

FORTY-SEVENTH DAY

TUESDAY, APRIL 8, 2003

PROCEEDINGS

The Senate met at 11:00 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Bivins, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Ratliff, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

The President announced that a quorum of the Senate was present.

The Reverend Dr. Daniel T. Hannon, Christ Church United Methodist, The Woodlands, offered the invocation as follows:

Into Your presence, gracious God, we now stand united as citizens of this great state and noble land. Into Your presence we now stand, mindful of the gift of freedom bestowed upon us as an inheritance by those Texans who have preceded us, which is now ensured by those Texans who would protect us. So we pray for our President George W. Bush and our military men and women standing in harm's way; guard, guide, and defend them. Into Your presence we now stand. Instill in us the passion to do right as You give the right, to seek justice as You give justice, to show mercy as You give mercy. Into Your presence we now stand, seeking divine guidance so to pass on that which we have received. These things we pray in Your gracious and divine name. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 83

On motion of Senator Wentworth, Senator Lucio will be shown as Co-author of **SB 83**.

CO-AUTHOR OF SENATE BILL 251

On motion of Senator Lucio, Senator West will be shown as Co-author of **SB 251**.

CO-AUTHOR OF SENATE BILL 319

On motion of Senator Armbrister, Senator Janek will be shown as Co-author of **SB 319**.

CO-AUTHOR OF SENATE BILL 611

On motion of Senator Nelson, Senator Ellis will be shown as Co-author of **SB 611**.

CO-AUTHOR OF SENATE BILL 835

On motion of Senator Williams, Senator Janek will be shown as Co-author of **SB 835**.

CO-AUTHOR OF SENATE BILL 938

On motion of Senator Barrientos, Senator Van de Putte will be shown as Co-author of **SB 938**.

REPORT OF COMMITTEE ON NOMINATIONS

Senator Lindsay submitted the following report from 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 a recommendation that they be confirmed:

Members, Commission on Human Rights: Thomas M. Anderson, Fort Bend County; Tivy Whitlock, Bexar County; Nila T. Wipf, Cameron County.

Member, Texas Lottery Commission: James A. Cox, Jr., Travis County.

Members, The Texas A&M University System Board of Regents: Erle Allen Nye, Dallas County; John David White, Harris County.

President, Texas Board of Chiropractic Examiners: Sandra Lee Jensen, D.C., Dallas County.

Members, Texas Board of Chiropractic Examiners: Marcia Olivia Daughtrey, Smith County; Paul Hinton Dickerson, J.D., C.P.A., Brazoria County; David Alan Sime, El Paso County.

Members, Commission on Jail Standards: Gonzalo R. Gallegos, Bexar County; David Gutierrez, Lubbock County; Horace Theodore Montgomery, Moore County; Michael M. Seale, M.D., Harris County.

Members, Office of Rural Community Affairs Executive Committee: Wallace G. Klussmann, Llano County; Lydia Rangel Saenz, Dimmit County; Michael Cooper Waters, Taylor County.

Members, Texas Commission on Alcohol and Drug Abuse: Beverly Barron, Ector County; John F. Longoria, Nueces County.

Presiding Officer, Texas Commission for the Blind: C. Robert Keeney, Jr., Harris County.

Members, Texas Commission for the Blind: Lars Andreas Anderson, Denton County; Ann Elizabeth Lemke, Ph.D., El Paso County; Charles A. Siburt, Taylor County.

Members, Texas School Safety Center Board of Directors: James Richard Pendell, El Paso County; Janace Pope Ponder, Potter County; Lucy Rubio, Nueces County; Severita Sanchez, Webb County; Cheryl Lee Shannon, Dallas County.

NOTICE OF CONSIDERATION OF NOMINATIONS

Senator Lindsay gave notice that he would tomorrow at the conclusion of morning call submit to the Senate for consideration nominations to agencies, boards, and commissions of the state.

SENATE RESOLUTION 562

Senator Lucio offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to welcome the Texas Association of Fairs and Events delegation to Austin for the Official Texas Fair and Event Day at the Capitol; and

WHEREAS, The Texas Association of Fairs and Events has been serving the fair and special events industry in Texas for over 77 years and is celebrating this year with an Official Fair and Event Day at the Capitol on Tuesday, April 8; and

WHEREAS, For more than 100 years, fairs have annually showcased Texas' finest agricultural products and technology and have provided entertainment and educational and recreational opportunities; and

WHEREAS, Fairs are held throughout Texas each year to advance and promote the education of Texas youths and to affirm life values; they help to develop responsible and informed citizens, particularly those in 4-H, FFA, and FHA, by providing healthy competition through an unparalleled forum of exhibits in arts, livestock, horticulture, and agriculture; and

WHEREAS, Fairs in Texas contribute millions of dollars annually to Texas youths through scholarships, premiums, and auction proceeds; and

WHEREAS, There are also over 200 events held in Texas that promote and develop the tourist industry and commerce and provide the public with an environment rich in entertainment choices, educational opportunities, and recreational pursuits; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby welcome and extend best wishes to the members of the Texas Association of Fairs and Events delegation, and, be it further

RESOLVED, that a copy of this Resolution be prepared for the Texas Association of Fairs and Events delegation as a memento of this special occasion.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate members of the Texas Association of Fairs and Events: Jim Beale, President; Louis Katz, First Vice-president; James Bricker, Second Vice-president; and Errol McKoy, Director; accompanied by other members of the Texas Association of Fairs and Events.

The Senate welcomed its guests.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

April 8, 2003

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 220, Relating to the confidentiality of certain records maintained by the Department of Public Safety regarding persons licensed to carry a concealed handgun.

HB 245, Relating to the disposition by counties of motor vehicle registration fees and sales tax revenue.

HB 623, Relating to the regulation of motor vehicle title services.

HB 829, Relating to jurisdiction to enter certain orders in a failure to attend school proceeding.

HB 1189, Relating to alternative dispute resolution procedures in certain police departments.

HB 1350, Relating to an evaluation of public funding for children's mental health services.

HB 1535, Relating to the use of certain fees by groundwater conservation districts.

HB 1849, Relating to the revocation process for certain persons released from the Texas Department of Criminal Justice on parole or mandatory supervision.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

PHYSICIAN OF THE DAY

Senator Duncan was recognized and presented Dr. Jess Paxton of Lubbock as the Physician of the Day.

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

SENATE RESOLUTION 591

Senator Ratliff offered the following resolution:

SR 591, In memory of George Eastland Christian, Jr., of Austin.

The resolution was read.

Senator Ratliff was recognized and introduced to the Senate family members of George Eastland Christian, Jr.: his widow, Jo Anne; his son, John, and wife, Adina Harrell; his son, Brian, and wife, Erin Barrett; his son, George Scott, and wife, Betsy; and his grandchildren, Adam, Regan, Kathryn, Leah, and Sarah.

The Senate welcomed its guests and extended its sympathy.

On motion of Senator Ratliff, the resolution was adopted by a rising vote of the Senate.

In honor of the memory of George Eastland Christian, Jr., of Austin, the text of **SR 591** is printed at the end of today's *Senate Journal*.

AT EASE

The President at 11:31 a.m. announced the Senate would stand At Ease pending the departure of its guests.

IN LEGISLATIVE SESSION

The President at 11:38 a.m. called the Senate to order as In Legislative Session.

GUESTS PRESENTED

Senator Estes was recognized and introduced to the Senate a delegation of citizens from the City of Wichita Falls.

The Senate welcomed its guests.

SENATE RESOLUTION 343

Senator Staples offered the following resolution:

WHEREAS, Throughout its history the State of Texas has maintained a commitment to the principle of protecting private property rights, and since its creation in 1920, the Texas Association of REALTORS® and its members have supported this vital principle; and

WHEREAS, Each day, REALTORS® provide valuable professional services that enable their fellow Texans to buy, sell, lease, develop, and manage real estate in a knowledgeable and confident manner, while helping to preserve the free enterprise system and the right to own real property; and

WHEREAS, Over the years, Texas REALTORS® have worked diligently within the regulatory process to promote and raise their business practices, and the term "REALTOR®" has come to stand for competence, fairness, and integrity; and

WHEREAS, The more than 60,000 members of the Texas Association of REALTORS® have consistently supported responsible government as well as the entrepreneurial spirit that is the backbone of our state's economy; and

WHEREAS, This exemplary organization promotes professional development, research, and the exchange of information among its members, consumers, and government, and its members are indeed worthy of special recognition at this time; now, therefore, be it

RESOLVED, That the Senate of the 78th Texas Legislature hereby recognize April 8, 2003, as REALTOR® Appreciation Day at the State Capitol and extend a warm welcome to members of the Texas Association of REALTORS® on the occasion of their visit to the State Capitol; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the Texas Association of REALTORS® as an expression of high regard by the Texas Senate.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Staples was recognized and introduced to the Senate representatives of the Texas Association of Realtors: Benny McMahan, Executive Vice-president; George Stephens, Chair; Dave Dalzell, Chair-elect; Lance Lacey, Secretary/Treasurer; and Mary Frances Burluson, past Chair; accompanied by a delegation of members.

The Senate welcomed its guests.

SENATE RESOLUTION 520

Senator West offered the following resolution:

WHEREAS, The Duncanville High School girls' basketball team has again reached the pinnacle of success by winning the 2003 University Interscholastic League Class 5A state championship, the school's sixth title in its storied hardwood history; and

WHEREAS, Carrying the Number One Class 5A ranking into the state championship game with Georgetown High School, this remarkable Duncanville team fulfilled its lofty expectations, employing a stifling defense to overwhelm its opponent 47-27 and reclaim the coveted crown; and

WHEREAS, Duncanville's return to state dominance was a result of total dedication to the team concept by players Tammy Bartosh, April O'Neal, Jamie Barr, Jamira Armstrong, LaJeanna Howard, Rochelle Vance, Chastity McGary, Tiffany Jackson, Destanie Sykes, Ceren Unal, Morgan Williams, Mariana Mergerson, Courtney Cunningham, Jessica Henderson, and Jessica Stephenson; and

WHEREAS, Head Coach Cathy Self-Morgan provided her young charges with inspired leadership and guidance, and she was ably supported in her efforts by assistant coaches Elesha Walker, Jennifer Polk, and Bretagne Galbreath; and

WHEREAS, The team's exceptional student-athletes, with their coaches and staff, are a source of great pride to all those associated with Duncanville High School, and it is truly appropriate that the team receive special legislative recognition at this time; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby congratulate the members of the Duncanville High School girls' basketball team on winning the 2003 Class 5A state championship title and extend to them sincere best wishes for continued success; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the team members and coaching staff as an expression of high regard from the Texas Senate.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator West was recognized and introduced to the Senate the 2003 University Interscholastic League Class 5A girls basketball champions, the Lady Panthers of Duncanville High School in Duncanville, accompanied by their coaches.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Gallegos, joined by Senator Janek, was recognized and introduced to the Senate Lauren Carrion, Michael Gartrell, Molly Ehni, and Jarrod Lopez, seventh-grade students from Saint Vincent de Paul Catholic School in Houston, accompanied by their history teacher, Jan Berry, and other students.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Ratliff was recognized and introduced to the Senate a delegation of citizens from Wood County.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Barrientos was recognized and introduced to the Senate German exchange students from Gymnasium Oberhaching, accompanied by their teacher, Babette Rupp, and sponsor, Ludwid Pichler.

The Senate welcomed its guests.

SENATE RESOLUTION 275

Senator Staples offered the following resolution:

WHEREAS, On April 8, 2003, many fine Texans have traveled to Austin to celebrate Montgomery County Day at the State Capitol, and it is a pleasure to welcome them at this time; and

WHEREAS, Created from part of Washington County in 1837, Montgomery County was officially designated the Birthplace of the Lone Star Flag by the Texas Legislature in 1997; early county resident Dr. Charles Bellinger Tate Stewart was a

signer of the Texas Declaration of Independence, the first Texas secretary of state, a Montgomery County delegate to the 1845 Constitutional Convention, and a designer of the Lone Star Flag; and

WHEREAS, Today, about 300,000 people make their home within the county's 1,000-plus square miles; while Montgomery County is situated within the Houston metropolitan area, it also has a rural setting that encourages residents to enjoy such treasures as the Sam Houston National Forest, W. G. Jones State Forest, Lake Houston State Park, Lake Conroe, and Lake Woodlands; in addition, the area offers numerous outdoor pursuits, including boating, fishing, hunting, hiking, and horseback riding; and

WHEREAS, Major contributors to the county's economy include lumber, oil production, research and biotech businesses, and government offices and services; the county seat of Conroe is a retail/wholesale center whose must-sees include the Crighton Theatre, a restored vaudeville playhouse, and the Heritage Museum of Montgomery County; the 13,000-person capacity Cynthia Woods Mitchell Pavilion in The Woodlands draws top-name entertainers, while the town of Montgomery lays claim to the N. H. Davis Pioneer Museum; and

WHEREAS, Rich in history, Montgomery County is committed to preserving its heritage for both residents and visitors alike; among the county's annual special events are the Montgomery Old West Festival in June, the Willis Birthday Blast in September, and the Conroe Cajun Catfish Festival in October; and

WHEREAS, Blessed with an abundance of natural resources and a forwarding-looking citizenry, Montgomery County is destined to continue on its path to success, saluting the past while anticipating a bright and promising future; now, therefore, be it

RESOLVED, That the Senate of the 78th Texas Legislature hereby recognize April 8, 2003, as Montgomery County Day at the State Capitol and extend to all involved warmest best wishes for an enjoyable and memorable visit.

STAPLES
WILLIAMS

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Staples, joined by Senator Williams, was recognized and introduced to the Senate representatives of Montgomery County: Nelda Blair, Chair, South Montgomery County Woodlands Chamber of Commerce; Jill Vaughn, Chair, Greater Conroe/Lake Conroe Area Chamber of Commerce; and David Whitaker, Chair, Economic Development Corporation of Magnolia; accompanied by a delegation of citizens from Montgomery County.

The Senate welcomed its guests.

SENATE RESOLUTION 482

Senator Ogden offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize the County and District Clerks' Association of Texas and to proclaim April 8, 2003, as County and District Clerks Day at the State Capitol; and

WHEREAS, The County and District Clerks' Association of Texas was established in 1893 to promote professional standards and to educate its members on their statutory and constitutional duties; currently, 441 individuals belong to the group; and

WHEREAS, County clerks provide support for the commissioners court and for the county courts at law in each county, and district clerks provide support for the district courts in each county; and

WHEREAS, County and district clerks serve as custodians of all court pleadings and papers that are part of any cause of action, civil or criminal, in the courts they serve; they also index and secure all court records, collect filing fees, and handle funds held in litigation and money awarded to minors; and

WHEREAS, In addition, county clerks act as the recorders and records managers for their county, work with the Bureau of Vital Statistics, and serve as election officials in most counties; district clerks oversee all aspects of a case from filing through ancillary proceedings following judgment and also receive and disburse court ordered child support; and

WHEREAS, The county and district clerks of Texas carry out their responsibilities with dedication and skill and with respect for the high standards established by the County and District Clerks' Association of Texas; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 78th Legislature, hereby commend county and district clerks for their invaluable service to our state and extend best wishes for the future to all who participate in County and District Clerks Day at the State Capitol; and, be it further

RESOLVED, That a copy of this Resolution be prepared as a memento of this occasion.

The resolution was read and was adopted without objection.

GUESTS PRESENTED

Senator Ogden was recognized and introduced to the Senate the Executive Board of the County and District Clerks' Association of Texas: Brazos County District Clerk Marc Hamlin, President; Angelina County Clerk JoAnn Chastain, Vice-president; Cass County District Clerk Becky Wilbanks, Treasurer; Washington County Clerk Beth Rothermel, Secretary; and Goliad County District Clerk Gail Turley, immediate past President; accompanied by a delegation of county and district clerks.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The President at 12:01 p.m. announced the conclusion of morning call.

**COMMITTEE SUBSTITUTE
SENATE BILL 16 ON THIRD READING**

The President laid before the Senate **CSSB 16** on its third reading. The bill had been read third time yesterday and consideration postponed:

CSSB 16, Relating to mentoring services programs for at-risk students in public schools.

Question — Shall **CSSB 16** be finally passed?

On motion of Senator Staples, **CSSB 16** was passed by a viva voce vote.

GUESTS PRESENTED

Senator Ellis was recognized and introduced to the Senate students from Ryan Middle School in Houston, accompanied by their teacher.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Staples was recognized and introduced to the Senate a group of students from Somerville High School in Somerville.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE
SENATE BILL 83 ON SECOND READING**

Senator Wentworth moved to suspend the regular order of business to take up for consideration **CSSB 83** at this time on its second reading:

CSSB 83, Relating to pledges of allegiance to the United States and Texas flags and to observance of one minute of silence in public schools.

The motion prevailed by a viva voce vote.

RECORD OF VOTE

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

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

RECORD OF VOTE

Senator Hinojosa asked to be recorded as voting "Nay" on the passage of **CSSB 83** to engrossment.

**COMMITTEE SUBSTITUTE
SENATE BILL 388 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSSB 388** at this time on its second reading:

CSSB 388, Relating to the use and management of certain state-owned real property.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Staples offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 388** Section 2206.003 by adding new subsection (4) as follows:

(4) This Section does not apply to a state park or historical site owned or operated by the state.

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

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

CSSB 388 as amended was passed to engrossment by a viva voce vote.

SENATE BILL 408 ON SECOND READING

Senator Deuell moved to suspend the regular order of business to take up for consideration **SB 408** at this time on its second reading:

SB 408, Relating to the punishment for the offense of terroristic threat.

The motion prevailed by a viva voce vote.

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

SENATE BILL 408 ON THIRD READING

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 408** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Averitt, Barrientos, Bivins, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams, Zaffirini.

Nays: Ratliff, Wentworth.

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

SENATE BILL 490 ON SECOND READING

Senator Shapleigh moved to suspend the regular order of business to take up for consideration **SB 490** at this time on its second reading:

SB 490, Relating to developing and coordinating certain agency services and activities involving mental health care for young children.

The motion prevailed by a viva voce vote.

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

SENATE BILL 490 ON THIRD READING

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 490** be placed on its third reading and final passage.

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

Yeas: Armbrister, Averitt, Barrientos, Bivins, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Lindsay, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams, Zaffirini.

Nays: Janek, Ratliff, Wentworth.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 1.

Nays: Janek.

(Senator Janek in Chair)

**COMMITTEE SUBSTITUTE
SENATE BILL 656 ON SECOND READING**

Senator Brimer moved to suspend the regular order of business to take up for consideration **CSSB 656** at this time on its second reading:

CSSB 656, Relating to the removal of certain on-premise signs in a municipality.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Brimer offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 656** in Section 1 of the bill as follows:

(1) In the introductory language (page 1, line 14, committee printing), strike "Subsection (e)" and substitute "Subsections (e) and (f)".

(2) Immediately following added Subsection 216.003(e), Local Government Code (page 1, between lines 28 and 29, committee printing), add a new Subsection (f) as follows:

(f) A municipality acting under Subsection (e) may agree with the owner of the sign or sign structure to remove only a portion of the sign or sign structure.

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

Senator Madla offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 656** in Section 1 of the bill in added Section 216.003(e), Local Government Code, after the end of the first sentence (page 1, line 26, Senate committee report) by inserting:

If the premises containing the sign or sign structure is leased, a municipality may not require removal under this subsection sooner than the second anniversary after the date the most recent tenant ceases to operate on the premises.

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

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

CSSB 656 as amended was passed to engrossment by a viva voce vote.

COMMITTEE SUBSTITUTE SENATE BILL 656 ON THIRD READING

Senator Brimer moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 656** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Averitt, Barrientos, Bivins, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams, Zaffirini.

Nays: Ratliff, Wentworth.

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

COMMITTEE SUBSTITUTE SENATE BILL 1090 ON SECOND READING

Senator Carona moved to suspend the regular order of business to take up for consideration **CSSB 1090** at this time on its second reading:

CSSB 1090, Relating to inspection, installation, repair, and maintenance of elevators, escalators, chairlifts, people movers, moving sidewalks, platform lifts, and related equipment; providing an administrative penalty.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 1090** (Senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter B, Chapter 754, Health and Safety Code, is amended to read as follows:

SUBCHAPTER B. INSPECTION, ~~AND~~ CERTIFICATION,
AND REGISTRATION

Sec. 754.011. DEFINITIONS. In this subchapter:

(1) "Acceptance inspection" means an inspection performed at the completion of the initial installation or alteration of equipment and in accordance with the applicable ASME Code A17.1.

(2) "Accident" means an event involving equipment that results in death or serious bodily injury to a person.

(3) "Alteration" means a change in or modernization of existing equipment. The term does not include maintenance, repair, replacement, or a cosmetic change that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable, at the time of alteration.

(4) "Annual inspection" means an inspection of equipment performed in a 12-month period in accordance with the applicable ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The term includes an acceptance inspection performed within that period.

(5) "ASCE Code 21" means the American Society of Civil Engineers Code 21 for people movers operated by cables.

(6) "ASME Code A17.1" means the American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.1.

(6-a) "Executive director" means the executive director of the department.

(7) [~~2~~] "ASME Code A17.3" means the 2002 American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.3.

(8) "ASME Code A18.1" means the American Society of Mechanical Engineers Safety Code for Platform Lifts and Stairway Chairlifts A18.1.

(9) [~~3~~] "Board" means the elevator advisory board.

(10) [~~4~~] "Commission" means the Texas Commission of Licensing and Regulation.

(11) [~~5~~] "Commissioner" means the commissioner of licensing and regulation.

(12) "Contractor" means a person engaged in the installation, repair, or maintenance of equipment. The term does not include an employee of a contractor or a person engaged in cleaning or any other work performed on equipment that does not affect the operational safety of the equipment or diminish the safety of the equipment below the level required by the ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, or ASCE Code 21, as applicable.

(13) [~~6~~] "Department" means the Texas Department of Licensing and Regulation.

(14) "Equipment" means an elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

(15) "Industrial facility" means a facility to which access is primarily limited to employees of the facility.

(16) ~~(7)~~ "Qualified historic building or facility" means a building or facility that is:

(A) listed in or eligible for listing in the National Register of Historic Places; or

(B) designated as a Recorded Texas Historic Landmark or State Archeological Landmark.

(17) ~~(8)~~ "Related equipment" means:

(A) automatic equipment that is used to move a person in a manner that is similar to that of an elevator, an ~~or~~ escalator, a chairlift, a platform lift, an automated people mover operated by cables, or ~~and includes~~ a moving sidewalk; and

(B) hoistways, pits, and machine rooms for equipment.

(18) "Serious bodily injury" means a major impairment to bodily function or serious dysfunction of any bodily organ or part requiring medical attention.

(19) "Unit of equipment" means one elevator, escalator, chairlift, platform lift, automated people mover operated by cables, or moving sidewalk, or related equipment.

Sec. 754.0111. EXEMPTION. (a) This subchapter does not apply to ~~an~~ elevator, escalator, or related equipment in a private building for a labor union, trade association, private club, or charitable organization that has two or fewer floors.

(b) This subchapter does not apply to an elevator located in a single-family dwelling, except as provided by Section 754.0141.

Sec. 754.012. ELEVATOR ADVISORY BOARD. (a) The elevator advisory board is composed of nine members appointed by the presiding officer of the commission ~~commissioner~~ as follows:

(1) a representative of the insurance industry or a certified elevator inspector;

(2) a representative of ~~[elevator, escalator, and related]~~ equipment constructors;

(3) a representative of owners or managers of a building ~~[buildings]~~ having fewer than six stories and having ~~[an elevator, an escalator, or related]~~ equipment;

(4) a representative of owners or managers of a building ~~[buildings]~~ having six stories or more and having ~~[an elevator, an escalator, or related]~~ equipment;

(5) a representative of independent ~~[elevator, escalator, and related]~~ equipment maintenance companies;

(6) a representative of ~~[elevator, escalator, and related]~~ equipment manufacturers;

(7) a licensed or registered engineer or architect ~~[representative of professional engineers or architects];~~

(8) a public member; and

(9) a public member with a physical disability.

(b) Board members serve at the will of the commission ~~[commissioner]~~.

(c) The presiding officer of the commission ~~[commissioner]~~ shall appoint a presiding officer of the board to serve for two years.

(d) The board shall meet at least twice each calendar year.

(e) A board member serves without compensation but is entitled to reimbursement for travel as provided for in the General Appropriations Act ~~[and other necessary expenses incurred in performing duties under this subchapter]~~.

Sec. 754.013. BOARD DUTIES. To protect public safety and to identify and correct potential hazards, the board shall advise the commission ~~[commissioner]~~ on:

(1) the adoption of appropriate standards for the installation, alteration, operation, and inspection of ~~[elevators, escalators, and related]~~ equipment;

(2) the status of ~~[elevators, escalators, and related]~~ equipment used by the public in this state; ~~[and]~~

(3) sources of information relating to equipment safety;

(4) public awareness programs related to elevator safety, including programs for sellers and buyers of single-family dwellings with elevators, chairlifts, or platform lifts; and

(5) any other matter considered relevant by the commission ~~[commissioner]~~.

Sec. 754.014. STANDARDS ADOPTED BY COMMISSION ~~[COMMISSIONER]~~. (a) The commission ~~[commissioner]~~ shall adopt standards for the installation, maintenance, alteration, operation, and inspection of ~~[elevators, escalators, and related]~~ equipment used by the public in:

(1) buildings owned or operated by the state, a state-owned institution or agency, or a political subdivision of the state; and

(2) buildings that contain ~~[an elevator, an escalator, or related]~~ equipment that is open to the general public, including a hotel, motel, apartment house, boardinghouse, church, office building, shopping center, or other commercial establishment.

(b) Standards adopted by the commission ~~[commissioner]~~ may not contain requirements in addition to the requirements in the ASME Code A17.1, ~~or~~ ASME Code A17.3, ASME Code A18.1, or ASCE Code 21. The standards must allow alteration of existing equipment if the alteration does not diminish the safety of the equipment below the level required by this subchapter at the time of alteration.

(c) Standards adopted by the commission ~~[commissioner]~~ must require ~~[elevators, escalators, and related]~~ equipment to comply with the installation requirements of the [following, whichever is the least restrictive:

~~(1) the ASME Code A17.1, ASME Code A18.1, or ASCE Code 21 that was in effect and applicable on the date of installation of the [elevators, escalators, and related] equipment]; or~~

~~(2) an applicable municipal ordinance governing the installation of elevators, escalators, and related equipment that was in effect on the date of installation].~~

(d) Standards adopted by the commission [~~commissioner~~] must require [~~elevators, escalators, and related~~] equipment to comply with the installation requirements of the [1994] ASME Code A17.3 that contains minimum safety standards for all [~~elevators, escalators, and related~~] equipment, regardless of the date of installation.

(e) The executive director [~~On written request, the commissioner~~] shall grant a delay for compliance with the applicable ASME Code A17.1, [~~or the 1994~~] ASME Code A17.3, or ASME Code A18.1 until a specified time if compliance is not readily achievable, as that phrase is defined in the Americans with Disabilities Act (42 U.S.C. Section 12101 et seq.), or regulations adopted under that Act. The accumulated total time of all delays may not exceed three years, except as provided by Subsection (f) or as allowed in the discretion of the executive director.

(f) The executive director [~~On written request, the commissioner~~] shall grant a delay until September 1, 2005, for compliance with the requirements for door restrictors or firefighter's service in the [1994] ASME Code A17.3 if those requirements were not included in the ASME Code A17.1 that was in effect on the date of installation [~~of the elevator, escalator, or related equipment~~] and the [~~that~~] equipment was not subsequently installed [~~by an owner of the elevator, escalator, or related equipment~~].

(g) The executive director [~~commissioner~~] may grant a waiver of compliance from an applicable code requirement [~~with the applicable ASME Code A17.1 or the 1994 ASME Code A17.3~~] if the executive director [~~commissioner~~] finds that:

(1) the building in which the [~~elevator, escalator, or related~~] equipment is located is a qualified historic building or facility or the noncompliance is due to structural components of the building; ~~and~~

(2) noncompliance will not constitute a significant threat to passenger safety; and

(3) noncompliance, with adequate alternative safeguards, will not constitute a significant threat to worker safety.

(h) The executive director shall grant a waiver of compliance if the noncompliance resulted from compliance with a municipal equipment construction code at the time of the original installation and the noncompliance does not pose imminent and significant danger. The executive director [~~commissioner~~] may grant a waiver of compliance with the firefighter's service provisions of the ASME Code A17.1 or the [1994] ASME Code A17.3 in an elevator that exclusively serves a vehicle parking garage in a building that:

(1) is used only for parking;

(2) is constructed of noncombustible materials; and

(3) is not greater than 75 feet in height.

(i) This subchapter does not apply to [~~an elevator, an escalator, or related~~] equipment in an industrial facility, or in a grain silo, radio antenna, bridge tower, underground facility, or dam, to which access is limited primarily [~~principally~~] to employees of or working in that facility or structure.

(j) ~~[The commissioner may charge a reasonable fee as set by the commission for an application for waiver or delay.]~~ One application for a waiver or delay may contain all requests related to a unit of equipment ~~[particular building]~~. A delay may not be granted indefinitely but must be granted ~~for [to]~~ a specified time not to exceed three years.

(k) For purposes of this section, the date of installation or alteration of equipment is the date that the owner of the real property entered into a contract for the installation or alteration of the ~~[purchase of the elevators, escalators, or related]~~ equipment. If that date cannot be established, the date of installation or alteration is the date of issuance of the municipal building permit under which the ~~[elevators, escalators, or related]~~ equipment was installed or altered ~~[constructed]~~ or, if a municipal building permit was not issued, the date that electrical consumption began for the construction of the building in which the ~~[elevators, escalators, or related]~~ equipment was installed.

Sec. 754.0141. STANDARDS FOR EQUIPMENT IN SINGLE-FAMILY DWELLINGS; REQUIRED INFORMATION. (a) Elevators, chairlifts, or platform lifts installed in a single-family dwelling on or after January 1, 2004, must comply with the ASME Code A17.1 or A18.1, as applicable, and must be inspected by a QEI-1 certified inspector after the installation is complete. The inspector shall provide the dwelling owner a copy of the inspection report.

(b) The commission shall, before January 1, 2004, adopt rules containing minimum safety standards that must be used by QEI-1 certified inspectors when inspecting elevators, chairlifts, and platform lifts installed in single-family dwellings.

(c) A municipality may withhold a certificate of occupancy for a dwelling or for the installation of the elevator or chairlift until the owner provides a copy of the QEI-1 inspection report to the municipality.

(d) A contractor is not required to report to the department any information concerning equipment in a single-family dwelling or the contractor's work on the equipment.

(e) On completing installation of equipment in a single-family dwelling, a contractor shall provide the dwelling owner with relevant information, in writing, about use, safety, and maintenance of the equipment, including the advisability of having the equipment periodically and timely inspected by a QEI-1 certified inspector.

(f) An inspection by a QEI-1 certified inspector of equipment in a single-family dwelling may be performed only at the request and with the consent of the owner. The owner of a single-family dwelling is not subject to Section 754.022, 754.023, or 754.024.

Sec. 754.015. RULES. (a) The ~~commission~~ [commissioner] by rule shall provide for:

(1) an annual [the] inspection and certification of the [once each calendar year of elevators, escalators, and related] equipment covered by standards adopted under this subchapter;

(2) [the] enforcement of those standards;

(3) registration [the certification] of qualified [persons as] inspectors and contractors [for the purposes of this subchapter]; and

(4) the form of ~~[the]~~ inspection documents, contractor reports, [report] and certificates [certificate] of compliance;

(5) notification to building owners, architects, and other building industry professionals regarding the necessity of annually inspecting equipment;

(6) approval of continuing education programs for registered QEI-1 certified inspectors; and

(7) standards of conduct for individuals who are registered under this subchapter.

(b) The commission [commissioner] by rule may not ~~[require that]~~:

(1) require inspections of equipment to [inspection] be made more often than every 12 months, except as provided by Subsection (c) [once per year of elevators, escalators, and related equipment];

(2) require persons to post a bond or furnish insurance or to have minimum experience or education as a condition of certification or registration; [and]

(3) require inspection reports or certificates of compliance to be placed in locations other than one provided in Section 754.019(a)(4);

(4) require building owners to submit to the department proposed plans for equipment installation or alteration;

(5) prohibit a QEI-1 certified inspector who is registered with the department from inspecting equipment; or

(6) require an inspection report or certificate of compliance to be placed inside or immediately outside an elevator cab or escalator or in the lobby or hallways of a building.

(c) The commission by rule may require a reinspection or recertification of equipment if the equipment has been altered and poses a significant threat to passenger or worker safety or if an annual inspection report indicates an existing violation has continued longer than permitted in a delay granted by the executive director.

(d) The executive director may charge a reasonable fee as set by the commission for:

(1) registering or renewing registration of an inspector;

(2) registering or renewing registration of a contractor;

(3) applying for a certificate of compliance;

(4) filing an inspection report as required by Section 754.019(a)(3), 30 days or more after the date the report is due, for each day the report remains not filed after the date the report is due;

(5) applying for a waiver or delay; and

(6) attending a continuing education program sponsored by the department for registered QEI-1 inspectors [754.019(4)].

Sec. 754.016. INSPECTION REPORTS ~~[REPORT]~~ AND CERTIFICATES [CERTIFICATE] OF COMPLIANCE. (a) Inspection reports [An inspection report] and certificates [a certificate] of compliance required under this subchapter must cover all [elevators, escalators, and related] equipment in a building or structure appurtenant to the building, including a parking facility, that are owned by the same person or persons. [There shall be only one inspection report and one certificate of compliance for each building.]

(b) An inspector shall date and sign an inspection report and shall issue the report to the building owner not later than the 10th calendar day after the date of inspection. ~~[The inspection report shall be on forms designated by the commissioner.]~~

(c) The executive director ~~[commissioner]~~ shall ~~[date and sign a certificate of compliance and shall]~~ issue a [the] certificate of compliance to the building owner if an application is submitted by the building owner with applicable fees and the application reflects that:

(1) ~~the~~ ~~[The certificate of compliance shall state that the elevators, escalators, and related]~~ equipment has [have] been inspected by a certified inspector;

(2) the inspection report shows the equipment is [and found by the inspector to be] in compliance with the requirements of this chapter; and

(3) to the extent the report shows any noncompliance that does not pose an imminent and significant danger, the building owner:

(A) acknowledges the noncompliance will be remedied within a reasonable period, not later than six months following the date of the inspection report; or

(B) has been granted a waiver or delay for compliance ~~[, except for any delays or waivers granted]~~ by the executive director ~~[commissioner and stated in the certificate].~~

(d) The certificate of compliance shall state:

(1) that the elevators, escalators, and related equipment have been inspected by a certified inspector and found by the inspector to be in compliance, except for any delays or waivers granted by the executive director and stated in the certificate;

(2) the date of the last inspection and the due date for the next inspection;
and

(3) contact information at the department to report a violation of this subchapter.

Sec. 754.017. CERTIFIED INSPECTORS. (a) In order to inspect equipment, an individual must:

(1) be registered ~~[An inspector must register]~~ with the department;

(2) attend educational programs approved by the department;

(3) ~~[and]~~ be certified as a QEI-1 [an ASME QEI 1] inspector by an organization accredited by the American Society of Mechanical Engineers; and

(4) pay all applicable fees. ~~[Any certification charges or fees shall be paid by the inspector.]~~

(b) ~~[The commissioner may not by rule prohibit an ASME QEI 1 certified inspector who is registered with the department from inspecting under this subchapter an elevator, an escalator, or related equipment.]~~ A person assisting a certified inspector and working under the direct, on-site supervision of the inspector is not required to be ~~[ASME QEI 1]~~ certified.

(c) A registration expires on the first anniversary of the date of issuance.

(d) A certified inspector may not be required to attend more than seven hours of continuing education during each licensing period. ~~[The commissioner may charge a \$15 fee to certified inspectors for registering with the department.]~~

Sec. 754.0171. CONTRACTOR REGISTRATION. (a) A person may not install, repair, or maintain equipment without registering as a contractor with the department as required by this subchapter.

(b) A contractor shall submit an application for registration and pay appropriate fees to the department. The registration application form may require information concerning the background, experience, or identity of the applicant.

(c) A registration expires on the first anniversary of the date of issuance.

(d) A person registering as a contractor under this subchapter shall submit to the department an initial report, not later than the 60th day following the application date, containing:

(1) the street address of each building or location at which the person performed installation, repair, alteration, or maintenance of equipment for the previous two years; and

(2) the name and mailing address of the building owner.

(e) After the initial report required by Subsection (d), a contractor registered as required by this subchapter shall submit to the department a quarterly report containing:

(1) the street address of each building or location at which the contractor performed installation, repair, alteration, or maintenance of equipment not reported in the contractor's initial report to the department under Subsection (d); and

(2) the name and mailing address of the building owner.

(f) Installation, repair, alteration, and maintenance standards for contractors must be consistent with ASME Code A17.1, ASME Code A17.3, ASME Code A18.1, and ASCE Code 21.

Sec. 754.0172. INSPECTION FEE. ~~[(a) A person inspecting an elevator, an escalator, or related equipment under this subchapter may not charge more than \$65 per elevator cab or per escalator for each inspection.~~

~~[(b)]~~ The amount charged for an inspection or the performance of an inspection of equipment under this subchapter may not be contingent on the existence of a maintenance contract between the person performing the inspection and any other person.

Sec. 754.018. POWERS OF MUNICIPALITIES. Subject to Section 754.014(h), if [H] a municipality operates a program for the installation, maintenance, alteration, inspection, or [and] certification of [elevators, escalators, and related] equipment, this subchapter shall not apply to the [elevators, escalators, and related] equipment in that municipality, provided that the standards of installation, maintenance, alteration, inspection, and certification are at least equivalent to [no less stringent than] those contained in this subchapter.

Sec. 754.019. DUTIES OF REAL PROPERTY OWNERS. (a) The owner of real property on which [an elevator, an escalator, or related] equipment covered by this subchapter is located shall:

(1) have the [elevator, escalator, or related] equipment inspected annually by a [an ASME QEI-1] certified inspector [in accordance with the commissioner's rules];

(2) obtain an inspection report from the inspector evidencing that all ~~[elevators, escalators, and related]~~ equipment in a building on the real property was inspected ~~[were]~~ in accordance with this subchapter and rules adopted under this subchapter;

(3) file with the executive director ~~[commissioner a copy of]~~ each inspection report, and all applicable fees, ~~[and a \$20 filing fee for each report, plus \$5 for each elevator, escalator, or related equipment]~~ not later than the 60th day after the date on which an inspection is made under this subchapter;

(4) display the certificate of compliance or a copy of the certificate:

(A) in each ~~[the]~~ elevator mechanical room if the certificate relates to an elevator;

(B) in each ~~[the]~~ escalator box if the certificate relates to an escalator; or

(C) in a place designated by rule if related to equipment other than an elevator or escalator ~~[the commissioner if the certificate relates to related equipment]~~; and

(5) display the inspection report at the locations designated in Subdivision (4) until a certificate of compliance is issued ~~[by the commissioner]~~.

(b) When an inspection report is filed ~~[with the commissioner]~~, the owner shall submit to the executive director, as applicable ~~[commissioner]~~:

(1) verification that any deficiencies in the inspector's report have been remedied or that a bona fide contract to remedy the deficiencies has been entered into; or

(2) any application for delay or waiver of an applicable standard.

(c) ~~[An inspection must be made not later than 18 months after the previous calendar year's inspection. This subsection does not affect the requirement that elevators, escalators, or related equipment be inspected at least once each calendar year.]~~

~~[(d)]~~ For the purpose of determining timely filing under Subsection (a)(3) and Section 754.016(b), an inspection report and filing fees ~~[fee]~~ are considered filed on the earlier of:

(1) the date of personal delivery;

(2) the date of postmark ~~[mailing]~~ by United States mail if properly addressed to the executive director; or

(3) the date of deposit with a commercial courier service, if properly addressed to the executive director ~~[commissioner]~~.

~~[(d)]~~ ~~[(e)]~~ ~~If the inspection report and fee required by Subsection (a)(3) are not timely filed, the commissioner may charge the owner of the real property on which the elevator, escalator, or related equipment is located an additional \$100 fee for late filing.~~

~~[(f)]~~ ~~The commissioner may not require that an inspection report or certificate of compliance be placed inside or immediately outside an elevator cab or escalator or in the lobby or hallways of a building.~~

~~[(g)]~~ A fee may not be charged or collected for a certificate of compliance for an institution of higher education as defined in Section 61.003, Education Code.

(e) An owner shall report to the department each accident involving equipment not later than 72 hours following the accident.

Sec. 754.020. CHIEF ELEVATOR INSPECTOR [~~DEPOSIT OF FEES~~]. The executive director may appoint a chief elevator inspector to administer the equipment inspection and registration program. The chief elevator inspector:

(1) may not have a financial or commercial interest in the manufacture, maintenance, repair, inspection, installation, or sale of equipment; and

(2) must possess a QEI-1 certification or obtain the certification within six months after becoming chief inspector [~~Fees collected under this subchapter shall be deposited to the credit of an account in the general revenue fund that may be used by the commissioner only to administer and enforce this subchapter and to reimburse expenses of board members provided by this subchapter.~~]

Sec. 754.021. LIST OF REGISTERED INSPECTORS AND CONTRACTORS [~~PERSONNEL~~]. The executive director shall [~~commissioner may~~]:

(1) compile a list of [~~ASME QEI-1~~] certified inspectors and contractors who are registered with the department [~~to perform an inspection under this subchapter~~]; and

(2) employ personnel who are [~~as~~] necessary to enforce this subchapter.

Sec. 754.022. NOTICE OF NONCOMPLIANCE. If the department [~~commissioner~~] learns of a situation of noncompliance under Section 754.019, the department [~~commissioner~~] shall send notice by certified mail of the noncompliance and the actions required to remedy the noncompliance to the record owner of the real property on which the equipment that is the subject of the noncompliance is located.

Sec. 754.023. INVESTIGATION; REGISTRATION [~~LICENSE~~] PROCEEDINGS; INJUNCTION; EMERGENCY ORDERS. (a) If there is good cause for the executive director [~~commissioner~~] to believe that [~~an elevator, an escalator, or related~~] equipment on real property poses an imminent and significant danger [~~is dangerous~~] or that an accident involving [~~an elevator, an escalator, or related~~] equipment occurred on the property and serious bodily injury or property damage resulted, the executive director [~~the commissioner~~] may enter the property during regular business hours after notice to the owner, operator, or person in charge of the property to inspect the [~~elevator, escalator, or related~~] equipment or investigate the danger or accident at no cost to the owner.

(b) The executive director [~~commissioner~~] may enter real property during regular business hours after notice to the owner, operator, or person in charge of the property to verify, at no cost to the owner, whether an inspection report or certificate of compliance has been displayed as required under Section 754.019(a).

(c) The commission [~~commissioner~~] may deny, suspend, or revoke a [~~the~~] registration under this subchapter and may assess an administrative penalty [~~of any ASME QEI-1 certified inspector~~] for:

(1) obtaining registration with the executive director [~~commissioner~~] by fraud or false representation;

(2) falsifying a [~~any inspection~~] report submitted to the executive director [~~commissioner~~]; or

(3) violating this subchapter or a rule adopted under this subchapter.

(d) Proceedings for the denial, suspension, or revocation of a registration and appeals from those proceedings are governed by Chapter 2001, Government Code (the Administrative Procedure Act).

(e) The executive director [~~commissioner~~] is entitled to appropriate injunctive relief to prevent a violation or threatened violation of this subchapter or a rule adopted under this subchapter.

(f) [~~(e)~~] The executive director [~~commissioner~~] may bring suit in a district court in Travis County or in the county in which the violation or threatened violation occurs. If requested, the attorney general shall represent the executive director [~~commissioner~~] in the suit.

(g) The executive director may issue an emergency order as necessary to enforce this subchapter if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(h) The executive director may issue an emergency order with simultaneous notice and without hearing or with the notice and opportunity for hearing practicable under the circumstances.

(i) If an emergency order is issued under this section without a hearing, the executive director shall set the time and place for a hearing to affirm, modify, or set aside the emergency order not later than the 10th day after the date the order was issued.

(j) An emergency order may direct a building owner or manager to disconnect power to or lock out equipment if:

(1) the department determines imminent and significant danger to passenger safety exists if action is not taken immediately and reasonable effort has been made for voluntary compliance by notification to the building owner or manager of the danger before the issuance of an emergency order; or

(2) an annual inspection has not been performed in more than two years and:

(A) the department gives the building owner or manager, or the agent of the building owner or manager, 60 days' written notice by certified mail directing the equipment to be inspected according to this subchapter; and

(B) after the expiration of the notice period under Paragraph (A), the department gives the building owner or manager, or the agent of the building owner or manager, written notice by certified mail stating that an order to disconnect power or lock out equipment will be made after the seventh day after the date notice is delivered.

(k) If an emergency order to disconnect power or lock out equipment is issued, the building owner or manager may have the power reconnected or the equipment unlocked only if:

(1) a registered inspector or contractor or a department representative has filed a written form with the department verifying the imminent and significant danger has been removed by repair, replacement, or other means; and

(2) the building owner, before the reconnection of power or unlocking of equipment, reimburses the department for all expenses incurred relating to the disconnection of power or lockout.

(l) The executive director or the executive director's designee may allow delayed payment if the building owner or manager commits in writing to pay the department for the expenses required by Subsection (k) not later than the 10th day after the date power is reconnected or equipment is unlocked.

(m) If an emergency order to disconnect power or lock out equipment is issued and the building owner later notifies the department that the imminent and significant danger no longer exists, the executive director or the executive director's designee shall, after the requirements of Subsection (k) are satisfied, promptly issue written permission to reconnect power or unlock the equipment and notify the owner.

Sec. 754.024. CRIMINAL PENALTY. (a) A person commits an offense if the person receives notice of noncompliance under Section 754.022 and the person has not remedied the noncompliance or entered into a bona fide contract to remedy the noncompliance before the 61st day after the date on which the notice is received.

(b) An offense under this section is a Class C misdemeanor.

(c) Each day of an offense under Subsection (a) constitutes a separate offense.

Sec. 754.025. APPLICATION OF CERTAIN LAW. Chapter 53, Occupations Code, applies to a registration under this subchapter.

SECTION 2. (a) This Act takes effect September 1, 2003, except that:

(1) a contractor is not required to be registered under Section 754.0171, Health and Safety Code, as amended by this Act, before January 1, 2004; and

(2) an escalator constructed before September 1, 2003, is not required to comply with step/skirt index requirements imposed under the 2002 American Society of Mechanical Engineers Safety Code for Elevators and Escalators A17.3 before September 1, 2009.

(b) A member of the elevator advisory board serving on the effective date of this Act continues to serve until removed by the governor or until the member's successor is appointed by the governor.

The floor amendment was read.

Senator Jackson offered the following amendment to the amendment:

Floor Amendment No. 2

Amend Floor Amendment No. 1 to **CSSB 1090** as follows:

(1) In amended Section 754.015(b), Health and Safety Code, strike amended Subdivisions (3) through (6) (page 10, lines 8 through 18) and substitute the following:

(3) [inspection reports or certificates of compliance to be placed in locations other than one provided in Section;] require building owners to submit to the department proposed plans for equipment installation or alteration;

(4) prohibit a QEI-1 certified inspector who is registered with the department from inspecting equipment; or

(2) Strike amended Sections 754.016(c) and (d), Health and Safety Code (page 11, line 22 through page 12, line 19), and substitute new amended Sections 754.016(c) and (d) as follows:

(c) The executive director [~~commissioner~~] shall date and sign a certificate of compliance and shall issue the certificate to the building owner. The certificate of compliance shall state:

(1) that the [elevators, escalators, and related] equipment ~~has~~ [have] been inspected by a certified inspector and found by the inspector to be in compliance, except for any delays or waivers granted by the executive director [~~commissioner~~] and stated in the certificate;

(2) the date of the last inspection and the due date for the next inspection;
and

(3) contact information at the department to report a violation of this subchapter.

(d) The commission by rule shall:

(1) specify what information must be contained in a certificate of compliance;

(2) describe the procedure by which a certificate of compliance is issued;

(3) require that a certificate of compliance related to an elevator be posted in a publicly visible area of the building; and

(4) determine what constitutes a "publicly visible area" under Subdivision (3).

(3) Strike amended Section 754.019(a)(4), Health and Safety Code (page 15, lines 12 through 20), and substitute a new amended Section 754.019(a)(4) as follows:

(4) display the certificate of compliance:

(A) in a publicly visible area of the building, as determined by commission rule under Section 754.016, [the elevator mechanical room] if the certificate relates to an elevator;

(B) in the escalator box if the certificate relates to an escalator; or

(C) in a place designated by the executive director [commissioner] if the certificate relates to [related] equipment other than an elevator or escalator; and

(4) Insert new Sections 2 and 3 of the bill as follows (on page 21, between lines 4 and 5):

SECTION 2. Not later than December 1, 2003, the Texas Commission of Licensing and Regulation shall adopt the rules required by Sections 754.016 and 754.019(a), Health and Safety Code, as amended by this Act.

SECTION 3. The changes in law made by this Act apply only to an inspection report or certificate of compliance issued on or after the effective date of this Act. An inspection report or certificate issued before the effective date of this Act is covered by the law in effect when the report or certificate was issued and is valid until the renewal date of that report or certificate under the terms of the former law, and the former law is continued in effect for that purpose. On renewal, an inspection report or certificate is subject to Chapter 754, Health and Safety Code, as amended by this Act.

(5) Renumber subsequent sections of the bill appropriately.

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

Question recurring on the adoption of Floor Amendment No. 1 as amended, the amendment as amended was adopted by a viva voce vote.

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

CSSB 1090 as amended was passed to engrossment by a viva voce vote.

(President in Chair)**SENATE BILL 392 ON SECOND READING**

Senator Williams moved to suspend the regular order of business to take up for consideration **SB 392** at this time on its second reading:

SB 392, Relating to tax assessment procedures in certain water districts.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 392** (committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter H, Chapter 49, Water Code, is amended by adding Section 49.236 to read as follows:

Sec. 49.236. NOTICE OF TAX HEARING. (a) Before the board adopts an ad valorem tax rate for the district for debt service, operation and maintenance purposes, or contract purposes, the board shall give notice of each meeting of the board at which the adoption of a tax rate will be considered. The notice must:

(1) contain a statement in substantially the following form:

"NOTICE OF PUBLIC HEARING ON TAX RATE

"The (name of the district) will hold a public hearing on a proposed tax rate for the tax year (year of tax levy) on (date and time) at (meeting place). Your individual taxes may increase or decrease, depending on the change in the taxable value of your property in relation to the change in taxable value of all other property and the tax rate that is adopted."; and

(2) contain the following information:

(A) the district's total adopted tax rate for the preceding year and the proposed tax rate, expressed as an amount per \$100;

(B) the difference, expressed as an amount per \$100 and as a percent increase or decrease, as applicable, in the proposed tax rate compared to the adopted tax rate for the preceding year;

(C) the average appraised value of a residence homestead in the district in the preceding year and in the current year; the district's total homestead exemption, other than an exemption available only to disabled persons or persons 65 years of age or older, applicable to that appraised value in each of those years; and the average taxable value of a residence homestead in the district in each of those years, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(D) the amount of tax that would have been imposed by the district in the preceding year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older;

(E) the amount of tax that would be imposed by the district in the current year on a residence homestead appraised at the average appraised value of a residence homestead in that year, disregarding any homestead exemption available only to disabled persons or persons 65 years of age or older, if the proposed tax rate is adopted; and

(F) the difference between the amounts of tax calculated under Paragraphs (D) and (E), expressed in dollars and cents and described as the annual increase or decrease, as applicable, in the tax to be imposed by the district on the average residence homestead in the district in the current year if the proposed tax rate is adopted.

(b) Notice of the hearing shall be:

(1) published at least once in a newspaper having general circulation in the district at least seven days before the date of the hearing; or

(2) mailed to each owner of taxable property in the district, at the address for notice shown on the most recently certified tax roll of the district, at least 10 days before the date of the hearing.

SECTION 2. (a) This Act takes effect September 1, 2003.

(b) For the 2003 tax year, the change in law made by this Act applies only to a conservation and reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, and governed by Chapter 49, Water Code, that adopts its tax rate on or after the effective date of this Act. For the 2003 tax year, a district that adopts its tax rate before the effective date of this Act is governed by the law as it existed when the tax rate was adopted, and that law is continued in effect for that purpose.

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

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

SB 392 as amended was passed to engrossment by a viva voce vote.

SENATE BILL 804 ON SECOND READING

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **SB 804** at this time on its second reading:

SB 804, Relating to accommodations and work assignments for certain pregnant Department of Public Safety officers.

The motion prevailed by a viva voce vote.

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

SENATE BILL 804 ON THIRD READING

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 804** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Averitt, Barrientos, Bivins, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams, Zaffirini.

Nays: Ratliff, Wentworth.

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

SENATE BILL 568 ON SECOND READING

Senator West moved to suspend the regular order of business to take up for consideration **SB 568** at this time on its second reading:

SB 568, Relating to security officers for medical corporations in certain municipalities.

The motion prevailed by a viva voce vote.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 568** in SECTION 1 of the bill, in amended Section 51.214(a), Education Code (page 1, line 20), by striking "that medical complex" and substituting "that medical corporation [~~complex~~]".

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

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

SB 568 as amended was passed to engrossment by a viva voce vote.

RECORD OF VOTE

Senator Janek asked to be recorded as voting "Nay" on the passage of **SB 568** to engrossment.

SENATE BILL 568 ON THIRD READING

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 568** be placed on its third reading and final passage.

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

Yeas: Armbrister, Averitt, Barrientos, Bivins, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Lindsay, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams, Zaffirini.

Nays: Janek, Ratliff, Wentworth.

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

RECORD OF VOTE

Senator Janek asked to be recorded as voting "Nay" on the final passage of **SB 568**.

**COMMITTEE SUBSTITUTE
SENATE BILL 273 ON SECOND READING**

Senator Shapleigh moved to suspend the regular order of business to take up for consideration **CSSB 273** at this time on its second reading:

CSSB 273, Relating to the continuation and functions of the Court Reporters Certification Board; providing an administrative penalty.

The motion prevailed by a viva voce vote.

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

**COMMITTEE SUBSTITUTE
SENATE BILL 273 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 273** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 2.

Yeas: Armbrister, Averitt, Barrientos, Bivins, Brimer, Carona, Deuell, Duncan, Ellis, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Shapiro, Shapleigh, Staples, Van de Putte, West, Whitmire, Williams, Zaffirini.

Nays: Ratliff, Wentworth.

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

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SCR 39 by Bivins, In memory of J. Hugh Liedtke of Houston.

SR 592 by Barrientos, In memory of Paul J. Mascot of Austin.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 1:00 p.m. adjourned, in memory of George Eastland Christian, Jr., of Austin, until 11:00 a.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

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

April 8, 2003

INTERNATIONAL RELATIONS AND TRADE — SCR 20 (Amended), CSSB 1583, CSSB 786, CSSB 395

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — SB 957, CSSB 903

GOVERNMENT ORGANIZATION — CSSCR 27, CSSB 95, SB 266, CSSB 272, CSSB 277, CSSB 286, CSSB 287, CSSB 306, CSSB 648, CSSB 775, CSSB 915, CSSB 1147

In Memory
of
George Eastland Christian, Jr.
Senate Resolution 591

WHEREAS, The State of Texas lost one of its towering figures with the passing of George Eastland Christian, Jr., of Austin, on November 27, 2002, at the age of 75; and

WHEREAS, A former presidential press secretary and confidant and for over four decades a trusted advisor to state political leaders, Mr. Christian was born in Austin on January 1, 1927; after graduating from Austin High School in 1944, he enlisted in the U.S. Marine Corps and saw duty in the Pacific theater and in Japan during the occupation; and

WHEREAS, Upon his discharge from the military, Mr. Christian returned to Austin and majored in journalism at the University of Texas (UT); he subsequently spent seven years covering Texas state government for the International News Service; and

WHEREAS, Noted for his ability and astute political judgment, he served as press secretary for Governors Price Daniel and John Connally before moving to Washington, D.C., to handle the same assignment for President Lyndon B. Johnson; holding the post of presidential press secretary from 1966 to 1969, during a difficult time in the nation's life, he won the respect of the White House press corps for his unshakable poise and civility; and

WHEREAS, At the close of President Johnson's term of office, Mr. Christian returned to Austin and established a public relations, consulting, and lobbying firm, which he continued to operate until his passing; and

WHEREAS, In addition to his professional work, he gave untold hours as vice chairman of the Lyndon Baines Johnson Foundation, member and chairman of the Texas Historical Commission (THC), member of the Texas State Cemetery Committee, and member of the boards of the Headliners Foundation, McDonald Observatory, Texas A&M College of Medicine, and Scott and White Memorial Hospital; and

WHEREAS, His many accolades included selection as a Distinguished Alumnus of UT Austin and as an Outstanding Alumnus of the UT College of Communication; he also received the Texas Award for Historical Preservation from the THC and the Harvey Penick Award from Caritas of Austin; in 1982, a centennial professorship in journalism was established in his name at UT Austin; and

WHEREAS, Across the political spectrum, George Christian was deeply respected for his unfailing graciousness and kindness, as well as for his seasoned judgment and sage advice; an unassuming, friendly man with a

booming laugh, he could enter the political fray with gusto and uncommon skill, and yet never allow rancor to taint the joust; eulogized as a "titan" on the Texas landscape, he embodied the best virtues of the politically engaged citizen, and he brought enormous honor to the Lone Star State; now, therefore, be it

RESOLVED, That the Senate of the 78th Texas Legislature pay special tribute to the life of George Eastland Christian, Jr., and extend sincere sympathy to the members of his family: to his wife of 43 years, Jo Anne Christian; to his children and grandchildren; and to his other relatives and many friends; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the members of his family and that when the Texas Senate adjourns this day, it do so in memory of George Eastland Christian, Jr.

RATLIFF

