

FIFTY-SEVENTH DAY

(Continued)

(Friday, May 3, 1991)

AFTER RECESS

The Senate met at 8:00 a.m. and was called to order by Senator Haley.

SENATORS ANNOUNCED PRESENT

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

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

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

LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Haley in Chair) announced that the time had arrived for consideration of the Local and Uncontested Bills Calendar.

Pursuant to Senate Rule 9.03(d), the following bills were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time and passed: (Vote on Constitutional Three-Day Rule and final passage indicated after the caption of each bill.)

S.B. 330 (Armbrister) Relating to the supplemental compensation paid district judges in Victoria County. (31-0) (31-0)

S.B. 355 (Zaffirini) Relating to the disposition of fees imposed for execution or processing of a warrant or capias. (31-0) (31-0)

S.B. 660 (Turner) Relating to authorization for the Board of Regents of The Texas A&M University System to grant a lease of surface area of the original main campus of Texas A&M University to the Texas A&M University Development Foundation. (31-0) (31-0)

C.S.S.B. 662 (Ellis) Relating to discrimination in employment based on perceived disabilities. (31-0) (31-0)

C.S.S.B. 698 (Truan) Relating to the agricultural exemption from ad valorem taxation of certain property. (31-0) (31-0)

C.S.S.B. 763 (Green) Relating to the apportionment of certain estate taxes and expenses. (31-0) (31-0)

S.B. 804 (Green) Relating to polygraph examinations of certain civil service employees in certain counties. (31-0) (31-0)

S.B. 935 (Green) Relating to construction contracts. (31-0) (31-0)

S.B. 972 (Truan) Relating to the regulation of a medical radiologic technologist. (31-0) (31-0)

C.S.S.B. 980 (Sims) Relating to estimated reclamation bond amounts for uranium surface mining permits. (31-0) (31-0)

C.S.S.B. 987 (Zaffirini) Relating to transition planning and services for special education students. (31-0) (31-0)

C.S.S.B. 1047 (Sims) Relating to review of district audits by the Texas Water Commission. (31-0) (31-0)

C.S.S.B. 1057 (Sims) Relating to the terms served by the appointed members of the board of directors of the Texas Agricultural Finance Authority. (31-0) (31-0)

C.S.S.B. 1059 (Sims) Relating to certain financial assistance programs of the Texas Water Development Board. (31-0) (31-0)

C.S.S.B. 1140 (Krier) Relating to the appropriation of state water for recharge of underground aquifers. (31-0) (31-0)

S.B. 1375 (Lyon) Relating to the terms of office of a member of a hospital district's governing board. (31-0) (31-0)

Senator Lyon offered the following committee amendment to the bill:

Amend **S.B. 1375** by deleting Section 2 and renumber accordingly.

The committee amendment was read and was adopted by a viva voce vote.

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

S.B. 1426 (Turner) Relating to the effect of foreclosure of a tax lien on existing restrictive covenants and easements. (31-0) (31-0)

S.B. 1428 (Sims, on behalf of Haley) Relating to the county courts at law in Angelina County. (31-0) (31-0)

H.B. 409 (Moncrief) Relating to certain family court masters. (31-0) (31-0)

H.B. 448 (Harris of Tarrant) Relating to the information to be included in an automobile accident report. (31-0) (31-0)

H.B. 571 (Brooks) Relating to the notice requirement for competitive bids or proposals for municipal contracts. (31-0) (31-0)

H.B. 1063 (Zaffirini) Relating to continuing education for county commissioners. (31-0) (31-0)

C.S.H.B. 1181 (Armbrister) Relating to the authority of navigation districts. (31-0) (31-0)

H.B. 1198 (Sibley) Relating to the election and terms of the board of directors of the Fairfield Hospital District. (31-0) (31-0)

H.B. 1448 (Lucio) Relating to the regulation of the harvesting of and to research programs concerning oysters and shrimp. (31-0) (31-0)

REPORTS OF STANDING COMMITTEES

By unanimous consent, Senator Lyon submitted the following report for the Committee on Criminal Justice:

H.B. 1673

S.B. 452

By unanimous consent, Senator Sims submitted the following report for the Committee on Natural Resources:

C.S.S.B. 818

By unanimous consent, Senator Green submitted the following report for the Committee on Jurisprudence:

H.B. 148
 H.B. 180
 H.B. 376
 H.B. 463
 S.B. 1509
 S.B. 1528
 S.B. 1499 (Amended)
 C.S.S.B. 952
 C.S.S.B. 1230
 C.S.S.B. 359

By unanimous consent, Senator Dickson submitted the following report for the Committee on Economic Development:

H.B. 739
 H.B. 2183
 S.B. 1009
 S.B. 946
 S.B. 619
 S.B. 1538
 S.B. 936
 S.B. 1489
 H.B. 37
 H.B. 670
 S.B. 1504
 S.B. 1523
 S.B. 1539 (Amended)
 C.S.H.B. 1847
 C.S.S.B. 1027
 C.S.S.B. 429

By unanimous consent, Senator Montford submitted the following report for the Committee on Finance:

S.B. 906
 S.B. 1071
 S.B. 1142
 S.B. 1547
 S.B. 863
 C.S.S.B. 1143
 C.S.S.B. 1095
 C.S.S.B. 1033
 C.S.H.B. 916
 C.S.S.B. 491
 C.S.S.B. 876

CONCLUSION OF SESSION FOR LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Haley in Chair) announced that the session for the consideration of the Local and Uncontested Bills Calendar was concluded.

WELCOME AND CONGRATULATORY RESOLUTIONS

H.C.R. 72 - (Armbrister): Proclaiming May 2, 1991, to be the State Day of Prayer in Texas.

H.C.R. 161 - (Haley): Honoring William D. and Kathryn M. Draper for their many years of service to the staff and patients of Rusk State Hospital.

H.C.R. 209 - (Barrientos): Honoring Saxon Fox on the publication of her new book, Texas Capitol Collection: Cookery-Commentary-Portraiture.

H.C.R. 214 - (Barrientos): Extending congratulations to The University of Texas Women's Swimming Team.

H.C.R. 215 - (Barrientos): Extending congratulations to The University of Texas Men's Swimming Team.

S.R. 641 - By Sibley: Recognizing Bryant Wray of Duncanville, who recently earned the Gold Medal of Achievement in Royal Rangers.

S.R. 642 - By Barrientos: Extending congratulations to Vanessa Patrice Bailey of Anahuac for being designated an Outstanding Black Freshman at The University of Texas at Austin by the Delta Xi Chapter of Alpha Kappa Alpha Sorority, Incorporated.

S.R. 643 - By Barrientos: Extending congratulations to Carolyn Elizabeth Perry of Dallas for being designated an Outstanding Black Freshman at The University of Texas at Austin by the Delta Xi Chapter of Alpha Kappa Alpha Sorority, Incorporated.

S.R. 644 - By Barrientos: Extending congratulations to Rochelle Camille Hayes of Austin for being designated an Outstanding Black Freshman at The University of Texas at Austin by the Delta Xi Chapter of Alpha Kappa Alpha Sorority, Incorporated.

S.R. 645 - By Barrientos: Extending congratulations to Leighton C. Walters of Houston for being designated an Outstanding Black Freshman at The University of Texas at Austin by the Delta Xi Chapter of Alpha Kappa Alpha Sorority, Incorporated.

S.R. 646 - By Glasgow: Welcoming Larry Myers, M.D., of Mansfield, and expressing gratitude for his service as Doctor of the Day.

ADJOURNMENT

On motion of Senator Armbrister, the Senate at 8:14 a.m. adjourned until 9:30 a.m. today.

FIFTY-EIGHTH DAY
(Friday, May 3, 1991)

The Senate met at 9:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Dallas, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejada, Truan, Turner, Whitmire, Zaffirini.

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Absent-excused: Harris of Tarrant, Henderson.

A quorum was announced present.

The Reverend Albert Elam, First Baptist Church, Dale, offered the invocation as follows:

Dear God, we thank You for all that You have given to us, and we come to You in the name of Jesus Christ our Lord to ask that You lead us to answers that will meet the needs of those we serve. That Your will be done in each heart and life, let Your blessings be with these our leaders. We pray in the name of Jesus Christ our Lord. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVES OF ABSENCE

Senator Harris of Tarrant was granted leave of absence for today on account of important business on motion of Senator Brooks.

Senator Henderson was granted leave of absence for today on account of important business on motion of Senator Brooks.

CO-AUTHOR OF SENATE BILL 1530

On motion of Senator Brooks and by unanimous consent, Senator Zaffirini will be shown as Co-author of S.B. 1530.

MESSAGE FROM THE HOUSE

House Chamber
May 3, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.B. 54, Relating to the maximum height of a vehicle on a highway.

S.B. 94, Relating to the ability of certain metropolitan transit authorities to fund medical transportation services.

S.B. 100, Relating to the types of plants and trees used in landscaping the Texas State Capitol grounds.

S.B. 164, Relating to the authority of a municipality to require that property owners connect their property to a sewer system.

S.B. 211, Relating to the financing of personal property by governmental agencies.

S.B. 299, Relating to the authority of a commissioners court to establish direct electronic access to certain county and district court records. (As amended)

S.B. 516, Relating to compensation of physicians by political subdivisions for medical services. (As amended)

S.B. 526, Relating to the conversion of certain hospital districts into districts operating under Article IX, Section 9, of the Texas Constitution.

S.B. 595, Relating to the change of domicile of insurance companies. (As substituted)

S.B. 756, Relating to the permanent advisory committee at the University of Houston-Clear Lake. (As substituted)

S.B. 1120, Relating to audit of fiscal records, investment and deposit of funds, surety bonds of directors, and benefits of employees of the Sabine River Authority of Texas.

S.B. 1126, Relating to the transaction of business by the Court of Appeals for the Fourth Court of Appeals District.

S.B. 17, Relating to a defense to the prosecution of the offense of cruelty to animals.

S.B. 76, Relating to making a left turn in a motor vehicle onto a one-way street.

S.B. 144, Relating to the regulation of wild animals in a county with a population of 2.4 million or more. (As substituted)

S.B. 243, Relating to the establishment of an appellate judicial system for the Second Court of Appeals District.

S.B. 356, Relating to the authority of certain counties to regulate alarm systems; providing penalties. (As substituted)

S.B. 366, Relating to the payment of wages. (As substituted)

S.B. 589, Relating to tampering with or altering identification numbers on motor vehicles, equipment, or other property and to forging or tampering with governmental records; providing a penalty.

S.B. 744, Relating to a nonresidency licensing requirement for hunting turkeys during the spring turkey hunting season.

S.B. 751, Relating to the format and content of marriage license applications.

S.B. 883, Relating to taking a person who commits an offense before a magistrate.

S.B. 1096, Relating to airport zoning regulations adopted by certain political subdivisions.

H.B. 616, Relating to excluding savings and loans and credit unions from life insurance agent licensing requirements.

H.B. 851, Relating to financing of certain rural transportation systems.

H.B. 1144, Relating to commissions for honorably retired inspectors and representatives of the Texas Alcoholic Beverage Commission.

H.B. 1393, Relating to the renewal of a license held by an individual serving on active military duty.

H.B. 1839, Relating to the authorities, duties, and privileges of a Type B general-law municipality and the ability of all types of municipalities to adopt health and safety ordinances.

H.B. 2411, Relating to county enforcement in unincorporated areas of public health laws.

H.B. 2489, Relating to the boundaries, powers, and duties of the South Randall County Hospital District.

H.B. 617, Relating to the authority of certain licensed insurance agents to assign commissions from credit life insurance and credit accident and health insurance to a state or federal credit union under certain circumstances.

H.B. 1639, Relating to the offense of theft of service involving property held under a rental agreement.

H.B. 434, Relating to the suspension or denial of the driver's license or permit of a child found to have engaged in delinquent conduct or conduct indicating a need for supervision.

H.B. 1662, Relating to the effect of competitive bidding requirements on the purchase of prison-made goods.

H.B. 1803, Relating to requiring county constables and deputy constables to attend civil process courses.

H.B. 2571, Relating to the election and powers and duties of the board of directors of the Bois d'Arc Island Levee Improvement District of Dallas and Kaufman counties.

H.B. 399, Relating to the operation of an authorized emergency vehicle by a volunteer fire fighter.

H.B. 2573, Relating to the election and powers and duties of the board of directors of the Dallas County Levee Improvement District No. 14.

H.B. 2823, Relating to the private practice of law by a full-time judge of a municipal court of record in San Antonio.

H.B. 2572, Relating to the election and powers and duties of the board of directors of the Dallas County Levee District No. 8.

H.B. 813, Relating to the use of certain determinations made by the Texas Employment Commission in other actions or proceedings.

H.B. 2780, Relating to terms and compensation of directors of the Trinity Bay Conservation District.

H.B. 1809, Relating to the establishment of fees by the Parks and Wildlife Commission to review permit applications and to the collection of revenue by the Parks and Wildlife Department.

H.B. 1558, Relating to safety lines at public swimming pools.

H.B. 2792, Relating to the terms of commissioners of the Calhoun County Navigation District.

H.B. 2563, Relating to the filing period for an application for a place on the ballot in a commissioners' election of the Brazos River Harbor Navigation District of Brazoria County.

H.B. 1581, Relating to the inclusion of a household hazardous waste collection program in a local or regional solid waste management plan.

H.B. 2777, Relating to the validation of certain actions of the Sheldon Road Municipal Utility District.

H.B. 582, Relating to the operation of authorized emergency vehicles.

H.B. 2724, Relating to bonds issued by and taxes assessed by the Hospital District of Maverick County, Texas.

H.B. 2819, Relating to grand juries for the district courts in Williamson County and to the terms of court of the 368th District Court.

H.B. 2778, Relating to the appointment of a public defender for Cherokee County.

H.B. 1036, Relating to terms of the board of directors of the Lavaca Hospital District.

H.B. 1095, Relating to unmanned teller machines used by banks.

H.B. 1587, Amending Section 113.056 of the Texas Trust Code relating to the standards for trust management and investment.

H.B. 1766, Relating to the cancellation of a permit to sell prepaid funeral services or merchandise.

H.B. 172, Relating to finance charge limitations.

H.B. 686, Relating to the Texas student loan auxiliary fund administered by the Texas Higher Education Coordinating Board; authorizing the issuance of bonds.

H.B. 1367, Relating to requiring the Texas Department of Human Services to provide permanent molar sealants to certain children receiving Medicaid assistance.

H.B. 549, Relating to the punishment of persons convicted of certain offenses committed for the benefit of, at the direction of, or in association with a criminal street gang.

H.B. 1583, Relating to certain information filed with the State Board of Insurance and the computation of an automobile experience modifier based on that information.

H.B. 2153, Relating to the civil liability of Parks and Wildlife Department and Parks and Wildlife Commission members and employees.

H.B. 493, Relating to approval of the bond required for state textbooks issued to a school district.

H.B. 555, Relating to the assignment of certain retired or former judges as visiting judges.

H.B. 504, Relating to the offense of preventing or obstructing a peace officer from arresting, searching, or transporting an individual.

H.B. 1607, Relating to width of vehicles transporting hay.

H.B. 1459, Relating to affirmative findings in a criminal case regarding the use or exhibition of a deadly weapon during the commission of a felony.

H.B. 952, Relating to the use of probation in disciplinary actions regarding certain insurance agents.

H.B. 1113, Relating to a bank's disclosure of financial information.

H.B. 2570, Relating to the election and powers and duties of the board of directors of the Dallas County Levee Improvement District No. 1.

H.B. 1201, Relating to the preservation of thumbprints as evidence of certain criminal convictions.

H.B. 1253, Relating to subrogation recoveries by the director of the State Employees Division of the Attorney General's Office.

H.B. 1204, Relating to an exemption from disqualification for unemployment compensation benefits and an employer's liability for those benefits for certain individuals.

H.B. 1586, Relating to certain motor vehicle installment sales.

H.B. 7, Relating to the administration of, benefits payable by, and credit established in the Teacher Retirement System of Texas.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

REPORTS OF STANDING COMMITTEES

Senator Brooks submitted the following report for the Committee on Health and Human Services:

H.B. 903
S.B. 478
S.B. 1356

Senator Zaffirini, Acting Chair, submitted the following report for the Committee on Health and Human Services:

C.S.H.B. 961

Senator Brooks submitted the following report for the Committee on Health and Human Services:

C.S.S.B. 1497
C.S.S.B. 841
C.S.S.B. 1370
C.S.S.B. 849
C.S.S.B. 1412

Senator Moncrief, Acting Chair, submitted the following report for the Committee on Health and Human Services:

C.S.S.B. 1336

Senator Brooks submitted the following report for the Committee on Health and Human Services:

C.S.S.B. 250
C.S.S.B. 1129
C.S.S.B. 1249

Senator Sims submitted the following report for the Committee on Natural Resources:

C.S.S.B. 745

Senator Montford submitted the following report for the Committee on Finance:

C.S.H.B. 30

Senator Dickson submitted the following report for the Committee on Economic Development:

C.S.H.B. 270

Senator Barrientos submitted the following report for the Committee on Nominations:

We, your Committee on Nominations, to which were referred the following appointments, have had same under consideration and report them back to the Senate with the recommendation that they be confirmed.

To be a Member of the STATE BANKING BOARD: Dr. George Willeford III, Travis County.

To be Members of the BOARD OF DIRECTORS, TEXAS GUARANTEED STUDENT LOAN CORPORATION: Paul H. Ellis, Travis County; Mark Griffin, Lubbock County.

SENATE RESOLUTION 647

Senator Barrientos offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in joining with the citizens of Mexico and Americans of Mexican ancestry in celebrating "El Cinco de Mayo," 1991; and

WHEREAS, On May 5, 1862, in the battle of Puebla, the Texas-born General Ignacio Zaragoza and his army of 1,200 men valiantly fought against the French forces that were invading Mexico to fulfill the dreams of French Emperor Napoleon III for greater personal glory and wealth; and

WHEREAS, The triumph of General Zaragoza and the Mexican troops over the forces of more than 7,500 French soldiers preserved the integrity and independence of Mexico by delaying the French conquest for a full year; and

WHEREAS, The decisive victory at Puebla was an important battle in the war that resulted in the last major defeat of a European power in the Western hemisphere; and

WHEREAS, This great victory for Mexico helped to restore the pride and unity of the people and their government; and

WHEREAS, General Zaragoza and the Mexican soldiers demonstrated uncommon valor and tenacity when they successfully forced the French armies to retreat; and

WHEREAS, The hero of Puebla, General Zaragoza, was born on March 24, 1829, at Presidio La Bahia, near Goliad, and his birthplace is restored and a statue has been erected in his honor; and

WHEREAS, It is appropriate that we pay tribute to the memory of Ignacio Zaragoza and the Mexican soldiers in the battle of Puebla and that we recognize the significance of their victory on behalf of Mexico and our Mexican-American citizens; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, hereby urge all Texans to join in celebration of Cinco de Mayo and carry forth with the tradition of commemorating this important historical event; and, be it further

RESOLVED, That a copy of this Resolution be prepared in remembrance of all who fought for the freedom of Mexico in the battle of Puebla, May 5, 1862.

BARRIENTOS
TEJEDA
TRUAN
LUCIO
ZAFFIRINI
ROSSON
ARMBRISTER

The resolution was read and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Moncrief was recognized and introduced students, teachers and parents from the All Saints Catholic Middle School of Fort Worth.

The Senate welcomed these guests.

**SENATE CONCURRENT RESOLUTION 11
WITH HOUSE AMENDMENT**

Senator Zaffirini called S.C.R. 11 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.

Committee Amendment - Wallace

Amend S.C.R. 11 as follows:

(1) On page 1, line 19, between "Museum" and the comma, insert "and Archives".

The amendment was read.

On motion of Senator Zaffirini and by unanimous consent, the Senate concurred in the House amendment to S.C.R. 11 by a viva voce vote.

CAPITOL PHYSICIAN

Senator Green was recognized and presented Dr. Randall Cary of Houston.

Dr. Cary, participating in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians, was welcomed by the Senate and received an expression of gratitude for his service today.

SESSION TO CONSIDER EXECUTIVE APPOINTMENTS

The President announced the time had arrived to consider the Executive appointments to agencies, boards and commissions. Notice of submission of these names for consideration was given Wednesday, May 1, 1991, by Senator Barrientos.

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

The President asked if there were requests to sever nominees.

Senator Lyon requested that the nominees to the Board of Pardons and Paroles, Kenneth N. Coleman and Peggy S. McAdams, be severed.

The request was granted.

NOMINEES CONFIRMED

The following nominees, not severed and reported Wednesday, May 1, 1991, by the Committee on Nominations, were confirmed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

Members, Board of Directors, Agricultural Finance Authority: R. DAVID GUERRERO, Jim Wells County; F. GARY VALDEZ, Travis County; MS. MARY ESTHER WEBB, Eastland County.

Members, State Commission on Judicial Conduct: A. H. "AL" LOCK, Tarrant County; JUDGE CHARLES P. McCAIN, Brown County.

Members, Texas Board of Licensure for Nursing Home Administrators: MS. JOHNNIE LOU AVERY, Howard County; DR. RUMALDO ZAPATA JUAREZ, Hidalgo County.

Members, Board of Regents, Stephen F. Austin State University: MS. LAUREL ANN "SISSY" PHILLIPS AUSTIN, Cherokee County; MS. DIONNE BAGSBY, Tarrant County; MS. RETTA B. KELLEY, Gregg County.

Public Counsel of the Office of Public Utility Counsel: LUIS A. WILMOT, Harris County.

Judge of the Criminal District Court of Dallas County: MS. JAN ELIZABETH HEMPHILL, Dallas County.

NOMINEES CONFIRMED

Senator Turner moved confirmation of the following nominees: KENNETH N. COLEMAN and PEGGY S. McADAMS to be Members of the Board of Pardons and Paroles.

The nominees were confirmed by the following vote: Yeas 24, Nays 4.

Yeas: Armbrister, Bivins, Brooks, Brown, Carriker, Dickson, Glasgow, Green, Haley, Krier, Leedom, Lucio, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejada, Truan, Turner, Whitmire, Zaffirini.

Nays: Barrientos, Ellis, Johnson, Lyon.

Absent: Harris of Dallas.

Absent-excused: Harris of Tarrant, Henderson.

GUESTS PRESENTED

Senator Lucio was recognized and introduced students from Santa Maria High School and Hanna High School of Brownsville.

The Senate welcomed these guests.

GUESTS PRESENTED

Senator Ratliff was recognized and introduced the principal of Como-Pickton High School, Gary McCain, and students who are here with the State One-act Play competition and their director, Nathan Wilson.

The Senate welcomed these guests.

GUESTS PRESENTED

Senator Bivins was recognized and introduced students from Clarendon High School and their sponsor, James Hayes.

The Senate welcomed these guests.

GUESTS PRESENTED

Senator Haley was recognized and introduced a former student of his, Kathy Moore Sawyer, who is here with her students, Monica Stansberry, a UIL contestant in the State finals in editorial writing, and her friend, Tracy Martin.

The Senate welcomed these guests.

GUESTS PRESENTED

Senator Dickson was recognized and introduced Tony Daniel, Shad Schlueter, Cooper Sellers, Pam O'Briant and Amy Teague, Sweetwater High School students, accompanied by their teacher, Mrs. Sue Schlucter.

The Senate welcomed these guests.

(Senator Carriker in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 1335 ON THIRD READING**

On motion of Senator Krier and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its third reading and final passage:

C.S.S.B. 1335, Relating to the guidelines for the support of a child and income withholding in proceedings brought by the attorney general.

The bill was read third time.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.S.B. 1335** as follows:

(1) On page 1, line 15, insert the following after (b) and before "Net Resources Defined" "(1)".

(2) On page 1, line 18, strike "overtime".

(3) On page 2, line 8, insert 'overtime pay,' between 'union dues' and 'and expenses'.

(4) On page 2, line 15, add the following section:

(2) Overtime Pay Defined. Overtime pay is not to be included in net resources when applying the child support guideline percentages to net resources. However, if overtime pay is earned, the court shall add an additional amount to the child support award, but such additional amount shall not exceed 10 percent of the average weekly or monthly net overtime wages the obligor has earned averaged over the past 12 months.

The amendment was read.

On motion of Senator Green and by unanimous consent, the amendment was withdrawn.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 2

Amend **C.S.S.B. 1335** as follows:

(1) In SECTION 4, Section 14.43(b) delete "to [through]" and substitute "through" (Committee Printing page 2, line 46).

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

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

The bill as amended was finally passed by the following vote: Yeas 28, Nays 0.

Absent: Harris of Dallas.

Absent-excused: Harris of Tarrant, Henderson.

**COMMITTEE SUBSTITUTE
SENATE BILL 880 ON SECOND READING**

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

C.S.S.B. 880, Relating to sentencing procedures in capital cases.

The bill was read second time.

(President in Chair)

Senator Lyon offered the following amendment to the bill:

Amend **C.S.S.B. 880** as follows:

On page 3, line 20, after the word "imprisonment", insert the words without the possibility of parole.

On page 4, line 16, after the word "life", insert the words without the possibility of parole.

On page 6, line 15, after the word "life", insert the words without the possibility of parole.

On page 6, line 22, after the word "life", insert the words without the possibility of parole.

On page 7, line 4, after the word "life", insert the words without the possibility of parole.

On page 7, line 15, after the words "life imprisonment" and before the word "or", insert the words without the possibility of parole.

On page 8, line 1, insert a new Section 6:

SECTION 6. Article 42.18, Section 8(b), Code of Criminal Procedure, is amended to read as follows:

(b) A prisoner under sentence of death is not eligible for parole. A prisoner under sentence of life under Section 19.03, Penal Code, is not eligible for release on parole. If a prisoner is serving a sentence for the offenses listed in Subdivision (1), Subsection (a), Section 3g, Article 12.12 of this code, or if the judgment contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-fourth of the maximum sentence or 15 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years. All other prisoners shall be eligible for release on parole when their calendar time served plus good conduct time equals one-fourth of the maximum sentence imposed or 15 years, whichever is less.

On page 8, line 1, insert a new Section 7:

SECTION 7. The change in law made by Section 6 of this Act applies for offenses committed after September 1, 1991.

On page 7, line 20, following the word "Act", insert the following:

, except as provided in Section 7,

Renumber Section 6 to become Section 8.

LYON
PARKER

The amendment was read and was adopted by the following vote: Yeas 28, Nays 1.

Nays: Glasgow.

Absent-excused: Harris of Tarrant, Henderson.

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

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 880 ON THIRD READING**

Senator Montford moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 880 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 1.

Nays: Glasgow.

Absent-excused: Harris of Tarrant, Henderson.

(Senator Harris of Dallas in Chair)

GUESTS PRESENTED

Senator Ratliff was recognized and introduced students from the Cooper Independent School District debate team and their sponsor, Judy Falls.

The Senate welcomed these guests.

GUESTS PRESENTED

Senator Bivins was recognized and introduced students from Ropes High School and their sponsor, John Satterwhite.

The Senate welcomed these guests.

**COMMITTEE SUBSTITUTE
SENATE BILL 1393 ON SECOND READING**

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

C.S.S.B. 1393, Relating to the burning of certain hazardous materials in an industrial furnace.

The bill was read second time.

Senator Brooks offered the following amendment to the bill:

Floor Amendment No. 1

Amend Section 1 of **C.S.S.B. 1393** by amending Section 382.064(a) (page 1, line 33) by striking the phrase "to control" and inserting the following after "technology" and before "the":

, with consideration given to the technical practicability and economic reasonableness of reducing or eliminating

RATLIFF
BROOKS

The amendment was read and was adopted by a viva voce vote.

Senator Rosson offered the following amendment to the bill:

Floor Amendment No. 2

Amend Section 1 of C.S.S.B. 1393 as follows:

Amend Section 382.064 (page 2, line 37) by inserting a new subsection (e):

Nothing in this Subsection shall be construed to be applicable to process raw materials which are introduced to an industrial furnace for the recovery of an intermediate or final product in a manufacturing plant in Standard Industrial Classification (SIC) Groups 28 and 33, 1987 edition.

The amendment was read and was adopted by a viva voce vote.

Senator Rosson offered the following amendment to the bill:

Floor Amendment No. 3

Amend Section 1 of C.S.S.B. 1393 as follows:

Amend Section 382.064(b) (page 1, line 44) by inserting the following after the first sentence of Subsection (b):

The emissions limitations established by the board shall be consistent with the comprehensive federal rules regulating the burning of hazardous materials in boilers and industrial furnaces promulgated by the U.S. Environmental Protection Agency in the Federal Register on February 21, 1991 at 56 Federal Register 7134.

The amendment was read and was adopted by a viva voce vote.

Senator Parker offered the following amendment to the bill:

Floor Amendment No. 4

Amend C.S.S.B. 1393 as follows:

(a) Amend Section 4 as follows: insert the following in place of the entire section: "This Act shall apply to the Texas Air Control Board or to any agency which may have or obtain authority to issue or amend permits for the activities described herein.

(b) Add as Section 5 what was previously Section 4.

The amendment was read and was adopted by a viva voce vote.

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

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 1393 ON THIRD READING**

Senator Zaffirini moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 1393 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by a viva voce vote.

(President in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 174 ON SECOND READING**

Senator Brown asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 174, Relating to the admissibility of evidence in criminal cases.

There was objection.

Senator Brown then moved to suspend the regular order of business and take up **C.S.S.B. 174** for consideration at this time.

The motion prevailed by the following vote: Yeas 22, Nays 7.

Yeas: Armbrister, Bivins, Brooks, Brown, Dickson, Ellis, Green, Haley, Harris of Dallas, Krier, Leedom, Lucio, Lyon, Montford, Ratliff, Rosson, Sibley, Sims, Tejada, Turner, Whitmire, Zaffirini.

Nays: Barrientos, Carriker, Glasgow, Johnson, Moncrief, Parker, Truan.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read second time.

Question — Shall the bill be passed to engrossment?

On motion of Senator Lyon and by unanimous consent, further consideration of **C.S.S.B. 174** was postponed until a time certain of 12:00 noon, Monday, May 6, 1991.

MESSAGE FROM THE HOUSE

House Chamber
May 3, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 1345, Relating to the manner in which relationships by consanguinity or affinity are determined.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE BILL 1247 ON SECOND READING

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

S.B. 1247, Relating to State Board of Insurance authority to regulate certain health care liability self-insurance trusts.

The bill was read second time.

Senator Carriker offered the following committee amendment to the bill:

Amend S.B. 1247 by striking SECTION 1 and substituting the following:

SECTION 1. Subsection (e), Article 21.49-4, Insurance Code, is amended to read as follows:

(e) The trust is not engaged in the business of insurance under this code and other laws of this state and the provisions of any chapters or sections of this code are declared inapplicable to a trust organized and operated under this article, provided that the State Board of Insurance may require any trust created under this article to:

(1) satisfy reasonable minimum requirements to insure the capability of the trust to satisfy its contractual obligations including the minimum surplus requirements of Article 2.02;

(2) obtain approval of all rates and forms pursuant to Article 5.15-1;

(3) file all liability claims reports which are required pursuant to Articles 1.24A and 1.24B; and

(4) be subject to the monetary penalties authorized under Section 7, Article 1.10.

The committee amendment was read.

On motion of Senator Carriker and by unanimous consent, the committee amendment was withdrawn.

Senator Carriker offered the following amendment to the bill:

Amend S.B. 1247 as follows:

Strike all below the enacting clause and substitute in lieu thereof the following:

SECTION 1. Article 21.49-4, Insurance Code is amended by adding new subsections (f), (g), (h), (i) and (j) to read as follows:

(f) Upon request, the trust shall furnish such books, records and documents as are required by the State Board of Insurance to fulfill its obligations under subsection (e) of this Article relating to the solvency of the Trust.

(g) The Trust shall file, for informational purposes only, all rates and forms with the State Board of Insurance.

(h) The Trust shall file with the State Board of Insurance all liability claims reports which are required pursuant to Articles 1.24 A and 1.24 B of the Insurance Code.

(i) If the trust is found to be in violation of, or to have failed to comply with, any provision of the Insurance Code, or any duly promulgated rule or regulation of the State Board of Insurance which is declared applicable to a trust organized and operated under this Article, the State Board of Insurance, pursuant to Section 7, Article 1.10 of the Insurance Code may order sanctions for such violations.

(j) The Trust shall file its independently audited annual financial statement with the State Board of Insurance; this audit shall not be considered an examination document.

SECTION 2. Part 4, Section 41.02 of Chapter 817, Acts 65th Legislature, 1977, is hereby repealed only insofar as it relates to the Trust under Article 21.49-4, Insurance Code, but said Section 41.02 is not otherwise repealed but shall be continued in full force and effect for all other purposes.

SECTION 3. This act takes effect September 1, 1991.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public

necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

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

The bill as amended was passed to engrossment by a viva voce vote.

(Senator Barrientos in Chair)

SENATE BILL 1247 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that S.B. 1247 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by a viva voce vote.

(Senator Glasgow in Chair)

SENATE BILL 1314 ON SECOND READING

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

S.B. 1314, Relating to the appointment of criminal law magistrates for the district courts of Travis County.

The bill was read second time.

Senator Barrientos offered the following amendment to the bill:

Amend S.B. 1314 by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 54, Government Code, is amended by adding Subchapter Q to read as follows:

SUBCHAPTER Q. CRIMINAL LAW MAGISTRATES IN TRAVIS COUNTY

Sec. 54.971. APPOINTMENT. (a) The judges of the district courts of Travis County that give preference to criminal cases, with the consent and approval of the Commissioners Court of Travis County, shall jointly appoint the number of magistrates set by the commissioners court to perform the duties authorized by this subchapter.

(b) Each magistrate's appointment must be made with the unanimous approval of the judges described in Subsection (a).

(c) If the number of magistrates is less than the number of the appointing judges, each magistrate shall serve equally in the courts of those judges.

Sec. 54.972. QUALIFICATIONS. A magistrate must:

(1) be a resident of this state and of Travis County; and

(2) have been licensed to practice law in this state for at least four years.

Sec. 54.973. COMPENSATION. (a) A magistrate is entitled to the salary determined by the Commissioners Court of Travis County.

(b) The salary may not be less than the salary authorized to be paid to a master for family law cases appointed under Subchapter A.

(c) The magistrate's salary is paid from the county fund available for payment of officers' salaries.

Sec. 54.974. JUDICIAL IMMUNITY. A magistrate has the same judicial immunity as a district judge.

Sec. 54.975. TERMINATION OF SERVICES. (a) A magistrate who serves a single court serves at the will of the judge.

(b) The services of a magistrate who serves more than one court may be terminated by a majority vote of the appointing judges.

Sec. 54.976. PROCEEDINGS THAT MAY BE REFERRED. (a) A judge may refer to a magistrate any criminal case for proceedings involving:

- (1) a negotiated plea of guilty and sentencing before the court;
- (2) a pretrial motion;
- (3) an examining trial;
- (4) a postconviction writ of habeas corpus;
- (5) a bond forfeiture suit;
- (6) issuance of search warrants;
- (7) setting of bonds;
- (8) arraignment of defendants; and
- (9) any other matter the judge considers necessary and proper.

(b) A magistrate may not preside over a contested trial on the merits, regardless of whether the trial is before a jury.

Sec. 54.977. ORDER OF REFERRAL. (a) To refer one or more cases to a magistrate, a judge must issue an order of referral specifying the magistrate's duties.

(b) An order of referral may:

- (1) limit the powers of the magistrate and direct the magistrate to report only specific issues, do particular acts, or receive and report on evidence only;
- (2) set the time and place for the hearing;
- (3) prescribe a closing date for the hearing;
- (4) provide a date for filing the magistrate's findings;
- (5) designate proceedings for more than one case over which the magistrate shall preside;
- (6) direct the magistrate to call the court's docket; and
- (7) set forth general powers and limitations of authority of the magistrate applicable to any case referred.

Sec. 54.978. POWERS. (a) Except as limited by an order of referral, a magistrate to whom a case is referred may:

- (1) conduct hearings;
- (2) hear evidence;
- (3) compel production of relevant evidence;
- (4) rule on admissibility of evidence;
- (5) issue summons for the appearance of witnesses;
- (6) examine witnesses;
- (7) swear witnesses for hearings;
- (8) make findings of fact on evidence;
- (9) formulate conclusions of law;
- (10) rule on pretrial motions;
- (11) recommend the rulings, orders, or judgment to be made in a case;
- (12) regulate proceedings in a hearing;
- (13) accept a negotiated plea of guilty and enter a finding of guilt and impose the sentence in the case; and
- (14) do any act and take any measure necessary and proper for the efficient performance of the duties required by the order of referral.

(b) A magistrate may not enter a ruling on any issue of law or fact if that ruling could result in dismissal or require dismissal of a pending criminal prosecution, but

the magistrate may make findings, conclusions, and recommendations on those issues.

Sec. 54.979. RECORD OF PROCEEDINGS. At the request of a party the court shall provide that the proceedings before the magistrate be recorded.

Sec. 54.980. WITNESS. (a) A witness who appears before a magistrate and is sworn is subject to the penalties for perjury provided by law.

(b) A referring court may issue attachment against and may fine or imprison a witness whose failure to appear after being summoned or whose refusal to answer questions has been certified to the court.

Sec. 54.981. PAPERS TRANSMITTED TO THE JUDGE. (a) At the conclusion of the proceedings, a magistrate shall transmit to the referring court any papers relating to the case, including the magistrate's findings, conclusions, orders, recommendations, or other action taken.

(b) A party has seven days after the date of the magistrate's ruling to tender, to the referring court, any objections to the magistrate's ruling on pretrial matters. The referring court shall consider any objections before taking final action.

Sec. 54.982. JUDICIAL ACTION. (a) A referring court may modify, correct, reject, reverse, or recommit for further information any action taken by the magistrate.

(b) If the court does not modify, correct, reject, reverse, or recommit an action of the magistrate, the action becomes the decree of the court.

(c) At the conclusion of each term during which the services of a magistrate are used, the referring court shall enter a decree on the minutes adopting the actions of the magistrate of which the court approves.

Sec. 54.983. COSTS OF MAGISTRATE. The court shall determine if the nonprevailing party is able to defray the costs of the magistrate. If the court determines that the nonprevailing party is able to pay those costs, the court shall tax the magistrate's fees as cost against the nonprevailing party.

Sec. 54.984. CRIMINAL LAW MAGISTRATES. (a) If a criminal law magistrate appointed under this subchapter is absent or unable to serve, the judge referring the case may appoint another criminal law magistrate to serve for the absent magistrate.

(b) A criminal law magistrate serving for another magistrate under this section has the powers and shall perform the duties of the magistrate for whom he is serving.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read and was adopted by a viva voce vote.

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

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 1314 ON THIRD READING

Senator Barrientos moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that S.B. 1314 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE CONCURRENT RESOLUTION 68 ON SECOND READING**

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

C.S.C.R. 68, Requesting all public institutions of higher education in Texas to examine the recommendations of the Study Committee on the Use of Part-Time Faculty.

The resolution was read second time and was adopted by a viva voce vote.

SENATE BILL 770 ON SECOND READING

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

S.B. 770, Relating to the fees charged by a county clerk for certain actions involving mental health services or chemical dependency services.

The bill was read second time.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 1

Amend **S.B. 770** by adding a new section one and two and renumbering the remaining sections accordingly:

SECTION 1. Section 118.011(b), Local Government Code, is amended to read as follows:

(b) The county clerk may set and collect the following fee from any person:

(1) Returned Check

(Sec. 118.0215) not less than \$15 or more than \$25

(2) Records Management and Preservation Fee

(Sec. 118.0216) not more than \$5

SECTION 2. Subchapter B, Chapter 118, Local Government Code, is amended by adding Section 118.0216 to read as follows:

Sec. 118.0216. RECORDS MANAGEMENT AND PRESERVATION. The fee for "Records Management and Preservation" under Section 118.011 is for the records management and preservation services performed by the county clerk after the filing and recording of a document in the records of the office of the clerk. The fee must be paid at the time of the filing of the document. The fee may be used only to provide funds for specific records preservation and automation projects.

The amendment was read and was adopted by a viva voce vote.

Senator Green offered the following amendment to the bill:

Floor Amendment No. 2

Amend **S.B. 770** as follows:

(1) Amend **SECTION 1**, Section 118.052(2)(A), by deleting "Attorney ad litem fee . . . \$50.00" (Committee Printing page 1, line 52)

(2) Strike **SECTION 2** of the bill and substitute the following: **SECTION 2.** Subsections (c) and (e), Section 118.055, local Government Code, are amended to read as follows:

(c) The fee for an action involving mental health or chemical dependency services for the services listed in Sections 13, 14, and 15, Texas Mental Health Code (Articles 5547-13, 5547-14, and 5547-15, Vernon's Texas Civil Statutes), or services under Subchapter C or D, Chapter 462, Health and Safety Code. The fees shall be paid by the person executing the application for mental health or chemical dependency services and are due at the time the application is filed when the services requested are to a private facility.

(e) Except as provided by Subsection (c), the fee shall be paid by the party initiating the action and is due at the time the action is initiated, except that with the permission of the court the fee may be paid:

- (1) at the time that the legal or personal representative of the estate qualifies; or
- (2) if a Veterans Administration chief attorney is the attorney of record, at the time the legal or personal representative of the estate receives funds with which to make the payment.

The amendment was read and was adopted by a viva voce vote.

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

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 770 ON THIRD READING

Senator Green moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that S.B. 770 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by a viva voce vote.

(President in Chair)

COMMITTEE SUBSTITUTE SENATE BILL 958 ON SECOND READING

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

C.S.S.B. 958, Relating to procedures for the establishment of the parent-child relationship.

The bill was read second time.

Senator Green offered the following amendment to the bill:

Amend **C.S.S.B. 958** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. Section 11.08, Family Code, is amended by amending subsections (c) and (d) to read as follows:

(c) ~~The petition and other matters in a suit in which a determination of paternity is sought, if the petitioner is a person other than the alleged father of the child, are confidential, and the district clerk and employees of the clerk may not disclose to any person other than the court, the department, or a party to the suit any matter concerning the suit. This subsection does not apply if and when the suit is set for trial under Subsection (b) of Section 13.05 of this code.~~

(d) A petition in any suit for adoption or any suit for appointment of a nonparent managing conservator with authority to consent to adoption of a child must include:

(1) a sworn allegation that there has been compliance with Chapter 45, Human Resources Code; or

(2) if there has not been compliance with Chapter 45, Human Resources Code, a sworn statement of the particular reasons for that noncompliance.

SECTION 2. Section 11.14 (j), Family Code, is amended to read as follows:

(j) In any suit seeking the establishment of the parent-child relationship, after a hearing the court shall grant a motion for a preferential setting for a final hearing on the merits, jury or non-jury, filed by a party to the suit or by the attorney or guardian ad litem for the child and shall give precedence to that hearing over other civil cases if discovery has been completed or sufficient time has elapsed since the filing of the suit for the completion of all necessary and reasonable discovery if diligently pursued.

SECTION 3. Section 12.02, Texas Family Code, is amended to read as follows:

(a) A man is presumed to be the biological father of a child if:

(1) he and the child's biological mother are or have been married to each other and the child is born during the marriage or not more than 300 days after the date the marriage terminated by death, annulment, divorce, or by having been declared void;

(2) before the child's birth, he and the child's biological mother attempted to marry each other by a marriage in apparent compliance with law, although the attempted marriage is or could be declared void, and the child is born during the attempted marriage or not more than 300 days after the date the attempted marriage terminated by death, annulment, divorce, or by having been declared void;

(3) after the child's birth, he and the child's biological mother have married or attempted to marry each other by a marriage in apparent compliance with law, although the attempted marriage is or could be declared void or voided by annulment, and:

(A) he has filed a written acknowledgment of his paternity of the child under Chapter 13 of this code;

(B) he consents in writing to be named and is named as the child's father on the child's birth certificate; or

(C) he is obligated to support the child under a written voluntary promise or by court order;

(4) without attempting to marry the mother, he consents in writing to be named as the child's father on the child's birth certificate; or

(5) before the child reaches the age of majority, he receives the child into his home and openly holds out the child as his biological child.

(b) A presumption under this subsection (a) may be rebutted only by clear and convincing evidence.

(c) Unless the contrary is proven by the preponderance of the evidence, a man is presumed to be the biological father of a child under the following circumstances:

(1) While not sharing a household with the child's mother, he contributes substantially to the support of the child, and he is named as the child's father on the child's birth certificate at birth:

(2) he clearly recognizes the child as his biological child in writing;

(3) he openly holds the child out as his biological child; or

(4) he was openly cohabitating with the mother throughout the entire biologically possible time of conception.

(d) If two or more presumptions arise that conflict, the presumption that is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court decree establishing the paternity of the child by another man.

SECTION 4. Section 13.01, Family Code, is amended by amending the caption of Section 13.01 and subsections (a) and (b) to read as follows:

Sec. 13.01. ~~[Parties:] [Time] Limitation of [Suit] Actions (a) [A suit to establish the parent-child relationship between a child who has no presumed father and the child's biological father may be brought by the mother, by a man claiming to be or possibly to be the father, or by any other person or governmental entity having standing to sue under Section 11.03 of this code.] A suit to establish paternity may be brought before the birth of the child, throughout the life of the alleged father, and at any time after the alleged father's death. For purposes of determining paternity under this chapter, the term "child" includes adult biological descendants [but must be brought on or before the second anniversary of the day the child becomes an adult, or the suit is barred].~~

(b) The children to whom this section applies include a child for whom a paternity action was brought or might have been brought, but was dismissed or might have been dismissed because a statute of limitations [of less than 18 years] was in effect.

SECTION 5. Section 13.02, Family Code, is amended by adding Subsections (e) and (f) to read as follows:

(e) If the child or either of the child's reputed biological parents is deceased, the court shall, unless all parties agree otherwise, and subject to the limitations of subsection (a) of this section:

(1) order the decedent's parents, brothers, sisters, children, and the respective mother of each of decedent's children to submit to the taking of samples for scientifically accepted paternity testing as provided in subsection (a) of this section; and

(2) if the results of such testing are inconclusive, order disinterment for scientific testing.

(f) The Court may enforce its orders to submit to scientific testing under subsection (e) by contempt, and may impose any other appropriate sanction for noncompliance.

SECTION 6. Section 13.05, Family Code, is amended to read as follows:

Sec. 13.05. Pretrial Proceedings: Effect of ~~[Blood]~~ Paternity Tests. (a) At the conclusion of the pretrial conference, if the court finds that the tests show by clear and convincing evidence that the alleged father is not the father of the child, the court shall dismiss the suit with prejudice.

(b) If the court finds that the paternity tests do not exclude the alleged father as the father of the child, and the results of the paternity testing do not exclude at least 95 percent of the male population from the possibility of being the father of the child, then the court shall set the suit for trial.

(c) If the court finds that the paternity tests fail to exclude the alleged father as the father of the child, and finds that at least 95 percent of the male population is excluded from the possibility of being the father, the court shall at the pretrial conference find and order that the burden of proof shifts to the party opposing the establishment of the alleged father's paternity and set the case for trial.

(d) The existence of a presumption of paternity shall not deprive the party asserting paternity of the right to open and close in the presentation of evidence and argument at trial.

SECTION 7. Section 13.22(b), Family Code, is amended to read as follows:

(b) The statement of paternity must clearly state that [:

~~(1) the father]~~ the man signing the statement acknowledges the child as his biological child [;

~~(2) he and the mother, who is named in the statement, were not married to each other at the time of conception of the child or at any subsequent time; and~~

~~(3) the child is not the biological child of another man].~~

SECTION 8. Section 13.42(a), Family Code, is amended to read as follows:

(a) In a suit in which a determination of paternity is sought, the court may provide for the managing and possessory conservatorship and support of and access to the child; except that no alleged father denying paternity may be required to make any payment for the support of the child until paternity is established or the alleged father is not excluded as the biological father of the child and at least 95 percent of the male population is excluded from being the biological father of the child. On a finding of paternity, the court may order support retroactive to the time of the birth [filing] of the child [suit] and, on a proper showing, may order a party to pay an equitable portion of all prenatal and postnatal related health care expenses of the mother and child. This section does not preclude the court from rendering an order pursuant to Section 14.062 of this code that requires a parent to reimburse the state for public assistance paid for the support of the child.

SECTION 9. Section 42(b)(1), Texas Probate Code, is amended to read as follows:

(b) Paternal Inheritance. (1) For the purpose of inheritance, a child is the child of his biological father if the child is ~~presumed to be the father's child [born under circumstances described by Section 12.02]~~, under the Family Code, is adjudicated to be the child of the father by court decree as provided by Chapter 13, Family Code, was adopted by his father, or if the father executed a statement of paternity as provided by Section 13.22, Family Code, or a like statement properly executed in another jurisdiction, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendant, and collateral in all degrees, and they may inherit from him and his issue. A person claiming to be a biological child of the decedent, who is not otherwise presumed to be a child of the decedent, or claiming inheritance through a biological child of the decedent, may petition the probate court for a determination of right of inheritance. If the court finds under the procedures of Chapter 13 of the Family Code [by clear and convincing evidence] that the purported father was the biological father of the child, the child is treated as any other child of the decedent for the purpose of inheritance and he and his issue may inherit from his paternal kindred, both descendants, ascendant, and collaterals in all degrees, and they may inherit from him and his issue. This section does not permit inheritance by a purported father of a child, whether recognized or not, if the purported father's parental rights have been terminated.

SECTION 10. (a) This Act takes effect September 1, 1991.

(b) Any litigation pending on or filed after the effective date of this Act that seeks to establish a parent-child relationship shall be tried in accordance with the provisions of this Act, notwithstanding that the parent or child may have died before the effective date of this Act.

SECTION 11. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted by a viva voce vote.

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

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 958 ON THIRD READING**

Senator Green moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 958 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 989 ON THIRD READING

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

S.B. 989, Relating to safety requirements regarding the use of certain toxic household products.

The bill was read third time.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 1

Amend **S.B. 989** as follows:

(1) In Section 161.096(a), strike "Any person may bring a civil action" and substitute "A civil action may be brought".

(2) In Section 161.096(b), strike "this section" and substitute "Chapter 41, Civil Practice and Remedies Code".

(3) In Section 161.096(c), strike "shall" and substitute "may".

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

Senator Brooks offered the following amendment to the bill:

Floor Amendment No. 2

Amend **S.B. 989** in Section 161.097(b) by inserting the following between "subchapter" and the period:

"and for poison control centers established under Chapter 773".

By unanimous consent, the amendment was read and was adopted by a viva voce vote.

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

The bill as amended was finally passed by a viva voce vote.

SENATE BILL 1076 ON SECOND READING

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

S.B. 1076, Relating to appropriate mental health facilities for court-ordered mental health services and to the capacity to consent of voluntary in-patients of such facilities.

The bill was read second time.

Senator Dickson offered the following amendment to the bill:

Amend **S.B. 1076** in SECTION 1, Subsection (d), by striking the last two words of the sentence and substituting the following:

“to treatment and release of information when necessary. This capacity to give consent applies only during the time the person is voluntarily admitted to a mental health facility.”

The amendment was read and was adopted by a viva voce vote.

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

The bill as amended was passed to engrossment by a viva voce vote.

SENATE BILL 1076 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 1076** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

COMMITTEE SUBSTITUTE SENATE BILL 379 ON SECOND READING

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

C.S.S.B. 379, Relating to abolition of the Texas Health and Human Services Coordinating Council and the transfer of certain of the council's functions to the governor's office, the Texas Department of Health, the Texas Department of Community Affairs, the Texas Commission on Alcohol and Drug Abuse, the Texas Juvenile Probation Commission, the Department of Information Resources, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Commerce, and the Texas Department of Human Services.

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

COMMITTEE SUBSTITUTE SENATE BILL 379 ON THIRD READING

Senator Carriker moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 379** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by a viva voce vote.

SENATE BILL 669 ON SECOND READING

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

S.B. 669, Relating to the exemption of certain students from certain academic skills testing and remedial coursework requirements.

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

SENATE BILL 669 ON THIRD READING

Senator Dickson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **S.B. 669** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE BILL 960 ON SECOND READING**

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

C.S.S.B. 960, Relating to the requirement of a mandatory hearing in a suit affecting the parent-child relationship in which child abuse is alleged.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 960 ON THIRD READING**

Senator Green moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that **C.S.S.B. 960** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE BILL 514 ON SECOND READING**

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

C.S.S.B. 514, Relating to changes in a property tax appraisal roll.

The bill was read second time.

Senator Turner offered the following amendment to the bill:

Amend **C.S.S.B. 514** on page 1, line 55 by inserting the following after "Chapter 41":

Or if the appraised value of the property was established as a result of a written agreement between the property owner or his agent and the appraisal district

The amendment was read and was adopted by a viva voce vote.

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

The bill as amended was passed to engrossment by a viva voce vote.

**COMMITTEE SUBSTITUTE
SENATE BILL 514 ON THIRD READING**

Senator Turner moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 514 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

**COMMITTEE SUBSTITUTE
SENATE BILL 1272 ON SECOND READING**

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

C.S.S.B. 1272, Relating to the adoption of objective performance indicators for vocational education provided by school districts.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 1272 ON THIRD READING**

Senator Rosson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that C.S.S.B. 1272 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

SENATE BILL 1274 ON SECOND READING

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

S.B. 1274, Relating to requiring consideration of the quality and effectiveness of vocational education as part of the accreditation process.

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

SENATE BILL 1274 ON THIRD READING

Senator Rosson moved that the Constitutional Rule and Senate Rule 7.20 requiring bills to be read on three several days be suspended and that S.B. 1274 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 0.

Absent-excused: Harris of Tarrant, Henderson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0. (Same as previous roll call)

MEMORIAL RESOLUTION

S.R. 653 - By Haley: In memory of the Reverend Jerry L. Johnson of Nacogdoches.

CONGRATULATORY RESOLUTIONS

S.R. 648 - By Sims: Paying tribute to Jeanne Waterman, who is retiring from the Ysleta Independent School District after 20 years of distinguished service to the youth of Texas.

S.R. 649 - By Sims: Extending congratulations to Glenn Eric Finley of Fort Davis on achieving the rank of Eagle Scout.

S.R. 650 - By Sims: Extending congratulations to Matthew Loran Rinehart of Fort Davis on achieving the rank of Eagle Scout.

S.R. 651 - By Sims: Paying tribute to Madeline Harrell on the momentous occasion of her retirement from 22 years of distinguished service to the El Paso Independent School District and the Ysleta Independent School District.

S.R. 652 - By Lucio: Recognizing Judge Reynaldo Garza for thirty years of outstanding service to the people of his community and State as a member of the federal judiciary.

S.R. 654 - By Barrientos: Extending congratulations to Eugene Wesson of Smithville for being designated Outstanding Black Freshman at The University of Texas at Austin by the Delta Xi Chapter of Alpha Kappa Alpha Sorority, Incorporated.

S.R. 656 - By Rosson: Extending best wishes to the El Paso LULAC chapters for a joyous "Cinco de Mayo" celebration.

S.R. 657 - By Rosson: Extending best wishes to the Lions International for a joyous "Cinco de Mayo" celebration.

S.R. 658 - By Rosson: Extending best wishes to Freddy's Cafe for a joyous "Cinco de Mayo" celebration.

ADJOURNMENT

On motion of Senator Brooks, the Senate at 12:21 p.m. adjourned, in memory of former United States Senator John G. Tower, Marian Goodwin Tower, Captain Thomas Clifford Bland, Jr., and Judge Marvin O. Teague of the Texas Court of Criminal Appeals, until 11:00 a.m. Monday, May 6, 1991.