

- SUBJECT:** Requiring legislators to cast record vote on final passage
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 7 ayes — Swinford, Paxton, Van Arsdale, Christian, B. Cook, Flynn, Parker  
2 present not voting — Farrar, Veasey  
0 nays
- WITNESSES:** For — (*Registered, but did not testify*: Fred Hartman, Texas Daily Newspaper Association, Texas Press Association; Benny Hernandez, American Civil Liberties Union of Texas; Billy Howe, Texas Farm Bureau; Michael Quinn Sullivan, Texans for Fiscal Responsibility; Suzy Woodford, Common Cause of Texas)  
  
Against — (*Registered, but did not testify*: Tom “Smitty” Smith, Public Citizen)
- BACKGROUND:** Under Rule 5, sec. 51 of the *Rules and Precedents of the Texas House, 80th Legislature*, any member may request that the yeas and nays of the members on any question be taken and entered in the *House Journal*. Further, the yeas and nays of the members of the House on final passage of any bill, and on any joint resolution proposing or ratifying a constitutional amendment, must be recorded the journal. A vote on final passage means a vote on:
- third reading;
  - second reading if the House suspends or otherwise dispenses with the requirement for three readings;
  - whether to concur in the Senate’s amendments; or
  - whether to adopt a conference committee report.
- Rule 5, sec. 51A stipulates that the recorded votes must be available to the public on the Internet not later than one hour after the vote was taken and the speaker has declared the result. Rule 5, sec. 52 allows members to have their votes recorded in the journal as “yea” or “nay” on a question where a record vote has not been ordered.

Under Texas Constitution, Art. 3. sec. 12, a recorded vote much be taken if requested by any three members, and the Senate follows that provision in its rules. Under Senate Rule 6.15, a record vote is required for final passage of:

- proposed constitutional amendments;
- all bills appropriating money or lands for any purpose;
- all bills containing an immediate effect clause;
- all motions to suspend the constitutional three-day rule; and
- all questions requiring a vote of two-thirds of the members elected.

For all other questions requiring a vote of two-thirds of the members present, the presiding officer determines if there is objection, and if so, calls for the yeas and nays, which are not recorded unless requested by at least three members. For any nonprocedural motion adopted by voice vote, without objection, or with unanimous consent, the Senate Journal shows all members present as voting “yea,” unless a member registers otherwise.

DIGEST: CSHB 83 would require a vote taken in either house of the Legislature to be by record vote if the vote was on final passage of:

- a bill;
- a joint resolution proposing or ratifying a constitutional amendment; or
- any other resolution, other than a resolution of a purely ceremonial or honorary nature.

Each member’s vote would be recorded in the appropriate journal and the secretary of the Senate or chief clerk of the House would have to publish and maintain each record vote on the Internet for at least one year after the vote was taken.

A vote on final passage would mean a vote on:

- third reading;
- second reading, if the applicable house suspended or otherwise dispensed with the requirement for three readings;
- whether to concur in the amendments of the other house; or
- whether to adopt a conference committee report.

The bill would not apply to legislation that applied only to or in one identifiable district or political subdivision of Texas.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

SUPPORTERS  
SAY:

CSHB 83 would require legislators to be accountable for their votes. A key tenet of democracy is open government and the voters' ability to hold their elected officials accountable. Texas is one of only nine states that does not require record votes on final passage of legislation. Although the House Rules require final votes to be recorded, the measure should be written in statute — and in the Constitution under HJR 19 by Branch, et al., also on today's calendar — because the rules can be changed every session.

Too many votes have been hidden under the “voice vote” provision, which is a common method of passing or defeating legislation in both chambers. House members have their votes recorded as “aye” unless they state their preference for a “no” vote, so an “aye” vote is merely presumed. Members should be required to affirmatively vote one way or another as a matter of public record when the vote is on final passage.

When a bill is under consideration for final approval, the public needs to have quick access to the votes of their elected officials. Any member can request a record vote at any time, but that does not occur on many of the votes cast, meaning that less than half of the votes taken in the Texas House are helpful to the public in deciding if their elected officials voted in their best interests. This bill would provide the public the information it needs to assess how each member stands on each significant issue before the House.

CSHB 83 appropriately would require record votes on third reading or final passage. If the Legislature were required by law or the Constitution to record votes on second reading or on every vote on every amendment, it would be significantly burdensome and would slow the lawmaking process.

Final passage is the key vote on the bill. On other matters, any House member or any three senators may ask for a record vote and frequently do, so the most important votes already are recorded. HB 83 and HJR 19

would not prevent record votes or future changes in the House or Senate rules to require record votes at other stages in the legislative process, but for votes other than final passage, this would be left to the flexibility of the rules of each chamber.

**OPPONENTS  
SAY:**

It is not necessary to require record votes by law because the House and the Senate already record votes in the journal on most substantive measures. The House Rules require record votes on final passage, and any member can ask for a record vote on any measure at any time. Further, under the House Rules, passage of a bill or joint resolution without objection is equivalent to a recorded vote because the House Journal reflects the fact that all members voted for the measure and are allowed to register opposition if they choose.

In addition, placing a requirement to record votes on final passage inflexibly in statute and the Constitution could create a time-consuming, logistical burden for future legislatures. According to the Texas Legislative Council, the House took 986 record votes in 2005, up from 573 votes in 1991. It takes time to calculate record votes, and the Legislature should maintain the flexibility to determine how many of the hundreds of hours members spend in session should be devoted to counting and recording votes. Current procedures adopted by rule in both chambers offer a practical way of informing the public while allowing the Legislature to carry out its business in an efficient manner during the brief biennial sessions.

**OTHER  
OPPONENTS  
SAY:**

CSHB 83 also should require record votes on second reading, which is the most important stage in the process of considering legislation. Votes during the second reading of a bill carry significant importance because amendments can be adopted at this stage with a simple majority, rather than the two-thirds vote required to amend a bill on third reading. As a result, bills rarely are amended on third reading, and most of the substantive debate takes place on second reading. The ability to view record votes on second reading would provide true transparency and allow members of the public to express their opinions on a bill prior to final passage. As a practical matter, votes in the House on second reading already are posted on the Internet, and the bill should reflect this practice.

CSHB 83 might require record votes on routine measures while overlooking local bills of great importance. Because it would not require record votes on legislation that applied "only to or in one identifiable

district or political subdivision,” CSHB 83 would shed no light on how members voted on controversial local bills that appeared on a general or major state calendar in the House, unless a member requested a record vote under current rules.

**NOTES:**

While HB 83 as introduced would have applied only to bills, the committee substitute expanded the record vote requirement to include votes on joint resolutions, and any other resolution that was not purely ceremonial or honorary in nature. HB 83 as introduced also would not have applied to a bill enacting a fence or stock law or a bill regarding game or fish preservation in defined geographic areas of Texas.

According to the Legislative Budget Board, the record vote requirements in CSHB 83 would cost the state nearly \$48,000 in general-revenue related funds in each regular legislative session.

HJR 19 by Branch, et al., which would amend the Constitution to require each House of the Legislature to record on final passage votes on all bills, resolutions, and any other resolutions not of a purely ceremonial or honorary nature, was approved by the House by 142-0 on April 17 and passed the Senate, as amended, by 31-0 on May 3. The Senate amendment would require a record vote on approval or disapproval of a bill or joint resolution and on any amendment if any member objected to its adoption.

Similar bills that would require record votes in the Legislature are HB 132 by McCall and HB 666 by Naishtat, both of which are pending in the House State Affairs Committee. SB 102 by Carona, which is identical to HB 666, has been referred to the Senate Administration Committee.

In 2005, the Senate passed SB 1140 by Carona, which would have required record votes taken by the House and Senate or a committee on approval or disapproval of bills, amendments, or substitute bills, joint resolutions, appointment or election of legislative officers or other public officials or confirmation of an appointment to public office. The bill died in the House State Affairs Committee.