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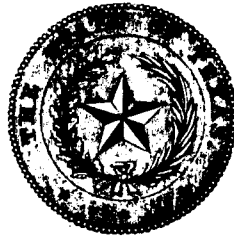
First Called Session

OF THE

Fortieth Legislature

BEGUN AND HELD AT

The City of Austin, May 9, 1927



JOHN D. COFER, Journal Clerk
WENDELL O'NEAL, First Assistant Journal Clerk
MISS JOSEPHINE BRAMLETTE, Second Assistant Journal Clerk


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creasing the efficiency of publicly supported institutions of higher learning in this State; creating the State Board of Higher Education; and prescribing its duties and functions; authorizing said board to secure the facts and information and study the needs in reference to publicly supported institutions of higher learning in this State; granting authority to said Board in order to prevent and eliminate duplications in the work of State institutions of higher learning publicly supported in this State; authorizing said Board to estimate the needs of such institutions and present them to the Board of Control to be included in the budget; making an appropriation to carry out the purposes of this Act; and declaring an emergency."

Read first time and referred to Committee on Education.

By Senators Greer, Floyd, Hardin, Moore, McFarlane, Neal and Ward.

S. B. No. 11, A bill to be entitled "An Act appropriating one and a half million dollars per year, or so much thereof as may be necessary, for the next two fiscal years for the purpose of promoting rural school education and equalizing the school opportunities afforded by the State to all children of scholastic age living in small and financially weak districts, allowing the State Board of Education and the State Superintendent of Public Instruction to aid such schools in accordance with conditions herein specified, providing certain prerequisites for the granting of such aid; providing for the maintenance of all rural schools which meet the requirements a term not exceeding six months solely out of the State and county school funds; providing aid for schools where extraordinary conditions prevent schools meeting all stated requirements; providing limited equipment for rural schools that will afford instruction and demonstration in home and farm vocations; providing assistance in the formation and maintenance of rural high school districts according to a county-wide plan; providing for the administration of this fund by the State Department of Education; providing for the manner of payment and disbursement of all money granted under the provisions of this Act, repealing all laws and parts of

laws in conflict therewith; and declaring an emergency."

Read first time and referred to Committee on Finance.

By Senator Love:

S. B. No. 12, A bill to be entitled "An Act amending the local road law of Dallas County so as to better provide for construction, reconstruction and repair of dirt roads connecting with the pikes or hard surfaced roads in said county, and so as to make more ample provision for the removing and preventing of impediments on the public highways of Dallas County such as junk, or debris, tin cans, glass or other similar impediments; and declaring an emergency."

Read first time and referred to Committee on State Highways and Motor Traffic.

Message From the Governor.

The Chair recognized the doorkeeper who introduced a messenger from the Governor with the following Executive Message:

To the Members of the Fortieth Legislature:

In the proclamation convening the Fortieth Legislature in extra session three questions were mentioned as meriting legislative consideration and being sufficiently urgent to justify the calling of the Legislature in extra session. These questions involved the passage of a general appropriation bill for the support of the Departments and institutions of the State Government through the ensuing biennium, legislation to further facilitate and promote the building of a correlated system of public highways through this State, and the enactment of a civil service law providing for the selection of subordinate State employees by a system of classified service.

Before discussing any of the details of either of these questions, I desire to mention certain things connected with the financial condition of the State.

At the time the Fortieth Legislature met in its regular session, it was considered probable that there would be a deficit in the revenues of the State by the close of the fiscal year amounting to approximately two million dollars. It was estimated that the unused appropriations made for the

present fiscal year amounted to \$14,121,320.50. Deficiency appropriations had been authorized by the Executive Office since the last session of the Legislature and prior to January 1, 1927, in the sum of \$180,500.00. Deficiency warrants to pay sheriffs and other officers' accounts were then outstanding in the sum of \$56,627.84, and it was estimated that \$200,000.00 additional would be necessary during the remainder of the fiscal year to meet other accounts of this nature. The amount of prior appropriations unused to January 1, 1927, was \$2,380,250.24. From these figures it was computed that approximately \$16,938,698.58 could be drawn against the income of the State during the remainder of the fiscal year. It was further estimated that the receipts for the fiscal year ending August 31, 1927, would be \$18,415,720.15, of which \$4,224,157.64 had theretofore been collected, leaving the estimated net income of the State for the year ending August 31, 1927, at \$14,502,426.39. On December 31, 1926, there was in the general revenue fund of the State Treasury the sum of \$1,342,967.12, with outstanding warrants amounting to \$681,045.22. It was upon these figures that the probable deficit was estimated at \$2,000,000.00.

Since those figures were compiled and furnished to me we have had a session of the Legislature and certain appropriations have been made from the general revenue fund.

During the regular session of the Fortieth Legislature the sums of money appropriated amounted to \$3,479,098.60. This figure may suggest to some that extravagant appropriations had been made. However, an examination of the appropriation bills discloses that the major portion of this money was appropriated to meet emergency needs of institutions and departments which had not been properly provided for by prior appropriations.

The distressing and long existing financial condition in the State Prison System was accountable for a considerable portion of this appropriation. The bonds or notes due Brown-Crummer Company amounted to \$750,000.00, and with interest due at their maturity date, which was in February, 1927, the total amount due on this obligation by

the prison system was \$787,500.00. Other notes and accounts of the prison system maturing prior to March 1, 1927, amounted to \$875,881.29. It was estimated that the operation of the prison system on a budget basis from March 1st to September 1st, the end of the fiscal year, would cost \$874,000.00. To meet this obligation the prison system had \$140,731.26. It was apparent from these figures the prison system needed \$733,268.74 to meet its current operating expenses through the last five months of this fiscal year. Therefore, the outstanding obligations of the prison system due prior to September 1, 1927, and the cost of operating the system from March 1, 1927, to September 1, 1927, amounted to the sum of \$2,596,650.03. To dispose of this item of indebtedness inherited by this administration, it was necessary to pay from the general revenue fund the sum of \$787,500.00 due the Brown-Crummer Company, and it was necessary to appropriate from the general revenue fund the sum of \$1,809,150.03. The appropriations made by the regular session of the Legislature included \$1,809,150.03 appropriated for the purpose of meeting the needs of the State prison system, and the Brown-Crummer obligation was paid in addition to this appropriation.

To meet deficiencies due district judges and prosecuting attorneys an appropriation of \$63,620.99 was made by the Fortieth Legislature in its regular session. Appropriations made to meet outstanding deficiencies authorized prior to January 18, 1927, amounted to the sum of \$180,921.38. Appropriations were made to meet the obligations of the Live Stock Sanitary Commission and support it until September 1, 1927, in the sum of \$179,500.00. For educational purposes there was appropriated \$1,032,386.00. The emergency appropriation bill carried appropriations for the Departments amounting to \$209,617.85. The eleemosynary institutions received in the emergency appropriation bill the sum of \$260,040.00. The above are some of the items which were carried by the appropriation bills passed by the regular session of the Fortieth Legislature.

I am conscious of the fact that perhaps some criticism may have

been made of my exercise of the veto power concerning a number of items included in the appropriations made by the regular session of the Fortieth Legislature. It is my purpose to exercise the utmost frugality in the conduct of the Government, and the items stricken from the appropriation bills were those I felt could be eliminated without permanent injury to any of the State departments or institutions.

Your attention is invited to a critical examination of the appropriations carried by the bills passed by the regular session of the Fortieth Legislature and upon such analysis

you will find that the major portion of the money thereby appropriated was to meet debts owing by the State Government and to meet needs which had not been properly provided for by prior appropriations. The major portion of the money was appropriated to satisfy what might be considered back debts of the State Government.

Since the adjournment of the regular session of the Fortieth Legislature figures have been compiled with reference to the total charges against the general revenue fund for the year ending August 31, 1927. The following is a tabulated list of these charges:

To appropriations by the 39th Legislature	-----	\$21,977,694.46
To appropriations by the 40th Legislature	-----	3,479,098.60
Unexpended prior appropriations that extend back for a period of several years	-----	\$2,380,250.24
Less estimated amount that should revert back to the State Treasury, based on the same estimate of previous years	2,000,000.00	380,250.24
Total Charge Against General Revenue, Year Ending August 31, 1927	-----	\$25,837,043.30
Receipts of General Revenue Fund for the Year Ending August 31, 1927.		
Cash balance in State Treasury credited to General Revenue Fund from Sept. 1, 1926	-----	\$ 5,458,922.52
Total receipts arising from 23 cent ad valorem tax rate	\$8,342,869.80	-----
Less 20% to cover assessing, collecting and delinquents	\$1,668,573.96	-----
Less approximate amount of taxes remitted to various counties	505,774.21	-----
	\$2,174,348.17	
Net estimated income from 23 cent ad valorem tax	-----	6,168,521.63
Estimated receipts from other sources of taxation during fiscal year	-----	12,147,198.52
Estimated receipts from prison system based on results of prior year	-----	177,071.31
Estimated amount of appropriation from general revenue to supplement available school fund which will not be used because of increase in gasoline tax	-----	1,000,000.00
Estimated increase in receipts from sources of taxation other than ad valorem property based on experience of previous years	-----	600,000.00
		\$25,551,713.98
Estimated deficit September 1, 1927	-----	285,329.32

The foregoing figures do not reflect the financial condition of the Highway Department.

It was evident during the years of 1925 and 1926 that the system employed by the Highway Commission would eventually bring that Department into a state of hopeless insolvency. Those who had taken occasion to inform themselves, or who undertook to get information relative to its condition during the year of 1926, realized that its finances were heavily involved, but it was impossible to gain accurate and definite data concerning its exact financial status. This was not available until a hasty audit was made in February of this year. This audit disclosed to the general public a lamentable state of affairs that was not known to exist, and it was surprising even to those who had undertaken to keep themselves informed as to the status of the Department.

In my first message to the Fortieth Legislature I suggested the advisability of ascertaining the exact financial condition of the Highway Department, because I believed that such information was necessary before they could know what was necessary in order to save our highway program. The investigation Committee which was in session in this City during the latter part of the year 1926 undertook to learn something of the financial condition of the Department, but so far as I am informed the Committee was not able to obtain accurate and definite information on this point.

The condition of the highway funds, as disclosed by examinations conducted in February made it evident that the continuation of our highway program was contingent upon that Department being furnished with additional revenues. Many people had hoped and expected that all obligations to the Government could be met and all departments and activities supported without any increase in taxation. However, the disclosures of those who examined the accounts of the Highway Department made it evident that notwithstanding the prevailing attitude toward an increase in taxation, that one of two things had to be done. It was certain that either the continual construction and development of highways in this State would have to remain at a standstill for the next year or two, or that additional funds through an increase in taxes would

have to be supplied to the Department.

One of the startling disclosures with reference to highway funds was the fact that there were in the Highway Department at the time approximately \$1,000,000.00 of approved estimates for highway work which had not been paid. Not only was it true that the obligations for the cost of constructing the roads had not been paid as they matured and became due, but even Department employees and laborers were without pay for work done as far back as September and October.

The following figures were furnished me by those who superintended the investigation of the affairs of this Department: The cost of construction work then under contract and in process of performance was estimated at approximately \$6,250,000.00. However, I understand that this figure was not placed high enough, and that it has since developed that the cost of this work will be more than was originally estimated. The system of maintaining roads by contract through the year 1925 and their lack of proper maintenance during the year 1926 had spent the tax money of the people but the roads were not in the state of maintenance required by the Federal Government. I was advised that the Federal Government was expecting the State to spend for road maintenance during the year 1927 the sum of approximately \$10,000,000.00. It was ascertained that the cost of maintenance of the Department would amount to approximately \$500,000.00.

The machinery purchased by the State for the maintenance of roads when this function was entrusted to the Highway Department had been scattered from one end of Texas to the other. Instances were told of quantities of this machinery having been gathered together and sold for junk to secure money to purchase an automobile for some of the road employees. It has been said that much of this machinery will not be located and recovered by the State, although I understand men have been employed and placed out in the field undertaking to retrieve as much of it as possible. It was estimated that before the State could spend the money for the maintenance of roads and properly do the work of maintenance

that at least one million dollars worth of highway equipment would have to be purchased.

Upon adding the cost of construction work then in progress, the estimated cost of maintenance, the cost of supporting the Department and the cost of the equipment, it was estimated that the Highway Department needed not less than \$17,750,000.00 to meet and satisfy the above obligations.

The income of the Department was received from a motor tax, gasoline tax and other miscellaneous items of income. The yield of the motor tax was estimated at \$10,500,000.00. The receipts from the gasoline tax, at 1 cent per gallon on gasoline sold, was estimated at \$4,250,000.00. This last figure is obtained after deducting that portion of the gasoline tax which goes to the Available School Fund. The receipts of the Department from miscellaneous sources was estimated at \$50,000.00. Thus it will be seen that the Highway Department was confronted with the demand for \$17,750,000.00 and was faced with an income of but approximately \$14,800,000.00 to meet this demand. In addition to the above there was available to the State of Texas from Federal Aid approximately \$6,500,000.00, but there was no money in the Highway fund with which to match this Federal Aid. To meet this inherited deficit it was perfectly evident that an increase in taxes to finance the Highway Department was required or the development of the good roads program would have to mark time until the present rates of revenue would increase the funds of the Department. The Legislature wisely determined the development of our Highway System should progress, and that as between the two they would choose to raise the gasoline tax rather than leave the development of highways remain dormant for the want of sufficient funds.

Another of the commendable results of the increase in the gasoline tax is the yield of more money to the Available School Fund. This will reduce the amount of demands made upon the General Revenue Funds.

The foregoing are conditions which have been met, and you are now faced with the matter of making provision for the support of the de-

partments and institutions of the State Government through the ensuing biennium.

The Board of Control has recommended the appropriation of \$37,748,058.56 for the next two years.

Committees of the Legislature have been busy during the time since adjournment of the regular session endeavoring to prepare an appropriation bill. Generally I understand that the bill prepared by the Appropriation Committee of the House and that the bill prepared by the Finance Committee of the Senate will exceed the recommendations of the Board of Control. I believe you can safely estimate the income of the State for the next two years, based upon existing rates and sources of taxation will not exceed the sum of forty to forty-one million dollars.

The recommendation of the Board of Control does not include an appropriation for rural aid and neither does it include appropriations to supplement the Available School Fund. These are matters for which provision should be made.

I do not doubt but that some of the Departments of the State could suspend operations today and no ill effects would be felt by either the business of the State or any considerable number of its citizens, and the Government would continue to function just as efficiently and just as smoothly. But I am positive that you cannot neglect the elementary schools of this State without doing a lasting injury to Texas. The existence of free government depends upon an educated citizenship, and only people whose minds have been enlightened by education are capable of self government.

The vast majority of the people of this State never come in contact with any educational institutions except the graded schools. When the necessities of education are considered and the demands made upon our institutions are taken into account, I do not believe there is any better purpose for which public funds can be expended than to aid the elementary and rural schools in affording adequate and equal educational opportunities to the boys and girls of Texas. Whatever else may have to be sparingly treated in the appropriation of the public money, I believe that the public school system should

be properly supported. This does not mean that I do not favor an adequate support of our institutions of higher learning; on the contrary I favor a liberal policy toward these institutions. The grade schools are the basis of all education in this State, and the institutions of higher learning depend upon these schools and their efficiency before they can perform the public service for which they were originally intended. I agree with the sentiment expressed by President Wilson when he said that the thing which we need is to hear the murmur of the voices of the common people within the corridors of our colleges. The route to college lies through the grade school, and I hope that the opportunities for education will increase in this State, and that the means of education placed within the reach of the average boy and girl of Texas will be such as to equip that boy or girl to enter college, and such as to inspire an ambition to secure a higher education. I believe the grade schools are a matter of transcendent importance in our school system. It is, therefore, my suggestion that one of the prime considerations should be to see that provision is made for an adequate available school fund to properly support the elementary schools of the State, and that a more just basis of apportioning the rural aid fund be determined upon.

The increase in the gasoline tax will substantially increase the Available School Fund, but from the best estimates available, the Available School Fund will not be sufficient without an appropriation from the general revenue of the State.

The support of our institutions of higher learning is important, and the welfare of our State for the future is to be promoted by an adequate support of these institutions. Within the expectant revenue of the State I encourage you to be as liberal as possible with the cause of Education in our several institutions of higher learning.

It has been suggested, and the suggestion bears merit, that there is a duplication of work in these institutions, and that savings could be accomplished without impairment of the institutions by providing for elimination of some of the duplication. This is within the power of your Body. I realize the practical

obstacles which stand in the way. It has been long advocated in this State, and by some of your members, that a non-salaried board be created to have general supervision over this question. I submit this suggestion to you for your consideration, and in submitting the question I desire to say that in my judgment it contains merit, and that its adoption in principle is highly desirable.

The amount of revenue available should be ample to properly support the functions of this government. I urge that you measure the requests that are made of you by the expectant revenue for the biennium and that the bill ultimately passed be kept within such revenue.

Savings can be accomplished through the consolidation of some of the departments of the State government and through the elimination of some of the unnecessary positions now paid out of the public revenue. I suggest for your consideration the consolidation of the work done by the department of the Board of Reclamation with the work of the Board of Water Engineers. The work of these two departments is sufficiently related to justify their consolidation and I believe that in other boards and bureaus of the State government eliminations can be made and savings can be accomplished. No employees ought to be on the public payroll whose services are not essential to the legitimate functions of the government or who do not perform a public service commensurate with the salary paid for such service.

State Highways.

One of the most important departments of our State government is that having charge of highway affairs. As has been pointed out the Legislature has provided adequate finance for our Highway Department, but attention should be given to so constructing our laws that the development of the highways in this State shall be facilitated. The designation of between 20,000 and 25,000 miles of highway has heavily increased the burden of highway maintenance in Texas. Many miles of these roads are difficult, if not impossible, of proper maintenance. The demands upon the Highway Fund for maintenance of this exten-

sive mileage have substantially reduced the amount of money available for building permanent roads upon which the maintenance cost is low. I am advised by the Federal authorities that former maintenance of highways in this State has not been satisfactory, in that it does not measure up to the standards set by the Federal Bureau of Public Roads. The present Commission has been able in the few months it has been in office greatly to improve the condition of maintenance and their policy towards maintenance has met with commendation of the representative of the Federal Bureau of Public Roads.

Appropriate legislation should be passed to aid in the building of lateral roads extending out to the farms which are now on mud roads, but which bear a part of the tax to build good roads. This will reduce the number of requests for designation of highways, and ultimately reduce the amount which the State is now required to spend in the maintenance of highways. Certainly the State cannot build and maintain a highway in front of every man's door, but the thousands of our citizens who live far removed from the improved highways should receive consideration at your hands. It should be remembered that all these desire and need better roads, and laws should be adopted to the end that the interests of the people living on the farms may be properly safeguarded in the development of our highway system.

I do not believe that the Legislature can well afford to undertake by legislative enactment to fix the general policy of the Highway Department.

I do believe, however, a great improvement of our highway system can be accomplished by adopting the following policies:

1. That the Highway Commission shall cause to be made, under the supervision of its engineering force, a survey of all designated roads; and that such roads shall be classed as first, second and third class, according to character of construction, traffic demands, and relative importance in a connected and correlated system of public highways.

2. That in the construction of public roads, regardless of the funds used in the construction thereof, durable types of road building material should be used, demanding

only the minimum amount of maintenance, with the view of keeping a connected system of principal highways intended to serve the greatest number of citizens. Where roads are built from State and Federal funds, the plans should contemplate the completion of the principal highways of the State, accommodation of the greatest number of people and the heaviest traffic. Where the funds are insufficient to construct a road of durable type, the effort should be to use a type of construction which may be maintained at a minimum of cost until funds are available to complete the road with a more durable character of construction.

3. That the advice of the engineers and technical experts employed by the Highway Commission shall be followed in so far as possible and consonant with the good of the system.

4. That the program of maintenance of the large mileage of designated highways consisting of dirt and other unimproved roads which, for lack of funds, cannot be made into durable highways in the immediate future should include the substantial betterment year by year of such roads by proper drainage, grading and repairing of structures and using good material which would increase the serviceability at small cost.

These are matters of policy which should be left to the Highway Commission, rather than be made the subject of legislative enactments. I realize that as conditions change from time to time, a change of policy for the improvement of the road system should not be made impossible because of the existence of some legislative enactment.

I favor giving the counties a larger voice in the administration of highway affairs. I advocate the passage of a law which will give the Commissioners Court of a county in which a highway is to be constructed by the use in whole or in part of county funds, the right of representation to the extent that it shall have the privilege of naming some person who, as the representative of the county, shall sit with the Highway Commission and have a voice in the selection of the type of construction and in awarding the contract.

It will be necessary for certain measures to be passed in order to

provide for the situation created by changes in the Highway statutes brought about by the re-codification. In such laws as are passed it would be wise to eliminate in so far as possible the details of matters involving purely questions of policy.

Civil Service.

I believe that those who direct governmental policies should be responsible to public opinion, and that the appointive heads of departments should be subject to change with changing administrations, and that only those whose views are in accord with the prevailing popular will should formulate the policies which are to control the operations of government. This principle, however, does not extend to subordinate employees, and particularly to those places requiring technical knowledge and skill; and I believe that greater efficiency in the administration of government would be insured through the enactment of a classified civil service act which shall protect technical experts and subordinate employees in the service of the State by securing their tenure in office through changing administrations. I have consistently urged, as a sound policy of State government, the establishment of a system of merit for the civil service of the State, and urge upon the Legislature the most careful consideration of the subject by them, and that a measure wisely adapted to the conditions and requirements of Texas providing for a classified civil service be adopted.

I believe that the system can be adopted without increased cost to the taxpayers of Texas by employing some of the existing agencies of the government as a civil service commission, and that such employees as may be necessary to carry the system into effect can be paid from the fees incident to the examination of applicants.

In this connection, I digress to suggest to you that the constantly increasing call upon the Legislature, through the past few years, for more State employees, has given the State employees that are not actually needed in the civil branches of the government. With the selection of

subordinate employees upon a basis of merit, it is my judgment that increased efficiency will be secured and the number of State employees necessary to discharge the duties of the several Departments will be reduced.

One of the measures passed by the last Legislature failed to carry the proper saving clause to protect pending cases, and I submit for your consideration the passage of a saving clause to Chapter 272, Acts of the Fortieth Legislature. This is an Act amending Article 1256 of the Penal Code, and provision should be made to continue the prosecution of all pending cases of manslaughter.

I reserve for further messages such other questions as, from time to time, may be deemed of sufficient importance to merit consideration in this session.

Respectfully submitted,

DAN MOODY,
Governor of Texas.

Executive Department,
Austin, Texas, May 10, 1927.

To the Honorable Senate of the State of Texas:

Gentlemen: I respectfully submit for your confirmation the following appointments which I have made since the last session of the Legislature:

Honorable Stayton M. Hankins of Childress, Texas, as State Service Officer.

Messrs. W. J. Peterson and W. R. Lacy of Houston, as Public Weighers for Harris County, Texas; (their appointment has been recommended by the Senator and a majority of the Representatives of their district as required by Article 5692).

Honorable S. H. Sanders, Center, Texas; Honorable George Armistead, Houston, Texas; and Clifton H. Morris, Fort Worth, Texas, as members of the Committee to make a survey of the systems of accounting and auditing in the State Departments and institutions, and activities in connection therewith.

Honorable W. R. Boyd, Teague, Texas, as District Judge of the seventh Judicial District, composed of Freestone and Limestone Counties. This vacancy was caused by the death of Judge J. Ross Bell.

striking out lines 30, 31 and 32, and lines 1 to 9 inclusive on page 5.

By Senator Moore:

Amend Senate Bill No. 7, page 7, by striking out Sec. 11 and inserting in lieu thereof, the following:

Sec. 11. Duties of the Members of the State Board of Education.—It shall be the duty of the Members of the State Board of Education, and they are hereby authorized, to take such action and to make such rules and regulations not inconsistent with the terms of this Act, as, in their opinion, may be necessary to carry out the provisions and intentions of this act and for the best interest of the schools for whose benefit the funds are appropriated. It shall be the duty of the county superintendent of each county seeking aid under this Act to make a thorough investigation in person of the grounds, buildings, equipment, teaching force, and financial condition of each school applying for aid under the provisions of this Act, and aid shall not be granted unless it can be shown that all provisions of this Act and regulations made by the State Board of Education have been complied with, and that such amount of aid is actually needed.

By Senators Moore, Greer:

Amend Senate Bill No. 7, page 4, by striking out Sec. 4, and insert in lieu thereof the following:

Sec. 4. Trustees in making contract with teachers shall determine the salary to be paid. But the maximum salaries which may be paid out of State and county funds shall be according to the following schedule: In one-teacher schools, \$100.00 per month; in two-teacher schools, the principal \$110.00 per month, assistant \$90.00 per month; in three-teacher schools, the principal \$150.00 per month, each assistant \$90.00 per month; in four teacher schools the principal \$160.00 per month, primary teacher \$100.00 per month, other assistants \$90.00 per month; in five or six teacher schools, principal \$175.00 per month, primary teacher \$110.00, other assistants \$95.00 per month; in schools above six teachers, principal \$185.00 per month, primary teacher \$110.00 per month, other assistants \$90.00 per month; provided that the amount of salary paid to any teacher

out of State, county or State aid funds according to above schedule does not exceed the limit of salary allowed by the general law based on the certificate held by the said teacher.

By Senator Moore:

Amend S. B. No. 7, page 8, by inserting between lines 12 and 13, a new section, as follows:

"Section 14-a.—Out of the amount of money set aside out of this appropriation by the State Board of Education, to pay for administering this Act, the maximum salary to be paid any one employe shall not exceed \$200.00 per month."

By Senator Moore:

Amend S. B. No. 7, page 6, line 3, by striking out the word "Department," and substitute therefor the word "Board."

By Senator Moore:

Amend S. B. No. 7, page 5, line 18, by striking out the word "Department" and substitute therefor the word "Board."

By Senator Moore:

Amend S. B. No. 7, page 5, line 14, by striking out the figures "30" and insert in lieu thereof the figures "40" and by striking out the figures "10" and insert in lieu thereof the figures "20."

By Senator Moore:

Amend S. B. No. 7, page 5, line 13 by striking out the figures "25.00" and insert in lieu thereof the figures "\$35.00."

By Senator Moore:

Amend S. B. No. 7, page 3, by striking out subdivision 6, under Section 2.

By Senator Moore:

Amend S. B. No. 7, page 3, line 8, by striking out the words "seventy-five" and insert in lieu thereof the following: "fifty."

By Senator Moore:

Amend S. B. No. 7, page 3, line 1, and substituting therefor the following: "as are approved by the State Board of Education."

Message from the Governor.

The Chair recognized the Doorkeeper who introduced a messenger from the Governor with the following Executive Message:

Executive Department,
Austin, Texas, May 19, 1927.
To the Honorable Fortieth Legisla-
ture of the State of Texas.
Gentlemen: The attached bills
are submitted for your considera-
tion.

A bill to be entitled "An Act to amend Article 3726 of the Revised Civil Statutes of 1925, so as to provide for the introduction in evidence of the originals or certified copies of recorded instruments which have been proved or acknowledged in accordance with law without proving their execution; providing a rule for construction of said Article, declaring that this Act shall be divisible if any part of same be held unconstitutional; and declaring an emergency."

A bill to be entitled "An Act regulating the slaughter and sale of the meat of animals for market and providing that every person engaged in the occupation of a butcher or slaughterer of cattle in this State, shall file a bond to be approved by the county judge of the county in which he desires to carry on such business; setting out the term of said bond and providing penalties for violation thereof; and repealing Articles 6904 and 6908, Title 121, Chapter 3 of the Revised Civil Statutes of Texas of 1925; and repealing Articles 1447, 1449 and 1450, Title 17, Chapter 11 of the Penal Code of the State of Texas adopted in 1925, and declaring an emergency."

A bill to be entitled "An Act to provide for the eradication of scabies among sheep and cattle, to provide adequate quarantine and sanitary measures, to provide for the inspection and dipping, and certification of said livestock, and to provide adequate penalties for violation of quarantine and dipping orders of the Live Stock Sanitary Commission, and declaring an emergency."

Respectfully submitted,

DAN MOODY, Governor.

Recess.

The Senate at 12:00 noon on the motion of Senator McFarlane recessed until this afternoon at 2:00 p. m.

After Recess.

The Senate was called to order at 2:00 p. m. pursuant to recess by Lieutenant Governor Barry Miller.

Senate Bill No. 10.

On the motion of Senator Wood, Senate Bill No. 10 was made a special order for Monday morning after the morning call.

Senate Bill No. 14.

The Chair laid before the Senate, on the Calendar, the following bill:

S. B. No. 14, A bill to be entitled "An Act amending Section 3a of Chapter 274 of the General Laws of the Regular Session of the Fortieth Legislature, so as to insert therein a saving clause in reference to offenses committed before this act takes effect so that Section 3a as amended shall read as follows:

"Section 3-a. In all cases tried under the provisions of this Act, it shall be the duty of the court to define "malice aforethought" and shall apply that term by appropriate charges to the facts in the case and shall instruct the jury that unless from all the facts and circumstances in evidence the jury believes the defendant was prompted and acted with his malice aforethought, they cannot assess the punishment at a period longer than five years; provided, however, that no offense committed prior to the taking effect of this act, shall be affected hereby, whether an indictment has been returned or not, but in every such case the offender may be proceeded against and punished under the law as it existed prior to the taking effect of this act, the same as if this act had not been passed, and declaring an emergency."

The bill was read second time and passed to engrossment.

On motion of Senator Woodward, the constitutional rule requiring bills to be read on three several days was suspended and S. B. No. 14 put on its third reading and final passage, by the following vote:

Yeas—20.

Berkeley.	Price.
Fairchild.	Reid.
Hall.	Russek.
Hardin.	Smith.
Holbrook.	Stuart.
Lewis.	Triplett.
Love.	Ward.
McFarlane.	Westbrook.
Moore.	Wood.
Parr.	Woodward.

Yeas—25.

Bailey.	Pollard.
Berkeley.	Price.
Bowers.	Real.
Floyd.	Russek.
Hall.	Smith.
Hardin.	Stuart.
Holbrook.	Triplett.
Lewis.	Ward.
Love.	Westbrook.
Miller.	Wirtz.
Moore.	Wood.
Neal.	Woodward.
Parr.	

Absent.

Bledsoe.	McFarlane.
Fairchild.	Reid.
Greer.	Witt.

Adjournment.

The Senate at 4:50 p. m., on motion of Senator Russek, adjourned until tomorrow morning (Tuesday) at 10:00 o'clock a. m.

APPENDIX.

Petitions and Memorials.

Granger, Texas, May 23, 1927.

A. E. Wood, Senator,
Austin, Texas.

I and my friends insist upon rigid economy in making all appropriations.

T. B. SULLIVAN.

May 21, 1927.

Hon. Barry Miller, President of the Senate,

Austin, Texas.

Dear Mr. President:

It was a great honor to West Texas Chamber of Commerce in its ninth annual convention held in Wichita Falls, May 16-17, to have the greetings and good wishes from your honorable body. It is with the sincerest pleasure that we reciprocate these expressions and we desire to give you the assurance that it is a burning ambition of the organization to be of helpful co-operation to your body in the constructive and orderly development of the Lone Star State in securing good government, peace and prosperity therein.

Sincerely yours,

WEST TEXAS

CHAMBER OF COMMERCE.

R. W. Haynie, President.

Homer D. Wade, Manager.

Committee on Engrossed Bills.

Committee Room,

Austin, Texas, May 23, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 4 carefully examined and compared, and find the same correctly engrossed.

WESTBROOK, Chairman.

Committee Room,

Austin, Texas, May 23, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 14 carefully examined and compared, and find the same correctly engrossed.

WESTBROOK, Chairman.

Committee Room,

Austin, Texas, May 23, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 16 carefully examined and compared, and find the same correctly engrossed.

WESTBROOK, Chairman.

Governor's Message.

Executive Office,

Austin, Texas, May 23, 1927.

To the Members of the Fortieth Legislature.

Gentlemen: The proclamation convening the Fortieth Legislature in extra session and the first message sent to the extra session mention three subjects for legislative consideration. These subjects were: first, general appropriations for the support of the departments and institutions of the State government through the ensuing biennium; second, the enactment of a classified civil service law providing for the selection of subordinate State employees by the merit system; and third, legislation to further facilitate the building of correlated public highways.

It was anticipated at that time that the work of the Appropriations Committee of the House and the Finance Committee of the Senate during the interim between the Regular Session and the Extra Session of the Fortieth Legislature would greatly facilitate the passage of the

appropriation bill and make it possible to dispose of that matter promptly after the convening of the Extra Session.

The Legislature has been in Extra Session for a period of two weeks, but the appropriation bill has not yet reached the Conference Committee. The time of the session is rapidly passing and as speedy consideration of the bill as is possible and consistent with public good is important. The session cannot last longer than thirty days and all parties concerned would like, if possible, to avoid the necessity of more than a thirty day session.

There are other matters which merit legislative attention and which the people of Texas expect to be considered. It is to be hoped that all of the time of this session will not be dissipated in the consideration of the appropriation bill, but that you will dispose of that promptly and find time to consider other matters which are worthy of your attention.

Some suggestions have been made that the subject of appropriation as submitted to you was in limited form, in that it covered only the subject of general appropriations for the support and maintenance of departments and institutions of the State government for the ensuing biennium, and did not cover emergency appropriations which demand immediate attention. Therefore, that limitation is removed and the subject enlarged to include emergency appropriations which are not included in the support and maintenance of departments and institutions for the ensuing biennium.

A great many of your members have asked that I submit special subjects for legislative consideration. I have felt that the best way to conserve time and encourage prompt action was by limiting the questions submitted until some progress had been made on the subjects first submitted. I have determined to submit additional subjects, but hold in reserve other questions which I have been requested to submit until further progress has been made. Before entering the discussion of additional questions, I desire to say something with reference to those now before you.

I recognize the handicaps under which you labor in the endeavor to meet all of the requests made of you

for the appropriation of public revenue. It is futile to attempt to meet all the requests because the money is not available. To wisely select between the essentials and nonessentials, and provide for the essentials is within your ability and power. The wisdom of the bill and the success of your efforts will be very largely judged by how well and how wisely you have separated the essentials from the nonessentials. I know that you have concern for the people of this State who pay the taxes that support the government, and I know that you realize that to many taxation is a burden. It is to be remembered by the Legislature and the Governor, that while on the one hand there stands the departments and institutions clamoring and asking for more money and larger appropriations, that on the other hand there stand the multiplied thousands of the taxpaying public of this State who have the right to expect, and do expect, that they will not be taxed beyond that which is necessary to meet the needs of the government and adequately finance its departments and institutions; and who have a right to feel, and do feel, that on all public officers and all public employees rest the duty of fidelity and the obligation to exercise great care in preserving the substance of the people.

"It is the duty of every branch of the government to enforce and practice the most rigid economy in conducting our public affairs, and no more revenue ought to be raised than is required to defray the necessary expenses of the government" is a principle of all respectable political parties, and is a good ideal for all public officers to get well into their systems.

The field of economy lies between the extremes of profligacy and waste on the one hand, and parsimony and niggardliness on the other. The appropriation measure should not fall in either extreme, but it should be characterized by sound practical economy, which is a virtue to be sought after in appropriation matters by all legislative assemblies. Considering the number of demands that are made upon you, and the seriousness with which they are urged, it is likely that there is far less danger of parsimony than there is of the other extreme.

Classified Service.

In the original message, I urged the adoption of a classified civil service law providing for the selection of subordinate employees in the civil service of the State upon a merit basis. It has been vaguely intimated that the suggestion does not find accord with Democratic ideas and Democratic principles. The idea that it is not in thorough accord with Democratic ideals and Democratic principles cannot be sustained.

The Democratic party has never been the party of the spoilsman or a party of spoilsmen.

The principles of that party governing the selection of public officials are those announced by Mr. Jefferson when he declared capacity and honesty to be essential to fitness for public office. It was the sense of his statement that "these elements in the public offices were essential to an honest civil service, and that an honest civil service was necessary to the purity and efficiency of administration."

There is no better place to learn the principles of a party than from an examination of the platforms upon which it has gone before the people for the election of its candidates.

Prior to the general election of 1882 the people had demanded purity of administration, the party in control had reveled in profligacy. In the elections of that year the Democrats won a sweeping victory in the congressional elections, chiefly on issues of tariff and civil service reform. It was following that election that the civil service system as employed in the Federal government was reformed from mere competitive examinations to the classified civil service system as we understand it today.

But the question did not find its origin as a party principle as late as 1882. A brief reference to some of the platforms of the party, both State and National, will completely dissipate the intimation advanced.

In the platform of 1872 the Democratic party declared that it regarded a thorough reform of the civil service as one of the most pressing necessities of the hour and insisted that honesty, capacity, and fidelity constitute the only valid claim to public employment, that the offices of the government cease to be a matter of arbitrary favoritism and patronage,

and that public station become again a post of honor.

In 1876, the Democratic platform declared that "experience proves that efficient, economical conduct of the governmental business is not possible if its civil service be subjected to change at every election, be a prize fought for at the ballot-box, be a brief reward of party zeal, instead of posts of honor assigned for proved competency, and held for fidelity in the public employ; that the dispensing of patronage should neither be a tax upon the time of all our public men nor the instrument of their ambition."

In 1880, the Democratic party declared that "we execrate the course of this administration in making places in the civil service a reward for political crime, and demand a reform by statute which shall make it forever impossible for the defeated candidate to bribe his way to the seat of the usurper by billeting villains upon the people."

The Democratic platform in 1884, being the one upon which Grover Cleveland was elected President of the United States, declared "we favor honest civil service reform and a compensation of all United States officers by fixed salaries; the separation of church and state, and the diffusion of free education by common schools, so that every child in the land may be taught the rights and duties of citizenship." This was a part of the platform upon which Grover Cleveland was elected President of the United States and it remained for him to put in effect the classified service law adopted following the Democratic victory of 1882.

The Democratic platform of 1888, contained a plank on civil service reform which read as follows: "Honest reform in the civil service has been inaugurated and maintained by President Cleveland, and he has brought the public service to the highest standard of efficiency, not only by rule and precept, but by the example of his own untiring and unselfish administration of public affairs."

The Democratic platform of 1892, upon which Cleveland was again elected President of the United States, carried the following plank, "public office is a public trust. We reaffirm the declaration of the Democratic National Convention of 1876 for the reform of the civil service, and we

call for the honest enforcement of all laws regulating the same. The nomination of a President, as in the recent Republican convention, by delegations composed largely of his appointees, holding office at his pleasure, is a scandalous satire upon free popular institutions, and a startling illustration of the methods by which a President may gratify his ambition. We denounce a policy under which Federal office-holders usurp control of party conventions in the states, and we pledge the Democratic party to the reform of these and all other abuses which threaten individual liberty and local self-government.

The Democratic platform of 1904 declared that the party stood committed to the principles of civil service reforms and demanded their honest, just and impartial enforcement. It denounced the opposing party for its continuous and sinister encroachments upon the operation of civil service rules and its arbitrary dispensing with examinations for office in the interests of favorites and employing all manner of devices to overreach and set aside the principle upon which the civil service was established.

The last man elected President of the United States on the Democratic ticket was himself at one time vice-president of the Civil Service Reform League, but resigned after he became President and after he had written "that his interest and sympathy with the work had not been and could not be abated."

The Democratic platform upon which he was elected declared "the law pertaining to civil service should be honestly and rigidly enforced to the end that merit and ability should be the standard of appointment and promotion rather than service to a political party."

The platform of the Democratic party in Texas has not been silent upon this question.

"The Democratic platform of 1892 demanded that the 'offices of the government cease to be a matter of arbitration, favoritism, and patronage, and again be a post of honor.'"

The Democratic platform of 1882 and 1902 contained planks more definitely in favor of the merit system, and that of 1912 specifically favored the merit system, recommending "that the Legislature enact such a law."

The Thirty-third, Thirty-fourth and Thirty-sixth Legislatures were each urged by Executive messages to pass a law instituting the merit system to apply in the various departments of State government.

It is to be remembered that the man who asked the question "what are we here for but the offices" was not a member of the Democratic party and his question was not asked in a convention of the Democratic party.

The State Democratic platform of 1912 provided "the merit system would enable the State to have its work done with fewer clerks and consequently with less expense. There would be no partisan service expected of those holding clerical positions under civil service regulations; neither the head of a department or institution keep an incompetent person through political influence. The public service would be greatly benefited by such a law."

Civil service reform today is supported upon its actual business value to the public, "rather than upon any theoretical arguments of its value in destroying the spoils system," though it can be sustained as worth while in that it means the destruction of the spoils system and the doctrine that public office is public plunder.

Other states of the American Union have adopted the system and it has improved the efficiency in the administration of public affairs. Any existing difference toward the adoption of the system in Texas will disappear "when the people of the State become aware of the conditions in Texas as compared with those in states where merit system has been given a fair trial." New York adopted the system as far back as 1883, and during the last twenty years, eight states have followed the example of New York in this particular.

Many compelling reasons can be advanced why the system should be adopted in Texas, especially since the number of public employees has grown so large. A large body of public employees owing their position, and their tenure of office, to the pleasure of the appointive power makes possible a political machine, and a political machine is a menace to free institutions. The govern-

ment should be ruled by the free and independent expression of the electorate, and it should not be influenced by an army of public employees, and neither should the lure of spoils of office be present to cause men to settle their position on questions of government upon selfish considerations. Is there anything more disgusting or beneath the dignity of position than a public officer in a free government taking the position that because he has secured some person a position as a filing clerk or a stenographer that such person owes the officer his vote? A vote is the privilege and duty of citizenship, and citizenship is not to be bartered away for a job or a position. The subordinate positions are not won and lost at the polls. The policy determining officers should be responsive to the will of the people, and these should change with changing administrations. The civil service belongs to the people, and is intended for their benefit. It should not be embarrassed by politics nor made the plunder of the spoilsman.

From time to time the Legislature has been importuned, and unfortunately with success, to establish new offices and create new jobs for no conceivable usefulness except that they furnished an opportunity to someone to reward a political friend out of the public Treasury. The demand for new offices and new positions has been so great, and the activities of the Government have been extended so far, that the State is now supporting a veritable army of employees.

The legitimate increase in the activities of the Government would normally create a demand for additional employees, but the system of appointment used in this State is one which encourages an extension of the activities of Government beyond its legitimate fields in order that there may be occasion for the creation of new positions. This demand for additional employees and added activities of Government contributes in no small degree to the modern tendency toward the centralization of governmental power in Austin. Many activities of Government are carried on from Austin by subordinate employees of the various departments,

which in times gone by would have been regarded as entirely out of keeping with the spirit of Government existing in his country. Not all of the departure from the idea of local self government, and not all of the tendency toward centralization, is to be charged to the spoils system, but it has contributed substantially in building up these tendencies. Inefficiency and expense have always been urged as reasons against centralization of power. It is easy to see in this State the proof of the assertion that centralization means extravagance and resulting inefficiency. The most casual observer about the State departments must be impressed with the idea that the sort of efficiency shown by many public employees would not be tolerated in any private enterprise. The introduction of the merit system into the selection of public employees would promote better efficiency and it would reduce the number of public offices necessary to meet the legitimate duties of government. When the merit system has been adopted in Texas the demands for new positions will be reduced in the proportion which our present system encourages public officers to ask for the creation of new positions.

Specific instances might be pointed out wherein the existing system in Texas is not subservient to the public good.

The elective public officer is forced to devote a lion's share of his time to listening to the petitions of people for appointment or people to secure an appointment for some other person. And unfortunately friends are not always faithful and considerate in the recommendations which they make, for frequently the same man will recommend not one, but several people for the same position, and all of them equally incompetent. A great many efficient and capable men and women make application for public employment, but a great many of those who apply have found themselves unsuccessful in the private venture of life, and seek the snug security which they feel comes from a public office, insuring a fixed income. A great many seem to believe that public offices are suitable to contribute to charity, and the "down

and out" who are in need of making a living are frequently the ones who are urged with greatest force upon the appointive power, without any regard for the ability or efficiency of the person whose appointment is sought.

The time has been in Texas when heads of departments levied assessments against their political employees to help defray campaign expenses. Such a practice is immoral and contrary to the best interests of good government. It rests upon the same moral plane as the purchase and sale of the powers of appointment.

Some people may regard patronage as a political asset, but it is doubtful if it can be justly considered as anything other than a liability in public office. For every position there are many applicants, and necessarily dis-appointments must be met. When a man is recommended by one officer for appointment in another department of the government, and he does not receive the appointment, he feels that the officer who recommends him did not use all of the pressure which he could have used, otherwise the appointment would have been received. The result is that he is offended. If a public officer is importuned to recommend several people for the same office and he recommends only one, those not recommended are offended. If he recommends several he feels disgusted with himself, and he leaves the officer to whom he makes the recommendation in the position of believing that his recommendations are made more or less without regard for the efficiency of the persons recommended.

Fidelity and party loyalty are not, and should never be considered as qualifications to public office, but it is a pernicious and wicked doctrine which makes those two questions the sole test of qualification for public service. I believe as strong as any man in loyalty to friends, and I believe that as a general rule one may find capable and honest men among the ranks of his friends. But I hold in utter contempt the doctrine that public offices should be treated as public spoils to be used in the payment of personal obligations incurred as the result of political campaigns. To give an office as a reward without

regard for efficiency or integrity is the grossest breach and default of a public trust.

Texas has seen many times the result of the spoils system. You have seen it for two years in the management of State affairs. Its evil consequences to the body of the people has been demonstrated time and time again in the administration of our prison affairs. The mismanagement of the penitentiary farms in Texas, the keeping of their books in such manner that expert accountants could not even ascertain the amount of the debt or the reason therefor upon one occasion; the loss of \$200,000.00 in the attempted operation of the iron foundry are credited by eminent authorities of this State to the lack of trained service and continuity of policy, or to put it in a briefer but harsher form—to the spoils system.

Highway.

The present highway laws of this State are found in the Revised Statutes of 1925, and the Acts of the Thirty-ninth Legislature. The bill passed by the Thirty-ninth Legislature seems to have been prepared without any careful thought being given to the work done by the codifiers. It is highly desirable that Texas be given a law that will better facilitate the construction of improved highways in this State. With 20,000 miles of designated highways involving tremendous cost maintenance, it is highly desirable that the roads be classified according to some standard of use in order that their improvement may be carried on in a manner best calculated to serve the public interests of this State. Better laws are needed with reference to the use and disposition of State, Federal and county funds and some adequate provision should be made to insure the assistance of the counties in the furtherance of a program to build a related system of public highways. There is no scientific thought in placing the power of purchase of equipment and materials used in highway work in the Board of Control when the Highway Department has a large number of technical employees who should be better fitted to pass upon these matters than the non-experts employed by the Board. Provision should be made to give the county which furnishes funds in the build-

ing of the highways a voice. This can be done without infringing upon the Federal rule governing the allotment of Federal Aid, and it is but fair and just that the people whose money is spent should have some voice in the letting of the contract under which their money is to be used.

The Highway Department spends millions of dollars and employs scores of people. It is one of the most important departments of the State government. When the authority of the Department is in the hands of honest and competent men people will not have cause to fear or reason to doubt, but should its affairs at some subsequent date come into the hands of incompetent men under existing laws the people would not have the proper protection. The history of 1925 might be repeated. If the expression of the people of Texas in the recent election can be taken for anything, it must be taken as a solemn mandate that every precaution possible be thrown around this Department to protect them from extravagance, waste, and incompetency. And the people of Texas have a right to expect that as a result of the experiences in the past that constructive legislation will be offered to protect them at all times in the future.

Prison System.

At the Regular Session of the Fortieth Legislature a bill was passed providing for a change in the management of the State Prison System. The people of Texas recently adopted an amendment to the Constitution which provided for the change in the system of management which had been employed in the past. It is reasonable to assume that the acquaintance which the people of Texas had with the losses suffered by the prison system, and the amount of their tax money that had been taken to meet its obligations, to some extent, influenced their action on the amendment. It is also a reasonable assumption that in adopting this amendment the people had in mind that provision would be made for the better management of the prison properties of this State.

The appropriations made at the last session of the Legislature to provide the necessary finances for the prison system are a strong argument

for a change in the system of management.

The Legislature appropriated \$875,881.29 to pay debts of the prison system maturing prior to the first day of September, 1927. Another appropriation was made of \$733,268.74, together with all of the money then on hand by the prison system, to support and maintain the penitentiary until September 1, 1927. A third appropriation was for \$38,918.28 to pay accrued taxes against certain prison farms owned by the State of Texas. In addition to these items there was a debt of \$750,000.00, with interest in the sum of \$37,500.00, which matured on February 1, and was evidenced by certain obligations which were held by a New York concern. The total of these items is \$2,635,368.31. In other words, the general revenues of this State were made to bear an obligation of \$2,635,368.31 to pay debts incurred in the operation of the prison system, and to support that system until the end of this fiscal year. To the average mind these figures constitute conclusive evidence of the inefficiency of the system of management of the penitentiary properties employed in the past.

House Bill 59, page 298, General Laws of the Regular Session of the Fortieth Legislature, changes the system of management of the prison properties to the extent that the Board of Prison Commissioners is abolished and the management of the properties placed in the hands of a manager, to be selected by the Texas Prison Board. The powers of the Texas Prison Board are few, and its duty is limited. There is nothing in the statute which gives the Board an opportunity to bring to the benefit of the State the result of any study which it may make of our prison properties. No opportunity is afforded for the introduction of constructive ideas in the economic problems presented by our prison system. The Board can select a manager, and it can exercise some influence over his policies, but they are given a property which has proven costly in the past, and asked to manage it upon a self-supporting basis, without being given any character of power to place its properties in such condition as to reach the ultimate object to be attained, and that is a self-supporting penitentiary system.

The Prison Board should, by all means, be given plenary authority in the management of our prison properties. The Board of nine members, after having had time to study the system, and locate the causes of loss in the past and determine wherein it has been inefficiently operated, should be able to formulate a constructive program looking to the betterment of this portion of the State's business. To my mind it is infinitely better to entrust to this Board full power in the management and handling of these properties than to give them only the limited power conferred by the bill passed at the last session of the Legislature. A Board of outstanding ability can be trusted to study the problems, and can be expected to find a solution. A measure giving them this power and authority would be a progressive step, and ought to mean ultimately a saving to the people of Texas.

Personally I am not advocating a relocation of the penitentiary, and neither do I undertake to say in what manner it would be re-organized but I do advocate the Board of Directors of the Prison System the authority to dispose of these questions after they have had an opportunity to study them and determine upon a program.

In all of the major affairs of business when perplexing problems arise those are consulted whose judgment is founded on scientific thought given to such problems and their solution; and generally their advice is followed. If this is a good rule in major business methods, and it seems to have been adopted almost universally, no good reason can be urged against its application to business problems arising from the management of State owned properties.

It is our duty to the State to bring to the solution of its prison question the best thought and the best study available. The State should not be denied the benefits to be derived from a scientific study of its prison problems, and the application of modern thought to the solution of these questions. Nine members of a prison board clothed with plenary power ought to be able to work out of the chaos into which prison matters have fallen a practical solution which would mean a self-supporting prison system, and a saving of the millions of dollars of tax money that have been drained from the Treasury into

an enterprise that would have long since been forced to wash its garments in a bankrupt court had it been owned and operated by private persons.

The offer of responsibility encourages capable people to accept public positions. The fact that the position carries power and responsibility encourages careful and scientific study of the work. The giving of plenary power to the board should make possible a board of outstanding ability, and Texas can well afford to trust this matter and its solution into the hands of nine of its best and most capable citizens.

Judicial Amendment.

The following subjects pertaining to judicial matters are submitted:

1. The enactment of a statute authorizing the Supreme Court in conjunction with a committee of trial judges and lawyers to prepare rules of procedure governing the trial of civil cases.

2. The enactment of a law changing our present system of fixed terms of court so that the several district courts of this State may be open for business in each county of the several districts at all times, making appropriate provisions for grand juries, the return of process and the filing of motions and records for appeal; any local measures effecting present terms of court.

3. Legislation to provide that in all criminal cases the accused or his counsel shall in thirty days after the judgment of conviction or the order overruling motion for new trial present to the trial judge for his approval and file with the clerk of the trial court an original and copy of the defendant's statement of the matters and things complained of as error and upon which the appeal is based, to be approved by the trial court and transmitted to the court of criminal appeals, to the end that the disposition of cases on appeal may be facilitated and justice more speedily administered.

4. The enactment of a law making severance in the trial of criminal cases a matter resting in the discretion of the court.

5. The enactment of a law to give greater protection to the State in the acceptance of appearance bonds.

6. The amendment of Articles 61, 62, 63 and 64 of the Penal Code of 1925, to make a more workable statute and one which in principle will conform more nearly with the laws of this character which have proved beneficial in the suppression of crime in other jurisdictions.

Respectfully submitted,

DAN MOODY.

Governor of Texas.

Committee Reports.

Committee Room,

Austin, Texas, May 23, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred

S. B. No. 23, A bill to be entitled "An Act relating to the jurisdiction of the county court of Menard County, conferring upon said court civil and criminal jurisdiction and increasing the criminal and civil jurisdiction of said court, conforming the jurisdiction of the district court of said county to such change; fixing the time of holding court and to repeal all laws in conflict with this Act."

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass, and that it be not printed either in bill form or in the Journal.

WOODWARD, Chairman.

Committee Room,

Austin, Texas, May 23, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred

S. B. No. 24, A bill to be entitled "An Act relating to the jurisdiction of the county court of Sterling County, conferring upon said court civil and criminal jurisdiction and increasing the criminal and civil jurisdiction of said court, conforming the jurisdiction of the district court of said county to such change; fixing the time of holding court and to repeal all laws in conflict with this Act."

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass,

and that it be not printed either in bill form or in the Journal.

WOODWARD, Chairman.

Committee Room,

Austin, Texas, May 23, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred

S. B. No. 25, A bill to be entitled "An Act relating to the jurisdiction of the county court of Irion County, conferring upon said court civil and criminal jurisdiction and increasing the criminal and civil jurisdiction of said court, conforming the jurisdiction of the district court of said county to such change; fixing the time of holding court and to repeal all laws in conflict with this Act."

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass, and that it be not printed either in bill form or in the Journal.

WOODWARD, Chairman.

Committee Room,

Austin, Texas, May 23, 1927.

Hon. Barry Miller, President of the Senate.

Sir: We, your Committee on Criminal Jurisprudence, to whom was referred

S. B. No. 26, A bill to be entitled "An Act to change and prescribe the time for holding district court of the Fifty-first Judicial District of the State; and to conform all writs and process from such court to such changes and to make all writs and process issued or served before this Act takes effect, including recognizances and bonds, returnable to the terms of court in the several counties in said district, as herein fixed, and to validate the summoning of grand juries and petit juries; and providing for the continuation of court in session in said district when this Act take effect, to the end of its term; and repealing all laws and parts of laws in conflict herewith."

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass, and that it be not printed either in bill form or in the Journal.

WOODWARD, Chairman.

controversy over the question of rural aid.

Therefore, Be it resolved by the Senate that the aforesaid orchestra be permitted to play a few of their selections.

BAILEY.
MILLER.
WIRTZ.

The resolution was read and adopted.

Executive Messages.

Executive Office,
Austin, Texas, May 25, 1927.
To the Honorable Fortieth Legislature.

Gentlemen: At the Regular Session of the Fortieth Legislature provision was made for the appointment of a committee to codify the school laws of the State. The attached is a copy of the school laws as codified by the committee, and prepared in the form of a bill. The subject of the passage of the attached bill is submitted for your consideration.

Respectfully submitted,
DAN MOODY,
Governor.

Executive Office,
Austin, Texas, May 25, 1927.
To the Honorable Members of the Fortieth Legislature.

Gentlemen: At the request of the Board of Health the attached bills are submitted for your consideration.

A bill to be entitled "An Act to better protect and promote the health of the people of Texas; establishing the State Department of Health, to consist of a State Board of Health, appointed by the Governor, a State Health Officer, appointed by the State Board of Health; fixing the term of office of the members of the State Board of Health, etc., and declaring an emergency."

A bill to be entitled "An Act to provide for an adequate system of vital statistics, and for the registration of all births and deaths in this State, and for the compiling and preservation of records for such purposes, etc."

Respectfully submitted,
DAN MOODY,
Governor.

Recess.

The Senate at 2:20 p. m., on motion of Senator Miller, recessed for

fifteen minutes to hear the colored orchestra from Virginia.

After Recess.

The Chair (Lieutenant Governor Miller) called the Senate to order at the close of the fifteen minute recess.

Senate Bill No. 23.

The Chair laid before the Senate on the calendar the following bill:

S. B. No. 23, A bill to be entitled "An Act relating to the jurisdiction of the county court of Menard County, conferring upon said court civil and criminal jurisdiction and increasing the criminal and civil jurisdiction of said court; conforming the jurisdiction of the district court of said county to such change; fixing the time of holding court and to repeal all laws in conflict with this Act, and declaring an emergency."

The bill was read second time and passed to engrossment.

On motion of Senator Woodward, the constitutional rule requiring bills to be read on three several days was suspended and S. B. No. 23 put on its third reading and final passage, by the following vote:

Yeas—28.

Bailey.	Moore.
Berkeley.	Neal.
Bledsoe.	Parr.
Bowers.	Pollard.
Fairchild.	Real.
Floyd.	Reid.
Greer.	Smith.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Westbrook.
Lewis.	Wirtz.
Love.	Wood.
Miller.	Woodward.

Absent.

Witt.

Absent—Excused.

McFarlane.	Russek.
Price.	Ward.

The bill was read third time and passed finally, by the following vote:

Yeas—28.

Bailey.	Greer.
Berkeley.	Hall.
Bledsoe.	Hardin.
Bowers.	Holbrook.
Fairchild.	Lewis.
Floyd.	Love.

a butcher or a slaughterer of cattle in this State, shall file a bond to be approved by the county judge of the county in which he desires to carry on such business, etc., and declaring an emergency."

The bill was read second time.

The committee report, carrying an amendment, was read.

On the motion of Senator Bailey, the bill was laid on the table subject to call.

Senate Bill No. 35.

The Chair laid before the Senate on the calendar, the following bill:

S. B. No. 35, A bill to be entitled "An Act providing for the separation of all public free school affairs in cities or towns from the municipal government therein; providing that all the power and authority over such schools shall be exercised by such cities or towns through their boards of education; providing for the election of trustees of the independent districts authorized herein; vesting the title to school property of such cities and towns in the independent district; authorizing the independent districts to assume outstanding bonds of cities and towns issued for school purposes; repealing all laws and parts of laws in conflict with the provisions of this Act, and declaring an emergency."

The bill was read second time.

On the motion of Senator Holbrook, the bill was laid on the table subject to call.

Messages From the Governor.

The Chair recognized the doorkeeper, who introduced a messenger from the Governor, with the following Executive Messages.

Executive Department,

Austin, Texas, May 26, 1927.

To the Honorable Senate of Texas. Gentlemen:

At the Regular Session of the Fortieth Legislature, I appointed Honorable Will Embry (inadvertently listed as Mrs. Will Embry), to be one of the Commissioners of Washington Park. Mr. Embrey advises that he is unable to accept this place. To succeed Mr. Embry, I submit for your confirmation the name of Mr. W. B. Francis of Brenham, Texas, to be one of the commissioners of this park.

With your advise and consent, I desire to appoint, under the pro-

visions of Article 5681, Revised Civil Statutes, 1925, the following persons to be public weighers in the towns respectively listed:

Mr. Joe Key, Davistown, Atascosa County.

Mr. H. C. Billimek, McCoy, Atascosa County.

Mr. E. A. Tuttle, Poteet, Atascosa County.

Article 5682, requiring endorsement by the Senator and a majority of the representatives of the senatorial district, has been complied with.

Respectfully submitted,

DAN. MOODY.

Governor of Texas.

Executive Office,

Austin, Texas, May 26, 1927.

To the Honorable Fortieth Legislature of Texas.

Gentlemen:

The subject of the passage of the attached bills is submitted by request for your consideration.

Respectfully submitted,

DAN MOODY,

Governor of Texas.

— B. No.—, A bill to be entitled "An Act requiring every person, firm, co-partnership, association or corporation doing business in this State, which are subject to occupation, gross receipts, or other taxes upon sales or gross receipts, to keep complete, permanent and detailed records of all business transacted in Texas, said records to be kept at the principal place of business in Texas; providing that the Attorney General of Texas, or the State Comptroller, or the duly authorized representatives of either, may make examination of all such books and records; defining the offense of failing to keep such records, and also failing or refusing to produce the same for examination, and fixing the penalty; providing for the producing of such records in court, and declaring an emergency."

— B. No.—, A bill to be entitled "An Act fixing the open season for hunting, taking or killing Black Tail Deer in that part of the State west of the Pecos River; limiting and restricting the killing of such deer during said open season in said territory; prescribing the penalty for violating any provision of this Act; and declaring an emergency."

— B. No.—, A bill to be entitled "An Act providing that negotiable instruments shall not be rendered non-negotiable by reason of the execution or contents of any other paper creating a lien or other right, securing such negotiable instrument, or by reason of any reference in the negotiable instrument to such other paper; and declaring an emergency."

— B. No.—, A bill to be entitled "An Act to prohibit the killing of squirrel in Hardin County during the months of February 1st to October 15th, inclusive; providing that during the other months of the year no one shall kill more than ten squirrels in any one day; prescribing a penalty for violation, and declaring an emergency."

— B. No.—, A bill to be entitled "An Act to amend Chapter 2, Title 22, Revised Civil Statutes, 1925, by adding thereto Article 725a to permit the issuance of bonds by counties for the purpose of funding or refunding indebtedness heretofore incurred for the purchase and improvement of county parks; and declaring an emergency."

— B. No.—, A bill to be entitled "An Act declaring unlawful the sale or offer for sale, transportation, preparation, receiving or delivery for transportation or marketing of citrus fruit that is immature, unripe, overripe, frost damaged or otherwise unfit for consumption and the sale thereof declared to be a fraud upon the public; defining terms; providing for the inspection of citrus fruits and issuance of certificates of inspection thereof; providing for the purchase and affixing of stamps in connection with the marketing or transportation of such citrus fruits; providing for the appointment of persons to inspect the same and fixing their compensation; defining certain offenses; prescribing the power and duties of the commissioner of agriculture, with regard to the provisions of this Act; providing for the enforcement thereof and prescribing penalties for violation of any of the provisions of this Act, and declaring an emergency."

— B. No.—, A bill to be entitled "An Act to amend Article 417 of the Code of Criminal Procedure of the State of Texas for 1925, so as to provide that where there are one or more felony charges against one or more persons for the same act or

transaction, or for two or more actions or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses which may be properly joined, the whole may be joined in one indictment in separate counts, charging separate offenses, and a conviction may be secured for each offense in the same trial under the same indictment; providing for judgment and sentence for each offense; providing for the manner of returning verdicts by the jury; providing that failure to reach a verdict on any count shall not be a bar to judgment on counts on which verdict is returned; providing for numbering the counts of indictment; and declaring an emergency."

Executive Office,

Austin, Texas, May 25, 1927.

To the Honorable Fortieth Legislature of the State of Texas.
Gentlemen:

In the re-codification of the statutes of 1925, a material change was made in the wording of subdivision 7 of article 1995, Revised Civil Statutes, 1925. Prior to the re-codification, subdivision 7 read as follows:

"In all cases of fraud and in cases of defalcation of public officers" suit "may be instituted in the county in which the fraud was committed, or where the defalcation occurred or where the defendant has his domicile."

As carried into the Revised Statutes of 1925, the subdivision reads:

"In all cases of fraud and defalcation of public officers, suit may be brought in the county in which the fraud was committed or defalcation occurred or where the defendant has his domicile."

In the case of *San Marcos Academy v. Burgess*, 292 S. W. 626, Advanced Sheet, No. 2, dated May 4, 1927, the Court of Civil Appeals at San Antonio has called attention to this change and pointed out that while the rule of law was well settled under this subdivision as it existed prior to re-codification, that the changed wording in the re-codification will likely change the rule of law with reference to cases brought under this subdivision.

I deem this of sufficient importance to merit consideration, and I submit to you for your consideration

an amendment of subdivision 7 of article 1995, so as to make its language clear and in conformity to the long established rule with reference to venue in cases of the nature covered by the subdivision.

I further submit for your consideration the enactment of a subdivision to article 1995, Revised Civil Statutes, creating an additional exception to the general venue rule.

The number of instances in which an injunction will be granted to restrain the threatened or actual violation of penal statutes is limited. There are not more than five or six criminal offenses which may be restrained by injunction proceedings. In some of these cases the law permits the suit for injunction to be filed in the county in which the transaction has occurred or is threatened or in Travis County. There are statutes which make it the duty of State departments to act in matters of this nature. Therefore, it would not change any policy of the State if venue in all such cases was given to the district courts of Travis County as well as the courts of the county in which the actual or threatened violation occurred, and it would facilitate the disposition of business of this character. Instances might be cited in which the effectiveness of the remedy is destroyed by reason of the few terms of court held in the county. Injunction proceeding restraining criminal law violation, where authorized by law, is not a harsh remedy and its effectiveness could be increased by incorporating a further exception to the general venue rule.

The Supreme Court of the United States has held Article 3107, Revised Civil Statutes, 1925, is violative of a provision of the Constitution of the United States. I submit for your consideration the repeal of this article and the enactment of a statute which will vest power in the Executive Committee of the several political parties to determine the qualifications requisite to membership in such parties.

Article 3137, Revised Civil Statutes, 1925, provided that the State Executive Committee shall meet on the second Monday after the fourth Saturday in August for the purpose of canvassing returns of the preceding primary election. This statute allows only a period of about eight

days within which the votes may be counted and returns made to the State Executive Committee. In the past it has been impossible to secure complete returns by that date, and general confusion and considerable inconvenience resulted from this cause.

Articles 3136 and 3139, Revised Civil Statutes, 1925, have to do with the State Convention held subsequent to the canvassing of the returns provided for in Article 3137. These statutes also contemplate the meeting of the State Executive Committee for canvassing the returns on the second Monday after the fourth Saturday in August. The subject of amending these statutes to grant additional time within which the vote may be counted and the returns made to the Executive Committee and of properly providing for the holding of the conventions contemplated by the statute is submitted for your consideration.

There is no adequate provision in the statute at this time for filling a vacancy in the office of county superintendent. Article 2355, Revised Civil Statutes, 1925, makes provision for certain vacancies in county offices to be filled by action of the commissioners court, but it does not embrace vacancies in the office of county superintendent. The subject of making provision for filling vacancies in the office of county school superintendent is submitted for your consideration. It is my information that there now exists in this State vacancies in the office of county superintendent and that there is no proper authority to provide for filling such vacancies.

At the last general election a proposed amendment to the Constitution providing for the payment of taxes on school lands owned by counties was ratified by the people. No law has been passed enabling the proper authority to pay such taxes or specifying the funds from which the same are to be paid. The subject of an enabling act to authorize the proper authorities to pay such taxes and to fix funds from which same are to be paid is submitted for your consideration.

The subject of amending Chapter 290, page 435, General Laws of the Regular Session of the Fortieth Legislature, to correct the conflict

therein is submitted for your consideration.

Chapter 4, Title 128, Revised Civil Statutes, 1925, provides for the creation of conservation districts to be known as Fresh Water Supply Districts for the purpose of conserving, transporting and distributing fresh water for domestic and commercial uses. Under this Chapter elections are held and bonds are issued. Article 7884 provides that a time and place shall be fixed at which a hearing shall be held by the commissioners court on the petition for any such election. The notice of such hearing, as provided by Article 7884, shall inform the persons concerned of their right to appear and contest the genuineness of said petition and the signatures thereto and whether the petitioners are qualified voters.

Article 7887 provides for the finding of the court upon the hearing provided for in Article 7884. Article 7887 simply provides that if upon the hearing of the petition it is found that the same is signed by the number of voters required by law and the petition conforms to the law, the court shall so find and shall order an election. No provision is made to give the persons living within the contemplated district a hearing on the question of the probable benefits to be derived from the establishment of such a district, or whether or not any benefits would be derived by the property to be taxed for the payment of bonds to be issued by the proposed district. In the present condition, Article 7884 and Article 7887 seem to place our fresh water supply districts bonds within the rule laid down by the Supreme Court of the United States in the Archer County case.

Three changes are necessary in these articles with reference to fresh water supply districts. First, Article 7884 ought to provide that the notice of the hearing should advise the persons living within the district that they would have an opportunity to contest the matter of benefits to be derived by the establishment of the district; second, Article 7887 should require that the court find upon the hearing that a benefit would accrue to the property owners by the establishment of the district; and third, a general validating act should be passed validat-

ing any bonds which may have been issued under the terms of Chapter 4, Title 128.

At present there is \$355,000.00 in the State Treasury to the credit of the "suspense fund". This money, I am advised comes from mineral operations on State land. It is recommended that this fund be transferred to the general revenue fund of the State.

Under present laws the royalties arising from mineral operations on submerged State lands is paid into the game fund. The revenue from this source amounts annually to many thousand dollars. The subject of passing a bill to bring this to the general revenue fund is submitted for your consideration.

Each of these suggestions has the support of the department now receiving this revenue.

In the regular session of the legislature a bill was passed amending Article 1728, Revised Civil Statutes, 1925, relating to the appellate jurisdiction of the Supreme Court. The amendment of this statute without a clause to provide for the saving of pending cases before the Supreme Court may destroy rights in many pending cases. The subject of passing a saving clause to preserve the rights of the parties in cases taken to the Supreme Court under the statute amended and now pending is submitted for your consideration.

Chapter 20, Acts of the Regular Session of the Fortieth Legislature, makes provision for the redemption of land sold under judgment for taxes levied by or for any district organized under the laws of this State, and provides that the laws applying to redemption of land sold under judgment for the collection of taxes for State and county purposes should be applied. In the recodification of the statutes, the law providing for the redemption of land sold for the collection of State and county taxes was omitted from the codification of 1925. The subject of passing a law to provide for the redemption of land sold for the collection of State and county taxes is submitted for your consideration.

I also submit the subject of making Chapter 20, Acts of the Regular Session of the Fortieth Legislature to conform to such statute as you may pass providing for the redemp-

tion of land sold for collection of State and county taxes.

The amendment of Article 5523, Revised Civil Statutes, 1925, to provide for the validation of defective acknowledgments of married women to deeds and other instruments affecting title to land is submitted for your consideration.

The amendment of Article 5519, Revised Civil Statutes, 1925, to provide for the quieting of land title is submitted for your consideration.

The amendment of Article 7373, Revised Civil Statutes, 1925, to provide for what may be proven under a plea of not guilty in trespass to try title suits, so as to make the recodification of the statutes conform to the long standing rule on this subject, is submitted for your consideration.

The submission of amendments affecting judicial procedure and practice may be considered as including bills affecting the jurisdiction of courts.

Respectfully submitted,
DAN MOODY,
Governor of Texas.

Simple Resolution No. 25.

Senator Wood sent up the following resolution:

Whereas, The Highway Department is prosecuting an extensive road program in the State, and

Whereas, Road material is in great demand and concrete roads seem to be the prevailing type now advocated, and

Whereas, For a number of years to come it seems that concrete for the purpose of building state roads will be greatly in demand, and

Whereas, Many million dollars are spent annually for the purpose of purchasing concrete for road building purposes, and

Whereas, The State now has no cement manufacturing plant, and

Whereas, The State has adequate and sufficient labor in the State penitentiary to operate a cement plant for the purpose of manufacturing cement for state use on public roads and elsewhere,

Therefore be it Resolved by the Texas Senate, That the Board of Control and the Highway Commission together make an estimate as to the approximate cost of a cement plant and determine as nearly as possible the actual cost to

manufacture cement and just what the same can be furnished to the State for the purposes above mentioned, and further advise if they deem feasible the construction of a cement plant, a possible location for same and the probable saving to the State and the various counties of the State because of the building of said plant; and further furnish this information at the earliest date possible in order that the Senate may be advised, and if this cannot be done at this session, then that they prepare and have the same ready to submit to the Senate at the next convening of the Texas Legislature; and that a copy of this resolution be sent to the Board of Control and the Highway Commission of Texas.

WOODWARD.

The resolution was read and adopted.

Adjournment.

The Senate at 3:15 p. m., on the motion of Senator Wood, adjourned until tomorrow morning (Friday) at 10:00 o'clock a. m.

APPENDIX.

Petitions and Memorials.

Headquarters, Daughters of the Republic of Texas.

Austin, Texas, May 22, 1927.

Hon. Barry Miller, President of the Senate:

Members of William B. Travis Chapter Daughters of the Republic of Texas, cordially invite the Senators and their wives to be their guests at the silver tea on the afternoon of Wednesday, June 1, 1927, from 4 to 7, at the Museum of the Daughters of the Republic of Texas.

Cordially yours,

Mrs. Paul Goldmann, Chairman,
Mrs. H. H. Sevier,
Mrs. S. J. Smith.

Dallas Section,
The Council of Jewish Women,
Dallas, Texas.

We commend the Governor, the Hon. Dan Moody, and the members of the 40th Legislature for many of the progressive measures enacted during the regular session. Both progress in the present material affairs, and a broad conception of the future of our state were combined

On motion of Senator Wood, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 2 was put on its second reading and final passage, by the following vote:

Yeas—29.

Bailey.	Parr.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Stuart.
Hall.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.
Neal.	

Absent.

Hardin.

Absent—Excused.

Smith.

The bill was read second time.

The Senate rule requiring committee reports to lay over one day was suspended by unanimous consent.

The committee report carrying amendment was adopted.

The bill was passed to third reading.

On motion of Senator Wood, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 2 was put on its third reading and final passage, by the following vote:

Yeas—29.

Bailey.	Parr.
Berkeley.	Pollard.
Bledsoe.	Price.
Bowers.	Real.
Fairchild.	Reid.
Floyd.	Russek.
Greer.	Stuart.
Hall.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.
Neal.	

Absent.

Hardin.

Absent—Excused.

Smith.

The bill was read third time and passed finally, by the following vote:

Yeas—30.

Bailey.	Neal.
Berkeley.	Parr.
Bledsoe.	Pollard.
Bowers.	Price.
Fairchild.	Real.
Floyd.	Reid.
Greer.	Russek.
Hall.	Stuart.
Hardin.	Triplett.
Holbrook.	Ward.
Lewis.	Westbrook.
Love.	Wirtz.
McFarlane.	Witt.
Miller.	Wood.
Moore.	Woodward.

Absent—Excused.

Smith.

Message From the Governor.

The Chair recognized the door-keeper, who introduced a messenger from the Governor, with the following Executive Message:

Executive Department,

Austin, Texas, May 30, 1927.

To the Honorable Fortieth Legislature of the State of Texas.

Gentlemen:

At the request of certain of your members, I submit for your consideration the question of the passage of the attached bills.

Respectfully submitted,

DAN MOODY,

Governor of Texas.

S. B. No. —. A bill to be entitled "An Act to create Lamar-Delta County Levee Improvement District Number Two, in the Counties of Lamar and Delta, State of Texas; validating and approving all orders made by the commissioners' courts of said counties and of the Board of Supervisors of said District in respect to the organization and establishment thereof; validating, approving and ratifying all proceedings had by the commissioners' courts relative to the appointment of the Commissioners of Appraisalment of said District; validating, ratifying and approving all proceedings had by the Commissioners of Appraisalment of said District in respect of assessments of benefits and damages to lands to be affected by the carrying-out of the Plan of Reclama-

tion approved by the State Reclamation Engineer; validating the authorization, issuance and sale of certain improvement bonds of said District, and providing for their payment by the annual levy, assessment and collection of taxes on all taxable property in said Levee District; approving and validating all orders, resolutions or decrees of the commissioners' courts of said counties, the Board of Supervisors of said Levee District, and the Commissioners of Appraisal of said Levee District, in respect of the said District, its bonds and taxes, or certified copies thereof, and constituting such orders, resolutions and decrees legal evidence; evidencing proof of publication of constitutional notice; and declaring an emergency."

H. B. No. —. A bill to be entitled "An Act to authorize a fifty year lease to be issued to the town of Aransas Pass in Aransas and San Patricio Counties Ransom Island and its sand flats extension to the northeast and its sand flat extension to the southwest in Red Fish Bay situated in Nueces County, and that shallow portion of said bay between said Island and its extensions and the main land; authorizing the said town to improve or have said area improved for public park purposes and to police said area, reserving to the State all minerals, and the right to sell any and all shell; providing for forfeiture for failure to maintain and keep said area open to the public; and declaring an emergency."

— B. No. —. A bill to be entitled "An Act amending Article 725, Revised Civil Statutes of 1925, authorizing the issuance of refunding bonds bearing the same or a lower rate of interest, in lieu of any valid outstanding bonds which have been issued under authority of Title 22 or Title 71, Revised Civil Statutes of 1925, or provisions of law which have been amended or superseded thereby, and adding Article 725b, validating all refunding bonds that have heretofore been issued and approved by the Attorney General for the purpose of refunding valid outstanding bonds of any of the counties of Texas; and declaring an emergency."

— B. No. —. A bill to be entitled "An Act relating to the duties of the County Board of Education of coun-

ties with an area of more than eleven hundred square miles and a population of not less than forty thousand and not more than one hundred thousand, according to the 1920 Federal census; authorizing the appointment of the County Superintendent of Public Instruction, and his assistants, providing supervision, authorizing the nomination of teachers by the County Superintendent subject to confirmation by local trustees, authorizing the purchase of supplies by the District Trustees, subject to the confirmation of the county superintendent, providing for an Equalization Fund, repealing all laws, or parts of laws, general or special in conflict herewith; and declaring an emergency."

S. B. No. —. A bill to be entitled "An Act relating to insurance certificates or policies issued by fraternal benefit societies; providing that certain statements in connection therewith in the absence of fraud shall be deemed representations and not warranties; making such certificates or policies incontestible after two years from their date, except for certain reasons; prescribing the rule of law which shall prevail as to the liability of any such fraternal benefit society where it fails to pay a loss within sixty days after proof of death, and prescribing the penalty that shall result for such failure; prescribing the rule as to the amount payable where the insured mis-states his or her age; and declaring an emergency."

H. B. No. —. A bill to be entitled "An Act to amend Article 432, Chapter 6, of the Revised Civil Statutes of Texas of 1925, relating to reserve deposits in savings departments of state banks, and declaring an emergency."

H. B. No. —. A bill to be entitled "An Act amending Article 1595 of the Revised Civil Statutes of 1925, relating to elections for the removal of County Seats; reducing the number of votes required to remove county seats in certain instances and declaring an emergency."

H. B. No. —. A bill to be entitled "An Act fixing compensation for County Tax Assessors in counties containing a city with a population of over 125,000 according to the last United States census, where the county assessor of taxes complies and makes a transfer book or card

index compiled from the real estate transfers recorded in the county clerk's office showing the names transferred to last owner assessed to, volume and page, description of property, assessed valuation and the consideration in the transfer; etc., and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act amending Section Eight of Chapter 177 of the General Laws of the Regular Session of the Thirty-ninth Legislature, as amended by Senate Bill No. 56, same being Chapter 35, of the General Laws of the regular session of the 40th Legislature, makes it unlawful for any person to kill, take or have in his possession for barter or sale, any wild beaver, wild otter, etc., and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act to provide for increasing or diminishing the area of an Independent School District upon petition of qualified resident property tax paying voters, etc., and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act to provide means and methods for the collection of delinquent and insolvent ad valorem taxes, penalties and interests thereon, and for the correction, completion and perfection of the tax assessment rolls and records of the State and Counties, and more fully to prescribe the duties of the Comptroller of Public Accounts and other State officers, tax collectors, tax assessors, district and county attorneys in reference thereto, and providing for compensation for those engaged by said Comptroller by contract for the more efficient accomplishment of said purposes, etc., and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act changing the wording of Article 2007 of the Revised Civil Statutes of 1925, as passed by the Regular Session of the 39th Legislature of the State of Texas, so that said Article 2007 shall be read as follows: A Plea of Privilege to be sued in the county of one's residence shall be sufficient if it be in writing and sworn to, and shall state that the party claiming such privilege was not, at the institution of such suit, nor at the time of the service of process thereon, nor at the time of the filing of the plea, a resident of the county in which such suit was

instituted, etc., and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act to amend Article 2095, Chapter 7, Title 42, of the Revised Civil Statutes of the State of Texas, 1925 so such article shall provide for the compiling of jury cards for the jury wheel in such counties of over one hundred fifty thousand population, placing such compiling under the supervision of the District Clerk and providing funds for employment of typists for compiling, and other expenses necessary."

H. B. No. —, A bill to be entitled "An Act validating the consolidation proceedings consolidating Rotan Independent School District and Cross Roads Common School District Number 29 of Fisher County and Hackberry Common School District Number 30 of Fisher County and a portion of Avelon Common School District Number 3 of Fisher County, including petitions, orders, notices, etc., and declaring an emergency."

—, B. No. —, A bill to be entitled "An Act providing for the filing by the county, district or criminal district attorney of a brief in all cases appealed to the Court of Criminal Appeals, and providing that no fees shall be collected by the county, district or criminal district attorney trying such cases unless said brief is filed, and providing for a deduction from the per diem of district attorneys whose compensation is fixed upon a per diem basis for each case tried by them and appealed to the Court of Criminal Appeals in which no memorandum brief is filed, etc., and declaring an emergency."

—, B. No. —, A bill to be entitled "An Act to amend Articles 2922b, 2922h, and 2922i of Chapter 19A, Revised Civil Statutes, 1925, so as to authorize the issuance and sale of bonds by trustees of rural high school districts and to authorize the assumption by rural high school districts of the bonded or other valid indebtedness of included common or independent school districts, etc., and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act to repeal Chapter 112 of the Acts of the Regular Session of the 39th Legislature, and restoring the old Cyclone Common School Dis-

trict No. 9 to its original status; and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act to amend Article 2547, Chapter 2, Title 47, Revised Civil Statutes of 1925 and amendments thereto, which article provides for the execution of bonds for securing county deposits; providing for the manner in which such deposits may be secured and the amount of such bonds; etc., and declaring an emergency."

—, B. No. —, A bill to be entitled "An Act to authorize the State Comptroller to join in behalf of the State in contracts for the collection of delinquent taxes under the provisions of Article 7335, Revised Statutes, 1925, and providing that the form of such contract shall be prepared by the Attorney General and that same shall not be valid without such joinder; repealing all laws and parts of laws in conflict and declaring an emergency."

—, B. No. —, A bill to be entitled "An Act to amend Articles 961 and 966, of Chapter 1, Title 28, Revised Civil Statutes, of 1925, providing for the incorporation of cities and towns with a population of five hundred or more inhabitants, and for the acceptance by certain cities and towns of the provisions of Title 29, relating to cities and towns; enacting provisions incidental and necessary to the subject and purpose of this Act; and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act to amend Chapter 193 of the General Laws of the Regular Session of the 40th Legislature, to permit the using of seines for the purpose of catching minnows for bait in the public fresh waters of Marion, Harrison, Smith and Rusk Counties, State of Texas; and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act amending Section 5, of Chapter 136, of the Acts of the 39th Legislature of Texas, passed and approved March 28, 1925, so as to permit the owner of land to build a dam or reservoir on his land to impound or contain not to exceed two hundred and fifty acre feet of water without the necessity of securing a permit therefor."

—, B. No. —, A bill to be entitled "An Act amending Article 4011, Revised Civil Statutes, 1925."

—, B. No. —, A bill to be entitled "An Act amending Article 4629 of the Revised Civil Statutes of 1925, relating to divorces so as to make Subdivision 4 thereof read as follows: "Where a husband and wife have lived apart without co-habitation for as long as five years"; and declaring an emergency."

DAN MOODY,
Governor.

Executive Office,
May 30, 1927.

To the Honorable Fortieth Legislature of Texas.

Gentlemen:

The recodification of the Statutes of 1925 omitted the provisions relative to penalties for violation of the rules and orders of the Railroad Commission respecting the conservation of oil and gas. As a result, the Railroad Commission lacks authority to enforce its rules relative to the production and conservation of oil and gas. Therefore, I submit the following subjects for your consideration:

(1) The enactment of statutes to provide for such penalties omitted in the recodification of 1925.

(2) The enactment of statutes giving the Railroad Commission authority to prevent waste of oil and natural gas in the actual drilling and producing operations and in the active storage, piping, distribution and utilization thereof.

(3) The enactment of statutes giving the Railroad Commission the power to enforce reasonable rules governing the handling of dry or abandoned wells drilled for oil or gas to prevent the same from constituting a source of damage to the oil and gas strata.

(4) The enactment of statutes fixing the qualifications of supervisors and deputy supervisors working under the Railroad Commission and the Oil and Gas Division thereof.

(5) The enactment of a statute supplementing the bill passed by the Fortieth Legislature giving the Railroad Commission control over passenger transportation by motor car, so as to extend this authority to also include transportation of freight by motor carriage.

Respectfully submitted,

DAN MOODY,
Governor of Texas.

Hardin.	Neal.
Holbrook.	Parr.
Lewis.	Pollard.
Love.	Russek.
McFarlane.	Smith.
Miller.	Ward.
Moore.	Westbrook.

Nays—8.

Berkeley.	Stuart.
Greer.	Triplett.
Price.	Wood.
Reid.	Woodward.

Present—Not Voting.

Wirtz.

Absent.

Bailey.	Real.
Hall.	Witt.

Recess.

The Senate at 12:15 p. m., on the motion of Senator Miller, recessed until this afternoon at 2:00 o'clock.

After Recess.

The Senate was called to order by Lieutenant Governor Barry Miller at 2:00 p. m., pursuant to recess.

Simple Resolution No. 27.

Senator McFarlane sent up the following resolution:

Whereas, Last week the meeting of the High School Bands of the Nation was held at Council Bluff, Iowa; and,

Whereas, The band of the High School of Austin, Texas, participated therein, and was recognized for first place as a parade band on account of their military bearing, and was accorded second place on account of their playing; and,

Whereas, Said recognition of the said band of the Austin High School has brought notice, publicity and honor to the State of Texas, and recognition to the said Austin High School, as well as to the City of Austin, the Capitol City of the State; and,

Whereas, Clel T. Silvey was and is the Director of said Band, and his untiring efforts have brought the Band of the Austin High School to its present efficiency; and,

Whereas, Said Band is now playing in the City of Chicago, and will play in St. Louis on their return, as a result of said recognition; and,

Now, Therefore, Be it Resolved by the Senate of Texas that the said Clel T. Silvey, as Director, and the Band of the Austin High School be given a vote of thanks for the recognition won by themselves, and the publicity and recognition secured by them for the State, in appreciation of their efforts; and that at some time convenient to them they be invited to play for the Senate, and at such time as they desire to play for the Senate that the Senate take advantage of such occasion and give them a rising vote of thanks for what they have done for themselves, their school and their State, as they have shown by their harmonious efforts in music what can be accomplished by the combined efforts of a united people for the State.

WOOD.

The resolution was read and adopted.

Senate Bill No. 17.

The Chair laid before the Senate as special order the following bill:

S. B. No. 17, A bill to be entitled "An Act amending Articles 6663 to 6674 both inclusive, of the Revised Civil Statutes of 1925 relating to highways and the Highway Department of the State of Texas, etc., and declaring an emergency."

The question was the substitute amendment by Senator Love to the amendment by Senator McFarlane.

Message From the Governor.

The Chair recognized the Doorkeeper who introduced a messenger from the Governor with the following executive message:

Hall of the House of Representatives,
Austin, Texas, May 31, 1927.

To the Honorable Fortieth Legislature of Texas.

Gentlemen: At the request of certain of your members, the question of the passage of the attached bills is submitted for your consideration.

It is my information that the State of Texas holds a claim against the United States for reimbursement for certain moneys paid to citizens of this State in connection with the campaign against the pink boll worm. The amount of this claim is said to be approximately one hun-

dred and twenty-five thousand dollars. It is suggested that the Legislature should empower some competent authority to take steps toward the collection of this claim.

I submit for your consideration the subject of passing a penal statute to adequately define and fix an appropriate penalty for the offense of exhibiting slot machines and like character of gambling devices.

Respectfully submitted,

DAN MOODY,
Governor of Texas.

— B. No. —, A bill to be entitled "An Act creating Cameron County Water Control and Improvement District Number 6, of Cameron County, Texas, defining its boundaries, and which district embraces the same territory included within Cameron Water Improvement District Number 6; etc., and declaring an emergency."

— B. No. —, A bill to be entitled "An Act creating Cameron County Water Control and Improvement District, Number Seven, of Cameron County, Texas, defining its boundaries, and which district embraces the same territory included within Cameron County Water Improvement District Number 7, etc., and declaring an emergency."

— B. No. —, A bill to be entitled "An Act creating Cameron County Water Control and Improvement District Number Five, of Cameron County, Texas, defining its boundaries, and which district embraces the same territory included within Cameron County Water Improvement District Number 5, etc., and declaring an emergency."

— B. No. —, A bill to be entitled "An Act to amend Articles 6162, 6163, 6164 and 6165, of Title 107, Revised Texas Civil Statutes of 1925, defining and regulating loan brokers; providing punishment for the violation of this law; requiring loan brokers to file affidavits in the County Clerk's office, giving name of owners and agents of said business, etc., and declaring an emergency."

— B. No. —, A bill to be entitled "An Act creating and establishing the Harris County Houston Ship Channel Navigation District of Harris County, Texas, under Article 3, Section 52, of the Constitution of the State of Texas, for the purpose of the development of deep water

navigation, the improvement of rivers, bays, creeks, streams or canals within or adjacent to such District, with the power and authority to acquire, purchase, take over, construct, maintain, operate, develop and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, etc., and declaring an emergency."

— B. No. —, A bill to be entitled "An Act authorizing the creation of Junior College Districts for the purpose of establishing, maintaining, operating and supporting junior colleges; providing the conditions upon which and the method by which such districts may be created, etc., and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act amending Article 545, Revised Civil Statutes of 1925."

— B. No. —, A bill to be entitled "An Act repealing Article 2538, Revised Civil Statutes of 1925, providing for the investment of State funds in Government bonds; repealing Articles 2539, 2540, 2541, 2542, 2543, creating and providing for the functions of a rate making board, etc., and declaring an emergency."

— B. No. —, A bill to be entitled "An Act to authorize incorporated cities, towns, and villages incorporated under either general or special law, etc., and declaring an emergency."

— B. No. —, A bill to be entitled "An Act providing that liens for street improvements created by written contract of the owner or owners of land, or by interest therein, shall be superior liens upon such improvement and providing for the enforcement thereof, and declaring an emergency."

H. B. No. —, A bill to be entitled "An Act to ratify and adopt in principle the Canadian River Compact between the States of New Mexico, Texas, and Oklahoma, etc., and declaring an emergency."

S. B. No. —, A bill to be entitled "An Act to amend Article 1645 of the Revised Civil Statutes of Texas by providing for a minimum salary to be paid county auditors in counties with a population not less than 35,000, nor more than 37,500, inhabitants; and declaring an emergency."