

SENATE JOURNAL

EIGHTIETH LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

TWENTY-SEVENTH DAY

(Thursday, March 15, 2007)

The Senate met at 10:09 a.m. pursuant to adjournment and was called to order by Dean Whitmire.

The roll was called and the following Senators were present: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent-excused: Gallegos.

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

The Reverend Dr. W. Raymond Bryant, Bethel African Methodist Episcopal Church, San Antonio, offered the invocation as follows:

Almighty God, creator and sustainer of the universe, giver of every good and perfect gift, we thank You for this day. We thank You for the privilege to live and work in the great State of Texas. We pray for the Governor and his family. We pray for the Lieutenant Governor and his family. We pray for all the Members that make up this body and their families. Be with them one and all. God, we pray that You guide the work and deliberations that take place here in this Chamber. Provide wisdom to see the right direction and courage to choose what is best for the families of Texas. God bless the work of this day. In Jesus' name we pray. Amen.

Senator Wentworth moved that the reading of the Journal of the proceedings of yesterday be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

LEAVE OF ABSENCE

On motion of Senator Wentworth, Senator Gallegos was granted leave of absence for today on account of illness.

CO-AUTHOR OF SENATE BILL 161

On motion of Senator Wentworth, Senator Uresti will be shown as Co-author of **SB 161**.

CO-AUTHOR OF SENATE BILL 346

On motion of Senator Duncan, Senator Harris will be shown as Co-author of **SB 346**.

CO-AUTHORS OF SENATE BILL 448

On motion of Senator Uresti, Senators Lucio, Shapleigh, and Van de Putte will be shown as Co-authors of **SB 448**.

CO-AUTHOR OF SENATE BILL 563

On motion of Senator Ogden, Senator Hinojosa will be shown as Co-author of **SB 563**.

CO-AUTHOR OF SENATE BILL 640

On motion of Senator West, Senator Nelson will be shown as Co-author of **SB 640**.

CO-AUTHOR OF SENATE BILL 1090

On motion of Senator Duncan, Senator Uresti will be shown as Co-author of **SB 1090**.

CO-AUTHORS OF SENATE BILL 1095

On motion of Senator Uresti, Senators Deuell, Nelson, Nichols, and Shapleigh will be shown as Co-authors of **SB 1095**.

CO-AUTHOR OF SENATE BILL 1142

On motion of Senator Deuell, Senator Uresti will be shown as Co-author of **SB 1142**.

CO-AUTHOR OF SENATE BILL 1168

On motion of Senator Van de Putte, Senator Lucio will be shown as Co-author of **SB 1168**.

CO-AUTHOR OF SENATE BILL 1175

On motion of Senator Ellis, Senator Carona will be shown as Co-author of **SB 1175**.

CO-AUTHOR OF SENATE BILL 1176

On motion of Senator Ellis, Senator Lucio will be shown as Co-author of **SB 1176**.

CO-AUTHOR OF SENATE BILL 1186

On motion of Senator Nelson, Senator Uresti will be shown as Co-author of **SB 1186**.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

March 15, 2007

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HB 76, Relating to the collection and analysis of information relating to certain sexual offenses.

HB 121, Relating to public school policies and curriculum designed to prevent dating and domestic violence.

HB 407, Relating to the establishment of a home-delivered meal grant program in the Department of Agriculture.

HB 624, Relating to the securitization of the nonbypassable delivery rates of transmission and distribution utilities.

HB 958, Relating to prohibiting or otherwise restricting certain sex offenders from residing or working within or otherwise entering certain school premises.

HB 1098, Relating to immunization against human papillomavirus.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE RESOLUTION 473

Senator Patrick offered the following resolution:

WHEREAS, St. Patrick's Day is a celebration of Irish heritage, and this occasion provides an opportunity to honor the many contributions that individuals of Irish descent have made to the Lone Star State; and

WHEREAS, One of the earliest Irish residents of Texas was Hugh O'Connor, who served as governor of the Spanish territory from 1767 to 1770; natives of Ireland also played a central role in the settlement of Texas in the early 1800s, including empresarios James McGloin, John McMullen, and James Power, who brought dozens of Irish families to South Texas and the Gulf Coast; and

WHEREAS, All three of these men participated in the Texas Revolution, as did Irishmen such as John Joseph Linn, Francis Moore, Jr., and Thomas William Ward; a dozen individuals from the Emerald Isle died defending the Alamo, and 100 Irish-born troops helped win the independence of Texas in the decisive Battle of San Jacinto; and

WHEREAS, The number of immigrants from Ireland grew dramatically in the mid-1800s, and several prominent Irish natives made their mark during that period; Samuel McKinney was an early president of Austin College, Father Michael Sheehan established the first Catholic church in Austin and became one of the first full-time Catholic chaplains in the U.S. Army, and Peter Gallagher served as a Texas Ranger and helped organize Pecos County; later in the 19th century, Irishman John William Mallet served as the first faculty chairman at The University of Texas at Austin, and artist Henry Arthur McArdle produced many famous paintings inspired by Texas history, some of which now hang in the State Capitol; and

WHEREAS, With the passing decades, additional people from Ireland found a new home in Texas, and they and the descendants of previous immigrants have had an enduring influence on the state's lifestyle and development; today, Irish culture is

celebrated in formal programs such as the Center for Irish Studies at the University of St. Thomas in Houston, as well as in statewide St. Patrick's Day celebrations, and it is appropriate to join with thousands of other residents in recognizing the significant role that Irish Americans have played in the story of the Lone Star State; now, therefore, be it

RESOLVED, That the Senate of the 80th Texas Legislature hereby pay tribute to the state's vital Irish heritage and extend Happy St. Patrick's Day wishes to all Irish Americans.

SR 473 was read and was adopted without objection.

(President in Chair)

SENATE BILLS ON FIRST READING

The following bills, filed on or before Friday, March 9, 2007, were introduced, read first time, and referred to the committees indicated:

SB 909 by Whitmire

Relating to the continuation and functions of the Texas Board of Criminal Justice, the Texas Department of Criminal Justice, and the Correctional Managed Health Care Committee and to the functions of the Board of Pardons and Paroles.

To Committee on Government Organization.

SB 910 by Estes

Relating to the continuation and functions of the Office of Rural Community Affairs.

To Committee on Government Organization.

SB 911 by Estes

Relating to the continuation and operation of the Texas Animal Health Commission; providing penalties.

To Committee on Government Organization.

SB 912 by Estes

Relating to the continuation and functions of the Texas Veterinary Medical Diagnostic Laboratory.

To Committee on Government Organization.

SB 913 by Brimer

Relating to the continuation and functions of the Texas State Library and Archives Commission.

To Committee on Government Organization.

SB 914 by Shapleigh

Relating to the continuation and functions of the Texas Real Estate Commission and the regulation of real estate brokers, salespersons, inspectors, appraisers, residential service companies, and timeshares; providing administrative penalties.

To Committee on Government Organization.

SB 1410 by West, Zaffirini

Relating to the management of child protective services caseworkers.

To Committee on Health and Human Services.

SB 1411 by West

Relating to requirements for judicial training on issues regarding family violence, sexual assault, and child abuse and neglect.

To Committee on Jurisprudence.

SB 1437 by West

Relating to the enforcement of municipal building and safety ordinances, including the authorization of certain civil actions and the creation of additional enforcement jurisdiction.

To Committee on Intergovernmental Relations.

SB 1795 by Ogden

Relating to increasing the amount of bonds and other public securities that may be secured by a pledge of and payable from revenue deposited to the credit of the state highway fund.

To Committee on Finance.

SB 1941 by Deuell

Relating to the regulation of foster care providers.

To Committee on Health and Human Services.

CONCLUSION OF MORNING CALL

The President at 10:26 a.m. announced the conclusion of morning call.

SENATE BILL 199 ON SECOND READING

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 199** at this time on its second reading:

SB 199, Relating to certain convictions barring employment at certain facilities serving the elderly or persons with disabilities.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 199** (committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Subsection (a), Section 250.006, Health and Safety Code (page 1, lines 63-64), strike "(24) an offense under Section 38.02(d), Penal Code (failure to identify);" and renumber subsequent subdivisions accordingly.

(2) In SECTION 1 of the bill, in amended Subsection (a)(27), Section 250.006, Health and Safety Code (page 2, line 8), strike "under Subdivisions (1)-(26) [~~(13)~~]" and substitute "by this subsection [~~under Subdivisions (1)-(13)~~]".

The amendment to **SB 199** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos.

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

SB 199 as amended was passed to engrossment by a viva voce vote.

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

Absent-excused: Gallegos.

SENATE BILL 199 ON THIRD READING

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 199** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Gallegos.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 199**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 199** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

PHYSICIAN OF THE DAY

Senator Watson was recognized and presented Dr. Samuel Adkins of Austin as the Physician of the Day.

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

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate: **HCR 2, HCR 39, HCR 73.**

**COMMITTEE SUBSTITUTE
SENATE BILL 218 ON THIRD READING**

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 218** at this time on its third reading and final passage:

CSSB 218, Relating to licensing and inspection requirements of the Department of Family and Protective Services for certain facilities.

The bill was read third time.

Senator Shapiro offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend **CSSB 218** on third reading as follows:

(1) In SECTION 1 of the bill, strike amended Subdivision (7), Subsection (b), Section 42.041, Human Resources Code, as further amended on 2nd reading by Floor Amendment No. 1 by Carona and Floor Amendment No. 2 by Van de Putte, and substitute the following:

(7) an educational facility accredited by the Texas Education Agency, the Texas Private School Accreditation Commission, or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above or ~~an after-school program operated directly by an accredited educational facility[, or an after-school program operated by another entity under contract with the educational facility, if the Texas Education Agency or Southern Association of Colleges and Schools has approved the curriculum content of the after-school program operated under the contract];~~

(2) In SECTION 2 of the bill, strike added Subsection (b-1), Section 42.044, Human Resources Code, as amended on 2nd reading by Floor Amendment No. 1 by Carona, and substitute the following:

(b-1) Notwithstanding Subsection (b), the department is required to inspect only as necessary a licensed child-care facility that offers only an after-school program operated by an entity under contract with an educational facility accredited by the Texas Education Agency, the Texas Private School Accreditation Commission, or the Southern Association of Colleges and Schools, if that agency, commission, or association has approved the curriculum content of the after-school program.

The amendment to **CSSB 218** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos.

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

CSSB 218 as again amended was finally passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

SENATE BILL 459 ON SECOND READING

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 459** at this time on its second reading:

SB 459, Relating to the provision of benefits to members of the Texas Transportation Commission; providing criminal penalties.

The bill was read second time.

Senator Shapleigh offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 459** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in the heading to proposed Section 201.060, Transportation Code (page 1, line 14), between "COMMISSIONER" and the semicolon, insert "OR SENIOR EMPLOYEE".

(2) In SECTION 1 of the bill, in proposed Sections 201.060(b), (c), and (d), Transportation Code (page 1, lines 19, 21, 23, 27, 28, 35, 36, 38, and 40), after each place "commissioner" appears, insert "or senior employee".

(3) In SECTION 1 of the bill, in proposed Section 201.060(b)(2), Transportation Code (page 1, line 26), between "commissioner's" and "discretion", insert "or senior employee's".

(4) In SECTION 1 of the bill, in the heading to proposed Section 201.061, Transportation Code (page 1, line 46), between "COMMISSIONER" and the semicolon, insert "OR SENIOR EMPLOYEE".

(5) In SECTION 1 of the bill, in proposed Section 201.061(a), Transportation Code (page 1, lines 48 and 49), after each place "commissioner" appears, insert "or senior employee".

(6) Add the following appropriately numbered SECTION to the bill and renumber subsequent SECTIONS of the bill as appropriate:

SECTION ____ . Section 201.001(a), Transportation Code, is amended by adding Subdivision (4) to read as follows:

(4) "Senior employee" means a department employee who is an area engineer, a district engineer, a division director, special office director, an assistant executive director or the equivalent, a deputy executive director or the equivalent, or the executive director.

The amendment to **SB 459** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos.

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

SB 459 as amended was passed to engrossment by a viva voce vote.

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

Absent-excused: Gallegos.

SENATE BILL 459 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 459** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Gallegos.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 459**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 459** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

SENATE BILL 545 ON SECOND READING

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 545** at this time on its second reading:

SB 545, Relating to the enforcement of commercial motor vehicle safety standards by certain peace officers.

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

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

Absent-excused: Gallegos.

SENATE BILL 545 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 545** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Gallegos.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **SB 545**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 545** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

GUESTS PRESENTED

Senator Hegar was recognized and introduced to the Senate a delegation of Austin County officials and citizens.

The Senate welcomed its guests.

COMMITTEE SUBSTITUTE SENATE BILL 483 ON SECOND READING

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 483** at this time on its second reading:

CSSB 483, Relating to regulation of electric generation capacity ownership in the electric power market.

The bill was read second time.

Senator Fraser offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 483** as follows:

- (1) On page 2, line 33, between "to" and ", a" insert "ERCOT".
- (2) On page 2, line 33, between "to," and "a power region" insert "or 25 percent of the installed generation capacity in".
- (3) On page 2, lines 40 through 42, strike ", reduced by the installed generation capacity of those facilities that are made subject to capacity auctions under Sections 39.153(a) and (d)".
- (4) On page 2, line 65, between "(b)," and "and (g)" insert "(f)".
- (5) On page 3, line 5, between "to" and ", a" insert "ERCOT".
- (6) On page 3, line 5, between "to," and "a power region" insert "or 25 percent of the installed generation capacity in".
- (7) On page 3, line 11, insert the following:
 - (f) The commission shall approve, modify, or reject a plan within 180 days after the date of a filing under Subsection (b). ~~[The commission may not modify a plan to require divestiture by the electric utility or the power generation company.]~~
- (8) On page 7, line 6, strike "and".
- (9) On page 7, line 7, between "Section 39.154," and "Utilities Code," insert "and Subsection (d), Section 39.156,".

The amendment to **CSSB 483** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 483** as follows:

- (1) In SECTION 6 of the bill, Subsection (a), Section 39.157, Utilities Code (committee printing page 3, line 35), in the second sentence of the subsection, strike "are" and substitute "have occurred or are presently".
- (2) In SECTION 6 of the bill, Subsection (a), Section 39.157, Utilities Code (committee printing page 3, line 36), in the second sentence of the subsection, between "require" and "reasonable" insert ", to the extend feasible refunds to retail customers and disgorgement of revenues received as a result of market power abuses and".
- (3) In SECTION 6 of the bill, Subsection (a), Section 39.157, Utilities Code (committee printing page 3, lines 40-42), in the second sentence of the subsection, strike "by requiring refunds or disgorgement of revenues received as a result of market power abuses,".

(4) In SECTION 6 of the bill, Subsection (a), Section 39.157, Utilities Code (committee printing page 3, line 46), after the period at the end of the second sentence and before "For" insert:

In lieu of seeking a civil penalty, as authorized by Chapter 15, the commission may require that a person who has been found by the commission to have engaged in market power abuse pay equivalent funds directly to an existing emergency bill payment assistance program operated by local assistance agencies that are supported by the Texas Department of Housing and Community Affairs. If the market monitor issues a report under Section 39.1515 indicating that market power abuses or other violations of this title have occurred or are occurring, then the executive director shall promptly approve or reject the findings of the market monitor and pursue all appropriate administrative remedies. Upon finding that market power abuses have occurred and after ordering the appropriate administrative remedies, the commission shall refer the matter to the attorney general for further action, including the imposition of civil penalties, criminal prosecution under Section 15.030 or for coordinating and assisting in local criminal prosecution.

The amendment to **CSSB 483** was read.

Senator Lucio offered the following amendment to Floor Amendment No. 2:

Floor Amendment No. 3

Amend Floor Amendment No. 2 to **CSSB 483** by striking Subsection (3) and renumbering further Subsections accordingly.

The amendment to Floor Amendment No. 2 to **CSSB 483** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos.

Question recurring on the adoption of Floor Amendment No. 2 as amended, the amendment as amended was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 2 as amended except as follows:

Absent-excused: Gallegos.

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

CSSB 483 as amended was passed to engrossment by a viva voce vote.

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

Absent-excused: Gallegos.

**COMMITTEE SUBSTITUTE
SENATE BILL 483 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 483** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Gallegos.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 483**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 483** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

**COMMITTEE SUBSTITUTE
SENATE BILL 896 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 896** at this time on its second reading:

CSSB 896, Relating to procedures of the Public Utility Commission of Texas with regard to certain transactions.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 896**, in SECTION 1 of the bill, in Section 14.101, Utilities Code (committee printing page 2, between lines 7 and 8) by adding the following new Subsections (f) through (j):

(f) Before approving a transaction under this section, the commission shall require the public utility, holding company, or affiliate reporting the transaction to provide any and all information necessary for the commission to carry out its duties under this section, including but not limited to:

(1) identification of all costs, both short-term and long-term, of the transaction;

(2) specification of each promise, pledge, concession, or agreement made by the public utility or other entity;

(3) identification of any potential rate and service impacts that may occur as a result of the transaction; and

(4) identification of any and all benefits of the transaction.

(g) Notwithstanding Section 14.101(b), at the request of any party to the proceeding, the commission shall conduct a public hearing on the transaction.

(h) The commission may impose conditions that it deems necessary before granting approval of any transaction under this section.

(i) The commission shall adopt rules to enforce the requirements of this section. Such rules shall include periodic reports by the public utility, holding company or affiliate as necessary to determine whether the public utility, holding company, or affiliate has satisfied the requirements of this section and any requirements established by the commission in any order issued under this section.

(j) On the dates specified in Section 31.003, the commission shall report to the legislature the status of any transactions approved, denied, or under review pursuant to this section and any utility, holding company, or affiliate that has failed to satisfy the requirements of any order issued under this section.

The amendment to **CSSB 896** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos.

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

CSSB 896 as amended was passed to engrossment by a viva voce vote.

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

Absent-excused: Gallegos.

**COMMITTEE SUBSTITUTE
SENATE BILL 896 ON THIRD READING**

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 896** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Gallegos.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 896**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 896** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

**COMMITTEE SUBSTITUTE
SENATE BILL 482 ON SECOND READING**

On motion of Senator Fraser and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 482** at this time on its second reading:

CSSB 482, Relating to competition and customer choice in the retail electric market; providing an administrative penalty.

The bill was read second time.

Senator Hinojosa offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 482** (Senate committee printing) as follows:

(1) In recital to SECTION 2 of the bill (page 1, line 25), strike "amending Subsection (a)" and substitute "amending Subsections (a) and (h)".

(2) In Section 39.101, Utilities Code, as amended by SECTION 2 of the bill (page 1, between lines 57 and 58), insert new amended Subsection (h) to read as follows:

(h) A retail electric provider, power generation company, aggregator, or other entity that provides retail electric service may not disconnect service to a residential customer during an extreme weather emergency or on a weekend day. The entity providing service shall defer collection of the full payment of bills that are due during an extreme weather emergency until after the emergency is over and shall offer ~~[work with]~~ customers a deferred payment plan providing for a period of not less than five months for a customer to pay deferred amounts ~~[to establish a pay schedule for deferred bills]~~. For purposes of this subsection, "extreme weather emergency" means ~~[a period when]~~:

(1) a day for which the National Weather Service forecasts that the ~~[previous day's highest]~~ temperature will reach or fall below ~~[did not exceed]~~ 32 degrees Fahrenheit in any part of a county in the relevant service territory ~~[and the temperature is predicted to remain at or below that level for the next 24 hours according to the nearest National Weather Service reports]; [or]~~

(2) a day for which the National Weather Service forecasts that the heat index will reach or exceed 100 degrees Fahrenheit in any part of a county in the relevant service territory; or

(3) a period when, ~~[issues a heat advisory for any county in the relevant service territory, or when such an advisory has been issued]~~ on any one of the previous two calendar days, the National Weather Service observes a heat index of 100 degrees Fahrenheit or more in any part of a county in the relevant service territory.

(3) Insert the following appropriately numbered SECTION to read as follows and renumber subsequent SECTIONS accordingly:

SECTION __. (a) Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.1015 to read as follows:

Sec. 39.1015. SUSPENSION OF DISCONNECTION FOR CERTAIN CUSTOMERS. (a) In this section:

(1) "Critical care residential customer" means a residential electric customer for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition.

(2) "Elderly low-income customer" means a low-income customer who is 65 years old or older.

(3) "Low-income customer" means an electric customer:
(A) whose household income is not more than 125 percent of the federal poverty guidelines;

(B) who receives food stamps from the Health and Human Services Commission; or

(C) who receives medical assistance from a state agency that administers a part of the medical assistance program.

(4) "Service provider" means a retail electric provider, power generation company, aggregator, or other entity that provides retail electric service.

(b) During the period beginning July 1 and ending September 30 of each year a service provider:

(1) may not disconnect service or authorize the disconnection of service to a critical care residential customer or elderly low-income customer who contacts the service provider regarding bill payment or in response to a disconnection notice;

(2) may not disconnect service or authorize the disconnection of service to a low-income customer other than an elderly low-income customer if the customer:

(A) contacts the service provider regarding bill payment or in response to a disconnection notice; and

(B) enters into a deferred payment plan with the service provider for the current month's electric charges and meets the terms of any then current deferred payment plan;

(3) shall request reconnection of service or reconnect service to a critical care residential customer or an elderly low-income customer whose service is disconnected before or during the period if:

(A) the customer contacts the service provider regarding bill payment or in response to a disconnection notice; or

(B) the service provider has previously been notified that the customer is a critical care customer;

(4) shall request reconnection of service or reconnect service to a low-income customer whose service is disconnected before or during the period if the customer enters into a deferred payment plan with the service provider; and

(5) shall rescind a request for disconnection of service to a critical care residential customer, elderly low-income customer, or low-income customer made before the period begins if the service provider is prohibited under this subsection from disconnecting or authorizing the disconnection of the customer's service during the period.

(c) A service provider may not disconnect service or authorize the disconnection of a critical care residential customer's service during the period provided by Subsection (b) regardless of whether the customer contacts the service provider as provided by Subsection (b) if the service provider has previously been notified that the customer is a critical care residential customer.

(d) A service provider shall allow a critical care residential customer, elderly low-income customer, or low-income customer to establish with the provider a deferred payment plan in person or by telephone. The service provider shall confirm the payment plan with the customer in writing. The deferred payment plan may not include a penalty for late payments accrued during the period provided by Subsection (b). The service provider shall allow a critical care residential customer, elderly low-income customer, or low-income customer to renegotiate the terms of the deferred payment plan at least one time, regardless of whether the customer's economic or financial circumstances have changed. For a low-income customer other than an elderly low-income customer, during the period provided by Subsection (b), the payment plan may require the payment of not more than 25 percent of the then current month's charges plus any due installments of a previous deferred payment

plan. For a low-income customer other than an elderly low-income customer, the service provider is not required to extend a deferred payment plan entered into under this subsection beyond the March billing cycle following the period provided by Subsection (b).

(e) A deferred payment plan established under Subsection (d) for one or more electric bills that come due during the period provided by Subsection (b) must provide:

(1) for a critical care customer or elderly low-income customer, that the customer is not required to pay more than 25 percent of the deferred electric bills as part of the first electric bill issued after the end of the period and that the remaining balance is to be paid in equal installments over the next five billing cycles, unless the customer requests a lesser number of installments; and

(2) for a low-income customer other than an elderly low-income customer, that the customer is required to pay not more than 25 percent of the deferred bills to initiate the agreement and that the remaining balance is to be paid in equal installments over the next five billing cycles, unless the customer requests a lesser number of installments.

(f) A service provider may pursue disconnection of electrical service for a critical care residential customer or an elderly low-income customer only after the period provided by Subsection (b) and only if the customer does not meet the terms of the deferred payment plan, unless the disconnection is otherwise prohibited. A service provider may pursue disconnection of service for a low-income customer other than an elderly low-income customer if the customer does not meet the terms of the deferred payment plan, unless the disconnection is otherwise prohibited. The service provider shall give the customer appropriate notice that the customer has not met the terms of the plan before the service provider disconnects or authorizes the disconnection of service.

(g) A service provider may encourage a critical care customer or elderly low-income customer to make partial payment of a deferred electric bill during the period provided by Subsection (b), but the service provider shall clearly inform the customer that the customer may not be disconnected for nonpayment before October 1 following the period provided by Subsection (b).

(b) This section takes effect June 1, 2007, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for this section to take effect on that date, this section takes effect September 30, 2007.

The amendment to **CSSB 482** was read and was adopted by a viva voce vote.

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

Nays: Nichols.

Absent-excused: Gallegos.

Senator Hinojosa offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 482** (Senate committee printing) by adding the following appropriately numbered SECTIONS to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION __. Section 17.008, Utilities Code, is amended to read as follows:

(b) A retail electric provider may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history or credit score~~[, but may use the applicant's utility payment data until the later of January 1, 2007, or the date on which the price to beat is no longer in effect in the geographic area in which the customer is located].~~

~~(c) [Notwithstanding Subsection (b), while a retail electric provider is required to provide service to a geographic area as the affiliated retail electric provider, the provider may not deny an applicant's request to become a residential electric service customer within that geographic area on the basis of the applicant's credit history, credit score, or utility payment data.~~

~~(d) After the date described in Subsection (b), a retail electric provider, including an affiliated retail electric provider, may not deny an applicant's request to become a residential electric service customer on the basis of the applicant's credit history, credit score, or utility payment data but may use the applicant's electric bill payment history.~~

~~(e)~~ A retail electric provider may not use a credit score, a credit history, or utility payment data as the basis for determining the price for month-to-month electric service or electric service that includes a fixed price commitment of 12 months or less:

(1) for an existing residential customer; or

(2) in response to an applicant's request to become a residential electric service customer.

~~(f)~~ ~~After the date described in Subsection (b), on~~ On request by a customer or former customer in this state, a retail electric provider or electric utility shall timely provide to the customer or former customer bill payment history information with the retail electric provider or electric utility during the preceding 12-month period. Bill payment history information may be obtained by the customer or former customer once during each 12-month period without charge. If additional copies of bill payment history information are requested during a 12-month period, the electric service provider may charge the customer or former customer a reasonable fee for each copy.

~~(g)~~ On request by a retail electric provider, another retail electric provider or electric utility shall timely verify information that purports to show a customer's service and bill payment history with the retail electric provider or electric utility.

(f) A retail electric provider may not require a person applying for residential electric service to provide a security deposit or advance payment as a condition of service if:

(1) it can be shown that the person was a customer of one or more retail electric providers or electric utilities in this state during the entire 12-month period preceding the request for electric service; and

(2) during the preceding 12-month period, the person was not late in paying an electric service bill.

(g) If a person applying for residential electric service does not provide the documentation described in subsection (f), nothing in this section limits [This section does not limit] a retail electric provider's authority to require a deposit or advance payment as a condition of service.

(h) ~~(+)~~ Notwithstanding Subsection (c) ~~(+)~~, a retail electric provider may provide rewards, benefits, or credits to residential electric service customers on the basis of the customer's payment history for retail electric service to that provider.

SECTION __. Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.1016 to read as follows:

Sec. 39.1016. CANCELLATION OR TERMINATION FEES. A retail electric provider may not charge a residential customer who requests cancellation or termination of retail electric service provided on a month-to-month basis a fee relating to the cancellation or termination.

The amendment to **CSSB 482** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos.

Senator Patrick offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 482** (Senate committee printing) as follows:

(1) In Section 39.101(a), Utilities Code, as amended by SECTION 2 of the bill (page 1, line 36), strike "information identifying" and substitute "the names and addresses of".

(2) In Section 4 of the bill, strike the language for added Subsection (q), Section 39.202, Utilities Code (page 2, lines 62 through 67), and substitute:

(q) On a schedule to be determined by the commission, the commission shall require affiliated retail electric providers to provide the commission with the names and addresses of residential customers who have not affirmatively chosen a retail electric provider or electric service plan. The commission shall release the names and addresses of those customers to retail electric providers licensed by the commission and currently offering residential service. The commission shall provide updated information on the list of names and addresses to remove the customers who have affirmatively made a choice in relation to providers or plans.

(3) In Section 39.202(r), Utilities Code, as amended by SECTION 4 of the bill (page 3, line 2), between "provider" and ." insert "or plan".

(3) In Section 39.902(c), Utilities Code, as amended by SECTION 6 of the bill (page 3, line 38), between "retail electric providers" and , and information concerning", by inserting ", plans".

The amendment to **CSSB 482** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 4

Amend **CSSB 482** as follows:

(1) On page 2, lines 12 and 13, between "that" and "on" insert ", as of December 31, 2006 had more than 250,000 residential customers and".

(2) On page 2, line 13, strike "on December 31, 2006".

(3) On page 2, line 27, strike "40" and substitute "35".

(4) On page 3, strike Subsection (a) and Subsection (b), Section 39.2025 and substitute the following:

(a) The commission may review, as described in Subsection (b), the price of the electric service plan under which customers who took service under a price to beat tariff on December 31, 2006 who have not subsequently chosen an alternate retail electric service plan are served in a transmission and distribution utility service territory if:

(1) at the end of calendar year 2007 the number of such customers exceeds 25 percent of the number of residential customers in the transmission and distribution service territory in which such customers take service; or

(2) at the end of calendar year 2008 the number of such customers exceeds 15 percent of the number of residential customers in the transmission and distribution service territory in which such customers take service.

(b) If the price charged by a retail electric provider to applicable residential customers is more than two cents per kilowatt hour higher for more than six consecutive months than the simple average of the prices charged for other similar electric service plans in the relevant transmission and distribution service territory, the commission may initiate a review of the retail electric provider's price charged to such residential customers. Of the commission determines that the retail electric provider's price charged to such customers is not reasonable based on its review, the commission may reduce the retail electric provider's residential price charged to such customers, but not to less than one cent per kilowatt hour higher than the simple average of the prices charged for other similar electric service plans in the relevant transmission and distribution utility service territory at the time the downward adjustment is required.

(5) On page 2, line 48, between "be" and "allocated" insert, "held in a segregated account by the retail electric provider and".

The amendment to **CSSB 482** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos.

Senator Patrick offered the following amendment to the bill:

Floor Amendment No. 5

Amend **CSSB 482** (Senate committee printing) by adding the following appropriately numbered section to the bill:

SECTION __. Subsection (a), Section 39.903, Utilities Code, is amended to read as follows:

(a) The system benefit fund is an account in the general revenue fund. Money in the account may be appropriated only for the purposes provided by this section [~~or other law~~]. Interest earned on the system benefit fund shall be credited to the fund. Section 403.095, Government Code, does not apply to the system benefit fund.

The amendment to **CSSB 482** was read.

Senator Patrick withdrew Floor Amendment No. 5.

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

CSSB 482 as amended was passed to engrossment by a viva voce vote.

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

Absent-excused: Gallegos.

COMMITTEE SUBSTITUTE SENATE BILL 482 ON THIRD READING

Senator Fraser moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 482** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Wentworth.

Absent-excused: Gallegos.

Reason for Vote

Senator Wentworth submitted the following reason for vote on suspension of the Constitutional Three-day Rule:

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 482**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **CSSB 482** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

March 15, 2007

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 8, Concurrent resolution providing for the operation and funding of the Joint Select Committee on the Operation and Management of the Texas Youth Commission.

HCR 98, In memory of James DeAnda of Houston, retired chief judge of the U.S. District Court for the Southern District of Texas.

HCR 122, Honoring Charles "Tex" Harrison of the Harlem Globetrotters.

HCR 127, Designating September 2007 as Leukemia and Lymphoma Awareness Month.

HCR 131, In memory of John H. "Wimpy" McCoy, former longtime mayor of New Boston.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 942 REREFERRED

Senator Carona submitted a Motion In Writing requesting that **SB 942** be withdrawn from the Committee on State Affairs and rereferred to the Committee on Jurisprudence.

The Motion In Writing prevailed without objection.

SENATE BILL 703 REREFERRED

Senator Deuell submitted a Motion In Writing requesting that **SB 703** be withdrawn from the Committee on Education and rereferred to the Committee on Health and Human Services.

The Motion In Writing prevailed without objection.

SENATE BILL ON FIRST READING

The following bill, filed on or before Friday, March 9, 2007, was introduced, read first time, and referred to the committee indicated:

SB 1295 by West

Relating to the establishment of community-based programs administered by the juvenile boards of certain counties.

To Committee on Criminal Justice.

**SENATE RULES SUSPENDED
(Posting Rules)**

On motion of Senator Carona and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Transportation and Homeland Security might meet and consider the following bills today: **SB 621, SB 848, SB 850, SB 995.**

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolution

SR 481 by Lucio, In memory of Jesus Rolando "Pollo" Garza, Sr., of Port Isabel.

Congratulatory Resolutions

SR 480 by Seliger, Recognizing the Coffee Memorial Blood Center in Amarillo on the occasion of its grand opening.

SR 483 by Lucio, Commending the Parks and Wildlife Department, the United States Maritime Administration, Texas A&M University, and the United States Fish and Wildlife Service for their acquisition of the U.S.T.S. *Texas Clipper* for use as an artificial reef.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 12:24 p.m. adjourned, in memory of Todd Holmes of Marshall, until 1:30 p.m. Monday, March 19, 2007.

APPENDIX

COMMITTEE REPORTS

The following committee reports were received by the Secretary of the Senate in the order listed:

March 15, 2007

BUSINESS AND COMMERCE — **CSSB 548, CSSB 849**

INTERNATIONAL RELATIONS AND TRADE — **SJR 20**

JURISPRUDENCE — **SB 430, SB 432, SB 560**

INTERGOVERNMENTAL RELATIONS — **SB 526, SB 525, SB 605, SB 683, SB 940, SB 826**