

HOUSE JOURNAL

SEVENTY-NINTH LEGISLATURE, THIRD CALLED SESSION

PROCEEDINGS

TWELFTH DAY — FRIDAY, MAY 5, 2006

The house met at 10 a.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 51).

Present — Mr. Speaker; Allen, A.; Alonzo; Anchia; Anderson; Bailey; Berman; Blake; Bohac; Bonnen; Branch; Brown, B.; Brown, F.; Callegari; Campbell; Casteel; Castro; Chavez; Chisum; Cook, B.; Cook, R.; Crabb; Crownover; Davis, J.; Davis, Y.; Dawson; Delisi; Denny; Deshotel; Driver; Dukes; Dunnam; Dutton; Edwards; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farrar; Flores; Flynn; Frost; Gallego; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goodman; Goolsby; Griggs; Grusendorf; Guillen; Haggerty; Hamilton; Hamric; Hardcastle; Harper-Brown; Hartnett; Hegar; Hernandez; Herrero; Hill; Hochberg; Hodge; Homer; Hope; Hopson; Howard, C.; Howard, D.; Hughes; Hunter; Hupp; Isett, C.N.; Jackson; Jones, D.; Jones, J.; Keel; Keffer, B.; Keffer, J.; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Laney; Laubenberg; Leibowitz; Luna; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miller; Morrison; Mowery; Naishtat; Nixon; Noriega, R.; Oliveira; Olivo; Orr; Otto; Paxton; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Reyna; Ritter; Rodriguez; Rose; Seaman; Smith, T.; Smith, W.; Smithee; Solis; Solomons; Strama; Straus; Swinford; Taylor; Thompson; Truitt; Turner; Uresti; Van Arsdale; Veasey; Villarreal; Vo; West; Wong; Woolley; Zedler.

Absent, Excused — Corte, V.; Talton.

Absent — Burnam; Coleman; Hilderbran; Moreno, P.; Riddle.

The invocation was offered by P. J. Hicks, family minister, Westside Church of Christ, Round Rock, as follows:

Our Father in heaven, we are humbled and blessed to pray before you in this land of freedom. We are thankful that you have given this day to not only wake to behold the beauty of this earth, but to recognize you as our Lord and creator. We humbly bow before you confessing our sins and our faults to a father who knows all that we do and all that we are. We pray you continue to mold us and make us to what you want us to be. We are grateful for your providential care that you provide day by day.

We would like to give you thanks for these men and women who are a part of the Texas House of Representatives who convene here to discuss the matters of this great state. Each one here has a very special part in the history that is written

even as we speak. We ask that you give each one the wisdom and understanding to make decisions according to your holy will. Help them to find a unity in their diversity as they proceed to govern and to guide the State of Texas. We come asking for help to use the power you give us to become all that you want us to be.

We ask for your vigilant and watchful eye over our men and women who serve in our military. Keep them safe and out of harms way. We pray for their families while they are away and we are grateful for their sacrifice. We pray for harmony, peace, and resolution for the war that continues to persist. As the Bible teaches, we pray for our enemies. We pray for your continued protective hand over our country as we continue to be one nation under God. Help us always be indivisible so that everyone will have liberty and justice.

Most of all Father, we are thankful for your son, Jesus, who died for our sins. We pray we never become indifferent to our savior and the sacrifice that he offered once and for all. We joyfully and thankfully pray through Jesus' name.

The speaker recognized Representative Krusee who led the house in the pledges of allegiance to the United States and Texas flags.

LEAVES OF ABSENCE GRANTED

The following members were granted leave of absence for today because of important business in the district:

V. Corte on motion of Chisum.

Talton on motion of Chisum.

REGULAR ORDER OF BUSINESS SUSPENDED

On motion of Representative Denny and by unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 6).

LEAVES OF ABSENCE GRANTED

The following members were granted leaves of absence for the remainder of today because of important business in the district:

Driver on motion of Chisum.

B. Keffer on motion of Chisum.

SCR 4 - ADOPTED (Swinford - House Sponsor)

Representative Swinford moved to suspend all necessary rules to take up and consider at this time **SCR 4**.

The motion prevailed.

The following resolution was laid before the house:

SCR 4, Congratulating the Stratford High School Elks on winning the Class 1A state football championship.

SCR 4 was adopted.

HR 420 - ADOPTED
(by Dunnam)

Representative Dunnam moved to suspend all necessary rules to take up and consider at this time **HR 420**.

The motion prevailed.

The following resolution was laid before the house:

HR 420, In memory of Mary Jane Dunnam Siemoneit of Dallas.

HR 420 was unanimously adopted by a rising vote.

HR 360 - ADOPTED
(by Haggerty)

Representative Haggerty moved to suspend all necessary rules to take up and consider at this time **HR 360**.

The motion prevailed.

The following resolution was laid before the house:

HR 360, Recognizing the 10th anniversary of the opening of the Rogelio Sanchez State Jail in El Paso and commending its roster of 10-year employees.

HR 360 was adopted.

HR 444 - ADOPTED
(by Laney)

Representative Laney moved to suspend all necessary rules to take up and consider at this time **HR 444**.

The motion prevailed.

The following resolution was laid before the house:

HR 444, Congratulating Jeff Jeter, assistant sergeant-at-arms for the Texas House of Representatives, on the occasion of his 30th birthday.

HR 444 was read and was adopted.

On motion of Representative Raymond, the names of all the members of the house were added to **HR 444** as signers thereof.

HR 343 - ADOPTED
(by Hunter)

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 343**.

The motion prevailed.

The following resolution was laid before the house:

HR 343, Honoring businessman and former athlete Earl Young of Dallas for his contributions to Texas and to the global community.

HR 343 was adopted.

**HR 271 - ADOPTED
(by Hunter)**

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 271**.

The motion prevailed.

The following resolution was laid before the house:

HR 271, Honoring Charlene Ricketts of Abilene for her many achievements.

HR 271 was adopted.

**HR 442 - ADOPTED
(by Hunter)**

Representative Edwards moved to suspend all necessary rules to take up and consider at this time **HR 442**.

The motion prevailed.

The following resolution was laid before the house:

HR 442, In memory of Dr. Grady McWhiney of Abilene.

HR 442 was unanimously adopted by a rising vote.

(Coleman now present)

HB 2 - WITH SENATE AMENDMENTS

Representative Pitts called up with senate amendments for consideration at this time,

HB 2, A bill to be entitled An Act relating to the allocation of certain revenue from franchise taxes, motor vehicle sales and use taxes, and taxes on cigarettes and other tobacco products to provide property tax relief and public education.

HB 2 - POINT OF ORDER

Representative Coleman raised a point of order against further consideration of **HB 2** under Rule 11, Section 2 and Rule 8, Section 3 of the House Rules and Article III, Section 30 of the Texas Constitution on the grounds that the senate amendments are not germane, they change the original purpose of the bill, and the bill contains more than one subject.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for today because of important business in the district:

Riddle on motion of Madden.

(Burnam now present)

HB 2 - (consideration continued)

The speaker sustained the point of order, and had read the following statement:

Representative Coleman raises a point of order against further consideration of **HB 2** on the following grounds: (1) that the senate amendment contains language that is not germane to the bill and, therefore, violates Rule 11, Section 2, House Rules; and (2) that the senate amendment violates Article III, Section 30, Texas Constitution, and Rule 8, Section 3, House Rules.

Germaneness. Rule 11, Section 2 states that "No motion or proposition on a subject different from the subject under consideration shall be admitted as an amendment or as a substitute for the motion or proposition under debate." This rule, known as the rule of germaneness, has consistently been strictly construed by the house over the years. This process has been followed in reviewing amendments to house bills, regardless of whether those amendments are offered in the house or in the senate. As our explanatory note, which has been published in the House Rules for many years, states:

"In recent practice, the chair has closely reviewed the germaneness of senate amendments to house bills. There is nothing in the rules that could possibly prevent a member from raising a point of order against a clear violation of Article III, Section 30 of the constitution and having it sustained. If a point of order is sustained against a non-germane senate amendment, the bill is returned to the senate with a message to that effect. The speaker may refuse to recognize a member for the motion to concur in senate amendments if the speaker considers an amendment to be not germane." (Explanatory Note 3, P. 180).

The subject of **HB 2** is clear and narrow. It simply requires certain tax revenue generated from the passage of **HB 3**, **HB 4**, and **HB 5** be dedicated to the reduction of school property tax rates. The fact that the house adopted a calendar rule to further limit amendments that would divert funds to sources other than directly to property tax relief also supports that narrow interpretation of the bill's subject matter.

The senate amendment violates Rule 11, Section 2, House Rules because it changed the sole dedication of additional revenue from **HB 3**, **HB 4**, and **HB 5** to property tax relief to allow up to one third of those dedicated funds to be diverted to the Texas Education Agency to increase the basic allotment and the guaranteed level of state and local funds per weighted student. In effect, the amendment added a dedication of funds to schools generally and did so at the expense of providing additional property tax relief. This amendment, the senate amendment, was not germane to the house engrossed version and is contrary to the stated purpose of the bill.

There are numerous precedents by the house that support the proposition that the chair must strictly enforce the House Rules regarding non-germane senate amendments to house bills. In accordance with those precedents, the point of order is well-taken and sustained.

Single-Subject. The chair also sustains Representative Coleman's point of order against **HB 2** on the grounds that the bill as amended by the senate contains more than a single subject and, therefore, violates Article III, Section 30, Texas Constitution, and Rule 8, Section 3, House Rules. The chair is well aware of the latitude given by courts in analyzing legislation for violation of Article III, Section 30, Texas Constitution. It is the chair's view that legislation of this importance places a great duty of care upon the legislature to comply with this constitutional requirement and make every effort to ensure that no bill is passed that could reasonably be construed to violate this provision.

The bill as it left the house had only one subject: the dedication of certain tax revenue generated from the passage of **HB 3**, **HB 4**, and **HB 5** to the reduction of school property tax rates. The senate amendment expanded the subject, authorizing the use of the dedicated funds for a second purpose in the form of an appropriation to the Texas Education Agency to increase funding to schools. This amendment effectively expanded the subject of the bill to include two subjects: dedication of funds to property tax relief and dedication of funds to education. Because this expansion violates both the House Rules and the Texas Constitution, the point of order is well-taken and sustained.

Accordingly, the chair instructs the chief clerk to return **HB 2** to the senate with a message to that effect.

The ruling precluded further consideration of **HB 2**.

(Hilderbran now present)

BILLS AND JOINT RESOLUTIONS ON FIRST READING AND REFERRAL TO COMMITTEES RESOLUTIONS REFERRED TO COMMITTEES

Bills and joint resolutions were at this time laid before the house, read first time, and referred to committees. Resolutions were at this time laid before the house and referred to committees. (See the addendum to the daily journal, Referred to Committees, List No. 1.)

ADJOURNMENT

Representative R. Noriega moved that the house adjourn until 2 p.m. Monday, May 8 in memory of James La Vois of Houston.

The motion prevailed.

The house accordingly, at 11 a.m., adjourned until 2 p.m. Monday, May 8.

ADDENDUM

REFERRED TO COMMITTEES

The following bills and joint resolutions were today laid before the house, read first time, and referred to committees, and the following resolutions were today laid before the house and referred to committees. If indicated, the chair today corrected the referral of the following measures:

List No. 1

HB 159 (By Farabee), Relating to exempting from the sales tax taxable items for personal use by certain permanently disabled veterans.

To Ways and Means.

HB 160 (By Farabee), Relating to providing a discounted rate for electricity provided to school districts.

To Regulated Industries.

HB 161 (By Hamric), Relating to the content of public school campus improvement plans.

To Ways and Means.

HB 162 (By Pickett), Relating to the operation of video lottery games as part of the state lottery in municipalities or counties in which the voters have approved the operation of the games and by certain Indian tribes on Indian land; providing penalties.

To Licensing and Administrative Procedures.

HB 164 (By C. N. Isett, et al.), Relating to certain limitations on the ad valorem tax rates of school districts and other taxing units.

To Ways and Means.

HCR 31 (By Uresti), Urging Congress to pass legislation to change the name of the Department of the Navy to the Department of the Navy and Marine Corps and the title of the Secretary of the Navy to Secretary of the Navy and Marine Corps.

To Defense Affairs and State-Federal Relations.

HJR 37 (By Pickett), Proposing a constitutional amendment authorizing the legislature to legalize the operation of video lottery games in counties or municipalities in which the voters have approved the operation of the games and by certain Indian tribes on Indian land.

To Licensing and Administrative Procedures.

HR 415 (By Flores), Honoring Sharyland Utilities for its efforts to provide commercial trade of electricity between the U.S. and Mexico.

To Regulated Industries.

HR 416 (By Giddings), Congratulating the Dallas South Oak Cliff High School boys' basketball team on winning the 2006 4A state championship.

To Rules and Resolutions.

HR 421 (By Gallego), In memory of Bobby Jack Probst of Alpine.

To Rules and Resolutions.

HR 422 (By Gallego), Congratulating the Alpine High School Lady Bucks softball team for winning the District 1-AA championship.

To Rules and Resolutions.

HR 423 (By Naishtat), Congratulating Dr. David M. Oshinsky of Austin on winning the Pulitzer Prize in the history category for his book, Polio: An American Story.

To Rules and Resolutions.

HR 424 (By Craddick), Honoring Reverend and Mrs. Milton Jochetz of Stanton on their 60th wedding anniversary.

To Rules and Resolutions.

HR 425 (By Craddick), Honoring the memory of Deane Stoltz on his posthumous receipt of a 2006 Jefferson Award for Public Service.

To Rules and Resolutions.

HR 426 (By Craddick), Congratulating Suzy Boldrick of Midland on her receipt of the Jefferson Award for Public Service in 2006.

To Rules and Resolutions.

HR 427 (By Craddick), Congratulating Barbara B. Yarbrough of Midland on earning the 2006 Jefferson Award for Public Service.

To Rules and Resolutions.

HR 428 (By Craddick), Congratulating David Grosse of Midland for his receipt of the 2006 Jefferson Award for Public Service.

To Rules and Resolutions.

HR 429 (By Dunnam), Commemorating the 100th anniversary of Texas First State Bank of Riesel.

To Rules and Resolutions.

HR 430 (By Delisi), Honoring Operational Test Command and Forward Operational Assessment teams for their service to this nation and to United States soldiers.

To Rules and Resolutions.

HR 431 (By Delisi), Honoring John and Bunny McKenney of Temple on their 60th wedding anniversary.

To Rules and Resolutions.

HR 432 (By Chavez), Congratulating Daisy Gonzalez of El Paso on being named a finalist in the 2006 Treasures of the Texas Coast Children's Art Contest.

To Rules and Resolutions.

HR 433 (By Chavez), Congratulating Gloria I. Polanco-McNealy of El Paso on being named Principal of the Year by Communities In Schools of Texas.

To Rules and Resolutions.

HR 434 (By Chavez), Congratulating Isabel Rivas of El Paso on being named Teacher of the Year by Communities In Schools of Texas.

To Rules and Resolutions.

HR 435 (By Chavez), Congratulating Thelma Rodriguez of El Paso on being named Parent of the Year by Communities In Schools of Texas.

To Rules and Resolutions.

HR 436 (By Chavez), Congratulating Sue McCarthy of El Paso on being named Board Member of the Year by Communities In Schools of Texas.

To Rules and Resolutions.

HR 437 (By Chavez), Congratulating Julio Aguilar of El Paso on being named a finalist in the 2006 Treasures of the Texas Coast Children's Art Contest.

To Rules and Resolutions.

HR 438 (By Straus), In memory of U.S. Army Staff Sergeant Christopher R. Morningstar of San Antonio.

To Rules and Resolutions.

HR 439 (By Hernandez, Farrar, and Anchia), In memory of the Honorable Joe E. Moreno of Houston.

To Rules and Resolutions.

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 6

HCR 18

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Friday, May 5, 2006

The Honorable Speaker of the House

House Chamber

Austin, Texas

Mr. Speaker:

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

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

SCR 4 Seliger SPONSOR: Swinford
Congratulating the Stratford High School Elks on winning the Class 1A state
football championship.

Respectfully,
Patsy Spaw
Secretary of the Senate

APPENDIX

STANDING COMMITTEE REPORTS

Favorable reports have been filed by committees as follows:

May 4

Higher Education - **HB 153, HB 154**

State Affairs - **HB 147**

Ways and Means - **HB 72, HJR 26**

SENT TO THE COMPTROLLER

May 4 - HB 3