

# SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE — REGULAR SESSION

---

---

AUSTIN, TEXAS

---

---

PROCEEDINGS

---

**THIRTY-NINTH DAY**

(Thursday, April 11, 2013)

The Senate met at 11:12 a.m. pursuant to adjournment and was called to order by Senator Nelson.

The roll was called and the following Senators were present: Birdwell, Campbell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Paxton, Rodríguez, Schwertner, Seliger, Taylor, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

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

The Reverend Ron Brunson, New Covenant Church, Plainview, offered the invocation as follows:

Our Father in heaven, blessed be Your name. Lord, we are gathered here again this morning in this assembly hall and in Your presence like so many of our predecessors have. Ever since Texas has been in existence our leaders have called on You for guidance, protection, and wisdom. Many, many times in this very room our fathers have invoked Your holy name, even as we do today. Thank You for hearing both their prayers and ours. Thank You for Your guidance, protection, and wisdom that have made us a great state and in many ways leader to the other 49 states. Thank You for Governor Perry, Lieutenant Governor David Dewhurst, and others who have publicly and unashamedly called on Your name and boldly given You credit for whatever good that has been done. Grant, O Lord, that every Senator here today may verbalize, convince, and vote in that same spirit. Remind us today that every one of us in leadership carry great responsibility not only to this generation and many to come but also on that great judgment day. Your holy word says, (James 3:1) My brethren, let not many of you become teachers, knowing that we shall receive a stricter judgment. (Matthew 12:36-37) But I say to you that for every idle word men may speak, they will give account of it in the day of judgment. For by your words you will be justified, and by your words you will be condemned. May every decision, objection, and vote made today be carefully considered against the backdrop that it is no man who will eventually pass judgment,

but You. And now I release a joyful, honest, respectful, and peaceful spirit in this place, and I declare that much progress will be made today in the name of the Father and of the Son and of the Holy Spirit. Amen.

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

The motion prevailed without objection.

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Thursday, April 11, 2013 - 1

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 38** Menéndez  
Relating to the penalty for an offense involving motor vehicle airbags.

**HB 86** Callegari  
Relating to the criteria for review by the Sunset Advisory Commission of an agency that licenses an occupation.

**HB 468** Davis, John  
Relating to reporting requirements and other information in connection with an award under the Texas emerging technology fund.

**HB 829** Thompson, Senfronia  
Relating to the governor's executive authority while traveling outside of the state.

**HB 838** Zerwas  
Relating to the monitoring of certain medications provided to foster children.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### PHYSICIAN OF THE DAY

Senator Hancock was recognized and presented Dr. Erica Swegler of Keller as the Physician of the Day.

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

**MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and was referred to the Committee on Nominations:

April 10, 2013  
Austin, Texas

TO THE SENATE OF THE EIGHTY-THIRD LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointment:

To be District Attorney of Kaufman County for a term until the next General Election and until her successor shall be duly elected and qualified:

Erleigh Norville Wiley

Forney, Texas

Judge Wiley is replacing Mike McLelland who is deceased.

Respectfully submitted,

/s/Rick Perry  
Governor

**SENATE RESOLUTION 625**

Senator Van de Putte offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to join the Texas Pharmacy Association in recognizing students who have chosen to dedicate themselves to the study of pharmacy; and

WHEREAS, Since 1879, the Texas Pharmacy Association has helped improve the quality of medication and pharmaceutical services in Texas; the group works to ensure the advancement, protection, and unification of the pharmacy profession and to assist patients in leading healthy lives; and

WHEREAS, In choosing to study pharmacy, students join a vital health profession whose members play a central role in maintaining the well-being of communities across the state; and

WHEREAS, There are more than 20,000 pharmacists practicing in Texas today; they, along with student pharmacists and pharmacy technicians, help patients maximize the benefits attainable from their medications; and

WHEREAS, Pharmacists also safeguard the health of innumerable Texans by preventing drug-related contraindications and other conditions that can arise from the overlapping use of multiple medications; and

WHEREAS, The use of medication as a cost-effective alternative to expensive medical procedures is becoming a major force in the moderation of health care costs; pharmacists play an invaluable role not only in the lives of patients, but in the overall well-being of the Texas health care system; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 83rd Legislature, hereby commend pharmacy students across the state for their dedication to the health of their fellow man and extend to them sincere appreciation for their ongoing contributions to the medical field; and, be it further

RESOLVED, That a copy of this Resolution be prepared for them as an expression of high regard from the Texas Senate.

**SR 625** was read and was adopted without objection.

### **GUESTS PRESENTED**

Senator Van de Putte was recognized and introduced to the Senate a Texas Pharmacy Association and pharmacy college students delegation, accompanied by Jobby John, Texas Pharmacy Association; Andrew Morris, University of Houston College of Pharmacy; Stephanie M. Bishop, Texas A&M Health Science Center Irma Lerma Rangel College of Pharmacy; Carolyn Johnson, Texas Tech University Health Sciences Center School of Pharmacy; and Amanda M. Zessin, University of the Incarnate Word Feik School of Pharmacy.

The Senate welcomed its guests.

### **FORMER MEMBERS DAY**

Senator Whitmire was recognized and introduced to the Senate former Lieutenant Governors, Deans of the Senate, and Senators.

#### **Former Lieutenant Governors**

The Honorable Ben Barnes–DeLeon  
Lieutenant Governor–1969 to 1973

The Honorable William P. Hobby–Houston  
Lieutenant Governor–1973 to 1991

#### **Former Senators**

The Honorable Don Adams–Jasper  
State Senator–1973 to 1977

The Honorable Richard Anderson–Marshall  
State Senator–1986 to 1989

The Honorable Ken Armbrister–Victoria  
State Senator–1987 to 2007

The Honorable Kip Averitt–McLennan  
State Senator–2002 to 2010

The Honorable Gonzalo Barrientos–Austin  
State Senator–1985 to 2007

The Honorable David Bernsen–Beaumont  
State Senator–1999 to 2003

The Honorable J. E. "Buster" Brown–Lake Jackson  
State Senator–1981 to 2002

The Honorable Chet Brooks–Pasadena  
State Senator–1967 to 1993  
Dean of the Senate–1981 to 1993

The Honorable David Cain–Dallas  
State Senator–1995 to 2003

The Honorable Kent Caperton–Bryan  
State Senator–1981 to 1991

The Honorable Ron Clower–Garland  
State Senator–1973 to 1981

The Honorable Ray Farabee–Wichita Falls  
State Senator–1975 to 1988

The Honorable Michael Galloway–The Woodlands  
State Senator–1995 to 1999

The Honorable Bill Haley–Center  
State Senator–1989 to 1995

The Honorable Kyle Janek–Harris  
State Senator–2002 to 2008

The Honorable Glenn Kothmann–San Antonio  
State Senator–1971 to 1987

The Honorable Cyndi Krier–San Antonio  
State Senator–1985 to 1993

The Honorable Ted Lyon–Rockwall  
State Senator–1983 to 1993

The Honorable Bill Meier–Eules  
State Senator–1973 to 1983

The Honorable John T. Montford–Lubbock  
State Senator–1983 to 1996

The Honorable Jack Ogg–Houston  
State Senator–1973 to 1983

The Honorable Bill Sarpalius–Amarillo  
State Senator–1981 to 1989

The Honorable A. R. "Babe" Schwartz–Galveston  
State Senator–1960 to 1981

The Honorable John Sharp–Victoria  
State Senator–1982 to 1987

The Honorable Dan Shelley–Crosby  
State Senator–1993 to 1995

The Honorable E. L. Short–Tahoka  
State Senator–1979 to 1983

The Honorable David Sibley–Waco  
State Senator–1991 to 2002

The Honorable W. E. "Pete" Snelson—Midland  
State Senator—1965 to 1983  
Dean of the Senate—1981 to 1983

The Honorable Hector Uribe—Brownsville  
State Senator—1981 to 1991

The Honorable Craig Washington—Houston  
State Senator—1985 to 1990

#### **Former Secretary of the Senate**

Charles Schnabel  
Secretary of the Senate—1955 to 1977

The Senate welcomed its guests.

#### **IN MEMORIAM**

Senator Eltife was recognized to read from "A State of Remembrance, April 11, 2013" the following names:

The Honorable Mario V. Gallegos, Jr.—Harris County  
State Senator—1995 to 2012

The Honorable Robert Alton Gammage—Harris County  
State Senator—1973 to 1976

The Honorable John Nesbett Leedom—Dallas County  
State Senator—1981 to 1996

The Honorable George O. Nokes, Jr.—Navarro County  
State Senator—1950 to 1953

The Honorable Carlos Flores Truan—Nueces County  
State Senator—1977 to 2003  
Dean of the Senate—1995 to 2003

**(President in Chair)**

#### **ACKNOWLEDGMENTS**

Senator Ellis was recognized and spoke on the history of Members of the Texas Senate.

Senator Zaffirini was recognized and spoke on the history of women and minorities in the Texas Senate.

#### **CONCLUSION**

Senator Whitmire was again recognized for closing remarks and thanked the honored guests for their service to the State of Texas.

#### **AT EASE**

The President at 11:55 a.m. announced the Senate would stand At Ease subject to the call of the Chair.

#### **IN LEGISLATIVE SESSION**

The President at 12:27 p.m. called the Senate to order as In Legislative Session.

## INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED

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

There was no objection.

## CONCLUSION OF MORNING CALL

The President at 12:27 p.m. announced the conclusion of morning call.

## COMMITTEE SUBSTITUTE SENATE BILL 1611 ON SECOND READING

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSSB 1611** at this time on its second reading:

**CSSB 1611**, Relating to discovery in a criminal case.

The motion prevailed.

Senators Birdwell and Campbell asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Ellis offered the following amendment to the bill:

### Floor Amendment No. 1

Amend **CSSB 1611** (senate committee printing) in SECTION 2 of the bill as follows:

(1) In the first sentence of amended Article 39.14(a), Code of Criminal Procedure (page 1, line 33), between "electronic" and "photographing", strike "duplication [copying] or" and substitute "duplication, copying, and [e]".

(2) In the first sentence of amended Article 39.14(a), Code of Criminal Procedure (page 1, lines 34-35), between "any offense" and "any designated documents", strike "reports or of" and substitute "reports,".

(3) In the first sentence of amended Article 39.14(a), Code of Criminal Procedure (page 1, line 40), between "report" and "[~~]~~, books", insert "or any designated".

(4) In the first sentence of amended Article 39.14(a), Code of Criminal Procedure (page 1, lines 40-41), between "objects or" and "tangible things", insert "other".

(5) In the first sentence of amended Article 39.14(a), Code of Criminal Procedure (page 1, line 41), between "otherwise privileged" and "constitute", strike "[:] which" and substitute "that [which]".

(6) In the first sentence of amended Article 39.14(a), Code of Criminal Procedure (page 1, lines 42-43), between "action and" and "are in the possession", strike "which" and substitute "that [which]".

(7) In amended Article 39.14(a), Code of Criminal Procedure (page 1, lines 45-47), strike the second sentence of the subsection and substitute the following: The state may provide to the defendant electronic duplicates of any documents or other information described by this article.

(8) In the first sentence of added Article 39.14(c), Code of Criminal Procedure (page 2, lines 1-2), between "remaining portion" and "and may withhold", insert "that is not subject to discovery".

(9) In the third sentence of added Article 39.14(d), Code of Criminal Procedure (page 2, lines 18-19), between "inspection of" and "document", strike "the" and substitute "a".

(10) In the third sentence of added Article 39.14(d), Code of Criminal Procedure (page 2, lines 21-23), between "information but" and the underlined period, strike "; notwithstanding Subsection (a), is not required to allow electronic duplication of the document, item, or information" and substitute "is not required to allow electronic duplication as described by Subsection (a)".

(11) In added Article 39.14(f), Code of Criminal Procedure (page 2, lines 30-31), between "The state shall" and "information provided", strike "document or otherwise electronically record the documents, items, and" and substitute "electronically record or otherwise document any document, item, or other".

(12) In added Article 39.14(g), Code of Criminal Procedure (page 2, lines 35-36), between "list of" and "documents", strike "the" and substitute "all".

(13) In added Article 39.14(h), Code of Criminal Procedure (page 2, line 39), between "any additional" and "information", strike "documents, items," and substitute "document, item,".

(14) In added Article 39.14(h), Code of Criminal Procedure (page 2, line 41), between "existence of the" and "or information", strike "documents, items," and substitute "document, item,".

(15) In added Article 39.14(i), Code of Criminal Procedure (page 2, lines 44-45), between "may not exceed" and "Chapter 552", strike "those provided for by" and substitute "the charges prescribed by Subchapter F".

The amendment to **CSSB 1611** was read and was adopted by a viva voce vote.

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

Senator Huffman offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **CSSB 1611** as follows:

(1) In SECTION 2 of the bill, in amended Article 39.14(a), Code of Criminal Procedure, (Committee Printing page 1, line 32), strike "Article 39.15" and substitute "Section 264.408, Family Code, and Article 39.15 of this code".

(2) In SECTION 2 of the bill, in added Subsection (d), Article 39.14, Code of Criminal Procedure, strike the first two sentences (Committee Printing page 2, lines 8-17).

(3) In SECTION 2 of the bill, in amended Article 39.14, Code of Criminal Procedure, after added Subsection (d) (Committee Printing page 2, between lines 23 and 24), add new Subsections (e), (f), and (g) and reletter the remaining subsections and cross-references accordingly:



(e) Except as provided by Subsection (f), the defendant, the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the defendant may not disclose to a third party any documents, evidence, materials, or witness statements received from the state under this article unless:

(1) a court orders the disclosure upon a showing of good cause after notice and hearing after considering the security and privacy interests of any victim or witness; or

(2) the documents, evidence, materials, or witness statements have already been publicly disclosed.

(f) The attorney representing the defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant, may allow a defendant, witness, or prospective witness to view the information provided under this article, but may not allow that person to have copies of the information provided, other than a copy of the witness's own statement. Before allowing that person to view a document or the witness statement of another under this subsection, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement. For purposes of this section, the defendant may not be the agent for the attorney representing the defendant.

(g) Nothing in this section shall be interpreted to limit an attorneys' ability to communicate regarding his or her case within the Texas Disciplinary Rules of Professional Conduct, except for the communication of information identifying any victim or witness, including name, except as provided in subsections (e) and (f), address, telephone number, driver's license number, social security number, date of birth, and bank account information or any information that by reference would make it possible to identify a victim or a witness. Nothing in this subsection shall prohibit the disclosure of identifying information to an administrative, law enforcement, regulatory or licensing agency for the purposes of making a good faith complaint.

(4) In SECTION 2 of the bill, in amended Article 39.14, Code of Criminal Procedure, after added Subsection (j) (Committee Printing page 2, between lines 46 and 47), add new Subsection (k) to read as follows:

(k) This article does not prohibit the parties from agreeing to discovery and documentation requirements equal to or greater than those required under this article.

(5) Reletter the existing subsections of amended Article 39.14, Code of Criminal Procedure, accordingly.

The amendment to **CSSB 1611** was read and was adopted by a viva voce vote.

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

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

**CSSB 1611** as amended was passed to engrossment by a viva voce vote.

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1611 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1611** be placed on its third reading and final passage.

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

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

*(Remarks regarding CSSB 1611 begin on page 852.)*

**GUESTS PRESENTED**

Senator Ellis was recognized and introduced to the Senate Michael Morton and his wife, Cynthia.

The Senate welcomed its guests.

**(Senator Eltife in Chair)**

**GUESTS PRESENTED**

Senator West was recognized and introduced to the Senate the Lincoln High School girls' 4A championship basketball team and the James Madison High School boys' 3A championship basketball team, accompanied by their coaches.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1623 ON SECOND READING**

Senator Hinojosa moved to suspend the regular order of business to take up for consideration **CSSB 1623** at this time on its second reading:

**CSSB 1623**, Relating to the creation of health care funding districts in certain counties located on the Texas-Mexico border; authorizing the imposition of a tax.

The motion prevailed.

Senators Birdwell, Estes, and Paxton asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 1623** (senate committee printing), in SECTION 9 of the bill, immediately following added Section 288.155(d), Health and Safety Code (page 2, between lines 63 and 64), insert the following:

(e) A local provider participation fund created under this section shall be abolished on the expiration of a waiver under Section 1115 of the federal Social Security Act (42 U.S.C. Section 1315) in connection with the fund.

The amendment to **CSSB 1623** was read and was adopted by a viva voce vote.

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

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

**CSSB 1623** as amended was passed to engrossment by a viva voce vote.

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

Nays: Birdwell, Estes, Paxton.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1623 ON THIRD READING**

Senator Hinojosa moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1623** be placed on its third reading and final passage.

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

Yeas: Campbell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Rodríguez, Schwertner, Seliger, Taylor, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Estes, Paxton.

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

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

On motion of Senator Paxton and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 656** at this time on its second reading:

**CSSB 656**, Relating to providing transparency in the budget adoption process of municipalities and counties.

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

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

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

Senator Paxton 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 31, Nays 0.

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 657 ON SECOND READING**

On motion of Senator Paxton and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 657** at this time on its second reading:

**CSSB 657**, Relating to procedural requirements for adopting and filing a school district budget.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 657 ON THIRD READING**

Senator Paxton moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 657** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1294 ON SECOND READING**

Senator Davis moved to suspend the regular order of business to take up for consideration **CSSB 1294** at this time on its second reading:

**CSSB 1294**, Relating to the awarding of contracts by the Texas Department of Transportation to private sector providers.

The motion prevailed.

Senators Fraser and Nelson asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

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

Nays: Fraser, Nelson.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1294 ON THIRD READING**

Senator Davis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1294** be placed on its third reading and final passage.

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

Yeas: Birdwell, Campbell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio, Nichols, Patrick, Paxton, Rodríguez, Schwertner, Seliger, Taylor, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Nelson.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

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

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 958** at this time on its second reading:

**CSSB 958**, Relating to the liability of certain special-purpose districts or authorities providing water to a purchaser for the generation of electricity.

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

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

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

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 958** be placed on its third reading and final passage.

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

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

**REMARKS ORDERED PRINTED**

On motion of Senator Watson and by unanimous consent, the remarks by Senators Fraser and Watson regarding **CSSB 958** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Watson:** Thank you, Mr. President. Thank you, Chairman Fraser. I support this bill, but I want to ask you one question for the purpose of establishing some legislative intent. As you've just laid out, and I think when I read the bill, Senate Bill 958 appears to create a narrow waiver of sovereign immunity in the limited instance of a suit against a special purpose district or authority for breach of contract for the sale of water supply for use in connection with the generation of electricity. But your bill, by creating this waiver, doesn't imply or become a basis, and you don't intend for it to imply or become a basis, for arguing that sovereign immunity would apply in any other contract situations. In other words, its silence as to all other contract situations isn't a statement that there is sovereign immunity in those instances. So, here's my question. For purposes of establishing legislative intent, this bill's about one narrow instance and doesn't speak to whether sovereign immunity

would or would not apply in any other breach of contract situation. It's your intent that those other instances are to be guided by other statute, common law, the specific contract language, or otherwise. Is that correct?

**Senator Fraser:** Senator Watson, your description and the question, you're correct. Senate Bill 958 speaks only to these narrow facts and says in this limited instance immunity is waived. It does not address any other breach of contract action and does not say whether immunity is waived or not waived in any other contract situation. Any other contract situation in which the law is solid presents an issue for the courts to decide.

**Senator Watson:** Thank you, Chairman Fraser.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1457 ON SECOND READING**

On motion of Senator Duncan and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1457** at this time on its second reading:

**CSSB 1457**, Relating to management services for the physical facilities of the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1457 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1457** be placed on its third reading and final passage.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 746 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 746** at this time on its second reading:

**CSSB 746**, Relating to unlawful acts against and criminal offenses involving the Medicaid program.

The bill was read second time.

Senator Nelson offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 746** as follows:

(1) Strike SECTION 2 of the bill (Committee printing page 2, line 59 through page 3, line 2) and substitute the following:

SECTION 2. Section 36.104, Human Resources Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) If the state declines to take over the action, the person bringing the action may proceed without the state's participation. A person proceeding under this subsection may recover for an unlawful act for a period of up to six years before the date the lawsuit was filed, or for a period beginning when the unlawful act occurred until up to three years from the date the state knows or reasonably should have known facts material to the unlawful act, whichever of these two periods is longer, regardless of whether the unlawful act occurred more than six years before the date the lawsuit was filed. Notwithstanding the preceding sentence, in no event shall a person proceeding under this subsection recover for an unlawful act that occurred more than 10 years before the date the lawsuit was filed.

(b-1) On request by the state, the state is entitled to be served with copies of all pleadings filed in the action and be provided at the state's expense with copies of all deposition transcripts. If the person bringing the action proceeds without the state's participation, the court, without limiting the status and right of that person, may permit the state to intervene at a later date on a showing of good cause.

(2) In SECTION 3 of the bill, in amended Subsection (b), Section 36.110, Human Resources Code (Committee printing page 3, line 8), strike "state criminal or civil hearing, in a state" and substitute "Texas or federal criminal or civil hearing, in a Texas or federal".

(3) In SECTION 4 of the bill, in amended Subsection (b), Section 36.113, Human Resources Code (Committee printing page 3, line 32), strike "state" and substitute "Texas or federal".

(4) In SECTION 4 of the bill, in amended Subsection (b), Section 36.113, Human Resources Code (Committee printing page 3, line 34), strike "state legislative or administrative report, or other state" and substitute "Texas legislative or administrative report, or other Texas".

The amendment to **CSSB 746** was read and was adopted by a viva voce vote.

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

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

**CSSB 746** as amended was passed to engrossment by a viva voce vote.

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

### COMMITTEE SUBSTITUTE SENATE BILL 746 ON THIRD READING

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 746** be placed on its third reading and final passage.

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

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

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

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 971** at this time on its second reading:

**CSSB 971**, Relating to the purposes, designation, and funding of a transportation reinvestment zone for port projects; providing authority to issue bonds; authorizing an assessment.

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

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

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

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

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

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

**SENATE BILL 262 ON SECOND READING**

Senator Huffman moved to suspend the regular order of business to take up for consideration **SB 262** at this time on its second reading:

**SB 262**, Relating to the reporting of criminal disposition completeness percentage data.

The motion prevailed.

Senators Fraser, Lucio, Rodríguez, and Seliger asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Huffman offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **SB 262** (senate committee report) by striking SECTION 2 of the bill, amending Article 60.14, Code of Criminal Procedure (page 2, lines 25-43), and renumbering the SECTIONS of the bill appropriately.

The amendment to **SB 262** was read and was adopted by a viva voce vote.

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

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

**SB 262** as amended was passed to engrossment by a viva voce vote.



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

Nays: Lucio, Seliger.

#### **SENATE BILL 262 ON THIRD READING**

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 262** be placed on its third reading and final passage.

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

Yeas: Birdwell, Campbell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Nelson, Nichols, Patrick, Paxton, Rodríguez, Schwertner, Taylor, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Lucio, Seliger.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

#### **SENATE BILL 1236 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1236** at this time on its second reading:

**SB 1236**, Relating to the extension of an emergency order for protective services for certain persons who are elderly or have disabilities.

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

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

#### **SENATE BILL 1236 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 1236** be placed on its third reading and final passage.

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

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

#### **SENATE BILL 1363 ON SECOND READING**

On motion of Senator Huffman and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 1363** at this time on its second reading:

**SB 1363**, Relating to testimony or the production of evidence before the legislature or a legislative committee.

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

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

**SENATE BILL 1363 ON THIRD READING**

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 1363** be placed on its third reading and final passage.

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

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

**(President in Chair)**

**COMMITTEE SUBSTITUTE  
SENATE BILL 21 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 21** at this time on its second reading:

**CSSB 21**, Relating to drug screening or testing as a condition for the receipt of unemployment compensation benefits by certain individuals.

The bill was read second time.

Senator Davis offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 21** (senate committee printing), in SECTION 2 of the bill, as follows:

(1) In added Section 207.026(b), Labor Code (page 2, line 1), strike "An individual who fails a drug test under this subsection" and substitute "An individual who is determined to have failed a drug test under this subsection under a final determination or decision made by the commission under this section".

(2) In added Section 207.026, Labor Code, between added Subsections (d) and (e) (page 2, between lines 17 and 18), insert the following:

(e) The commission's procedures for an appeal and the retaking of a failed drug test under Subsection (d) must provide for:

(1) the provision to each individual who fails a drug test under Subsection (b) of:

(A) privacy with regard to the individual's test result for at least 10 days following the date the individual receives initial notice of the result during which the individual may appeal the result or retake the failed drug test; and

(B) prompt notice regarding:

(i) the manner in which the individual may appeal the result or retake the failed drug test; and

(ii) common potential causes of a false positive test result; and

(2) full payment by the commission of the costs of the retaking of failed drug tests by any individual who contests the individual's failed drug test as a false positive result and passes a subsequently taken test.

(3) In added Section 207.026(e), Labor Code (page 2, line 18), strike "(e)" and substitute "(f)".

The amendment to **CSSB 21** was read and was adopted by a viva voce vote.

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

Senator Watson offered the following amendment to the bill:

### **Floor Amendment No. 2**

Amend **CSSB 21** (senate committee printing), in SECTION 2 of the bill, in added Section 207.026(c), Labor Code, as follows:

(1) In added Subdivision (1), between ";" and "or" (page 2, line 11), insert the following:

(2) the individual enrolls in a treatment program for drug abuse not later than the seventh day after the date the individual receives initial notice of the failed drug test result;

(2) In added Subdivision (2) (page 2, line 12), strike "(2)" and substitute "(3)".

The amendment to **CSSB 21** was read and was adopted by a viva voce vote.

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

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

**CSSB 21** as amended was passed to engrossment by a viva voce vote.

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

### **COMMITTEE SUBSTITUTE SENATE BILL 21 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 21** be placed on its third reading and final passage.

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

The bill was read third time.

Senator Williams moved to temporarily postpone further consideration of **CSSB 21**.

The motion prevailed.

Question—Shall **CSSB 21** be finally passed?

### **SENATE BILL 211 ON SECOND READING**

On motion of Senator Nichols and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 211** at this time on its second reading:

**SB 211**, Relating to the continuation and functions of the Texas Facilities Commission; authorizing fees.

The bill was read second time.

**(Senator Eltife in Chair)**

Senator Nichols offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **SB 211** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 2268.055, Government Code, is amended to read as follows:

Sec. 2268.055. MEETINGS. (a) The commission shall hold meetings quarterly or on the call of the presiding officer.

(b) Commission meetings are subject to Chapter 551.

SECTION \_\_\_\_\_. Sections 2268.058(e), (g), and (i), Government Code, are amended to read as follows:

(e) The ~~[If the]~~ commission in a public hearing by majority vote of the members present shall approve or disapprove each detailed ~~[accepts a]~~ proposal submitted to the commission for review and may ~~[, the commission shall]~~ provide its findings and recommendations to the responsible governmental entity not later than the 45th day after the date the commission receives complete copies of the detailed proposal. If the commission does not provide its findings or recommendations to the responsible governmental entity by that date, the commission is considered to ~~[have declined review of the proposal and to]~~ not have made any findings or recommendations on the proposal.

(g) The commission shall include in any ~~[review accepted detailed proposals and provide]~~ findings and recommendations provided to the responsible governmental entity ~~[that include]~~:

(1) a determination on whether the terms of the proposal and proposed qualifying project create state tax-supported debt, taking into consideration the specific findings of the comptroller with respect to the recommendation;

(2) an analysis of the potential financial impact of the qualifying project;

(3) a review of the policy aspects of the detailed proposal and the qualifying project; and

(4) proposed general business terms.

(i) The ~~[Except as provided by Subsection (e), the]~~ responsible governmental entity may not negotiate ~~[begin negotiation of]~~ an interim or comprehensive agreement for a detailed proposal that has been disapproved by ~~[until]~~ the commission ~~[has submitted its recommendations or declined to accept the detailed proposals for review].~~

SECTION \_\_\_\_\_. Section 2268.058(d), Government Code, is repealed.

The amendment to **SB 211** was read and was adopted by a viva voce vote.

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

Senator Nichols offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **SB 211** (committee report version), in SECTION 12 of the bill, immediately following added Section 2166.106, Government Code (page 6, between lines 36 and 37), by inserting the following:

Sec. 2166.1065. REVIEW OF CAPITOL COMPLEX MASTER PLAN BY PARTNERSHIP ADVISORY COMMISSION. (a) After a proposed Capitol Complex master plan or proposed update to the plan is submitted and considered approved under Section 2166.106 and before the commission adopts the plan or update, the commission must submit the plan or update to the Partnership Advisory Commission established under Chapter 2268 for review and comment.

(b) Not later than the 60th day after the date the Partnership Advisory Commission receives the plan or update, the advisory commission shall in a public hearing by majority vote of the members present:

(1) vote to approve the plan or update; or

(2) submit to the commission written comments and recommended modifications to the plan or update.

The amendment to **SB 211** was read and was adopted by a viva voce vote.

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

Senator Whitmire offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **SB 211** (senate committee printing) as follows:

(1) In SECTION 12 of the bill, in proposed Section 2166.105(a), Government Code (page 5, lines 39-59), strike proposed Subdivisions (4)-(11) and substitute the following:

(4) detailed, site-specific proposals for state property in the Capitol Complex, including proposals on the use of property and space for public sector purposes;

(5) an analysis of and recommendations for building design guidelines to ensure appropriate quality in new or remodeled buildings in the Capitol Complex;

(6) an analysis of and recommendations for Capitol Complex infrastructure needs, including transportation, utilities, and parking;

(7) for projects identified in the plan, an analysis of and recommendations for financing options;

(8) time frames for implementing the plan components and any projects identified in the plan;

(9) consideration of alternative options for meeting state space needs outside the Capitol Complex; and

(10) other information relevant to the Capitol Complex as the commission determines appropriate.

(2) In SECTION 12 of the bill, in proposed Section 2166.107(a), Government Code (page 6, line 40), strike "including property in the Capitol Complex,".

(3) In SECTION 12 of the bill, in proposed Section 2166.107(b), Government Code (page 6, lines 48 and 49), strike "and, for Capitol Complex property, the State Preservation Board and the Texas Historical Commission".

(4) Add the following appropriately numbered SECTIONS to the bill and renumber the SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter F, Chapter 2165, Government Code, is amended by adding Section 2165.259 to read as follows:

Sec. 2165.259. CAPITOL COMPLEX. (a) In this section, "Capitol Complex" has the meaning assigned by Section 443.0071.

(b) Notwithstanding Subchapter D, the commission may not lease, sell, or otherwise dispose of real property or an interest in real property located in the Capitol Complex.

(c) This section does not affect the commission's authority under Subchapter E to lease space in state office buildings and parking garages.

SECTION \_\_\_\_\_. Section 2267.003, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

Sec. 2267.003. APPLICABILITY. This chapter does not apply to:

(1) the financing, design, construction, maintenance, or operation of a highway in the state highway system;

(2) a transportation authority created under Chapter 451, 452, 453, or 460, Transportation Code; ~~or~~

(3) any telecommunications, cable television, video service, or broadband infrastructure other than technology installed as part of a qualifying project that is essential to the project; or

(4) a qualifying project located in the Capitol Complex, as defined by Section 443.0071.

The amendment to **SB 211** was read and was adopted by a viva voce vote.

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

Senator Duncan offered the following amendment to the bill:

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

Amend **SB 211** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 30.022, Education Code, is amended by amending Subsection (h) and adding Subsection (h-1) to read as follows:

(h) Except as provided by Subsection (h-1), the [The] board has [exclusive] jurisdiction over the physical assets of the school and shall administer and spend appropriations made for the benefit of the school.

(h-1) The Texas Facilities Commission shall provide facilities maintenance services for the physical facilities of the school, including facilities construction, cabling, facility reconfiguration, and any other services as provided by a memorandum of understanding between the board and the Texas Facilities Commission.

SECTION \_\_\_\_\_. Section 30.052, Education Code, is amended by amending Subsection (h) and adding Subsection (h-1) to read as follows:

(h) Except as provided by Subsection (h-1), the ~~[The]~~ board has ~~[exclusive]~~ jurisdiction over the physical assets of the school and shall administer and spend appropriations to carry out the purposes of the school as provided by Section 30.051.

(h-1) The Texas Facilities Commission shall provide facilities maintenance services for the physical facilities of the school, including facilities construction, cabling, facility reconfiguration, and any other services as provided by a memorandum of understanding between the board and the Texas Facilities Commission.

SECTION \_\_\_\_\_. Section 2165.007(b), Government Code, is amended to read as follows:

(b) Notwithstanding any other law, the commission shall provide facilities management services in relation to all state agency facilities in Travis County or a county adjacent to Travis County. The commission's duty does not apply to:

- (1) a facility owned or operated by an institution of higher education;
- (2) military facilities;
- (3) facilities owned or operated by the Texas Department of Criminal Justice;
- (4) facilities owned or operated by the Texas Department of Juvenile Justice ~~[Youth Commission]~~;
- (5) facilities owned or operated by the Texas Department of Transportation;
- (6) the Capitol, including the Capitol Extension, the General Land Office building, the Bob Bullock Texas State History Museum, any museum located on the Capitol grounds, the Governor's Mansion, and any property maintained by the Texas Historical Commission under Sections 442.0072 and 442.0073;
- (7) a facility determined by the commission to be completely residential;
- (8) a regional or field office of a state agency;
- (9) a facility located within or on state park property;
- (10) the property known as the Finance Commission Building described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas; ~~[or]~~
- (11) the property known as the Credit Union Department Building described by deed recorded in Volume 6126, Page 27, of the Deed Records of Travis County, Texas;
- (12) facilities owned or operated by the Texas School for the Blind and Visually Impaired; or
- (13) facilities owned or operated by the Texas School for the Deaf.

SECTION \_\_\_\_\_. (a) Not later than January 1, 2014, the following are transferred from the Texas School for the Blind and Visually Impaired to the Texas Facilities Commission:

(1) the powers, duties, functions, programs, and activities of the Texas School for the Blind and Visually Impaired relating to the maintenance of the school's physical facilities;

(2) any obligations and contracts of the Texas School for the Blind and Visually Impaired that are directly related to implementing a power, duty, function, program, or activity transferred under this subsection; and

(3) all property and records in the custody of the Texas School for the Blind and Visually Impaired that are related to a power, duty, function, program, or activity transferred under this subsection and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The Texas Facilities Commission and the Texas School for the Blind and Visually Impaired shall enter into a memorandum of understanding as provided by Section 30.022(h-1), Education Code, as added by this Act, that:

(1) identifies in detail the applicable powers and duties that are transferred between the two agencies by this Act; and

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas School for the Blind and Visually Impaired that are used for purposes of the commission's powers and duties directly related to the maintenance of the school's physical facilities under Section 30.022, Education Code.

SECTION \_\_\_\_\_. (a) Not later than January 1, 2014, the following are transferred from the Texas School for the Deaf to the Texas Facilities Commission:

(1) the powers, duties, functions, programs, and activities of the Texas School for the Deaf relating to the maintenance of the school's physical facilities;

(2) any obligations and contracts of the Texas School for the Deaf that are directly related to implementing a power, duty, function, program, or activity transferred under this subsection; and

(3) all property and records in the custody of the Texas School for the Deaf that are related to a power, duty, function, program, or activity transferred under this subsection and all funds appropriated by the legislature for that power, duty, function, program, or activity.

(b) The Texas Facilities Commission and the Texas School for the Deaf shall enter into a memorandum of understanding as provided by Section 30.052(h-1), Education Code, as added by this Act, that:

(1) identifies in detail the applicable powers and duties that are transferred between the two agencies by this Act; and

(2) establishes a plan for the identification and transfer of the records, personnel, property, and unspent appropriations of the Texas School for the Deaf that are used for purposes of the commission's powers and duties directly related to the maintenance of the school's physical facilities under Section 30.052, Education Code.

The amendment to **SB 211** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.



Senator Watson offered the following amendment to the bill:

### Floor Amendment No. 5

Amend **SB 211** (Senate Committee Report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 2267.001, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Commission" means the Partnership Advisory Commission established under Chapter 2268.

SECTION \_\_\_\_\_. Subchapter A, Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by adding Sections 2267.005, 2267.006, 2267.007, and 2267.008 to read as follows:

Sec. 2267.005. APPLICABILITY OF MUNICIPAL ZONING REGULATIONS. (a) Except as provided by Subsection (b) and Section 2267.006, a qualifying project that is to be performed or located in a municipality must comply with the zoning and land use regulations of the municipality.

(b) This section does not apply to a qualifying project that:

(1) uses a building, other structure, or land under the control, administration, or jurisdiction of a state agency for the same public purposes for which the state agency is authorized under the governing law that established the agency to use the building, structure, or land; or

(2) is located within the Capitol Complex, as defined by Section 411.061(a)(1).

Sec. 2267.006. SPECIAL BOARD OF REVIEW. (a) If a qualifying project does not comply with the zoning and land use regulations of a municipality as required by Section 2267.005 and the municipality denies a rezoning request for the qualifying project, the matter may be appealed to a special board of review consisting of the following members:

(1) the land commissioner;

(2) the administrative head of the governing body of the responsible governmental entity;

(3) the mayor of the municipality;

(4) the county judge of the county in which the municipality is located;

(5) one state senator selected by the lieutenant governor;

(6) one member of the house of representatives selected by the speaker of the house; and

(7) the commission member appointed by the governor.

(b) The land commissioner shall serve as presiding officer of the special board of review.

(c) The special board of review shall conduct one or more public hearings to consider the proposed qualifying project. The hearings must be conducted in accordance with rules adopted by the General Land Office for conduct of special review. The hearings are not considered a contested case proceeding under Chapter 2001.

(d) If after the hearings, the special board of review determines that the zoning and land use regulations are detrimental to the best interest of this state, the special board of review shall issue an order establishing a development plan to govern the use of the real property related to the qualifying project. Development of the real property must be in accordance with the plan and comply with all applicable municipal regulations, orders, or ordinances except as specifically identified by the order of the special board of review. If substantial progress is not made in implementing the qualifying project before the fifth anniversary of the date the development plan is adopted by the special board of review, the municipal zoning and land use regulations become applicable to development of the property, unless the special board of review adopts a new development plan.

(e) A development plan adopted by the special board of review and any plan accepted by a responsible governmental entity is final and binding on the state, the responsible governmental entity, lessees, successors in interest and assigns, and the affected municipality unless revised by the special board of review.

(f) A responsible governmental entity, builder, developer, or any other person may not modify the development plan without specific approval by the special board of review.

Sec. 2267.007. CONFLICT OF INTEREST. An employee of a responsible governmental entity or a person related to the employee within the second degree by consanguinity or affinity, as determined under Chapter 573, may not accept money, a financial benefit, or other consideration from a contracting person that has entered into a comprehensive agreement with the responsible governmental entity.

Sec. 2267.008. PROHIBITED EMPLOYMENT WITH FORMER OR RETIRED GOVERNMENTAL ENTITY EMPLOYEES. (a) A contracting person may not employ or enter into a professional services contract or a consulting services contract under Chapter 2254 with a former or retired employee of the responsible governmental entity with which the person has entered into a comprehensive agreement before the first anniversary of the date on which the former or retired employee terminates employment with the entity.

(b) This section does not prohibit the contracting person from entering into a professional services contract with a corporation, firm, or other business organization that employs a former or retired employee of the responsible governmental entity before the first anniversary of the date the former or retired employee terminates employment with the entity if the former or retired employee does not perform services for the corporation, firm, or other business organization under the comprehensive agreement with the responsible governmental entity that the former or retired employee worked on before terminating employment with the entity.

SECTION \_\_\_\_. (a) Section 2267.051, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Subsection (a-1), a [A] person may not develop or operate a qualifying project unless the person obtains the approval of and contracts with the responsible governmental entity under this chapter. The person may initiate

the approval process by submitting a proposal requesting approval under Section 2267.053(a), or the responsible governmental entity may request proposals or invite bids under Section 2267.053(b).

(a-1) A person may not develop or operate a qualifying project on property located within the Capitol Complex, as defined by Section 411.061(a)(1), unless the person obtains the approval of and contracts with the responsible governmental entity under this chapter. The person may not initiate the approval process by submitting a proposal requesting approval under Section 2267.053(a). The responsible governmental entity may request proposals or invite bids under Section 2267.053(b).

(b) If S.B. No. 894, Acts of the 83rd Legislature, Regular Session, 2013, or similar legislation relating to real property within the Capitol Complex is enacted and becomes law, this section has no effect.

SECTION \_\_\_\_ . Section 2267.052, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (b) and (c) and adding Subsection (d) to read as follows:

(b) The guidelines for a responsible governmental entity described by Section 2267.001(5)(A) must:

(1) require the responsible governmental entity to:

(A) make a representative of the entity available to meet with persons who are considering submitting a proposal; and

(B) provide notice of the representative's availability;

(2) provide reasonable criteria for choosing among competing proposals;

(3) contain suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;

(4) allow the responsible governmental entity to accelerate the selection, review, and documentation timelines for proposals involving a qualifying project considered a priority by the entity;

(5) include financial review and analysis procedures that at a minimum consist of:

(A) a cost-benefit analysis;

(B) an assessment of opportunity cost;

(C) consideration of the degree to which functionality and services similar to the functionality and services to be provided by the proposed project are already available in the private market; and

(D) consideration of the results of all studies and analyses related to the proposed qualifying project;

(6) allow the responsible governmental entity to consider the nonfinancial benefits of a proposed qualifying project;

(7) include criteria for:

(A) the qualifying project, including the scope, costs, and duration of the project and the involvement or impact of the project on multiple public entities;

(B) the creation of and the responsibilities of an oversight committee, with members representing the responsible governmental entity, that acts as an advisory committee to review the terms of any proposed interim or comprehensive agreement; and

(C) compliance with the requirements of Chapter 2268;

(8) require the responsible governmental entity to analyze the adequacy of the information to be released by the entity when seeking competing proposals and require that the entity provide more detailed information, if the entity determines necessary, to encourage competition, subject to Section 2267.053(g);

(9) establish criteria, key decision points, and approvals required to ensure that the responsible governmental entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement; and

(10) require the posting and publishing of public notice of a proposal requesting approval of a qualifying project, including:

(A) specific information and documentation regarding the nature, timing, and scope of the qualifying project, as required under Section 2267.053(a);

(B) a reasonable period, as determined by the responsible governmental entity, of not less than 45 days or more than 180 days, or a longer period specified by the governing body of the responsible governmental entity to accommodate a large-scale project, ~~[as determined by the responsible governmental entity,]~~ to encourage competition and partnerships with private entities and other persons in accordance with the goals of this chapter, during which the responsible governmental entity must accept submission of competing proposals for the qualifying project; and

(C) a requirement for advertising the notice on the governmental entity's Internet website and on TexasOnline or the state's official Internet website.

(c) The guidelines of a responsible governmental entity described by Section 2267.001(5)(B) must include:

(1) ~~[may include]~~ the provisions required under Subsection (b); and

(2) ~~[must include]~~ a requirement that the governmental entity engage the services of qualified professionals, including an architect, professional engineer, or certified public accountant, not otherwise employed by the governmental entity, to provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of any proposal requesting approval of a qualifying project unless the governing body of the governmental entity determines that the analysis of the proposal is to be performed by employees of the governmental entity.

(d) A responsible governmental entity described by Section 2267.001(5)(A) shall submit a copy of the guidelines adopted by the entity under this section to the commission for approval by the commission. The commission shall prescribe the procedure for submitting the guidelines for review under this section. The governmental entity may not request or consider a proposal for a qualifying project until the guidelines are approved by the commission.

SECTION \_\_\_\_ . Section 2267.053, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (b-1), and (b-2) to read as follows:

(a) A private entity or other person may submit a proposal requesting approval of a qualifying project by the responsible governmental entity. The proposal must be accompanied by the following, unless waived by the responsible governmental entity:

(1) a topographic map, with a 1:2,000 or other appropriate scale, indicating the location of the qualifying project;

(2) a description of the qualifying project, including:

(A) the conceptual design of any facility or a conceptual plan for the provision of services or technology infrastructure; and

(B) a schedule for the initiation of and completion of the qualifying project that includes the proposed major responsibilities and timeline for activities to be performed by the governmental entity and the person;

(3) a statement of the method the person proposes for securing necessary property interests required for the qualifying project;

(4) information relating to any current plans for the development of facilities or technology infrastructure to be used by a governmental entity that are similar to the qualifying project being proposed by the person for each affected jurisdiction;

(5) a list of all permits and approvals required for the development and completion of the qualifying project from local, state, or federal agencies and a projected schedule for obtaining the permits and approvals;

(6) a list of any facilities that will be affected by the qualifying project and a statement of the person's plans to accommodate the affected facilities;

(7) a statement on the person's general plans for financing the qualifying project, including the sources of the person's funds and identification of any dedicated revenue source or proposed debt or equity investment for the person;

(8) the name and address of each individual who may be contacted for further information concerning the request;

(9) user fees, lease payments, and other service payments over the term of any applicable interim or comprehensive agreement and the methodology and circumstances for changes to the user fees, lease payments, and other service payments over time;

(10) a statement of the specific public purpose served by the qualifying project;

(11) a statement describing the qualifying project's compliance with the responsible governmental entity's best value determination under Subsection (b-1); and

(12) [(10)] any additional material and information the responsible governmental entity reasonably requests.

(a-1) A responsible governmental entity that approves a proposal for a qualifying project under Subsection (a) shall select the contracting person for the project by soliciting additional proposals through a request for qualifications, request for proposals, or invitation to bid.

(b) A responsible governmental entity may request proposals or invite bids from persons for the development or operation of a qualifying project.

(b-1) A responsible governmental entity shall make a best value determination in evaluating the proposals received and consider the total project cost as one factor in evaluating the proposals. The responsible governmental entity [received, but] is not required to select the proposal that offers the lowest total project cost and [The responsible governmental entity] may consider the following factors:

(1) the proposed cost of the qualifying project;

(2) the general reputation, industry experience, and financial capacity of the person submitting a proposal;

(3) the proposed design and overall quality of the qualifying project;

- (4) the eligibility of the project for accelerated selection, review, and documentation timelines under the responsible governmental entity's guidelines;
- (5) comments from local citizens and affected jurisdictions;
- (6) benefits to the public;
- (7) the person's good faith effort to comply with the goals of a historically underutilized business plan;
- (8) the person's plans to employ local contractors and residents;
- (9) for a qualifying project that involves a continuing role beyond design and construction, the person's proposed rate of return and opportunities for revenue sharing;
- (10) the relationship and conformity of the qualifying project to a state or local community plan impacted by the qualifying project or to the uses of property surrounding the qualifying project;
- (11) the historic significance of the property on which the qualifying project is proposed to be located;
- (12) the environmental impact of the qualifying project; and
- (13) ~~(10)~~ other criteria that the responsible governmental entity considers appropriate.

(b-2) A responsible governmental entity may approve a qualifying project that the governmental entity determines serves a public purpose. The responsible governmental entity must include in the comprehensive agreement for the qualifying project a written declaration of the specific public purpose served by the project.

SECTION \_\_\_\_. Subsection (a), Section 2267.058, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended to read as follows:

(a) Before developing or operating the qualifying project, the contracting person must enter into a comprehensive agreement with a responsible governmental entity. The comprehensive agreement shall provide for:

- (1) delivery of letters of credit or other security in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible governmental entity, and delivery of performance and payment bonds in compliance with Chapter 2253 for all construction activities;
- (2) review of plans and specifications for the qualifying project by the responsible governmental entity and approval by the responsible governmental entity indicating that ~~(#)~~ the plans and specifications conform to standards acceptable to the responsible governmental entity, except that the contracting person may not be required to provide final design documents for ~~complete the design of~~ a qualifying project before the execution of a comprehensive agreement;
- (3) inspection of the qualifying project by the responsible governmental entity to ensure that the contracting person's activities are acceptable to the responsible governmental entity in accordance with the comprehensive agreement;
- (4) maintenance of a public liability insurance policy, copies of which must be filed with the responsible governmental entity accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible

governmental entity and reasonably sufficient to ensure coverage of tort liability to the public and project employees and to enable the continued operation of the qualifying project;

(5) monitoring of the practices of the contracting person by the responsible governmental entity to ensure that the qualifying project is properly maintained;

(6) reimbursement to be paid to the responsible governmental entity for services provided by the responsible governmental entity;

(7) filing of appropriate financial statements on a periodic basis; and

(8) policies and procedures governing the rights and responsibilities of the responsible governmental entity and the contracting person if the comprehensive agreement is terminated or there is a material default by the contracting person, including conditions governing:

(A) assumption of the duties and responsibilities of the contracting person by the responsible governmental entity; and

(B) the transfer or purchase of property or other interests of the contracting person to the responsible governmental entity.

SECTION \_\_\_\_. The heading to Section 2267.066, Government Code, is amended to read as follows:

Sec. 2267.066. POSTING OF PROPOSALS; PUBLIC COMMENT; PUBLIC ACCESS TO PROCUREMENT RECORDS; FINAL VOTE.

SECTION \_\_\_\_. Section 2267.066, Government Code, is amended by amending Subsections (c) and (d) and adding Subsection (e-1) to read as follows:

(c) Chapter 552 applies to qualifying project proposals [~~Trade secrets, financial records, or other records of the contracting person excluded from disclosure under Section 552.101 may not be posted or made available for public inspection except as otherwise agreed to by the responsible governmental entity and the contracting person~~].

(d) The responsible governmental entity shall hold a public hearing on the proposal during the proposal review process not later than the 30th day before the date the entity enters into an interim or comprehensive agreement. The public hearing shall be held in the area in which the proposed qualifying project is to be performed.

(e-1) After making the proposed comprehensive agreement available as required by Subsection (e), the responsible governmental entity shall hold a public hearing on the final version of the proposed comprehensive agreement and vote on the proposed comprehensive agreement after the hearing. The hearing must be held not later than the 10th day before the date the entity enters into a comprehensive agreement with a contracting person.

SECTION \_\_\_\_. (a) Subchapter B, Chapter 2267, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is amended by adding Section 2267.067 to read as follows:

Sec. 2267.067. QUALIFYING PROJECT IN CAPITOL COMPLEX. (a) A qualifying project for property located in the Capitol Complex, as defined by Section 411.061(a)(1), must be consistent with Capitol Complex design guidelines or standards adopted as part of the Capitol Complex master plan developed under Section 2166.105.

(b) A responsible governmental entity shall include design guidelines and standards defined in Subsection (a) in the request for proposals or invitation for bids for the development or operation of a qualifying project and inform the persons who submit proposals of the requirement to comply with the design guidelines and standards. The final proposal or invitation must be submitted to the State Preservation Board for verification that the proposal complies with the design guidelines and standards.

(c) A responsible governmental entity shall submit a final qualifying project proposal for property in the area described by Subsection (a) to the State Preservation Board. The board by majority vote may disapprove the proposal not later than the 60th day after the date the proposal is received by the board.

(d) A responsible governmental entity may not approve a qualifying project proposal for property in the area described by Subsection (a) before September 1, 2015. This subsection expires September 1, 2015.

(b) If S.B. No. 894, Acts of the 83rd Legislature, Regular Session, 2013, or similar legislation relating to real property within the Capitol Complex is enacted and becomes law, this section has no effect.

SECTION \_\_\_\_. Subsection (a), Section 2268.052, Government Code, is amended to read as follows:

(a) The commission consists of the following five ~~[11]~~ members:

(1) the chair of the House Appropriations Committee ~~[or the chair's designee]~~;

(2) one representative ~~[three representatives]~~ appointed by the speaker of the house of representatives;

(3) the chair of the Senate Finance Committee ~~[or the chair's designee]~~;

(4) one senator ~~[three senators]~~ appointed by the lieutenant governor; and

(5) one public member ~~[three representatives of the executive branch]~~, appointed by the governor.

SECTION \_\_\_\_. Subsection (a), Section 2268.056, Government Code, is amended to read as follows:

(a) The State Preservation Board ~~[legislative body that the presiding officer serves]~~ shall provide administrative staff support for the commission.

SECTION \_\_\_\_. Subsection (c), Section 211.013, Local Government Code, is amended to read as follows:

(c) Except as provided by Section 2267.005, Government Code, this ~~[This]~~ subchapter does not apply to a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency.

SECTION \_\_\_\_. Not later than December 1, 2016, the Partnership Advisory Commission established under Chapter 2268, Government Code, shall submit to the lieutenant governor, the speaker of the house of representatives, and the appropriate legislative standing committees recommendations on proposed amendments to Chapters 2267 and 2268, Government Code.

SECTION \_\_\_\_. Section 552.153, Government Code, as added by Chapter 1334 (S.B. 1048), Acts of the 82nd Legislature, Regular Session, 2011, is repealed.

The amendment to **SB 211** was read and was adopted by a viva voce vote.



All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5.

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

**SB 211** as amended was passed to engrossment by a viva voce vote.

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

### SENATE BILL 211 ON THIRD READING

Senator Nichols moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 211** be placed on its third reading and final passage.

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

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

### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Thursday, April 11, 2013 - 2

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:

**HCR 31** Eiland  
Designating the Kemp's ridley sea turtle as the official State Sea Turtle of Texas.

**HCR 36** Smith  
Designating February 16 as Texas Homemade Pie Day for a 10-year period beginning in 2013.

**HCR 43** Geren  
Authorizing the lieutenant governor and speaker to appoint interim joint committees.

**HCR 55** Lucio III  
Urging the U.S. Department of State to take appropriate action to ensure that Mexico complies with the 1944 Treaty regarding shared water resources and that it make required water deliveries to the United States a priority.

**SB 157** Hegar  
Relating to the Parrie Haynes Trust.

Sponsor: Aycock

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**COMMITTEE SUBSTITUTE  
SENATE BILL 15 ON SECOND READING**

Senator Seliger moved to suspend the regular order of business to take up for consideration **CSSB 15** at this time on its second reading:

**CSSB 15**, Relating to the governance of public institutions of higher education in this state.

The motion prevailed.

Senators Birdwell and Paxton asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

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

Nays: Birdwell, Paxton.

**COMMITTEE SUBSTITUTE  
SENATE BILL 15 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 15** be placed on its third reading and final passage.

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

Yeas: Campbell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Rodriguez, Schwertner, Seliger, Taylor, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Paxton.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 2. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 21 ON THIRD READING**

The Presiding Officer, Senator Eltife in Chair, laid before the Senate **CSSB 21** by Senator Williams on its third reading. The bill had been passed to engrossment as amended, read third time, and further consideration temporarily postponed:

**CSSB 21**, Relating to drug screening or testing as a condition for the receipt of unemployment compensation benefits by certain individuals.

Question—Shall **CSSB 21** be finally passed?

Senator Watson offered the following amendment to the bill:

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

Amend Second Reading Amendment No. 2 by Watson to **CSSB 21** on third reading in the proposed Section 207.026(c)(2), Labor Code, between "enrolls in" and "a treatment program" by inserting "and attends".

The amendment to **CSSB 21** was read and was adopted by a viva voce vote.

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

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

**CSSB 21** as again amended was finally passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 215 ON SECOND READING**

On motion of Senator Birdwell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 215** at this time on its second reading:

**CSSB 215**, Relating to the continuation and functions of the Texas Higher Education Coordinating Board.

The bill was read second time.

Senator Birdwell offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 215** (senate committee printing) in SECTION 15 of the bill as follows:

(1) In amended Section 61.0512(b), Education Code (page 7, lines 17 through 19), strike "secure preliminary approval from [college or university shall notify] the board to carry out that planning" and substitute "[college or university shall] notify the board before the institution may carry out that planning".

(2) In added Section 61.0512(c), Education Code (page 7, line 23), strike "begins preliminary planning for" and substitute "requests to implement".

The amendment to **CSSB 215** was read and was adopted by a viva voce vote.

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

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSSB 215** (senate committee printing) in SECTION 2 of the bill, in added Section 51.406(d), Education Code (page 1, line 37), by striking "consult" and substituting "engage in negotiated rulemaking under Chapter 2008, Government Code,".

The amendment to **CSSB 215** was read and was adopted by a viva voce vote.

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

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 3**

Amend **CSSB 215** (senate committee printing) by striking SECTION 10 of the bill (page 3, line 66, through page 4, line 11), striking SECTION 29 of the bill (page 10, line 59, through page 11, line 1), and renumbering the remaining SECTIONS of the bill accordingly.

The amendment to **CSSB 215** was read and was adopted by a viva voce vote.

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

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 4**

Amend **CSSB 215** (senate committee printing) by striking SECTION 13 of the bill (page 4, line 46, through page 5, line 63) and substituting the following appropriately numbered SECTION:

SECTION \_\_\_\_ Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.035 to read as follows:

Sec. 61.035. COMPLIANCE MONITORING. (a) The board by a negotiated rulemaking process in accordance with Chapter 2008, Government Code, shall establish an agency-wide, risk-based compliance monitoring function for:

(1) funds allocated by the board to institutions of higher education, private or independent institutions of higher education, and other entities, including student financial assistance funds, academic support grants, and any other grants, to ensure that those funds are distributed in accordance with applicable law and board rule; and

(2) data reported by institutions of higher education to the board and used by the board for funding or policymaking decisions, including data used for formula funding allocations, to ensure the data is reported accurately.

(b) For purposes of this section, student financial assistance includes grants, scholarships, loans, and work-study.

(c) After considering potential risks and the board's resources, the board shall review a reasonable portion of the total funds allocated by the board and of data reported to the board. The board shall use various levels of monitoring, according to risk, ranging from checking reported data for errors and inconsistencies to conducting comprehensive audits, including site visits.

(d) In developing the board's risk-based approach to compliance monitoring under this section, the board shall consider the following factors relating to an institution of higher education or private or independent institution of higher education:

(1) the amount of student financial assistance or grant funds allocated to the institution by the board;

(2) whether the institution is required to obtain and submit an independent audit;

(3) the institution's internal controls;

(4) the length of time since the institution's last desk review or site visit;

(5) past misuse of funds or misreported data by the institution;

(6) in regard to data verification, whether the data reported to the board by the institution is used for determining funding allocations; and

(7) other factors as considered appropriate by the board.

(e) The board shall train compliance monitoring staff to ensure that the staff has the ability to monitor both funds compliance and data reporting accuracy. Program staff in other board divisions who conduct limited monitoring and contract administration shall coordinate with the compliance monitoring function to identify risks and avoid duplication.

(f) If the board determines through its compliance monitoring function that funds awarded by the board to an institution of higher education or private or independent institution of higher education have been misused or misallocated by the institution, the board shall present its determination to the institution's governing board and provide an opportunity for a response from the institution. Following the opportunity for response, the board shall report its determination and the institution's response, together with any recommendations, to the institution's governing board, the governor, and the Legislative Budget Board.

(g) If the board determines through its compliance monitoring function that an institution of higher education has included errors in the institution's data reported for formula funding, the board:

(1) for a public junior college, may adjust the appropriations made to the college for a fiscal year as necessary to account for the corrected data; and

(2) for a general academic teaching institution, a medical and dental unit, or a public technical institute, shall calculate a revised appropriation amount for the applicable fiscal year based on the corrected data and report that revised amount to the governor and Legislative Budget Board for consideration as the basis for budget execution or other appropriate action, and to the comptroller.

(h) In conducting the compliance monitoring function under this section, the board may partner with internal audit offices at institutions of higher education and private or independent institutions of higher education, as institutional resources allow, to examine the institutions' use of funds allocated by, and data reported to, the board. To avoid duplication of effort and assist the board in identifying risk, an internal auditor at an institution shall notify the board of any audits conducted by the auditor involving funds administered by the board or data reported to the board. The board by rule may determine the timing and format of the notification required by this subsection.

(i) The board may seek technical assistance from the state auditor in establishing the compliance monitoring function under this section. The state auditor may periodically audit the board's compliance monitoring function as the state auditor considers appropriate.

(j) In this section:

(1) "Desk review" means an administrative review by the board that is based on information reported by an institution of higher education or private or independent institution of higher education, including supplemental information required by the board for the purposes of compliance monitoring, except that the term does not include information or accompanying notes gathered by the board during a site visit.

(2) "Site visit" means an announced or unannounced in-person visit by a representative of the board to an institution of higher education or private or independent institution of higher education for the purposes of compliance monitoring.

The amendment to **CSSB 215** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 4.

Senator Patrick offered the following amendment to the bill:

#### **Floor Amendment No. 5**

Amend **CSSB 215** (senate committee printing) in SECTION 15 of the bill, in amended Section 61.0512(a), Education Code, (page 7, line 13) insert the following sentence at the end of the subsection: "A new degree or certificate program is considered approved if the board has not completed a review under this section and acted to approve or disapprove the proposed program before the first anniversary of the date on which an institution of higher education submits a completed application to the board. The board may not summarily disapprove a program without completing the review required by this section."

The amendment to **CSSB 215** was read.

Senator West offered the following amendment to Floor Amendment No. 5:

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

Amend Floor Amendment No. 5 to **CSSB 215**, on page 1, line 11, after "section.", insert "The board shall specify by rule the elements that constitute a completed application and shall make an administrative determination of the completeness of the application not later than the fifth business day after receiving the application. A request for additional information in support of an application that has been determined administratively complete does not toll the period within which the application is considered approved under this section. The board may not summarily disapprove a program without completing the review required by this section."

The amendment to Floor Amendment No. 5 to **CSSB 215** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 6.

Question recurring on the adoption of Floor Amendment No. 5 to **CSSB 215**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 5 as amended.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend **CSSB 215** (senate committee printing) in SECTION 23 of the bill by striking added Section 61.07761, Education Code (page 9, lines 27 through 36), and substituting the following:

Sec. 61.07761. FINANCIAL AID AND OTHER TRUSTEED FUNDS ALLOCATION. (a) For any funds trustee to the board for allocation to institutions of higher education and private or independent institutions of higher education, including financial aid program funds, the board by rule shall:

(1) establish and publish the allocation methodologies; and  
(2) develop procedures to verify the accuracy of the application of those allocation methodologies by board staff.

(b) The board shall engage in negotiated rulemaking as described by Chapter 2008, Government Code, in adopting rules under this section.

The amendment to **CSSB 215** was read.

Senator Birdwell moved to table Floor Amendment No. 7.

The motion to table was lost by the following vote: Yeas 13, Nays 17.

Yeas: Birdwell, Carona, Deuell, Eltife, Hancock, Hegar, Huffman, Nelson, Nichols, Patrick, Paxton, Taylor, Whitmire.

Nays: Campbell, Davis, Duncan, Ellis, Estes, Fraser, Garcia, Lucio, Rodríguez, Schwertner, Seliger, Uresti, Van de Putte, Watson, West, Williams, Zaffirini.

Absent: Hinojosa.

Question recurring on the adoption of Floor Amendment No. 7 to **CSSB 215**, the amendment was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 7.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend **CSSB 215** (senate committee report) as follows:

In SECTION 25 of the bill, in amended Section 61.822(a), Education Code, (page 9, lines 43-44), strike "develop and implement policies to promote" and substitute "encourage".

The amendment to **CSSB 215** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 8.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 9**

Amend **CSSB 215** (senate committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 61.033, Education Code, is amended to read as follows:

Sec. 61.033. ~~[NEGOTIATED RULEMAKING;]~~ ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of[:

~~[(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and~~

~~[(2)]~~ appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to[:

~~[(1) coordinate the implementation of the policy adopted under Subsection (a);~~

~~[(2)]~~ serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution[; and

~~[(3) collect data concerning the effectiveness of those procedures, as implemented by the board].~~

SECTION \_\_\_\_\_. Subchapter B, Chapter 61, Education Code, is amended by adding Section 61.0331 to read as follows:

Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. If the board is required by this code or other law to consult or cooperate with institutions of higher education in the development of a policy, procedure, or rule, the board must engage the institutions in a negotiated rulemaking process as described by Chapter 2008, Government Code, before the policy, procedure, or rule may take effect.

The amendment to **CSSB 215** was read.

Senator Birdwell moved to table Floor Amendment No. 9.

The motion to table was lost by the following vote: Yeas 10, Nays 21.

Yeas: Birdwell, Carona, Eltife, Hegar, Huffman, Nelson, Nichols, Paxton, Van de Putte, Whitmire.

Nays: Campbell, Davis, Deuell, Duncan, Ellis, Estes, Fraser, Garcia, Hancock, Hinojosa, Lucio, Patrick, Rodríguez, Schwertner, Seliger, Taylor, Uresti, Watson, West, Williams, Zaffirini.

Question recurring on the adoption of Floor Amendment No. 9 to **CSSB 215**, the amendment was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 9.

Senator Seliger offered the following amendment to the bill:

#### **Floor Amendment No. 10**

Amend **CSSB 215** as follows:

(1) In amended Section 61.0512, Education Code, strike Subsections (f) and (g) (Committee printing page 7, lines 45-53) and substitute the following:



(f) The board may not order the consolidation or elimination of any degree or certificate program offered by an institution of higher education but may, based on the board's review under Subsections (d) and (e), recommend such action to an institution's governing board. If an institution's governing board does not accept recommendations to consolidate or eliminate a degree or certificate program, the university system or, where a system does not exist, the institution, must identify the programs recommended for consolidation or elimination on the next legislative appropriations request submitted by the system or institution.

(2) In Subsection (h), Section 61.0512, Education Code (Committee printing page 7, line 54), strike "(h)" and substitute "(g)".

The amendment to **CSSB 215** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 10.

Senator Seliger offered the following amendment to the bill:

#### **Floor Amendment No. 11**

Amend **CSSB 215** by adding the following appropriately numbered SECTION to the bill and renumbering the remaining SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subsection (f), Section 130.0012, Education Code, is amended to read as follows:

(f) Each public junior college that offers a baccalaureate degree program under this section must enter into an articulation agreement for the first five years of the program with one or more general academic teaching institutions to ensure that students enrolled in the degree program have an opportunity to complete the degree if the public junior college ceases to offer the degree program. The coordinating board may require a general academic teaching institution that offers a comparable degree program to enter into an articulation agreement with the public junior college as provided by this subsection.

The amendment to **CSSB 215** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 11.

Senator West offered the following amendment to the bill:

#### **Floor Amendment No. 12**

Amend **CSSB 215** by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 61, Education Code, is amended by adding Section 61.0763 to read as follows:

Sec. 61.0763. STUDENT LOAN DEFAULT PREVENTION AND FINANCIAL AID LITERACY PILOT PROGRAM. (a) In this section, "career school or college" has the meaning assigned by Section 132.001.

(b) Not later than January 1, 2014, the board shall establish and administer a pilot program at selected postsecondary educational institutions to ensure that students of those institutions are informed consumers with regard to all aspects of student financial aid, including:

(1) the consequences of borrowing to finance a student's postsecondary education;

(2) the financial consequences of a student's academic and career choices;  
and

(3) strategies for avoiding student loan delinquency and default.

(c) The board shall select at least one institution from each of the following categories of postsecondary educational institutions to participate in the program:

(1) general academic teaching institutions;

(2) public junior colleges;

(3) private or independent institutions of higher education; and

(4) career schools or colleges.

(d) In selecting postsecondary educational institutions to participate in the pilot program, the board shall give priority to institutions that have a three-year cohort student loan default rate, as reported by the United States Department of Education:

(1) of more than 20 percent; or

(2) that has above average growth as compared to the rates of other postsecondary educational institutions in this state.

(e) The board, in consultation with postsecondary educational institutions, shall adopt rules for the administration of the pilot program, including rules governing the selection of postsecondary educational institutions to participate in the pilot program consistent with the requirements of Subsection (d).

(f) The board may contract with one or more entities to administer the pilot program according to criteria established by board rule.

(g) Not later than January 1 of each year, beginning in 2016:

(1) the board shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the outcomes of the pilot program, as reflected in the federal student loan default rates reported for the participating institutions; and

(2) each participating institution shall submit a report to the governor, the lieutenant governor, and the speaker of the house of representatives regarding the outcomes of the pilot program at the institution, as reflected in the federal student loan default rate reported for the institution.

(h) This section expires December 31, 2020.

SECTION \_\_\_\_. The Texas Higher Education Coordinating Board shall adopt rules for the administration of Section 61.0763, Education Code, as added by this Act, as soon as practicable after this Act takes effect. For that purpose, the coordinating board may adopt the initial rules in the manner provided by law for emergency rules.

The amendment to **CSSB 215** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 12.

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

**CSSB 215** as amended was passed to engrossment by a viva voce vote.

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

Nays: Hegar.

**COMMITTEE SUBSTITUTE  
SENATE BILL 215 ON THIRD READING**

Senator Birdwell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 215** be placed on its third reading and final passage.

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

Nays: Hegar.

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1255 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1255** at this time on its second reading:

**CSSB 1255**, Relating to binding arbitration of an appraisal review board order determining a protest of an unequal appraisal of the owner's property.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1255 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1255** be placed on its third reading and final passage.

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

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

**NOMINATION RETURNED**

Senator Hegar moved to grant the request of the Governor to return the following nomination:

Member, Board of Regents, University of North Texas System: Ernest W. Kuehne, Dallas County.

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

**SENATE RULE 7.07(b) SUSPENDED**  
**(Permission to Introduce)**  
**(Motion In Writing)**

On motion of Senator Whitmire and by unanimous consent, Senate Rule 7.07(b) was suspended to permit the introduction of the following bill: **SB 1887**.

**SENATE BILLS ON FIRST READING**

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

**SB 1887** by Carona

Relating to excellence funding for health-related institutions of higher education.  
To Committee on Finance.

**SB 1888** by Hinojosa

Relating to the creation of a county court at law in Jim Wells County.  
To Committee on Jurisprudence.

**HOUSE BILLS ON FIRST READING**

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

**HB 243** to Committee on Health and Human Services.

**HB 424** to Committee on Health and Human Services.

**HB 442** to Committee on Transportation.

**HB 634** to Committee on Criminal Justice.

**HB 680** to Committee on Intergovernmental Relations.

**HB 695** to Committee on Transportation.

**HB 736** to Committee on Health and Human Services.

**HB 757** to Committee on Veteran Affairs and Military Installations.

**HB 1097** to Committee on Transportation.

**HB 1648** to Committee on Health and Human Services.

**REMARKS ORDERED PRINTED**

On motion of Senator Ellis and by unanimous consent, the remarks regarding **CSSB 1611** were ordered reduced to writing and printed in the *Senate Journal* as follows:

**President:** Chair recognizes Senator Ellis for a motion to suspend the Senate's Regular Order of Business to take up and consider Committee Substitute to Senate Bill 1611.

**Senator Ellis:** Thank you, Mr. President and Members. Senator Robert Duncan and I came together to work together to work on this Committee Substitute to Senate Bill 1611 because there's nothing more vital than the reliability and quality of our justice system in Texas than bringing all of the relevant facts to light to ensure we're protecting the innocent, convicting only the guilty, and providing justice to people that we can trust. Members, I want to take a moment, if I might, to thank Senator Duncan, in particular, and his staff, as well as my staff and a lot of other people who worked on this bill, my friend and colleague, Senator West, who I nicknamed Thurgood, going

through this process, Deán Whitmire, Senator Huffman, the Lieutenant Governor's staff, and the Lieutenant Governor personally, the District and County Attorneys' Association, the defense bar, the Governor's office, and Thomas Ratliff. I want to thank all of the stakeholders who've been involved in this issue with trying to put justice first, working out an agreement in the best interest of everybody of Texas, in coming together on this important step towards making our criminal justice system a much better one. In particular, I want to thank someone over to my right that I took the privilege of bringing on the floor, with permission from Senate Administration. I want to thank Michael Morton for using his life's tragedy to make a difference to protect others, to make sure they wouldn't end up in a similar predicament. There were times when this bill fell apart, when I, quite frankly, was ready to walk away and work on something else, but I thought about Dean Whitmire's comments when he introduced Michael Morton on one of his bills, and we had them on the floor, and he said, what would Michael do? But Michael Morton and his lovely bride really worked on this and did a lot to bring us all together over the last couple of days. Michael's tragic case brought to the forefront something that we already knew in Texas, but we too long neglected. Our criminal discovery process in Texas needs serious reform. Clearly, exculpatory evidence was in the possession of the state in his case, but it was never revealed for over 25 years. Regardless of whether those facts were intentional or not, what is clear is that a more open and transparent discovery process would've helped Michael Morton and hopefully many other people in Texas. Mr. Morton was kind enough to work on this bill; we decided to name it after him. So, hence forward, hoping it passes today, this will be known as the Michael Morton Act. Here are the four important things that the bill does. It removes barriers to discovery processes in Texas to ensure a more relevant evidence procedure comes forward and evidence that is relevant will be disclosed; it has to be disclosed. It allows prosecutors to withhold information through a protective order to protect a victim or witness to make sure that they are safe. Number three, it provides greater transparency by requiring a record of all items disclosed to avoid disputes later in the process. And fourth, which is the other main component, it requires continuing discovery after trial has commenced. Members, the discovery statute in Texas has not been changed since 1965. I know we had a lot of former Members here today, and if any one of them were in this body in 1965, I'm sure they tried to do a good job. But God knows, we were not ahead of our time in 1965. As I stated earlier, it is an agreed-to bill. I have a perfecting amendment to correct typos that Senator Huffman and Senator Whitmire have looked at and approved, and Senator Huffman has an amendment that she's going to offer at the appropriate time to address some of her concerns. There'll be some Q&A in terms of legislative intent, hopefully to make sure that no unintended consequences in this bill, but I think we have an agreed-to product. I would respectfully move that the Senate suspend all necessary rules to take up and consider the Committee Substitute to Senate Bill 1611, the Michael Morton Act.

**Senator Davis:** Thank you. Senator Ellis, I just want to compliment your incredible work on the bill that we're voting on right now. I know it has not been an easy process for you, and, unfortunately, it resulted from experiences like those borne by Mr. Morton in our criminal justice system, but it is an incredibly important piece of work going forward to make sure that hopefully we don't have more Michael Morton

stories in Texas' future. You are to be congratulated for what you have done in putting this bill together. I know it has not been an easy process, and I just want you to know how much I admire the difference that you're making in people's lives, that we will never know, will be impacted by the work that you put forward in this bill today. Thank you very much.

**Senator Ellis:** Thank you, Senator. I have good staff and a good co-sponsor, so we've been pretty lucky. But thank you, Members, one and all.

**Senator Huffman:** Senator Ellis, you and I worked on this, and I am absolutely certain you're going to take my amendment, but just to quell some of the questions that I'm receiving here on the floor, you do intend to accept the amendment that I will be offering?

**Senator Ellis:** That is correct, I will. And I appreciate the time and work that you put into it, Senator, and all of the Members. We had a long collaborative meeting on yesterday and over a lot of days, and so I appreciate the work of everyone.

**Senator Whitmire:** Senator Ellis, as you well know, sometimes some of the grassroots of ours and grassroots of Senator Huffman and Senator Duncan will ask us, well, are you familiar that sometimes they say, why do y'all work with the Republicans? Why don't you distinguish our side from their side? Would you not agree with me, this is a classic example of where you and Senator Duncan came together to craft some legislation in a bipartisan form? Senator Huffman had some concerns based on her experiences as a prosecutor and a judge, but I was in the working session yesterday, and I'm going to tell you publicly, it was as fine a moment for the legislative process as I've seen maybe ever, certainly in a long time. You've been here a long time as well. Do you not agree with me that as we pass this piece of legislation with Mr. Morton and his wife, Cynthia, here, isn't it a great tribute to this body, to the Mortons, that would stay involved and make a difference? Not only for future cases, I mean, we can't undo the harm and the tragedy of his case but, I mean, I just can't tell you how impressed I was yesterday to watch how serious you and Duncan and Huffman and Senator West and your advisors took this subject with Mr. Morton at the table. So, would you not agree with me that that is why we're sent down here to legislate and to make a difference in state policy?

**Senator Ellis:** Dean, it is, and it's really a testament to all of us. I mean, we know that our law enforcement people have a tough job to do. And you and Members of your committee do a good job of advocating for them, but it is a government program and sometimes the government makes mistakes. Every other state in the country has a discovery process. Some people on my side of the aisle would say, well, why do you have to do anything, because it's pretty clear from court precedents from the Supreme Court, most of this stuff should've been given over anyway, 254 counties, is not always given over. So, I think all sides came together. I had a good conversation with the prosecutor from Bexar County on yesterday, and I think she raised some legitimate concerns. Senator Huffman put a lot of time into it. Dean, you helped a lot. It's a tough issue. You know, I point out all the time, I'm not a criminal lawyer, and Senator Duncan is not either, but we've had a lot of good experts and a lot of goodwill

in this body, including the Presiding Officer, to do a meet with Mr. Morton on short notice on yesterday when the wheels fell off. I think it's a good product that we'll all be proud of.

**Senator Whitmire:** Having been here a while, I have referenced many times that long-time Lieutenant Governor Bob Bullock would put us in the Ramsey room and tell us not to come out until we have an agreement. Well, yesterday, our current Lieutenant, Dewhurst, because the Ramsey room was full, he put us in the great room and told us not to come out until we had an agreement. So that's, once again, what it's all about, to come together. We'll disagree on the budget, and we're going to have some heated discussions about charters, but for the moment, let me just tell you, this is why we're sent down here. And I hope our friends and supporters understand why we agree to disagree sometime, and then we come up with a package that'll make our constituents have better opportunities when they go to court.

**Senator Ellis:** Thank you, Dean.

**President:** Well said, Senator Whitmire.

**Senator Rodríguez:** I'm just rising to express my appreciation for the great work that was done by Senator Ellis, Senator Duncan, and Senator Huffman, and I did find out about your key role, Mr. President. And having been a prosecutor and also having done some criminal defense work when I was in private practice, in my brief stint as a private practice lawyer, I have an appreciation for how difficult it was to reach this point where there was some resistance on both sides, and yet the role that Mr. Morton and his wife played in it was able to convince all of us, and I especially want to thank Senator Huffman for her key role in working out this compromise that is in the bill today, to have us at least move forward finally. For many, many years we hadn't done any changes, significant changes to the discovery rules in the criminal arena, and this is a major step forward in promoting a fair, a more just criminal justice system, so I want to thank you for that great work, all of you, for having done this for the state. Thank you, Mr. President.

**Senator Ellis:** Senator, I want to thank you for having dinner with me and the Mortons the other night, a good three hours. You told me you were going to stop by and I'm sure the fact that he was there, his wife was there—they're trying to go on their honeymoon sometime soon—that you and Senator West stayed a couple of hours working through this bill a couple of nights ago. Thank you very much.

**Senator West:** Senator Ellis, I know that there had to be a lobbyist group that brought this bill to you, there had to be a lobbyist group, so what lobbyist group brought this bill to you?

**Senator Ellis:** No lobbyist group brought this and, Senator, you know, I think back to last session and some of the controversy on the Forensic Science Commission. You remember that, and it was a very heated exchange between me and some of our friends in the prosecutor community, and you know, of course, you roll forward. I guess history sort of proved I knew that there was something going on when Michael Morton walked out of that courtroom as a free man after our last session, but really, this is not one, I attribute my staff. I mean, there were a lot of meetings about what could be done and a lot of proposals were put on the table as a result of the Morton

tragedy. I mean, he's just one, there are many others. You know, there are about 312 people that have been exonerated in this country. That's a tough thing when you go up against the full force of the federal government or any state, but this is not one that, to be honest with you, it wouldn't have been on my top list of things to do coming into this session. I understand there was a meeting in which our staff members were there, your staff may have been there, the stakeholders, Mr. Morton and old Thomas Ratliff, and nobody was picking this one up off the table. So, a young gal, my staff, picked it up and I said, well, you know, good luck. Maybe we'll do a bill, we had a long, I think 30-page bill that you had a little heartburn over.

**Senator West:** I had a lot of heartburn over.

**Senator Ellis:** Yeah, we had some deep discussions about that late at night where we were going to bust up the Black Caucus on that bill, so we decided to go with something we could pass, but this is not one. You know I chair the board of the Innocence Project? The Innocence Project will not take a position on this issue because there are still people in the defense community who are going to get some heartburn. I mean, there'll be some discussion when your amendment comes up that I'm going to accept, and I suspect there are some people in the prosecutor community who will still have some heartburn. Change does not come easily, although we're the last state not to have an open discovery process. But no, no, this is not one way with the lobby, it was really our staffs and us really wanting to do something because of what this man went through.

**Senator West:** You know, there's, and I'm going to introduce them in a few minutes. I'm glad that I've got some students down from my senatorial district that I'll introduce in a minute so they can hear what's going on on the floor of the Senate. Because Senator Whitmire is correct, this is probably one of our finest moments. I think that even though we're dealing with juvenile issues, truancy, and all of that, I think this is going to be one of the—we get it through the House, and the whole nine yards—it's going to be one of the top criminal justice bills this legislative session because it's going to make a difference. And I concur with Senator Whitmire, when you think about the talent—and I think LeBron James took his talents to South, what was it, South Beach, okay—you think about the talents on this floor that had input into this particular process, the experience. We had judicial experience, prosecutorial experience, defense counsel experience, and then everyday people experience. In terms of the impact that it has, that some of the things that have happened in our criminal justice, that have on our citizens, all of those experiences, as well as the leadership of our Lieutenant Governor, came to bear on this particular issue. That's why I'm glad that we're taking a moment, just kind of reflect on how this particular bill ultimately will be passed in the Senate, hopefully become law, and use this as a blueprint as we go through other issues of importance, sitting down—yes, we get noise and knots out all the time, in terms of what we should and shouldn't do—but we should use it as a blueprint to go forth on other issues. So, I applaud the work group that we were able to put together in getting this particular bill to the floor and hopefully passage today.



**Senator Ellis:** Senator, I thank you, and you know I nicknamed you Thurgood because when my friends come to me with these technical questions about the criminal justice system, in terms of a practitioner's perspective, that's above my pay grade, and you and John Whitmire made a really big difference on this bill, and I appreciate it.

**President:** Members, well said. And, Senator Ellis, you've got my commitment and partnership to work with the House on this bill, make sure that it passes. Members, you've heard the motion by Senator Ellis, is there objection from any Member as to the suspension of the Senate's rules? Hearing no objection, the rules are suspended. Chair lays out on second reading, Committee Substitute to Senate Bill 1611, the Secretary will read the caption. Chair lays out Floor Amendment 1 by Senator Ellis, the Secretary will read the amendment.

**Secretary of the Senate:** Floor Amendment Number 1 by Ellis.

**President:** Chair recognizes Senator Ellis to explain Floor Amendment Number 1.

**Senator Ellis:** Mr. President and Members, it is purely cleanup, this floor amendment is simply a Lege' Council cleanup of the Committee Substitute to Senate Bill 1611, so we don't have things like hysterical instead of historical, and Senator Huffman has looked at it. Purely cleanup, no trick stuff in here. I may have something in another bill, but not on this one. If there are no questions, I move adoption.

**President:** Well, thank you for giving us an insight into your other bills. Members, you've heard the motion by Senator Ellis, is there any objection from any Member? Chair hears no objection and Floor Amendment Number 1 is adopted. Chair lays out Floor Amendment Number 2 by Senator Huffman. The secretary will read the amendment.

**Senator Huffman:** Thank you, Mr. President. As Senator Ellis explained, this is an amendment which I felt was necessary to complete the bill. I was very supportive and, I think most, the great majority of those in the prosecutor community, I think, were very supportive of change in the discovery process, knowing that, as Senator Ellis said, it's been over 40 years since we've made any changes, and it was time to do it. Many of the big urban counties had started to implement open-file policies and started to make their own discovery reforms, but I think many of us believe that it was necessary in the interest of justice that it be uniform throughout the State of Texas, that seemed like the right thing to do. But it's very difficult in these situations to balance the need to get the information that a defendant needs to adequately prepare defense and balance that with just the duties that we have as a state, as the prosecutors have, the duties they have to protect the vulnerability of witnesses and victims who find themselves in the criminal justice system, many times, of course, through no fault of their own. And so, I worked with the prosecutors and with the other stakeholders to kind of come up with some language that would, hopefully we could all agree on, and after a little head butting, but some good substantive discussion, we were able to do that. So, I feel comfortable with this amendment, that it brings us to a place of balance that will be both fair to the defendant and fair to the victims and witnesses. Basically, the amendment just goes a little step further, tightens up protections of a witness or a victim's identity, though it still allows the defendant all the tools that he needs and the

access to information by his inner circle, and by inner circle, I mean his defense lawyer, his group of experts, his investigators, and so forth, will have the information they need, but it provides for steps if that information needs to be released outside of the inner circle. It also provides something in there that would allow a defense counsel to do what he or she would need to publicly speak about the case that's pending, within the rules of professional responsibility. So, I think it's a good amendment, I think it makes this bill a workable bill, and I move adoption of the amendment.

**Senator West:** Senator Huffman, I got about three questions I want to ask you. Will your amendment permit a defense attorney to confer with a more experienced defense attorney who is not a part of the defense team on the case about issues raised by discovery received from the state?

**Senator Huffman:** Yes, the amendment specifically refers to consulting legal counsel, and I believe that what you're asking would certainly be under the definition of a consulting legal counsel. So, that would be within that inner circle because that's a person that would be under the same ethical rules of professional responsibility, so certainly be willing to respect the parameters of the bill in keeping the confidentiality that is required under the bill.

**Senator West:** With the amendment, does the legislation allow lawyers to fulfill their ethical obligations by reporting misconduct to the State Bar and oversight agencies when reporting misconduct involves providing information received in discovery and identifying a witness by name?

**Senator Huffman:** Yes, under Subsection (g), we specifically addressed that an attorney who wanted to make a complaint could do that to whatever administrative law enforcement regulatory or licensing agent, if they made a good faith complaint. It did not violate the bill.

**Senator West:** And last question, will your amendment allow defense attorneys to comply with their professional responsibilities pursuant to Rule 3.07 as trial publicity of the Texas Disciplinary Rules of Professional Conduct and the Supreme Court decision in *Gentile v. State Bar of Nevada* and respond publicly the statements made by law enforcements or the state characterizing the strength of the case, or the evidence to the press?

**Senator Huffman:** Yes, and that again is covered in Subsection (g), and as discussed, the Texas Rules of Professional Responsibility lay out the obligations and ethical duties of a lawyer and the parameters that they can follow when they're just publicly discussing a pending criminal case, or a pending case.

**Senator Hinojosa:** Senator Huffman, I'm just reading your amendment, I just want to make sure I understand it. Down where I practice law we have an open policy, open-file policy, which helps a lot in process cases for us attorneys who represent the defendant in criminal cases make better decisions on the plea or go to trial or punishment. And basically, if I understand your amendment correctly, you do not allow an attorney who receives that information from the prosecuting lawyer to disclose any information to a third party dealing with witnesses, other personal information that may be in the file.

**Senator Huffman:** That's correct. You are allowed to show a witness information and documents, but you can't, you have to redact certain information, and that's laid out in the bill, and you can discuss information, and you can let them look at information. You can't give them a copy unless it's a copy of the witness' own statement.

**Senator Hinojosa:** Now, if the press has already disclosed information such as the names of the witnesses or victims, then I'm not under the same obligations?

**Senator Huffman:** Correct, and the bill again, the amendment specifically addresses the issue of information that has already been publicly disclosed, is not covered by the bill, so if the newspaper's already put it on their front page, or if it's in a probable cause affidavit, that's become public record, not sealed, then all of that could be considered public record.

**Senator Hinojosa:** Okay, and I guess the reality is when you look at the, most defense lawyers will not disclose this information to a client, in terms of social security, bank accounts, other identifying information as to address. But here you have, we could get a court order to disclose this information, a showing of good cause, I guess, for what purpose, I'm trying to figure that out.

**Senator Huffman:** Well, I think there was a concern by the defense bar, if there were a situation that it was necessary to disclose, for purpose of trial preparation in some way, shape, or form, they just felt they needed to do that. It just gave them an opportunity to do that by going before the court, and if they had a good reason, if they had good cause, then the judge could set the parameters and it may, I would envision it would be set within very strict parameters, whatever the judge felt was necessary for the defense to properly prepare their defense.

**Senator Hinojosa:** And actually, I guess, as I get to read the amendment, and I apologize I didn't have it beforehand, as a defense lawyer, I'm allowed to actually show the information to an expert, or even the defendant, my client, as long as I read the information that will be personal to that particular victim or other witness.

**Senator Huffman:** That's correct. Of course, you can't give copies, but you can show, as long as you redacted the information as set out in the amendment.

**Senator Hinojosa:** Okay, and well, the amendment is getting better now that I'm getting to read it and discuss it with you. I have, I guess, as I look, I guess the other one is, and you have an amendment, or you have here in your amendment that I'm not prohibited from discussing any information that I have, if it's properly requested by law enforcement or any disciplinary agency or as required by law to provide that information.

**Senator Huffman:** I think that came, that was added, there was a concern if you needed to maybe file a complaint against, if you felt like a police officer needed to be complained against or, I think, a chemist and so forth, so we wanted to make sure that we weren't making it impossible for lawyers to complain against individuals in that capacity. So, that's why they were excluded.

**President:** Members, the issue before us is the acceptance of Floor Amendment Number 2 by Senator Huffman, which is acceptable to the author, Senator Ellis. Is there objection from any Member? Chair hears no objection from any Member, and floor amendment is adopted. Chair recognizes Senator Ellis for a motion.

**Senator Ellis:** Thank you, Mr. President. I move passage to engrossment of the Michael Morton Act.

**President:** Members, you've heard the motion, is there any objection from any Member? Chair hears no objection from any Member, and Committee Substitute to Senate Bill 1611, as amended, passes to engrossment.

(President in Chair)

**COMMITTEE SUBSTITUTE  
SENATE BILL 2 ON SECOND READING**

Senator Patrick moved to suspend the regular order of business to take up for consideration **CSSB 2** at this time on its second reading:

**CSSB 2**, Relating to certain charter schools.

The motion prevailed.

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

The bill was read second time.

Senator Patrick offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 2** (senate committee printing) by striking all below the enacting clause and substituting the following:

SECTION 1. Subchapter D, Chapter 11, Education Code, is amended by adding Sections 11.1542 and 11.1543 to read as follows:

Sec. 11.1542. OPEN-ENROLLMENT CHARTER SCHOOL OFFER FOR DISTRICT FACILITY. (a) The board of trustees of an independent school district that intends to sell, lease, or allow use for a purpose other than a district purpose of an unused or underused district facility must give each open-enrollment charter school located wholly or partly within the boundaries of the district the opportunity to make an offer to purchase, lease, or use the facility, as applicable, in response to any terms established by the board of trustees, before offering the facility for sale or lease or to any other specific entity.

(b) This section does not require the board of trustees of a school district to accept an offer made by an open-enrollment charter school.

Sec. 11.1543. CHARTER SCHOOL PAYMENT FOR FACILITIES USE OR FOR SERVICES. (a) An independent school district may not require a campus or campus program that has been granted a charter under Subchapter C, Chapter 12, and that is the result of the conversion of the status of an existing school district campus to pay rent for or to purchase a facility in order to use the facility.

(b) An independent school district may not require a campus or campus program described by Subsection (a) or an open-enrollment charter school to pay for any service provided by the district under a contract between the district and the campus, campus program, or open-enrollment charter school an amount that is greater than the amount of the actual costs to the district of providing the service.

SECTION 2. Subchapter C, Chapter 12, Education Code, is amended by adding Section 12.0522 to read as follows:

Sec. 12.0522. DISTRICT CHARTER AUTHORIZATION. (a) Notwithstanding Section 12.052, in the manner provided by this section, the board of trustees of a school district or the governing body of a home-rule school district may grant a district charter to a campus to the extent authorized under this section.

(b) Except as otherwise provided by this subsection or Subsection (c), a district charter may be granted under this section only to one or more campuses serving in total a percentage of the district's student enrollment equal to not more than 15 percent of the district's student enrollment for the preceding school year. The percentage limit may not prevent a district from granting a district charter to at least one feeder pattern of schools, including an elementary, middle or junior high, and high school.

(c) A district charter may be granted to any campus that has received the lowest performance rating under Subchapter C, Chapter 39.

(d) Subchapter D applies to a campus granted a district charter under this section as though the campus were granted a charter under Subchapter D, and the campus is considered an open-enrollment charter school.

(e) A charter granted under this section is not considered for purposes of the limit on the number of charters for open-enrollment charter schools imposed by Section 12.101.

(f) The commissioner may adopt rules as necessary for the administration of this section.

SECTION 3. Section 12.055, Education Code, is amended to read as follows:

Sec. 12.055. APPLICABILITY OF LAWS AND RULES TO CAMPUS OR PROGRAM GRANTED CHARTER. (a) A campus or program for which a charter is granted under this subchapter is subject to federal and state laws and rules governing public schools, except that the campus or program is subject to this code and rules adopted under this code only to the extent the applicability to a campus or program for which a charter is granted under this subchapter of a provision of this code or a rule adopted under this code is specifically provided.

(b) A school district may contract with another district or an open-enrollment charter school for services at a campus charter. An employee of the district or open-enrollment charter school providing contracted services to a campus charter is eligible for membership in and benefits from the Teacher Retirement System of Texas if the employee would be eligible for membership and benefits if holding the same position at the employing district or open-enrollment charter school.

SECTION 4. Section 12.056(b), Education Code, is amended to read as follows:

(b) A campus or program for which a charter is granted under this subchapter is subject to:

- (1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) high school graduation under Section 28.025;

(D) special education programs under Subchapter A, Chapter 29;

(E) bilingual education under Subchapter B, Chapter 29;

(F) prekindergarten programs under Subchapter E, Chapter 29;

(G) extracurricular activities under Section 33.081;

(H) health and safety under Chapter 38; and

(I) public school accountability under Subchapters B, C, D, E, F, and J,

Chapter 39.

SECTION 5. Section 12.057, Education Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) An employee of a charter holder, as defined by Section 12.1012, who is employed on a campus or in a program granted a charter under this subchapter and who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system in the same manner and to the same extent as a qualified employee of an independent school district who is employed on a regularly operating campus or in a regularly operating program.

SECTION 6. Section 12.059, Education Code, is amended to read as follows:

Sec. 12.059. CONTENT. Each charter granted under this subchapter must:

(1) describe the educational program to be offered, which may be a general or specialized program;

(2) provide that continuation of the charter is contingent on satisfactory student performance under Subchapter B, Chapter 39, satisfactory financial performance under Subchapter D, Chapter 39, and ~~and~~ compliance with other applicable accountability provisions under Chapter 39;

(3) specify any basis, in addition to a basis specified by this subchapter, on which the charter may be ~~placed on probation or~~ revoked;

(4) prohibit discrimination in admission on the basis of national origin, ethnicity, race, religion, or disability;

(5) describe the governing structure of the campus or program;

(6) specify any procedure or requirement, in addition to those under Chapter 38, that the campus or program will follow to ensure the health and safety of students and employees; and

(7) describe the manner in which an annual audit of financial and programmatic operations of the campus or program is to be conducted, including the manner in which the campus or program will provide information necessary for the school district in which it is located to participate, as required by this code or by commissioner ~~[State Board of Education]~~ rule, in the Public Education Information Management System (PEIMS).

SECTION 7. Section 12.101, Education Code, is amended by amending Subsections (a) and (b) and adding Subsections (b-0), (b-1), (b-2), (b-3), (b-4), (b-5), and (b-6) to read as follows:

(a) In accordance with this subchapter, the commissioner [~~State Board of Education~~] may grant a charter on the application of an eligible entity for an open-enrollment charter school to operate in a facility of a commercial or nonprofit entity, an eligible entity, or a school district, including a home-rule school district. In this subsection, "eligible entity" means:

- (1) an institution of higher education as defined under Section 61.003;
- (2) a private or independent institution of higher education as defined under Section 61.003;
- (3) an organization that is exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3)); or
- (4) a governmental entity.

(b) After thoroughly investigating and evaluating an applicant, the commissioner [~~The State Board of Education~~] may grant a charter for an open-enrollment charter school only to an applicant that meets any financial, governing, educational, and operational standards adopted by the commissioner under this subchapter, that the commissioner determines is capable of carrying out the responsibilities provided by the charter and likely to operate a school of high quality, and that:

(1) has not within the preceding 10 years had a charter under this chapter or a similar charter issued under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned; or

(2) is not, under rules adopted by the commissioner, considered to be a corporate affiliate of or substantially related to an entity that has within the preceding 10 years had a charter under this chapter or a similar charter issued under the laws of another state surrendered under a settlement agreement, revoked, denied renewal, or returned.

(b-0) The commissioner shall notify the State Board of Education of each charter the commissioner proposes to grant under this subchapter. Unless, before the 90th day after the date on which the board receives the notice from the commissioner, a majority of the members of the board present and voting vote against the grant of that charter, the commissioner's proposal to grant the charter takes effect. The board may not deliberate or vote on any grant of a charter that is not proposed by the commissioner.

(b-1) In granting charters for open-enrollment charter schools, the commissioner [~~The State Board of Education~~] may not grant a total of more than:

- (1) 215 charters through the fiscal year ending August 31, 2014;
- (2) 225 charters beginning September 1, 2014;
- (3) 240 charters beginning September 1, 2015;
- (4) 255 charters beginning September 1, 2016;
- (5) 275 charters beginning September 1, 2017;
- (6) 295 charters beginning September 1, 2018;
- (7) 315 charters beginning September 1, 2019; or

(8) 330 charters beginning September 1, 2020 [for an open-enrollment charter school].

(b-2) Beginning September 1, 2021, the total number of charters for open-enrollment charter schools that may be granted is the sum of the number of charters authorized to be granted as of the preceding fiscal year plus 10 additional charters.

(b-3) The commissioner may not grant more than one charter for an open-enrollment charter school to any charter holder. The commissioner may consolidate charters for an open-enrollment charter school held by multiple charter holders into a single charter held by a single charter holder with the written consent to the terms of consolidation by or at the request of each charter holder affected by the consolidation.

(b-4) A charter holder having an accreditation status of accredited and at least 50 percent of its student population in grades assessed under Subchapter B, Chapter 39, may establish one or more new open-enrollment charter school campuses under an existing charter held by the charter holder if:

(1) the charter holder is currently evaluated under the standard accountability procedures for evaluation under Chapter 39 and received a district rating in the highest or second highest performance rating category under Subchapter C, Chapter 39, for three of the last five years with at least 75 percent of the campuses rated under the charter also receiving a rating in the highest or second highest performance rating category and with no campus with a rating in the lowest performance rating category in the most recent ratings;

(2) the charter holder provides written notice to the commissioner of the establishment of any campus under this subsection in the time, manner, and form provided by rule of the commissioner; and

(3) not later than the 60th day after the date the charter holder provides written notice under Subdivision (2), the commissioner does not provide written notice to the charter holder disapproving a new campus under this section.

(b-5) The initial term of a charter granted under this section is five years.

(b-6) The commissioner shall adopt rules to modify criteria for granting a charter for an open-enrollment charter school under this section to the extent necessary to address changes in performance rating categories or in the financial accountability system under Chapter 39.

SECTION 8. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1011 to read as follows:

Sec. 12.1011. CHARTER AUTHORIZATION FOR HIGH-PERFORMING ENTITIES; LIMIT NOT APPLICABLE. (a) Notwithstanding Section 12.101(b), the commissioner may grant a charter for an open-enrollment charter school to an applicant that is:

(1) an eligible entity under Section 12.101(a)(3) that proposes to operate the charter school program of a charter operator that operates one or more charter schools in another state and with which the eligible entity is affiliated and, as determined by the commissioner in accordance with commissioner rule, has performed at a level of performance comparable to performance under the highest or second highest performance rating category under Subchapter C, Chapter 39; or



(2) an entity that has operated one or more charter schools established under this subchapter or Subchapter C or E and, as determined by the commissioner in accordance with commissioner rule, has performed in the highest or second highest performance rating category under Subchapter C, Chapter 39.

(b) A charter holder granted a charter for an open-enrollment charter school under Subsection (a) may vest management of corporate affairs in a member entity provided that the member entity may change the members of the governing body of the charter holder before the expiration of a member's term only with the express written approval of the commissioner.

(c) The initial term of a charter granted under this section is five years.

(d) A charter granted under this section is not considered for purposes of the limit on the number of charters for open-enrollment charter schools imposed by Section 12.101.

(e) The commissioner shall adopt rules to modify criteria for granting a charter for an open-enrollment charter school under this section to the extent necessary to address changes in performance rating categories under Subchapter C, Chapter 39.

SECTION 9. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1013 to read as follows:

Sec. 12.1013. CHARTER AUTHORIZER ACCOUNTABILITY. (a) The commissioner shall annually report under Subchapters J and K, Chapter 39, the performance of open-enrollment charter schools by authorizer compared to campus charters and matched traditional campuses based on student achievement indicators adopted under Section 39.053.

(b) The format of the report must enable the public to distinguish and compare the performance of each type of public school by classifying the schools as follows:

- (1) open-enrollment charters granted by the State Board of Education;
- (2) open-enrollment charters granted by the commissioner;
- (3) charters granted by school districts; and
- (4) matched traditional campuses.

(c) The report must include the performance of each public school in each class described by Subsection (b) as measured by the student achievement indicators adopted under Section 39.053.

(d) The report must also:

(1) aggregate and compare the performance of open-enrollment charter schools granted charters by the State Board of Education, open-enrollment charter schools granted charters by the commissioner, campuses and programs granted charters by school districts, and matched traditional campuses; and

(2) rate the aggregate performance of elementary, middle or junior high, and high schools within each class described by Subsection (b) as indicated by the composite rating that would be assigned to the class of elementary, middle or junior high, and high schools if the students attending all schools in that class were cumulatively enrolled in one elementary, middle or junior high, or high school.

SECTION 10. Section 12.102, Education Code, is amended to read as follows:

Sec. 12.102. AUTHORITY UNDER CHARTER. An open-enrollment charter school:

(1) shall provide instruction to students at one or more elementary or secondary grade levels as provided by the charter;

(2) is governed under the governing structure described by the charter;

(3) retains authority to operate under the charter to the extent authorized under Sections 12.1141 and 12.115 and Subchapter E, Chapter 39 [~~contingent on satisfactory student performance as provided by the charter in accordance with Section 12.111~~]; and

(4) does not have authority to impose taxes.

SECTION 11. Section 12.104(b), Education Code, is amended to read as follows:

(b) An open-enrollment charter school is subject to:

(1) a provision of this title establishing a criminal offense; and

(2) a prohibition, restriction, or requirement, as applicable, imposed by this title or a rule adopted under this title, relating to:

(A) the Public Education Information Management System (PEIMS) to the extent necessary to monitor compliance with this subchapter as determined by the commissioner;

(B) criminal history records under Subchapter C, Chapter 22;

(C) reading instruments and accelerated reading instruction programs under Section 28.006;

(D) accelerated instruction under Section 28.0211;

(E) high school graduation requirements under Section 28.025;

(F) special education programs under Subchapter A, Chapter 29;

(G) bilingual education under Subchapter B, Chapter 29;

(H) prekindergarten programs under Subchapter E, Chapter 29;

(I) extracurricular activities under Section 33.081;

(J) discipline management practices or behavior management techniques under Section 37.0021;

(K) health and safety under Chapter 38;

(L) public school accountability under Subchapters B, C, D, E, F, G, and J, Chapter 39;

(M) the requirement under Section 21.006 to report an educator's misconduct; and

(N) intensive programs of instruction under Section 28.0213.

SECTION 12. Section 12.1051, Education Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) With respect to the operation of an open-enrollment charter school, except as provided by Subsection (c), any requirement in Chapter 551 or 552, Government Code, or another law that concerns open meetings or the availability of information, that applies to a school district, the board of trustees of a school district, or public school students applies to an open-enrollment charter school, the governing body of a charter holder, the governing body of an open-enrollment charter school, or students attending an open-enrollment charter school.

(c) Notwithstanding Subchapter F, Chapter 551, Government Code, the commissioner shall provide by rule for meetings by telephone conference call or video conference call where a majority of the quorum of the governing body of a charter

holder or charter school is not physically present at one location of the meeting. The rule may apply only to meetings of the governing body of a charter holder or charter school with its central administrative offices in a state other than this state.

SECTION 13. Section 12.1053(a), Education Code, is amended to read as follows:

(a) This section applies to an open-enrollment charter school unless the school's charter otherwise describes procedures for purchasing and contracting and the procedures are approved by the commissioner [~~State Board of Education~~].

SECTION 14. Section 12.1057(a), Education Code, is amended to read as follows:

(a) An employee of an open-enrollment charter school [~~operating under a charter granted by the State Board of Education~~] who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

SECTION 15. Sections 12.110(a), (c), and (d), Education Code, are amended to read as follows:

(a) The commissioner [~~State Board of Education~~] shall adopt:

(1) an application form and a procedure that must be used to apply for a charter for an open-enrollment charter school; and

(2) criteria to use in selecting a program for which to grant a charter.

(c) As part of the application procedure, the commissioner [~~board~~] may require a petition supporting a charter for a school signed by a specified number of parents or guardians of school-age children residing in the area in which a school is proposed or may hold a public hearing to determine parental support for the school.

(d) The commissioner shall [~~board may~~] approve or deny an application based on:

(1) documented evidence collected through the application review process;

(2) merit; and

(3) other criteria as adopted by the commissioner, which [~~it adopts. The criteria the board adopts~~] must include:

(A) criteria relating to the capability of the applicant to carry out the responsibilities provided by the charter and the likelihood that the applicant will operate a school of high quality;

(B) [~~(4)~~] criteria relating to improving student performance and encouraging innovative programs; and

(C) [~~(2)~~] a statement from any school district whose enrollment is likely to be affected by the open-enrollment charter school, including information relating to any financial difficulty that a loss in enrollment may have on the district.

SECTION 16. Section 12.1101, Education Code, is amended to read as follows:

Sec. 12.1101. NOTIFICATION OF CHARTER APPLICATION OR ESTABLISHMENT OF CAMPUS. The commissioner by rule shall adopt a procedure for providing notice to the following persons on receipt by the commissioner [~~State Board of Education~~] of an application for a charter for an open-enrollment charter school under Section 12.110 or of notice of the establishment of a campus as authorized under Section 12.101(b-4):

(1) the board of trustees of each school district from which the proposed open-enrollment charter school or campus is likely to draw students, as determined by the commissioner; and

(2) each member of the legislature that represents the geographic area to be served by the proposed school or campus, as determined by the commissioner.

SECTION 17. Section 12.111(a), Education Code, is amended to read as follows:

(a) Each charter granted under this subchapter must:

(1) describe the educational program to be offered, which must include the required curriculum as provided by Section 28.002;

(2) ~~[specify the period for which the charter or any charter renewal is valid;~~  
~~[(3)] provide that continuation [or renewal] of the charter is contingent on the status of the charter as determined under Section 12.1141 or 12.115 or under Subchapter E, Chapter 39 [acceptable student performance on assessment instruments adopted under Subchapter B, Chapter 39, and on compliance with any accountability provision specified by the charter, by a deadline or at intervals specified by the charter];~~

(3) specify the academic, operational, and financial performance expectations by which a school operating under the charter will be evaluated, which must include applicable elements of the performance frameworks adopted under Section 12.1181 [(4) establish the level of student performance that is considered acceptable for purposes of Subdivision (3)];

(4) ~~[(5)]~~ specify:

(A) any basis, in addition to a basis specified by this subchapter or Subchapter E, Chapter 39, on which the charter may be ~~[placed on probation or] revoked, [or on which] renewal of the charter may be denied, or the charter may be allowed to expire; and~~

(B) the standards for evaluation of a school operating under the charter for purposes of charter renewal, denial of renewal, expiration, revocation, or other intervention in accordance with Section 12.1141 or 12.115 or Subchapter E, Chapter 39, as applicable;

(5) ~~[(6)]~~ prohibit discrimination in admission policy on the basis of sex, national origin, ethnicity, religion, disability, academic, artistic, or athletic ability, or the district the child would otherwise attend in accordance with this code, although the charter may:

(A) provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or discipline problems under Subchapter A, Chapter 37; and

(B) provide for an admission policy that requires a student to demonstrate artistic ability if the school specializes in performing arts;

(6) ~~[(7)]~~ specify the grade levels to be offered;

(7) ~~[(8)]~~ describe the governing structure of the program, including:

(A) the officer positions designated;

(B) the manner in which officers are selected and removed from office;

(C) the manner in which members of the governing body of the school are selected and removed from office;

- (D) the manner in which vacancies on that governing body are filled;
- (E) the term for which members of that governing body serve; and
- (F) whether the terms are to be staggered;

(8) [(9)] specify the powers or duties of the governing body of the school that the governing body may delegate to an officer;

(9) [(10)] specify the manner in which the school will distribute to parents information related to the qualifications of each professional employee of the program, including any professional or educational degree held by each employee, a statement of any certification under Subchapter B, Chapter 21, held by each employee, and any relevant experience of each employee;

(10) [(11)] describe the process by which the person providing the program will adopt an annual budget;

(11) [(12)] describe the manner in which an annual audit of the financial and programmatic operations of the program is to be conducted, including the manner in which the person providing the program will provide information necessary for the school district in which the program is located to participate, as required by this code or by commissioner [~~State Board of Education~~] rule, in the Public Education Information Management System (PEIMS);

(12) [(13)] describe the facilities to be used;

(13) [(14)] describe the geographical area served by the program; ~~and~~

(14) [(15)] specify any type of enrollment criteria to be used;

(15) provide information, as determined by the commissioner, relating to any management company that will provide management services to a school operating under the charter; and

(16) specify that the governing body of an open-enrollment charter school accepts and may not delegate ultimate responsibility for the school, including the school's academic performance and financial and operational viability, and is responsible for overseeing any management company providing management services for the school and for holding the management company accountable for the school's performance.

SECTION 18. Section 12.112, Education Code, is amended to read as follows:

Sec. 12.112. FORM. A charter for an open-enrollment charter school shall be in the form of a written contract signed by the commissioner [~~chair of the State Board of Education~~] and the chief operating officer of the school.

SECTION 19. Section 12.113(a), Education Code, is amended to read as follows:

(a) Each charter the commissioner [~~State Board of Education~~] grants for an open-enrollment charter school must:

(1) satisfy this subchapter; and

(2) include the information that is required under Section 12.111 consistent with the information provided in the application and any modification the commissioner [~~board~~] requires.

SECTION 20. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1141 to read as follows:

Sec. 12.1141. RENEWAL OF CHARTER; DENIAL OF RENEWAL; EXPIRATION. (a) The commissioner shall develop and by rule adopt a procedure for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school at the end of the term of the charter. The procedure must include consideration of the performance under Chapter 39 of the charter holder and each campus operating under the charter and must include three distinct processes, which must be expedited renewal, discretionary consideration of renewal or denial of renewal, and expiration. To renew a charter at the end of the term, the charter holder must submit a petition for renewal to the commissioner in the time and manner established by commissioner rule.

(b) At the end of the term of a charter for an open-enrollment charter school, if a charter holder submits to the commissioner a petition for expedited renewal of the charter, the charter automatically renews unless, not later than the 30th day after the date the charter holder submits the petition, the commissioner provides written notice to the charter holder that expedited renewal of the charter is denied. The commissioner may not deny expedited renewal of a charter if:

(1) the charter holder has been assigned the highest or second highest performance rating under Subchapter C, Chapter 39, for the three preceding school years;

(2) the charter holder has been assigned a financial performance accountability rating under Subchapter D, Chapter 39, indicating financial performance that is satisfactory or better for the three preceding school years; and

(3) no campus operating under the charter has been assigned the lowest performance rating under Subchapter C, Chapter 39, for the three preceding school years or such a campus has been closed.

(c) At the end of the term of a charter for an open-enrollment charter school, if a charter holder submits to the commissioner a petition for renewal of the charter and the charter does not meet the criteria for expedited renewal under Subsection (b) or for expiration under Subsection (d), the commissioner shall use the discretionary consideration process. The commissioner's decision under the discretionary consideration process must take into consideration the results of annual evaluations under the performance frameworks established under Section 12.1181. The renewal of the charter of an open-enrollment charter school that is registered under the agency's alternative education accountability procedures for evaluation under Chapter 39 shall be considered under the discretionary consideration process regardless of the performance ratings under Subchapter C, Chapter 39, of the open-enrollment charter school or of any campus operating under the charter, except that if the charter holder has been assigned a financial accountability performance rating under Subchapter D, Chapter 39, indicating financial performance that is lower than satisfactory for any three of the five preceding school years, the commissioner shall allow the charter to expire under Subsection (d). In considering the renewal of the charter of an open-enrollment charter school that is registered under the agency's alternative education accountability procedures for evaluation under Chapter 39, such as a dropout recovery school or a school providing education within a residential treatment facility, the commissioner shall use academic criteria established by commissioner rule that are appropriate to measure the specific goals of the school. The criteria

established by the commissioner shall recognize growth in student achievement as well as educational attainment. For purposes of this subsection, the commissioner shall designate as a dropout recovery school an open-enrollment charter school or a campus of an open-enrollment charter school:

(1) that serves students in grades 9 through 12 and has an enrollment of which at least 50 percent of the students are 17 years of age or older as of September 1 of the school year as reported for the fall semester Public Education Information Management System (PEIMS) submission; and

(2) that meets the eligibility requirements for and is registered under alternative education accountability procedures adopted by the commissioner.

(d) At the end of the term of a charter for an open-enrollment charter school, if a charter holder submits to the commissioner a petition for renewal of the charter, the commissioner may not renew the charter and shall allow the charter to expire if:

(1) the charter holder has been assigned the lowest performance rating under Subchapter C, Chapter 39, for any three of the five preceding school years;

(2) the charter holder has been assigned a financial accountability performance rating under Subchapter D, Chapter 39, indicating financial performance that is lower than satisfactory for any three of the five preceding school years;

(3) the charter holder has been assigned any combination of the ratings described by Subdivision (1) or (2) for any three of the five preceding school years; or

(4) any campus operating under the charter has been assigned the lowest performance rating under Subchapter C, Chapter 39, for the three preceding school years and such a campus has not been closed.

(e) Notwithstanding any other law, a determination by the commissioner under Subsection (d) is final and may not be appealed.

(f) Not later than the 90th day after the date on which a charter holder submits a petition for renewal of a charter for an open-enrollment charter school at the end of the term of the charter, the commissioner shall provide written notice to the charter holder, in accordance with commissioner rule, of the basis on which the charter qualified for expedited renewal, discretionary consideration, or expiration, and of the commissioner's decision regarding whether to renew the charter, deny renewal of the charter, or allow the charter to expire.

(g) Except as provided by Subsection (e), a decision by the commissioner to deny renewal of a charter for an open-enrollment charter school is subject to review by the State Office of Administrative Hearings. Notwithstanding Chapter 2001, Government Code:

(1) the administrative law judge shall uphold a decision by the commissioner to deny renewal of a charter for an open-enrollment charter school unless the judge finds the decision is arbitrary and capricious or clearly erroneous; and

(2) a decision of the administrative law judge under this subsection is final and may not be appealed.

(h) If a charter holder submits a petition for renewal of a charter for an open-enrollment charter school, notwithstanding the expiration date of the charter, the charter term is extended until the commissioner has provided notice to the charter holder of the renewal, denial of renewal, or expiration of the charter.

(i) The term of a charter renewed under this section is 10 years for each renewal.

(j) The commissioner shall adopt rules to modify criteria for renewal, denial of renewal, or expiration of a charter for an open-enrollment charter school under this section to the extent necessary to address changes in performance rating categories or in the financial accountability system under Chapter 39.

SECTION 21. Section 12.115, Education Code, is amended to read as follows:

Sec. 12.115. BASIS FOR CHARTER ~~[MODIFICATION, PLACEMENT ON PROBATION,]~~ REVOCATION~~[-]~~ OR MODIFICATION OF GOVERNANCE ~~[DENIAL OF RENEWAL]~~. (a) Except as provided by Subsection (c), the ~~[The]~~ commissioner shall ~~[may modify, place on probation,]~~ revoke~~[-, or deny renewal of]~~ the charter of an open-enrollment charter school or reconstitute the governing body of the charter holder if the commissioner determines that the charter holder:

(1) committed a material violation of the charter, including failure to satisfy accountability provisions prescribed by the charter;

(2) failed to satisfy generally accepted accounting standards of fiscal management;

(3) failed to protect the health, safety, or welfare of the students enrolled at the school; ~~[or]~~

(4) failed to comply with this subchapter or another applicable law or rule;

(5) failed to satisfy the performance framework standards adopted under Section 12.1181; or

(6) is imminently insolvent as determined by the commissioner in accordance with commissioner rule.

(b) The action the commissioner takes under Subsection (a) shall be based on the best interest of the open-enrollment charter school's students, the severity of the violation, ~~[and]~~ any previous violation the school has committed, and the accreditation status of the school.

(c) Except as provided by Subsection (d), the commissioner shall revoke the charter of an open-enrollment charter school if:

(1) the charter holder has been assigned an unacceptable performance rating under Subchapter C, Chapter 39, for the three preceding school years;

(2) the charter holder has been assigned a financial accountability performance rating under Subchapter D, Chapter 39, indicating financial performance lower than satisfactory for the three preceding school years; or

(3) the charter holder has been assigned any combination of the ratings described by Subdivision (1) or (2) for the three preceding school years.

(d) Subsections (c)(1) and (3) do not apply to a charter holder registered under the agency's alternative education accountability procedures for evaluation under Chapter 39.

(e) This section does not limit the authority of the attorney general to take any action authorized by law.

(f) A charter holder rated as academically unacceptable under Subchapter D, Chapter 39, as that subchapter existed on January 1, 2009, for the 2010-2011 school year is considered to have been assigned an unacceptable performance rating for that school year under Subsection (c)(1). This subsection expires September 1, 2015.

SECTION 22. Section 12.116, Education Code, is amended to read as follows:



Sec. 12.116. PROCEDURE FOR ~~[MODIFICATION, PLACEMENT ON PROBATION,]~~ REVOCATION~~[;]~~ OR MODIFICATION OF GOVERNANCE ~~[DENIAL OF RENEWAL]~~. (a) The commissioner shall adopt an informal ~~[a]~~ procedure to be used for ~~[modifying, placing on probation,]~~ revoking~~[, or denying renewal of]~~ the charter of an open-enrollment charter school or for reconstituting the governing body of the charter holder as authorized by Section 12.115.

~~(b) [The procedure adopted under Subsection (a) must provide an opportunity for a hearing to the charter holder and to parents and guardians of students in the school. A hearing under this subsection must be held at the facility at which the program is operated.]~~

~~[(e)]~~ Chapter 2001, Government Code, does not apply to a procedure ~~[hearing]~~ that is related to a ~~[modification, placement on probation,]~~ revocation~~[;]~~ or modification of governance ~~[denial of renewal]~~ under this subchapter.

(c) A decision by the commissioner to revoke a charter is subject to review by the State Office of Administrative Hearings. Notwithstanding Chapter 2001, Government Code:

(1) the administrative law judge shall uphold a decision by the commissioner to revoke a charter unless the judge finds the decision is arbitrary and capricious or clearly erroneous; and

(2) a decision of the administrative law judge under this subsection is final and may not be appealed.

(d) If the commissioner revokes the charter of an open-enrollment charter school, the commissioner may:

(1) manage the school until alternative arrangements are made for the school's students; and

(2) assign operation of one or more campuses formerly operated by the charter holder who held the revoked charter to a different charter holder who consents to the assignment.

SECTION 23. Section 12.1161(a), Education Code, is amended to read as follows:

(a) If ~~[Except as provided by Subsection (b), if]~~ the commissioner revokes or denies the renewal of a charter of an open-enrollment charter school~~[;]~~ or ~~[if]~~ an open-enrollment charter school surrenders its charter, the school may not:

(1) continue to operate under this subchapter; or

(2) receive state funds under this subchapter.

SECTION 24. Section 12.1163(c), Education Code, is amended to read as follows:

(c) Unless the commissioner has specific cause to conduct an additional audit, the commissioner may not conduct more than one on-site audit ~~[under Section 12.1163]~~ during any fiscal year, including any financial and administrative records. For purposes of this subsection, an audit of a charter holder or management company associated with an open-enrollment charter school is not considered an audit of the school.

SECTION 25. Section 12.1164(a), Education Code, is amended to read as follows:

(a) The commissioner must notify the Teacher Retirement System of Texas in writing of the revocation, denial of renewal, expiration, or surrender of a charter under this subchapter not later than the 10th business day after the date of the event.

SECTION 26. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1181 to read as follows:

Sec. 12.1181. PERFORMANCE FRAMEWORKS; ANNUAL EVALUATIONS. (a) The commissioner shall develop and by rule adopt performance frameworks that establish standards by which to measure the performance of an open-enrollment charter school. The commissioner shall develop and by rule adopt separate, specific performance frameworks by which to measure the performance of an open-enrollment charter school that is registered under the agency's alternative education accountability procedures for evaluation under Chapter 39. The performance frameworks shall be based on national best practices that charter school authorizers use in developing and applying standards for charter school performance. In developing the performance frameworks, the commissioner shall solicit advice from charter holders, the members of the governing bodies of open-enrollment charter schools, and other interested persons.

(b) The performance frameworks may include a variety of standards. In evaluating an open-enrollment charter school, the commissioner shall measure school performance against an established set of quality standards developed and adopted by the commissioner.

(c) Each year, the commissioner shall evaluate the performance of each open-enrollment charter school based on the applicable performance frameworks adopted under Subsection (a).

SECTION 27. Section 12.119, Education Code, is amended to read as follows:

Sec. 12.119. BYLAWS; ANNUAL REPORT. (a) A charter holder shall file with the commissioner [~~State Board of Education~~] a copy of its articles of incorporation and bylaws, or comparable documents if the charter holder does not have articles of incorporation or bylaws, within the period and in the manner prescribed by the commissioner [~~board~~].

(b) Each year within the period and in a form prescribed by the commissioner [~~State Board of Education~~], each open-enrollment charter school shall file with the commissioner [~~board~~] the following information:

(1) the name, address, and telephone number of each officer and member of the governing body of the open-enrollment charter school; and

(2) the amount of annual compensation the open-enrollment charter school pays to each officer and member of the governing body.

(c) On request, the commissioner [~~State Board of Education~~] shall provide the information required by this section and Section 12.111(a)(7) [~~12.111(a)(8)~~] to a member of the public. The commissioner [~~board~~] may charge a reasonable fee to cover the commissioner's [~~board's~~] cost in providing the information.

SECTION 28. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1211 to read as follows:

Sec. 12.1211. NAMES OF MEMBERS OF GOVERNING BODY LISTED ON WEBSITE. An open-enrollment charter school shall list the names of the members of the governing body on the home page of the school's Internet website.

SECTION 29. Section 12.122(a), Education Code, is amended to read as follows:

(a) Notwithstanding the applicable provisions of the Business Organizations Code [Texas Non Profit Corporation Act (Article 1396 1.01 et seq., Vernon's Texas Civil Statutes)] or other law, on request of the commissioner, the attorney general may bring suit against a member of the governing body of an open-enrollment charter school for breach of a fiduciary duty by the member, including misapplication of public funds.

SECTION 30. Section 12.128(a), Education Code, is amended to read as follows:

(a) Property purchased or leased with funds received by a charter holder under Section 12.106 after September 1, 2001:

(1) is considered to be public property for all purposes under state law;

(2) is property of this state held in trust by the charter holder for the benefit of the students of the open-enrollment charter school; and

(3) may be used only for a purpose for which a school district may use school district property.

SECTION 31. Subchapter D, Chapter 12, Education Code, is amended by adding Section 12.1231 to read as follows:

Sec. 12.1231. TRAINING FOR AGENCY EMPLOYEES. Not later than October 1, 2013, each agency employee assigned responsibility related to granting charters for open-enrollment charter schools or providing oversight or monitoring of charter holders or open-enrollment charter schools must participate in training on charter school authorization, oversight, and monitoring provided by a nationally recognized organization of charter school authorizers identified by the commissioner. This section expires January 1, 2014.

SECTION 32. Sections 12.152 and 12.154, Education Code, are amended to read as follows:

Sec. 12.152. AUTHORIZATION. ~~[(a)]~~ In accordance with this subchapter and Subchapter D, the commissioner ~~[State Board of Education]~~ may grant a charter on the application of:

(1) a public senior college or university for an open-enrollment charter school to operate on the campus of the public senior college or university or in the same county in which the campus of the public senior college or university is located; or

(2) a public junior college for an open-enrollment charter school to operate on the campus of the public junior college or in the same county in which the campus of the public junior college is located.

Sec. 12.154. CONTENT. (a) Notwithstanding Section 12.110(d), the commissioner ~~[State Board of Education]~~ may grant a charter under this subchapter to a public senior college or university only if the following criteria are satisfied in the public senior college's or university's application, as determined by the commissioner ~~[State Board of Education]~~:

(1) the college or university charter school's educational program must include innovative teaching methods;

(2) the college or university charter school's educational program must be implemented under the direct supervision of a member of the teaching or research faculty of the public senior college or university;

(3) the faculty member supervising the college or university charter school's educational program must have substantial experience and expertise in education research, teacher education, classroom instruction, or educational administration;

(4) the college or university charter school's educational program must be designed to meet specific goals described in the charter, including improving student performance, and each aspect of the program must be directed toward the attainment of the goals;

(5) the attainment of the college or university charter school's educational program goals must be measured using specific, objective standards set forth in the charter, including assessment methods and a time frame; and

(6) the financial operations of the college or university charter school must be supervised by the business office of the public senior college or university.

(b) Notwithstanding Section 12.110(d), the commissioner [~~State Board of Education~~] may grant a charter under this subchapter to a public junior college only if the following criteria are satisfied in the public junior college's application, as determined by the commissioner [~~State Board of Education~~]:

(1) the junior college charter school's educational program must be implemented under the direct supervision of a member of the faculty of the public junior college;

(2) the faculty member supervising the junior college charter school's educational program must have substantial experience and expertise in teacher education, classroom instruction, or educational administration;

(3) the junior college charter school's educational program must be designed to meet specific goals described in the charter, such as dropout recovery, and each aspect of the program must be directed toward the attainment of the goals;

(4) the attainment of the junior college charter school's educational program goals must be measured using specific, objective standards set forth in the charter, including assessment methods and a time frame; and

(5) the financial operations of the junior college charter school must be supervised by the business office of the junior college.

SECTION 33. Section 12.156(b), Education Code, is amended to read as follows:

(b) A charter granted under this subchapter is not considered for purposes of the limit on the number of open-enrollment charter schools imposed by Section 12.101 [~~12.101(b)~~].

SECTION 34. Section 39.152, Education Code, is amended to read as follows:

Sec. 39.152. REVIEW BY STATE OFFICE OF ADMINISTRATIVE HEARINGS: SANCTIONS. (a) A school district or open-enrollment charter school that intends to challenge a decision by the commissioner under this chapter to close the district or a district campus or the charter school or to pursue alternative management of a district campus or the charter school must appeal the decision under this section [~~the procedures provided for a contested case under Chapter 2001, Government Code~~].

(b) A challenge to a decision under this section is under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. The commissioner shall adopt procedural rules for a challenge under this section.

(c) Notwithstanding other law:

(1) the State Office of Administrative Hearings shall conduct [~~provide~~] an expedited review of a challenge under this section;

(2) the administrative law judge shall issue a final order not later than the 30th day after the date on which the hearing is finally closed; [~~and~~]

(3) the decision of the administrative law judge is final and may not be appealed; and

(4) the decision of the administrative law judge may set an effective date for an action under this section.

SECTION 35. Section 221.0071(a), Human Resources Code, is amended to read as follows:

(a) Notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, the commissioner of education [~~State Board of Education~~] may grant a charter on the application of a detention, correctional, or residential facility established only for juvenile offenders under Section 51.12, 51.125, or 51.126, Family Code.

SECTION 36. Section 221.056(d), Human Resources Code, is amended to read as follows:

(d) Notwithstanding any other law and in addition to the number of charters allowed under Subchapter D, Chapter 12, Education Code, the commissioner of education [~~State Board of Education~~] shall grant a charter on the application of a residential treatment facility established under this section for a school chartered for the purposes of this section.

SECTION 37. The following provisions of the Education Code are repealed:

(1) Section 12.113(b); and

(2) Section 12.1161(b).

SECTION 38. This Act takes effect September 1, 2013.

The amendment to **CSSB 2** was read.

Senator West offered the following amendment to Floor Amendment No. 1:

### **Floor Amendment No. 2**

Amend the proposed floor substitute for **CSSB 2** (83r21408) as follows:

(1) In the recital to SECTION 7 of the bill (page 5, line 20), strike "and (b-6)" and substitute "(b-6), and (b-7)".

(2) In SECTION 7 of the bill, strike added Sections 12.101(b-1) and (b-2), Education Code (page 6, line 30, through page 7, line 15), and substitute the following:

(b-1) In granting charters for open-enrollment charter schools, the commissioner [The State Board of Education] may not grant a total of more than:

(1) 215 charters through the fiscal year ending August 31, 2014;

(2) 225 charters beginning September 1, 2014;

(3) 240 charters beginning September 1, 2015;

(4) 255 charters beginning September 1, 2016;

(5) 270 charters beginning September 1, 2017; and  
(6) 285 charters beginning September 1, 2018 [~~for an open-enrollment charter school~~].

(b-2) Beginning September 1, 2019, the total number of charters for open-enrollment charter schools that may be granted is 305 charters.

(3) In SECTION 7 of the bill, immediately following added Section 12.101(b-6), Education Code (page 8, between lines 20 and 21), insert the following:

(b-7) A charter granted under this section for a dropout recovery school is not considered for purposes of the limit on the number of charters for open-enrollment charter schools imposed by this section. For purposes of this subsection, an open-enrollment charter school is considered to be a dropout recovery school if the school meets the criteria for designation as a dropout recovery school under Section 12.1141(c).

(4) In SECTION 8 of the bill, in the heading to added Section 12.1011, Education Code (page 8, line 24), strike "; LIMIT NOT APPLICABLE".

(5) In SECTION 8 of the bill, strike added Section 12.1011(d), Education Code (page 9, lines 17-19).

(6) In SECTION 8 of the bill, in added Section 12.1011(e), Education Code (page 9, line 20), strike "(e)" and substitute "(d)".

The amendment to Floor Amendment No. 1 to **CSSB 2** was read and was adopted by a viva voce vote.

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

Senator West offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 to **CSSB 2**, by adding, in Section 15, amending Section 12.110, Education Code, subsection (e) to read as follows:

(e) The commissioner shall give priority and approval to applications that include:

- (1) a plan to increase the educational and performance levels of students in campuses that received unacceptable performance ratings under Section 39.054; and
- (2) educate populations of students to be enrolled at the campus.

The amendment to Floor Amendment No. 1 to **CSSB 2** was read and was adopted by a viva voce vote.

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

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 2**, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 as amended except as follows:

Nays: Nichols.

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

**CSSB 2** as amended was passed to engrossment by a viva voce vote.

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

Nays: Nichols.

**COMMITTEE SUBSTITUTE  
SENATE BILL 2 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 2** be placed on its third reading and final passage.

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

Nays: Nichols.

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 421 ON SECOND READING**

On motion of Senator Zaffirini and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 421** at this time on its second reading:

**CSSB 421**, Relating to the Texas System of Care and the development of local mental health systems of care for certain children.

The bill was read second time.

Senator Zaffirini offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 421** (Senate Committee Printing) by striking: SECTION 3 of the bill.

The amendment to **CSSB 421** was read and was adopted by a viva voce vote.

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

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

**CSSB 421** as amended was passed to engrossment by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 421 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 **CSSB 421** be placed on its third reading and final passage.

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

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

**SENATE RULES SUSPENDED**  
**(Posting Rules)**

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

**SB 1489, SB 1670, SB 1671.**

**SENATE RULE 11.10(a) SUSPENDED**  
**(Public Notice of Committee Meetings)**

On motion of Senator Hegar and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Finance Subcommittee on Fiscal Matters might meet today.

**SENATE RULE 11.10(a) SUSPENDED**  
**(Public Notice of Committee Meetings)**

On motion of Senator Van de Putte and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Veteran Affairs and Military Installations might meet today.

**REMARKS ORDERED PRINTED**

On motion of Senator Williams and by unanimous consent, his remarks regarding Thomas Peyton Battle were ordered reduced to writing and printed in the *Senate Journal* as follows:

Thomas Peyton Battle, 70, passed April 3, 2013, at St. Luke's Episcopal Hospital in the Houston Medical Center. His final weeks were spent surrounded by his family after having undergone a lung transplant approximately one month earlier. Tom was born August 20, 1942, in Atlanta, Georgia, to Carlos and Lillian Battle. He attended Kilgore High School in Kilgore, Texas. He continued his education, graduating with a Bachelor of Science in mechanical engineering from Southern Methodist University in Dallas, Texas, in 1964. In 1967, Tom was granted a Juris Doctor from The University of Texas. Following graduation from law school, Tom began working in various engineering, planning, legal, and management positions at Exxon USA and Exxon Minerals. In 1982, Tom left Exxon to become the General Counsel of Mitchell Energy & Development Corporation, retiring in 2002 as the Senior Vice-president of Legal and Governmental Affairs. Following retirement from Mitchell, Tom worked part time with the law firm of King & Spalding, LLP, and then as an arbitrator. Tom also served on various charitable boards, including as Chairman of the Board of The Cynthia Woods Mitchell Pavilion, Montgomery County United Way, and L'Alliance Francaise de Houston. Tom was an avid runner, artist, traveler, and foodie. He is survived by his



wife of 45 years, Nancy Battle; his daughter, Christine, and her spouse, Simon Longbottom, and their two children, Peyton and Alex, of Perth, Australia; his daughter, Kelly, and her spouse, Tom Schmidt, and their children, Cate and Charlie, of Houston, Texas; and his brother, Jack Battle, and his family of Austin, Texas.

**CO-AUTHOR OF SENATE BILL 2**

On motion of Senator Patrick, Senator Campbell will be shown as Co-author of **SB 2**.

**CO-AUTHOR OF SENATE BILL 11**

On motion of Senator Nelson, Senator Campbell will be shown as Co-author of **SB 11**.

**CO-AUTHOR OF SENATE BILL 15**

On motion of Senator Seliger, Senator Hinojosa will be shown as Co-author of **SB 15**.

**CO-AUTHOR OF SENATE BILL 346**

On motion of Senator Seliger, Senator Nichols will be shown as Co-author of **SB 346**.

**CO-AUTHOR OF SENATE BILL 421**

On motion of Senator Zaffirini, Senator Rodríguez will be shown as Co-author of **SB 421**.

**CO-AUTHOR OF SENATE BILL 467**

On motion of Senator Hegar, Senator Paxton will be shown as Co-author of **SB 467**.

**CO-AUTHOR OF SENATE BILL 657**

On motion of Senator Paxton, Senator Campbell will be shown as Co-author of **SB 657**.

**CO-AUTHOR OF SENATE BILL 895**

On motion of Senator Davis, Senator Nelson will be shown as Co-author of **SB 895**.

**CO-AUTHOR OF SENATE BILL 898**

On motion of Senator Van de Putte, Senator Nelson will be shown as Co-author of **SB 898**.

**CO-AUTHORS OF SENATE BILL 971**

On motion of Senator Williams, Senators Garcia, Hinojosa, Lucio, and Taylor will be shown as Co-authors of **SB 971**.

**CO-AUTHOR OF SENATE BILL 1390**

On motion of Senator Davis, Senator Eltife will be shown as Co-author of **SB 1390**.

**CO-AUTHOR OF SENATE BILL 1398**

On motion of Senator Estes, Senator Campbell will be shown as Co-author of **SB 1398**.

**CO-AUTHOR OF SENATE BILL 1406**

On motion of Senator Patrick, Senator Nelson will be shown as Co-author of **SB 1406**.

**CO-AUTHOR OF SENATE BILL 1611**

On motion of Senator Ellis, Senator West will be shown as Co-author of **SB 1611**.

**CO-AUTHOR OF SENATE JOINT RESOLUTION 55**

On motion of Senator Williams, Senator Campbell will be shown as Co-author of **SJR 55**.

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Memorial Resolutions**

**SR 633** by Deuell, In memory of Melvin K. Price, Jr.

**SR 635** by Davis, In memory of Charles Cleveland Curry.

**SR 636** by Lucio, In memory of Carlos Rodriguez, Jr.

**Congratulatory Resolutions**

**SR 634** by Davis, Congratulating Martin Frost for being elected chairman of the board of the National Endowment for Democracy.

**SR 637** by Uresti, Recognizing Rachel Cedillo on the occasion of her retirement.

**SR 640** by Schwertner, Congratulating Nicole Hagerty for her selection as 2013 Region 13 Assistant Principal of the Year.

**SR 641** by Schwertner, Recognizing Republican Women of Brazos Valley for its service.

**ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 3:46 p.m. adjourned, in memory of Thomas Peyton Battle and former Senators Mario V. Gallegos, Jr., Robert Alton Gammage, John Nesbitt Leedom, George O. Nokes, Jr., and Carlos Flores Truan, until 2:00 p.m. Monday, April 15, 2013.

---

**APPENDIX**

---

**COMMITTEE REPORTS**

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

April 11, 2013

AGRICULTURE, RURAL AFFAIRS AND HOMELAND SECURITY — **SB 772, SB 1095, CSSB 1233, CSSB 1312, CSSB 1814**

CRIMINAL JUSTICE — **CSSB 1356**

OPEN GOVERNMENT — **CSSB 881, CSSB 895, SB 1650**

ECONOMIC DEVELOPMENT — **SB 1390, SB 1640, SB 1638, SB 1496**

EDUCATION — **CSSB 709, CSSB 1541**

OPEN GOVERNMENT — **CSSB 667, CSSB 984, CSSB 1409**

CRIMINAL JUSTICE — **CSSB 876, CSSB 357, CSSB 1052, CSSB 1839**

BUSINESS AND COMMERCE — **CSSB 400, CSSB 1280, SB 1364**

TRANSPORTATION — **SB 1274, SB 1415, SB 1605, SB 1705**

CRIMINAL JUSTICE — **CSSB 893**

NATURAL RESOURCES — **CSSB 900, CSSB 1387**

FINANCE — **SJR 1**

INTERGOVERNMENTAL RELATIONS — **SB 634, SB 773, SB 837, SB 887, SB 1167, SB 1341, SB 1601, SB 1820, SB 1821, SB 1837, SB 1838, SB 1841, SB 1845**

JURISPRUDENCE — **SB 1806, SB 1460**

INTERGOVERNMENTAL RELATIONS — **SB 1846, SB 1847, SB 1852, SB 1853, SB 1868**

HIGHER EDUCATION — **SB 301, SB 439, SB 922, SB 976, SB 1509, SB 1855**

EDUCATION — **SB 906**

HEALTH AND HUMAN SERVICES — **SB 1610, SB 1402, SB 1177, SB 1175, SB 34, SCR 26, SB 1099, CSSB 1130**

CRIMINAL JUSTICE — **CSSB 1292**

**BILLS ENGROSSED**April 10, 2013**SB 11, SB 33, SB 632, SB 753, SB 974, SB 1019, SB 1076, SB 1120, SB 1142,  
SB 1267, SB 1395, SB 1467, SB 1811****RESOLUTIONS ENROLLED**April 10, 2013**SR 609, SR 615, SR 628, SR 629, SR 630, SR 631, SR 632**