

# SENATE JOURNAL

EIGHTIETH LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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**FIFTY-SIXTH DAY**  
(Monday, May 7, 2007)

The Senate met at 1:42 p.m. pursuant to adjournment and was called to order by Dean Whitmire.

The roll was called and the following Senators were present: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

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

Senator Eddie Lucio, Jr., offered the invocation as follows:

Our dear heavenly Father, we bow our heads today to thank You for the opportunity to serve our fellow man in our elected capacities. Please heal the suffering of those who have lost loved ones, homes, and businesses to the storms that have plagued our country recently. At this time we invoke Your guidance for the work we perform here each day, and ask forgiveness when we err. Please bless our families, close personal friends, and districts while we toil in Austin. We also pray for those who are ill and in need of medical care, in particular, for those who suffer catastrophic illnesses. We ask this in humility and in the name of Thy savior, Jesus Christ. Amen.

Senator Wentworth moved that the reading of the Journal of the proceedings of Friday, May 4, 2007, be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

## **CO-AUTHORS OF SENATE BILL 49**

On motion of Senator Zaffirini, Senators Gallegos and Van de Putte will be shown as Co-authors of **SB 49**.

## **CO-AUTHOR OF SENATE BILL 1176**

On motion of Senator Ellis, Senator Van de Putte will be shown as Co-author of **SB 1176**.

## **PHYSICIAN OF THE DAY**

Senator Nelson was recognized and presented Dr. Dale Ragle of Dallas as the Physician of the Day.

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

## GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate National Honor Society members from Lyndon B. Johnson High School in Laredo, accompanied by their teachers and sponsors.

The Senate welcomed its guests.

### SENATE RULE 7.12(a) SUSPENDED (Printing of Bills)

On motion of Senator Brimer and by unanimous consent, Senate Rule 7.12(a) was suspended and the committee reports were ordered not printed for the following bills: **HB 2278**, **HB 2636**, **HB 3166**, **HB 3167**.

### SENATE RULE 11.13 SUSPENDED (Consideration of Bills in Committees)

On motion of Senator Brimer and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate was meeting today and will be meeting during the Local and Uncontested Calendar Session tomorrow.

## INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED

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

There was no objection.

### CONCLUSION OF MORNING CALL

The Presiding Officer at 1:54 p.m. announced the conclusion of morning call.

### SENATE BILL 1389 WITH HOUSE AMENDMENT

Senator Van de Putte called **SB 1389** from the President's table for consideration of the House amendment to the bill.

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

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

Amend **SB 1389** on third reading as follows:

(1) On page 4, line 17, after "actionable", insert the following:

"by a consumer"

(2) On page 4, line 17, after the period, insert the following:

"Claims related to more than one consumer may not be joined in a single action brought for an alleged violation of this subchapter, unless all parties agree."

(3) On page 4, line 20, insert the following:

"(n) A violation of this section is subject to an action by the office of the attorney general as provided by Section 17.46(a)."

The amendment was read.

Senator Van de Putte moved to concur in the House amendment to **SB 1389**.

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 971 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSSB 971** at this time on its second reading:

**CSSB 971**, Relating to swimming pool safety.

The motion prevailed.

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

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

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

Nays: Harris, Nelson, Nichols, Patrick.

**COMMITTEE SUBSTITUTE  
SENATE BILL 971 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 971** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Jackson, Janek, Lucio, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Harris, Nelson, Nichols, Patrick.

The bill was read third time and was passed by the following vote: Yeas 27, Nays 4. (Same as previous roll call)

**SENATE BILL 1701 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1701** at this time on its second reading:

**SB 1701**, Relating to the appointment of a successor guardian for certain wards adjudicated as totally incapacitated.

The bill was read second time.

Senator Harris offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **SB 1701** (committee printing) as follows:

(1) In amended Subsection (d), Section 161.101, Human Resources Code (page 1, line 16), strike "Section 695" and substitute "Section 695(c)".

(2) In added Subsection (f), Section 161.101, Human Resources Code (page 1, line 21), strike "agree to".

(3) Strike SECTION 2 of the bill (page 1, lines 24 through 34) and substitute:

SECTION 2. Section 695, Texas Probate Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) The court may appoint the Department of Aging and Disability Services as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if:

(1) there is no less restrictive alternative to continuation of the guardianship;

(2) there is no family member or other suitable person, including a guardianship program, willing and able to serve as the ward's successor guardian;

(3) the ward is located more than 100 miles from the court that created the guardianship;

(4) the ward has private assets or access to government benefits to pay for the needs of the ward;

(5) the department is served with citation and a hearing is held regarding the department's appointment as proposed successor guardian; and

(6) the appointment of the department does not violate a limitation imposed by Subsection (d) of this section.

(d) The number of appointments under Subsection (c) of this section is subject to an annual limit of 55. The appointments must be distributed equally or as near as equally as possible among the health and human services regions of this state as established under Section 531.024, Government Code. The Department of Aging and Disability Services at its discretion may establish a different distribution scheme to promote the efficient use and administration of resources.

(e) If the Department of Aging and Disability Services is named as a proposed successor guardian in an application in which the department is not the applicant, citation must be issued and served on the department as provided by Section 633(c)(5) of this code.

The amendment to **SB 1701** was read and was adopted by a viva voce vote.

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

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

**SB 1701** as amended was passed to engrossment by a viva voce vote.

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

### **SENATE BILL 1701 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1701** be placed on its third reading and final passage.

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

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

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

May 7, 2007

The Honorable President of the Senate  
Senate Chamber  
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

**HB 343**, Relating to notification of voter registrar by probate court clerk of recent deaths.

**HB 432**, Relating to the prosecution of the offense of the sale of prison-produced articles or products.

**HB 497**, Relating to resolution of disputes arising under certain construction contracts.

**HB 945**, Relating to the dates on which certain independent school districts may hold an election of trustees.

**HB 1034**, Relating to the pledge of allegiance to the state flag.

**HB 1082**, Relating to a pilot program to require reporting of methicillin-resistant *Staphylococcus aureus*.

**HB 1146**, Relating to the authority of small cities to conduct elections only by mail.

**HB 1238**, Relating to the operation of a student health center at an institution of higher education.

**HB 1241**, Relating to the duty of the security department of a private business to maintain criminal history record information for security department employees.

**HB 1314**, Relating to the regulation of water and sewer utility systems in certain counties; providing a civil penalty.

**HB 1412**, Relating to the regional emergency medical dispatch resource centers program.

**HB 1617**, Relating to the qualifications for appointment to the board of directors of certain economic development corporations.

**HB 1633**, Relating to the determination of eligibility for Medicaid for certain persons in the armed forces and their family members.

**HB 1659**, Relating to procedures in an eminent domain proceeding initiated by certain common carriers.

**HB 1742**, Relating to urban land bank demonstration programs.

- HB 1775**, Relating to authorizing the issuance of revenue bonds for the expansion of school of nursing facilities at Stephen F. Austin State University.
- HB 1847**, Relating to certain noninsurance benefits and related services for accident, health, life, and long-term care insurance.
- HB 1857**, Relating to the identification and regulation of land located in a future transportation corridor of a county.
- HB 1864**, Relating to periods of possession of a child under a standard possession order.
- HB 1903**, Relating to continuing educational requirements of a justice of the peace who is a licensed attorney.
- HB 1995**, Relating to the time in which to appeal a report by an associate judge in a suit affecting the parent-child relationship.
- HB 2015**, Relating to the reporting of claim information under certain group health plans; providing administrative penalties.
- HB 2042**, Relating to an electronic database of physicians, hospitals, and other health care providers participating in the state Medicaid program.
- HB 2077**, Relating to police officers eligible to be certified to enforce commercial motor vehicle safety standards.
- HB 2106**, Relating to the regulation of barbering and cosmetology.
- HB 2117**, Relating to the liability of certain persons who administer emergency care.
- HB 2118**, Relating to licensing and regulation of residential fire alarm technicians and regulation and installation of fire detection and alarm devices.
- HB 2271**, Relating to financing statements and other records under the secured transactions law.
- HB 2405**, Relating to paying the costs incurred by a state agency that is deployed by the governor to respond to a natural disaster or other emergency.
- HB 2444**, Relating to the powers of the Southmost Regional Water Authority.
- HB 2471**, Relating to the treatment and sale of certain bedding.
- HB 2479**, Relating to the estates of decedents.
- HB 2524**, Relating to the establishment of a pilot project to construct a public safety triage and detoxification unit and the provision of mental health and substance abuse treatment.
- HB 2541**, Relating to emergency response costs and certain other requirements concerning solid waste facilities, including recycling facilities.
- HB 2546**, Relating to the sale of ammonium nitrate; creating an offense.
- HB 2624**, Relating to certain functions and services performed in relation to accidents.

**HB 2654**, Relating to the regulation of the use of an injection well to inject nonhazardous brine from a desalination operation or to inject nonhazardous drinking water treatment residuals.

**HB 2664**, Relating to audits of certain public retirement system actuarial valuations, studies, and reports.

**HB 2703**, Relating to interference with the duties of a public health professional; providing a criminal penalty.

**HB 2754**, Relating to the regulation of state banks and state trust companies.

**HB 2783**, Relating to the regulation of certain persons involved in mortgage lending.

**HB 2786**, Relating to the preparation by the Legislative Budget Board of a dynamic fiscal impact statement for certain bills and joint resolutions affecting taxes and fees.

**HB 2834**, Relating to the use of land on the main campus of Texas A&M University in College Station.

**HB 3017**, Relating to the certification of water treatment specialists.

**HB 3066**, Relating to the use of political contributions to make payments in connection with the rental or purchase of certain real property; providing a criminal penalty.

**HB 3101**, Relating to a residential tenant's rights and remedies.

**HB 3106**, Relating to the implementation of enterprise resource planning by the comptroller.

**HB 3114**, Relating to student fees at component institutions of The Texas A&M University System.

**HB 3143**, Relating to electioneering near a polling place.

**HB 3194**, Relating to binding arbitration of certain appraisal review board orders.

**HB 3275**, Relating to the distribution of federal funds for highway projects.

**HB 3385**, Relating to the use of certain state money for costs related to the relocation to the city of Austin, Texas, of the Interstate Oil and Gas Compact Commission and for the support of that commission.

**HB 3438**, Relating to the powers and duties of the Rio Grande Regional Water Authority and the establishment of a member conference.

**HB 3453**, Relating to permissible inquiries by a public information officer of an educational institution to a requestor requesting information about a student under the public information law.

**HB 3518**, Relating to the extension of, addition to, or modification of existing restrictive covenants in certain residential subdivisions.

**HB 3558**, Relating to the issuance of warrants to certain persons for fire, health, and code inspections.

**HB 3560**, Relating to transferring to the comptroller the duties of the Texas Building and Procurement Commission that do not primarily concern state facilities.

**HB 3581**, Relating to county authority to abate nuisances.

**HB 3635**, Relating to procedures to limit the carrying of handguns by persons other than peace officers on certain premises used for law enforcement.

**HB 3674**, Relating to the operation of property owners' associations.

**HB 3711**, Relating to the repeal of obsolete statutes regulating railroads.

**HB 3747**, Relating to the use of money from the Texas rail relocation and improvement fund for rail projects.

**HB 3960**, Relating to the discontinuance of the Texas Commission on Environmental Quality's compliance history program.

**HB 4048**, Relating to the jurisdiction of a county court at law in Erath County.

**HB 4065**, Relating to the establishment by the Texas Workforce Commission of a pilot program to provide grants for the construction of certain facilities for job training and employment services.

**HB 4107**, Relating to the appointment and duties of criminal magistrates for certain courts in Nueces County.

**HCR 198**, Requesting the Texas Residential Construction Commission to work in cooperation with the San Antonio Housing Authority to create and implement an inspection and mediation plan relating to certain authority-built homes.

**HCR 213**, Honoring 104-year-old Myrtle Perry McDaniel of Menard.

THE HOUSE HAS CONCURRED IN SENATE AMENDMENTS TO THE FOLLOWING MEASURES:

**HB 85** (140 Yeas, 1 Nays, 2 Present, not voting)

**HB 121** (141 Yeas, 3 Nays, 2 Present, not voting)

**HB 823** (143 Yeas, 0 Nays, 2 Present, not voting)

**HB 1344** (142 Yeas, 0 Nays, 2 Present, not voting)

**HB 1505** (141 Yeas, 0 Nays, 3 Present, not voting)

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1270 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSHB 1270** at this time on its second reading:

**CSHB 1270**, Relating to an intensive reading and language intervention pilot program at certain public school campuses.

The motion prevailed.

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



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

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

Nays: Harris.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1270 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CShB 1270** be placed on its third reading and final passage.

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

Nays: Harris.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 1802 ON SECOND READING**

On motion of Senator Uresti and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1802** at this time on its second reading:

**CSSB 1802**, Relating to providing certain computerized instructional material for blind and visually impaired students and students with dyslexia who are enrolled at public institutions of higher education.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1802 ON THIRD READING**

Senator Uresti moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1802** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 78 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 78** at this time on its second reading:

**CSSB 78**, Relating to the creation of the offense of continuous sexual abuse of a child, the prosecution and punishment of that offense, and the consequences of a conviction for that offense.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 78 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 78** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 2031 ON SECOND READING**

Senator Ogden moved to suspend the regular order of business to take up for consideration **CSSB 2031** at this time on its second reading:

**CSSB 2031**, Relating to requiring legislative consent or approval of the settlement or compromise of a claim or action against the state that will involve state expenditures exceeding a certain amount.

The motion prevailed.

Senators Ellis, Shapleigh, and Watson asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 2031** as follows:

In SECTION 1 of the bill, insert new subsection (d) of Sec. 111.001, Civil Practice and Remedies Code (page 1, line 30), to read as follows:

(d) This chapter does not apply to a refund of a tax, fee, or any related penalty or interest.

The amendment to **CSSB 2031** was read and was adopted by a viva voce vote.

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

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSSB 2031** in SECTION 1 of the bill, in added Section 111.001(b), Civil Practice and Remedies Code (page 1, line 22, Senate committee printing), between "to any settlement" and "of a claim" by inserting "described by Section 111.003(a)".

The amendment to **CSSB 2031** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSSB 2031** by adding the following to the end of SECTION 1 of the bill (page 2, between lines 2 and 3, Senate committee printing):

Sec. 111.006. REPORT BY ATTORNEY GENERAL. Not later than September 1 of each even-numbered year, the attorney general shall send to the lieutenant governor, speaker of the house of representatives, and each member of the Senate Finance Committee and the House Appropriations Committee a report describing each claim or action pending as of September 1 of that year that has been or that in the opinion of the attorney general may be settled in a manner that will require prior consent or subsequent approval by the legislature under this chapter.

The amendment to **CSSB 2031** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 3.

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

**CSSB 2031** as amended was passed to engrossment by the following vote: Yeas 28, Nays 3.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Ellis, Shapleigh, Watson.

**COMMITTEE SUBSTITUTE  
SENATE BILL 2031 ON THIRD READING**

Senator Ogden moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 2031** be placed on its third reading and final passage.

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

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Ellis, Shapleigh, Watson.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3. (Same as previous roll call)

**COMMITTEE SUBSTITUTE**  
**SENATE BILL 623 ON SECOND READING**

On motion of Senator Janek and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 623** at this time on its second reading:

**CSSB 623**, Relating to the regulation of funeral homes, cemeteries, and crematories.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 623** by inserting the following appropriately numbered SECTION and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_. Section 716.101, Health and Safety Code, is amended to read as follows:

Sec. 716.101. UNIDENTIFIED HUMAN REMAINS. (a) Except as provided by Subsection (b), a [A] crematory establishment may not accept for cremation unidentified human remains.

(b) Notwithstanding any other provision of this chapter, a crematory establishment may accept for cremation unidentified human remains from a county on the order of:

- (1) the county commissioners court; or
- (2) a court located in the county.

The amendment to **CSSB 623** was read and was adopted by a viva voce vote.

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

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

**CSSB 623** as amended was passed to engrossment by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 623 ON THIRD READING**

Senator Janek moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 623** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1613 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1613** at this time on its second reading:

**CSSB 1613**, Relating to the liability and indemnification of directors of soil and water conservation districts.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1613 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1613** be placed on its third reading and final passage.

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

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

**SENATE BILL 1428 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1428** at this time on its second reading:

**SB 1428**, Relating to the arrest and commitment of certain individuals arrested under a warrant issued because of a violation of the conditions of parole.

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

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

**SENATE BILL 1428 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1428** be placed on its third reading and final passage.

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

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

### SENATE BILL 1209 WITH HOUSE AMENDMENT

Senator Carona called **SB 1209** from the President's table for consideration of the House amendment to the bill.

The Presiding Officer, Senator Whitmire in Chair, laid the bill and the House amendment before the Senate.

#### Amendment

Amend **SB 1209** by substituting in lieu thereof the following:

#### A BILL TO BE ENTITLED AN ACT

relating to the relocation of utility facilities required by improvement of a state highway.

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

SECTION 1. Sections 203.092(a-1), (a-2), and (a-3), Transportation Code, are amended to read as follows:

(a-1) Notwithstanding Subsection (a)(3) [~~(a)~~], the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2013 [~~2007~~], and required by the improvement of a nontolled highway to add one or more tolled lanes. This subsection expires September 1, 2013 [~~2007~~].

(a-2) Notwithstanding Subsection (a)(3) [~~(a)~~], the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2013 [~~2007~~], and required by ~~for~~ the improvement of a nontolled highway that has been converted to a turnpike project or toll project. This subsection expires September 1, 2013 [~~2007~~].

(a-3) Notwithstanding Subsection (a)(3) [~~(a)~~], the department and the utility shall share equally the cost of the relocation of a utility facility that is made before September 1, 2013 [~~2007~~], and required by ~~for~~ the construction on a new location of a turnpike project or toll project or the expansion of such a turnpike project or toll project. This subsection expires September 1, 2013 [~~2007~~].

SECTION 2. Subchapter E, Chapter 203, Transportation Code, is amended by adding Section 203.0922 to read as follows:

Sec. 203.0922. PREPAYMENT FUNDING AGREEMENT FOR RELOCATION OF UTILITY FACILITIES. (a) On the request of a utility, the commission shall by rule authorize the department to enter into a prepayment funding agreement with the utility to reimburse the utility for the direct and related indirect costs of the relocation of a utility facility that is required by the improvement of a segment of the state highway system, including a turnpike project or toll project, for which the utility is not eligible for reimbursement under Section 203.092. The agreement must:

(1) require the utility to prepay to the department an annual amount as provided by Subsection (b) or (c);

(2) be for a term:

(A) that is a multiple of three years; and

(B) of at least six years;

(3) set forth a methodology for the utility to submit, document, and substantiate reimbursable costs under the agreement; and

(4) set forth a methodology for the department to reimburse the utility its reimbursable costs under the agreement in a timely manner.

(b) The annual prepayment amount for each year of the initial three-year period of a prepayment funding agreement is equal to 75 percent of the annual average of the direct and related indirect costs incurred for relocation of the utility's facilities on applicable segments of the state highway system during the preceding three years for which the utility is not otherwise eligible for reimbursement under Section 203.092.

(c) The annual prepayment amount for each year of a subsequent three-year period of a prepayment funding agreement is equal to 75 percent of the annual average of the direct and related indirect costs paid by the department or reimbursed to the utility under the agreement for relocation of the utility's facilities on applicable segments of the state highway system during the preceding three years for which the utility is not otherwise eligible for reimbursement under Section 203.092.

(d) The department may not establish a prepayment amount that unreasonably discriminates among utilities.

(e) If a change in law causes all or a part of the cost of the relocation of a utility facility that was eligible for reimbursement under Section 203.092(a)(1) at the time a prepayment funding agreement was entered into under this section to cease to be eligible for reimbursement, that amount, beginning on the effective date of the applicable change in law, is considered to be a cost that is not otherwise eligible for reimbursement under Section 203.092 for purposes of the prepayment funding agreement.

(f) Notwithstanding any law to the contrary, an obligation of the commission or the department to make a payment to a utility under a prepayment funding agreement entered into under this section may be enforced by mandamus against the commission, the department, and the comptroller in a district court of Travis County, and the sovereign immunity of the state is waived for that purpose. The district courts of Travis County have exclusive jurisdiction and venue over any action brought under this subsection. The remedy provided by this subsection is in addition to any legal and equitable remedies that may be available to a party to a prepayment funding agreement.

(g) This section or a contractual right obtained under an agreement under this section does not:

(1) make the department or a utility subject to new or additional licensing, certification, or regulatory jurisdiction of the Public Utility Commission of Texas, Texas Department of Insurance, or Railroad Commission of Texas; or

(2) supersede or otherwise affect a provision of another law applicable to the department or a utility regarding licensing, certification, or regulatory jurisdiction of an agency listed in Subdivision (1).

(h) A payment received by the department under this section must be deposited to the credit of the state highway fund and is exempt from the application of Subchapter D, Chapter 316, Government Code, and Section 403.095, Government Code.

(i) The commission shall appoint a rules advisory committee to advise the department and the commission on development of the commission's rules, including initial rules and additions or changes to the rules, required by this section. The committee shall consist solely of members representing interested utilities. Chapter 2110, Government Code, does not apply to the committee.

(j) An agreement entered into by the department and a utility under this section remains in force until its termination or expiration.

(k) This section expires September 1, 2013.

SECTION 3. This Act takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2007.

The amendment was read.

Senator Carona moved to concur in the House amendment to **SB 1209**.

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

**(President in Chair)**

### **SENATE BILL 1847 ON SECOND READING**

Senator Duncan moved to suspend the regular order of business to take up for consideration **SB 1847** at this time on its second reading:

**SB 1847**, Relating to Employees Retirement System of Texas collection of member contributions.

The motion prevailed.

Senators Ellis, Hinojosa, Shapleigh, Watson, and Zaffirini asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

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

Nays: Ellis, Hinojosa, Shapleigh, Watson, Zaffirini.

### **SENATE BILL 1847 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1847** be placed on its third reading and final passage.

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



Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Uresti, Van de Putte, Wentworth, West, Whitmire, Williams.

Nays: Ellis, Hinojosa, Shapleigh, Watson, Zaffirini.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5. (Same as previous roll call)

### **HOUSE BILL 923 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **HB 923** at this time on its second reading:

**HB 923**, Relating to the persons to whom an assessor for a taxing unit is required to mail an ad valorem tax bill.

The motion prevailed.

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

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

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

Nays: Harris.

### **HOUSE BILL 923 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **HB 923** be placed on its third reading and final passage.

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

Nays: Harris.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1. (Same as previous roll call)

### **BILLS AND RESOLUTIONS SIGNED**

The President announced the signing of the following enrolled bills and resolutions in the presence of the Senate after the captions had been read:

**SB 123, SB 1041, SB 1077, SB 1089, SB 1236, SB 1447, SB 1500, SB 1694, SB 1752, SB 1832, SCR 51, SCR 52, SCR 54, HB 310, HB 314, HB 320, HB 407, HB 570, HB 709, HB 733, HB 863, HB 886, HB 973, HB 1003, HB 1006, HB 1059, HB 1164, HB 1237, HB 1295, HB 1390, HB 2007, HB 2024, HCR 195.**

**NOTICE GIVEN FOR  
LOCAL AND UNCONTESTED CALENDAR**

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

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Whitmire and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Criminal Justice might meet and consider the following bills tomorrow:

**SB 1563, HB 1303, HB 963.**

**MOTION TO RECESS AND ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 3:33 p.m. agreed to recess, upon completion of the introduction of bills and resolutions on first reading, until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

The Senate further agreed to adjourn, upon conclusion of the Local and Uncontested Calendar Session, until 11:00 a.m. tomorrow.

**SENATE BILLS AND RESOLUTIONS ON FIRST READING**

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

**SB 2050** by Ellis

Relating to territory included in, and the validation of acts of, the Greater Southeast Management District.

To Committee on Intergovernmental Relations.

**SB 2051** by Ogden

Relating to authorizing the Texas Transportation Commission, subject to legislative review and approval, to designate an area adjacent to a state highway project as a transportation finance zone and requiring that the revenue from the state sales and use taxes imposed in a transportation finance zone be used to pay obligations issued in connection with the state highway project located in the zone.

To Committee on Transportation and Homeland Security.

**SB 2052** by Brimer

Relating to the creation of the Northern Trinity Groundwater Conservation District.

To Committee on Natural Resources.

**SJR 67** by Ogden

Proposing a constitutional amendment authorizing the legislature to permit the Texas Transportation Commission, subject to legislative review and approval, to designate the area adjacent to a state highway project as a transportation finance zone and dedicating the proceeds of the state sales and use taxes imposed in a transportation finance zone to the Texas Mobility Fund for certain purposes.

To Committee on Transportation and Homeland Security.

**SR 941** by Patrick

Recognizing May 1, 2007, as Cold War Victory Day.

To Committee on Veteran Affairs and Military Installations.

**SR 944** by Shapleigh

Requesting the Supreme Court of Texas to rule on the pending mandamus appeal filed by Allied Chemical Corporation, et al.

To Committee on State Affairs.

**HOUSE BILLS ON FIRST READING**

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

**HB 4** to Committee on Natural Resources.

**HB 42** to Committee on Government Organization.

**HB 149** to Committee on Natural Resources.

**HB 182** to Committee on Intergovernmental Relations.

**HB 434** to Committee on Criminal Justice.

**HB 472** to Committee on State Affairs.

**HB 556** to Committee on Natural Resources.

**HB 606** to Committee on Education.

**HB 616** to Committee on Transportation and Homeland Security.

**HB 626** to Committee on State Affairs.

**HB 643** to Committee on Health and Human Services.

**HB 693** to Committee on Transportation and Homeland Security.

**HB 922** to Committee on Criminal Justice.

**HB 1031** to Committee on State Affairs.

**HB 1158** to Committee on Criminal Justice.

**HB 1207** to Committee on Finance.

**HB 1352** to Committee on Jurisprudence.

**HB 1498** to Committee on Natural Resources.

**HB 1567** to Committee on Business and Commerce.

**HB 1585** to Committee on Health and Human Services.

**HB 1587** to Committee on State Affairs.

**HB 1656** to Committee on Natural Resources.

**HB 1733** to Committee on Finance.

**HB 1759** to Committee on Health and Human Services.

**HB 1944** to Committee on Criminal Justice.

**HB 2060** to Committee on Business and Commerce.

**HB 2095** to Committee on Intergovernmental Relations.

**HB 2128** to Subcommittee on Higher Education.  
**HB 2171** to Committee on Education.  
**HB 2173** to Committee on Government Organization.  
**HB 2195** to Committee on State Affairs.  
**HB 2222** to Subcommittee on Agriculture, Rural Affairs, and Coastal Resources.  
**HB 2346** to Subcommittee on Agriculture, Rural Affairs, and Coastal Resources.  
**HB 2371** to Subcommittee on Higher Education.  
**HB 2455** to Committee on Education.  
**HB 2585** to Subcommittee on Agriculture, Rural Affairs, and Coastal Resources.  
**HB 2591** to Committee on Intergovernmental Relations.  
**HB 2621** to Committee on Government Organization.  
**HB 2623** to Committee on Business and Commerce.  
**HB 2625** to Committee on Business and Commerce.  
**HB 2639** to Subcommittee on Higher Education.  
**HB 2714** to Committee on Natural Resources.  
**HB 2718** to Committee on State Affairs.  
**HB 2820** to Committee on Business and Commerce.  
**HB 2895** to Committee on Veteran Affairs and Military Installations.  
**HB 2896** to Committee on Veteran Affairs and Military Installations.  
**HB 2897** to Committee on Veteran Affairs and Military Installations.  
**HB 2945** to Committee on Transportation and Homeland Security.  
**HB 3129** to Committee on Jurisprudence.  
**HB 3131** to Committee on Criminal Justice.  
**HB 3210** to Committee on Criminal Justice.  
**HB 3211** to Committee on Criminal Justice.  
**HB 3273** to Committee on Natural Resources.  
**HB 3449** to Subcommittee on Higher Education.  
**HB 3460** to Committee on Jurisprudence.  
**HB 3493** to Committee on Finance.  
**HB 3494** to Committee on Finance.  
**HB 3514** to Committee on Finance.  
**HB 3601** to Committee on Transportation and Homeland Security.  
**HB 3630** to Committee on Finance.  
**HB 3725** to Committee on Education.  
**HB 3731** to Committee on Intergovernmental Relations.  
**HB 3768** to Committee on Intergovernmental Relations.  
**HB 3827** to Committee on State Affairs.  
**HB 3879** to Subcommittee on Base Realignment and Closure.  
**HB 3928** to Committee on Finance.  
**HB 3955** to Committee on Transportation and Homeland Security.  
**HB 3992** to Committee on Jurisprudence.  
**HB 3993** to Committee on Jurisprudence.  
**HB 4007** to Committee on Jurisprudence.  
**HB 4037** to Committee on Jurisprudence.  
**HB 4045** to Committee on Intergovernmental Relations.

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Memorial Resolutions**

**SR 975** by Uresti, In memory of Jack L. Richardson of Del Rio.

**SR 981** by Shapiro, In memory of Carl Benjamin "Catfish" Montgomery of Carrollton.

**Congratulatory Resolutions**

**SCR 71** by Uresti, Commending the farmers of Medina and Uvalde counties in the Edwards Aquifer region for their water conservation efforts.

**SR 976** by Watson, Recognizing the American Civil Liberties Union of Texas on the occasion of its 70th anniversary.

**SR 977** by Lucio, Congratulating Fred W. Rusteberg for receiving the 2007 Timeless Values Leadership Award from the Rio Grande Council of the Boy Scouts of America.

**SR 980** by Shapiro, Congratulating the recipients of the Volunteer Center of North Texas' Collin County volunteerism awards.

**RECESS**

Pursuant to a previously adopted motion, the Senate at 3:41 p.m. recessed until 8:00 a.m. tomorrow.

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**APPENDIX**

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**COMMITTEE REPORTS**

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

May 7, 2007

JURISPRUDENCE — **CSHB 417, HB 930** (Amended)

CRIMINAL JUSTICE — **CSSB 1285, CSSB 1593, CSHB 126, CSHB 495, CSHB 914**

STATE AFFAIRS — **CSHB 1594, CSSB 1143, CSSB 568, CSHB 2468**

INTERGOVERNMENTAL RELATIONS — **HB 280, HB 1210, HB 1694, HB 1784, HB 2514, SB 1972, SB 2010**

**SIGNED BY GOVERNOR**May 4, 2007**SB 192, SB 213, SB 229, SB 325, SB 339, SB 343, SB 362, SB 369, SB 456, SB 507, SB 657, SB 679, SB 740, SB 844, SCR 50****SENT TO SECRETARY OF STATE**May 7, 2007**SCR 52****SENT TO GOVERNOR**May 7, 2007**SB 44, SB 123, SB 370, SB 671, SB 699, SB 1041, SB 1077, SB 1089, SB 1106, SB 1236, SB 1447, SB 1470, SB 1500, SB 1694, SB 1752, SB 1832, SCR 51, SCR 54**