

**The 79th Legislative Senate Session
Transcribed from the Senate Media Service Video**

May 29, 2005

House Bill 2120 Senate Session, Part II @ 5:47:30

[Senator Whitmire in the Chair.]

Senator Whitmire: Chair recognizes Senator Lindsay on a conference committee report on House Bill 2120.

Senator Lindsay: Thank you, Mr. President. Mr. President, 2120 is the bill that's had a little controversy this morning and during the day and I do want to get your attention and make sure everybody understands what's going on.

We, uh, first of all this is the bill – it was a simple little county bill that had a bunch of little cleanup language in it to handle a variety of things for county government across the State of Texas that came across from the House and was amended here uh – by you all – with about 10, 12 amendments that were sig – that turned out to be very – most of them – very significant amendments to this bill. And, uh, we've sent this, of course, to conference committee – it came back – uh, things that were ripped out of the bill then on the House side were things that I really cared about – one was concurrent jurisdiction for, uh, condemnation suits between county courts of law and civil district courts, especially in Harris County because we're really getting the uh – all the governmental entities – everybody that has any kind of condemnation suits in that part of the state are really paying – getting taken by, in my opinion, by these courts and we need to do something to kind of straighten that out. That was a high thing on my agenda item – and that was taken out on the House side.

The other issue, of course, is one that Senator Armbrister and I and his entire committee has been working on since the very first day of the session having to do with clean up of hazardous waste, especially an incident that happened out here on Interstate 35, just south of town. And we felt very strongly, or I felt very strongly that that should be in the bill. Well, the House took both those items out of the bill and that just gave me heartburn and I decided well, that was my bill, I was going to kill the entire bill. I have since changed my mind, I'm willing now to give this better consideration and we'll move to concur with House amendments and I want to put in some language on this having to do with the hazardous waste clean up issue and to make sure that – and everybody I talked to on this floor seems to be on my side on this particular issue that something needs to be done, so with that, I will move to concur and would like to have additional dialogue at that time – with 2120. But, I will move to concur with House amendments to House Bill 2120.

[Lieutenant Governor Dewhurst now in the Chair.]

Lieutenant Governor Dewhurst: Senator Wentworth for what purpose do you rise?

Senator Wentworth: To ask a question of Senator Lindsay.

Lieutenant Governor Dewhurst: Will Senator Lindsay yield?

Senator Lindsay: Yes

Senator Wentworth: Senator Lindsay, House Bill 2120, that's the one with floor Amendment No. 1 by Harris, No. 2 by Lindsay, No. 3 by Seliger, No. 4 by Williams, No. 5 by Shapleigh, No. 6 by Carona, No. 9 by Wentworth (and No. 9 by Wentworth is the 800 million dollar potential development in North Bexar County), No.10 by Madla, No. 11 by Brimer, No. 12 by Carona, No. 13 by Carona, No. 15 by Lindsay and No. 16 by Gallegos.

Senator Lindsay: That's right and the two – two of them now were taken out and I'm glad – I failed to mention that two of them – two others were taken out of this bill as well, and that was the one by Senator Shapleigh and also the one by Senator Barrientos. Those two were taken out on the House side as well as the ones I mentioned to you that had my interest in them – so it was more than just the two that I had an interest in - a couple of you others lost your amendments as well due to germaneness.

Senator Wentworth: And your motion is to adopt the conference committee report.

Senator Lindsay: That is my motion.

Senator Wentworth: Thank you. I sincerely thank you.

Senator Lindsay: Thank you

Lieutenant Governor Dewhurst: Senator Armbrister for what purpose do you rise?

Senator Armbrister: To ask the Senator from Harris a question.

Lieutenant Governor Dewhurst: Will Senator Lindsay yield?

Senator Lindsay: Yes

Senator Armbrister: Senator Lindsay as you know I believe it was Senator Gallegos that carried a separate bill that we tried to make some legislative changes to what a state agency should have done, they're empowered to do, but because of inactivity of over 7½ years on an incident, they're not doing. Then Senator Gallegos put an amendment that tried to address that lack of enforcement on your bill. I believe that was one of those that Senator Wentworth had just enumerated that had been stricken or was found to be nongermane to the bill in question, is that...

Senator Lindsay: That is correct.

Senator Armbrister: O.K., alright.

Senator Armbrister: Are you aware that there's a pending and unresolved notice of violation on that incident that I was talking about that occurred nearly 7½ years ago in Senator Barrientos' district?

Senator Lindsay: Yes

Senator Armbrister: That's pending before TCEQ still today and do you realize that the Chairwoman at TCEQ had called for a vote on that issue and could not get the other two commissioners to take any action.

Senator Lindsay: Yes Senator, as a matter of fact you had a hearing on that at the very beginning of this session and that was disclosed at that time.

Senator Armbrister: Well, it seems as a matter of – all we really are about is establishing the public policy of the State – we empower agencies to enact the general law that we pass and to protect the citizenry of the State against, in this case, spilling, distributing, dumping of hazardous waste. You got an agency over there that has been inactive for 7½ years even after a violation has been filed and even after staff, after staff have told us in individual conversations as well as in our public hearing that this needs to be resolved. I was just wondering if you were aware that that of course was part of the Gallegos bill and then part of the Gallegos amendment to your bill that we had to strike because somehow, miraculously, the House ruled it was nongermane to a county bill that, as you know, being a former county judge, counties have very limited power.

Senator Lindsay: Yes.

Senator Armbrister: That power though – those powers that are vested in counties such as hazardous material and waste, such as regulation of non healthy activities in the county, or things such as nuisance areas such as massage parlors that go in unlicensed, happen. Counties do have quite a bit of authority in both Travis County, it's my understanding, as well as Hays County, used to be mine, now it's Senator Wentworth's county, has requested action be taken on this but no action's been taken for some odd reason in 7½ years.

Senator Lindsay: That's why I was so interested in this being part of this bill – one of the reasons.

Senator Armbrister: So your view really is that such an incident should have been handled with adequate enforcement and appropriate penalties assessed long before now?

Senator Lindsay: That's right, they shouldn't have to be in the courthouse.

Senator Armbrister: Are you aware that due to an action by TCEQ that hazardous waste was in fact commingled on their order with municipal waste and is presently sitting in containers in a large landfill just to the south of us in Senator Barrientos' district because of inactivity of a State agency and a duty that they are charged with enforcing.

Senator Lindsay: I'm aware of that very situation.

Senator Armbrister: I would ask you and members of this Senate and the members of the House to work with us in the weeks ahead to ensure that the pending matter of abandonment of waste by a trucking company that was involved in an October 1997 incident is resolved by TCEQ with appropriate penalties being assessed for the 7½ years of inactivity. Would you agree with me that that needs to be done?

Senator Lindsay: Yes, I definitely would.

Senator Armbrister: Members, this isn't about a single incident in Senator Barrientos' district, or Senator Wentworth's district, or even Senator's Lindsay's district – this is an event that occurred that's affecting similar events in every single part of the State of Texas. If we got an agency whose staff has investigated, and they've recommended an enforcement, in fact they've issued a notice of violation, but for some odd reason there's been no action taken. Senator Duncan has worked the entire session on XI.E.2. nuclear hazardous waste coming in that was killed on a point of germaneness over there. We don't want to be the nation's dumping ground for hazardous material or waste like we're fixing to be of a XI.E.2. waste in the State of Texas. I would ask this body, and my colleagues, and our friends in the House to stand up and say, look we passed laws for years, and years, and years, and time and time again. State agency, quit listening to somebody hired by some other company to not do your job. Would you join with me in that?

Senator Lindsay: I will. I hope the rest of this body will join with us.

Senator Armbrister: Thank you sir and thank you members of the Senate

Senator Lindsay: Thank you Senator Armbrister.

Lieutenant Governor Dewhurst: The Chair recognizes Senator Lindsay to close on the motion.

Lieutenant Governor Dewhurst: Senator Wentworth, for what purpose do you rise?

Senator Wentworth: I have a couple of questions for Senator Lindsay.

Lieutenant Governor Dewhurst: Will Senator Lindsay yield?

Senator Lindsay: Yes.

Senator Wentworth: Senator Lindsay in regards to the new chapter that was referred to in House Bill 580, in this new chapter, the county must provide reasonable notice to a concerned party about the need for the cleanup, removal, and disposal of the hazardous materials. What do you envision as being the reasonable time period for such notice?

Senator Lindsay: Well, obviously this can depend on the exact circumstances and the potential threat of public safety and to the environment but it seems to me like it ought to be a reasonably short time, you know, 21 days or something like that would be appropriate.

Senator Wentworth: If the material at the time of its original leaking, spilling, release, or abandonment was a hazardous waste, am I correct in assuming that it is your intent that the final disposal of such materials must be at a fully licensed hazardous waste management and disposal facility?

Senator Lindsay: Well yes, I think that goes without question.

Senator Wentworth: Is your answer the same even when the hazardous material has been commingled with non-hazardous materials?

Senator Lindsay: Yes, of course.

Senator Wentworth: Am I also correct in assuming that both the county where the accident occurred or where an abandonment of hazardous materials occurred has the authority under this law to take the actions contemplated by this new chapter?

Senator Lindsay: I believe so, yes.

Senator Wentworth: Thank you Senator.

Senator Lindsay: Thank you Senator. And...

Senator Wentworth: Mr. President, I ask unanimous consent that the questions and answers just taken place between Senator Ambrister and Senator Lindsay and me and Senator Lindsay be reduced in writing and spread upon the journal.

Lieutenant Governor Dewhurst: Members, you've heard the motion by Senator Wentworth. Is there any objection to the motion? Chair hears none and the motion is adopted.

The chair recognizes Senator Lindsay.

Senator Lindsay: Mr. President, I do move that the conference committee report on House Bill 2120 be approved by this body.

Lieutenant Governor Dewhurst: Thank you Senator Lindsay.

Members, you've heard the motion by Senator Lindsay, the secretary will call the roll.

Secretary of the State: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, ...

[Pounds gavel on the desk]

Lieutenant Governor Dewhurst: There being 31 ayes, and no nays; the conference committee report on House Bill 2120 is adopted.

Thank you Senator Lindsay.

[Pounds gavel on the desk]