Hughes, King, Kolkhorst, Middleton, Parker, Perry, Schwertner, Sparks, Springer.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, LaMantia, Menéndez, Miles, West, Zaffirini.

Absent-excused: Nichols, Paxton, Whitmire.

### SENATE BILL 7 WITH HOUSE AMENDMENTS

Senator Middleton called **SB 7** from the President's table for consideration of the House amendments to the bill.

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

#### Amendment

Amend **SB 7** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to prohibiting a private employer from adopting or enforcing certain COVID-19 vaccine mandates; authorizing an administrative penalty.

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

SECTION 1. Subtitle D, Title 2, Health and Safety Code, is amended by adding Chapter 81D to read as follows:

#### CHAPTER 81D. PROHIBITED CORONAVIRUS VACCINE MANDATES BY PRIVATE EMPLOYER

Sec. 81D.001. DEFINITIONS. In this chapter:

(1) "Adverse action" means an action taken by an employer that a reasonable person would consider was for the purpose of punishing, alienating, or otherwise adversely affecting an employee, contractor, applicant for employment, or applicant for a contract position.

(2) "Commission" means the Texas Workforce Commission.

(3) "COVID-19" means the 2019 novel coronavirus disease and any variants of the disease.

(4) "Employer" means a person, other than a governmental entity, who employs one or more employees.

Sec. 81D.002. EMPLOYER CORONAVIRUS VACCINE MANDATES PROHIBITED. An employer may not adopt or enforce a mandate requiring an employee, contractor, applicant for employment, or applicant for a contract position to be vaccinated against COVID-19 as a condition of employment or a contract position.

Sec. 81D.003. PROHIBITED ADVERSE ACTION BY EMPLOYER. An employer may not take an adverse action against an employee, contractor, applicant for employment, or applicant for a contract position for a refusal to be vaccinated against COVID-19.

Sec. 81D.0035. ADVERSE ACTION EXCEPTION FOR CERTAIN HEALTH CARE FACILITIES, HEALTH CARE PROVIDERS, AND PHYSICIANS. (a) In this section:

(1) "Health care facility" means a facility that is a provider of services, as defined by Section 1861, Social Security Act (42 U.S.C. Section 1395x).

(2) "Health care provider" and "physician" have the meanings assigned by Section 74.001, Civil Practice and Remedies Code.

(b) A health care facility, health care provider, or physician may establish and enforce a reasonable policy that includes requiring the use of protective medical equipment by an individual who is an employee or contractor of the facility, provider, or physician and who is not vaccinated against COVID-19 based on the level of risk the individual presents to patients from the individual's routine and direct exposure to patients.

(c) Establishing or enforcing a policy described by Subsection (b) is not considered an adverse action under this chapter.

Sec. 81D.004. COMPLAINT; INVESTIGATION. (a) An employee, contractor, applicant for employment, or applicant for a contract position against whom an employer took an adverse action in violation of this chapter may file a complaint with the commission in the form and manner prescribed by commission rules.

(b) A complaint filed with the commission must include the following information:

(1) the name of the complainant;

(2) the name of the employer; and

(3) the nature and description of any alleged adverse action the employer took against the complainant.

(c) On receipt of a complaint under Subsection (a), the commission shall conduct an investigation to determine whether the employer took an adverse action against the complainant because of the complainant's refusal to be vaccinated against COVID-19. For a complaint against a health care facility, health care provider, or physician, the commission shall consult with the department in determining if a policy adopted under Section 81D.0035 was reasonable.

Sec. 81D.005. INJUNCTIVE RELIEF. (a) On receipt of a complaint filed under Section 81D.004, the commission may request that the attorney general bring an action for injunctive relief against the employer to prevent further violations of this chapter by the employer. The action must be filed in a district court in:

(1) Travis County; or

(2) the county in which the alleged adverse action occurred.

(b) In an injunction issued under Subsection (a), a court may include reasonable requirements to prevent further violations of this chapter.

Sec. 81D.006. ADMINISTRATIVE PENALTY. (a) The commission shall impose on an employer who violates this chapter an administrative penalty in an amount equal to \$10,000 for each violation, unless the employer, as applicable:

(1) hires the applicant for employment or offers a contract to the applicant for a contract position; or

(2) reinstates the employee or contractor and provides the employee or contractor with back pay from the date the employer took the adverse action and makes every reasonable effort to reverse the effects of the adverse action, including reestablishing employee benefits for which the employee or contractor otherwise would have been eligible if the adverse action had not been taken.

(b) If, following an investigation under Section 81D.004, the commission determines that the employer violated this chapter, the commission may recover from the employer reasonable investigative costs incurred by the commission in conducting the investigation, regardless of whether the employer has taken an action described by Subsection (a)(1) or (2).

Sec. 81D.007. RULES. The commission shall adopt rules as necessary to implement and enforce this chapter.

SECTION 2. The change in law made by this Act applies only to conduct or an adverse action that occurs on or after the effective date of this Act.

SECTION 3. If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared severable.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

### **Floor Amendment No. 3**

Amend **CSSB 7** (house committee printing) as follows:

(1) On page 1, between 17 and 18, insert the following:

(2) "Contractor" means a person who undertakes specific work for an employer in exchange for a benefit without submitting to the control of the employer over the manner, methods, or details of the work.

(3) Renumber subsequent subdivisions of Sec. 81D.001 accordingly.

### **Floor Amendment No. 6**

Amend **CSSB 7** (house committee report) on page 4, line 4, by striking "\$10,000" and substituting "\$50,000".

The amendments were read.

Senator Middleton moved to concur in the House amendments to **SB 7**.

The motion prevailed by the following vote: Yeas 17, Nays 11.

Yeas: Bettencourt, Birdwell, Campbell, Creighton, Flores, Hall, Hancock, Huffman, Hughes, King, Kolkhorst, Middleton, Parker, Perry, Schwertner, Sparks, Springer.

Nays: Alvarado, Blanco, Eckhardt, Gutierrez, Hinojosa, Johnson, LaMantia, Menéndez, Miles, West, Zaffirini.



Absent-excused: Nichols, Paxton, Whitmire.

### REMARKS ORDERED PRINTED

On motion of Senator Kolkhorst and by unanimous consent, the remarks by Senators Middleton and Kolkhorst regarding **SB 7** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Presiding Officer:** For what purpose does the Senator from Washington County rise?

**Senator Kolkhorst:** To ask the gentleman a question or two.

**Presiding Officer:** Do you yield?

**Senator Middleton:** Of course.

**Presiding Officer:** Senator Kolkhorst, you're recognized.

**Senator Kolkhorst:** Thank you, Mr. President. I want to thank you for all your hard work. Obviously both of us had bills during the last session, went at it from different approaches and worked really hard. I'm grateful to Governor Abbott for putting this on the call so that we could work to get this to his desk and let him sign it into law. I believe that if we are able to garner the votes for this bill, it'll be potentially a frontrunner for the nation, wouldn't you say, in employee rights?

**Senator Middleton:** It is. It is.

**Senator Kolkhorst:** I want to go to the amendment, think it was Amendment No. 3 in the House that redefines contractor to include person who performs specific work in exchange for a benefit without allowing the employer to control for the methods or details of the work. It is intended, I believe, to cover nurse students and interns. Do you believe that that amendment covers nurses that are interning there or working to get their nursing degree, and also those that are working on their medical degree?

**Senator Middleton:** I believe that it does. And, you know, Senate Bill 29 already covered those state institutions. Like UTMB is in the district, you know, they said, look, we're already under Senate Bill 29. So, it's covering the public medical schools already. But, you know, we actually have a 2014 National Labor Relations Board ruling that said, medical interns, residents, and fellows are employees for the purposes of federal labor laws. So, we already had a lot of precedent in this, in this aspect here, but I believe that that interpretation of contract for which there wasn't a definition in the bill as we sent it over to the House, but that definition that was added in the House, I believe, does cover of course these interns and medical students and fellowships as well, so.

**Senator Kolkhorst:** Excellent. So, Senate Bill 7 will give, afford those students the same protections as an employee in this bill. Correct?

**Senator Middleton:** Yes.

**Senator Kolkhorst:** Thank you so much.

**Senator Middleton:** Thank you.

**Senator Kolkhorst:** Mr. President, I make a motion to have the exchange between Senator Middleton and I reduced to writing and placed in the Journal.

### REMARKS ORDERED PRINTED

On motion of Senator Hall and by unanimous consent, the remarks by Senators Middleton and Hall regarding **SB 7** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Presiding Officer:** For what purpose does the Senator from Van Zandt County rise?

**Senator Hall:** Question of the author.

**Presiding Officer:** Senator Middleton, do you yield?

**Senator Middleton:** I do. Thanks—

**Presiding Officer:** Senator Hall, you're recognized.

**Senator Hall:** Senator Middleton, that, I think this bill rounds out our protection for people or what we're trying to do. Previous bill we had passed covered government agencies not being able to mandate folks take a irreversible medical procedure, and now this bill picks up everybody else, as I understand it. Here that, so, where were people working in the private sector, going to school, or whatever they're doing, we now have a population protected so that it's their choice. Their body, their choice. Is that correct? Or am I, is that the intent of this legislation?

**Senator Middleton:** That's definitely an intent. There is no daylight between Senate Bill 7 and Senate Bill 29, which Senator Birdwell passed that covers all governmental entities. So, there's no gap there.

**Senator Hall:** Yeah.

**Senator Middleton:** All Texans are protected under Senate Bill 7 and that's certainly the intent of it, and I believe that that's exactly what it accomplishes, where you get to make your own decision whether or not to take the COVID vaccine or not.

**Senator Hall:** Which is the way it should be. Thank you very much for this.

### STATEMENT REGARDING SENATE BILL 7

Senator Eckhardt submitted the following statement regarding **SB 7**:

With stunning irony, advocates of this anti-vaccination bill co-opt the rallying cry of the abortion rights movement by proclaiming, "My Body, My Choice" and an intent "to make personal medical decisions without fear of retribution." The irony of those who assert that they are "pro-life" in one area, then advocate for extreme measures to ban vaccines - a tool to promote life, would be laughable if it did not cause real harm to our public health.

Vaccines are a modern miracle, a global health and development success story. Routine immunizations save millions of lives every year. Immunizations currently prevent 3.5-5 million deaths every year from diseases like diphtheria, tetanus, pertussis, influenza, and measles. The COVID-19 vaccinations prevented more than

18 million hospitalizations, prevented over three million deaths, and it is estimated to have saved the United States \$1 trillion dollars between December 2020 and November 2022.

This bill explicitly bans a public health intervention that has proven so colossally effective at saving lives to protect the personal liberties of those who are an existential threat to themselves and others. Human activity is warming our climate, expanding into wildlife habitats, and increasing globalization, all of which increases the likelihood of more frequent pandemics. As the Economist recently said when recognizing the Nobel prize being awarded to Katalin Karikó and Drew Weissman, Penn's Historic mRNA Vaccine Research Team: "Vaccines are not only immensely useful; they also embody something beautifully human in their combination of care and communication. Vaccines do not trick the immune system, as is sometimes said; they educate and train it. As a resource of good public health, they allow doctors to whisper words of warning into the cells of their patients, in an age short of trust, this intimacy between government policy and an individual's immune system is easily misconstrued as a threat. But vaccines are not conspiracies or tools of control: they are molecular loving-kindness." Truly pro-life.

ECKHARDT

#### **CO-AUTHORS OF SENATE BILL 6**

On motion of Senator Huffman, Senators Bettencourt, Campbell, Hughes, King, Kolkhorst, Middleton, Parker, Perry, and Schwertner will be shown as Co-authors of **SB 6**.

#### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

##### **Memorial Resolution**

**SR 66** by Johnson, In memory of Marquis Gideon Goode Jr.

##### **Congratulatory Resolutions**

**SR 61** by Flores, Recognizing the induction of the Kraus Farm into the Texas Department of Agriculture Family Land and Heritage Program.

**SR 62** by Flores, Recognizing the induction of the DCH Ranch into the Texas Department of Agriculture Family Land Heritage Program.

**SR 63** by Flores, Recognizing the induction of the Old Fuller Place into the Texas Department of Agriculture Family Land Heritage Program.

**SR 64** by Flores, Recognizing the induction of the Wallace Farm into the Texas Department of Agriculture Family Land Heritage Program.

**SR 65** by Flores, Recognizing the induction of the Holistic and Historical 1882 Grote Ranch into the Texas Department of Agriculture Family Land Heritage Program.

**SR 67** by Kolkhorst, Recognizing Donald Gene Davidson on the occasion of his 95th birthday.

**SR 68** by West, Recognizing William Lawhorn for his service to Texas and to the United States.

**ADJOURNMENT**

On motion of Senator Zaffirini, the Senate at 3:29 p.m. adjourned until 3:32 p.m. today.

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**APPENDIX**

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**BILL ENGROSSED**

October 31, 2023

**SB 6**

**BILL AND RESOLUTIONS ENROLLED**

October 31, 2023

**SB 7, SR 61, SR 62, SR 63, SR 64, SR 65, SR 66, SR 67, SR 68**