

# SENATE JOURNAL

EIGHTIETH LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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FIFTIETH DAY

(Friday, April 27, 2007)

The Senate met at 10:33 a.m. pursuant to adjournment and was called to order by the President.

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

The President announced that a quorum of the Senate was present.

Robert Cunningham, son-in-law of Senator Estes, Youth Director, Bates Creek Presbyterian Church, Lexington, Kentucky, offered the invocation as follows:

Dear Lord, we thank You so much for this day and for the opportunity to serve You this day. I thank You for the men and women in this room. I thank You for the unique way You have gifted them, called them, and equipped them to serve both You and Your people. I pray they would see the significance of their calling. I pray You would give them strength to press on for the good of Your people. I pray You would give them unity and vision that they would be together in a passion for the good of the people of Texas. Lord, we do pray as well for the citizens of Texas. We ask that You would comfort and heal those who are suffering, specifically those affected by the storms from last week. Most of all, Lord, we pray that You would be honored and glorified in this place. We all come to You in humility, knowing that we desperately need Your hand to be on us this day. God, we pray that You would bless Texas and bless the Texas Senate. Amen.

Senator Whitmire 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.

## CO-AUTHOR OF SENATE BILL 570

On motion of Senator Deuell, Senator Uresti will be shown as Co-author of **SB 570**.

## CO-AUTHOR OF SENATE BILL 637

On motion of Senator Van de Putte, Senator Zaffirini will be shown as Co-author of **SB 637**.

**CO-AUTHOR OF SENATE BILL 1056**

On motion of Senator Wentworth, Senator Van de Putte will be shown as Co-author of **SB 1056**.

**CO-AUTHOR OF SENATE BILL 1347**

On motion of Senator Patrick, Senator Whitmire will be shown as Co-author of **SB 1347**.

**CO-AUTHOR OF SENATE BILL 1696**

On motion of Senator Nelson, Senator Van de Putte will be shown as Co-author of **SB 1696**.

**CO-AUTHOR OF SENATE JOINT RESOLUTION 28**

On motion of Senator Wentworth, Senator Gallegos will be shown as Co-author of **SJR 28**.

**CO-AUTHOR OF SENATE RESOLUTION 892**

On motion of Senator Van de Putte, Senator Zaffirini will be shown as Co-author of **SR 892**.

**CO-SPONSOR OF HOUSE BILL 416**

On motion of Senator Watson, Senator Janek will be shown as Co-sponsor of **HB 416**.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

April 27, 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 647**, Relating to the making of political contributions to and acceptance of political contributions by statewide officers and members of the legislature before and during a special session of the legislature; providing a criminal penalty.

**HB 782**, Relating to genetic testing in the determination of parentage and to a proceeding to vacate an order of paternity or child support.

**HB 814**, Relating to the payment of child support obligations on behalf of persons wrongfully imprisoned.

**HB 913**, Relating to the ad valorem tax situs of certain portable drilling rigs.

**HB 946**, Relating to conduct that constitutes the offense of endangering a child.

**HB 1297**, Relating to the creation of the state employee wellness program.

**HB 1386**, Relating to regulation of the decommissioning costs of certain nuclear-powered commercial electric generating units.

**HB 1460**, Relating to licensing, acquisition, and regulation of manufactured housing; providing penalties.

**HB 1470**, Relating to the continuation of the Texas Economic Development Act and to the duties of the comptroller of public accounts and the Texas Education Agency under that Act.

**HB 2138**, Relating to regulation of property tax lenders; providing a penalty.

**HB 2265**, Relating to the award of prizes in, and the conduct of, a progressive bingo game.

**HB 2445**, Relating to certain employment records maintained by the Commission on Law Enforcement Officer Standards and Education; providing an administrative penalty.

**HB 2482**, Relating to the requirements regarding persons who service or maintain on-site sewage disposal systems.

**HB 2534**, Relating to the transfer of a motor vehicle retail installment contract to a holder.

**HB 2713**, Relating to studies, plans, and projects concerning electric generation capacity or electric energy storage, transmission, or distribution.

**HB 2770**, Relating to adoption of the Uniform Child Abduction Prevention Act.

**HB 2823**, Relating to provisional voting by a person who applied for an early voting ballot by mail.

**HB 3249**, Relating to the powers and duties of, and the entities reviewed by, the Sunset Advisory Commission.

**HB 3322**, Relating to a plan-to-plan transfer of certain assets from the TexaSaver 457 plan administered by the Employees Retirement System of Texas to a 457 plan created by an institution of higher education.

**HB 3350**, Relating to payment of costs incurred in the operation and administration of the Texas Lottery Commission.

**HB 3446**, Relating to the promotion by the governor's office of economic development of Texas manufactured products; providing civil and administrative penalties.

**HB 3694**, Relating to the enterprise zone program.

**HB 3732**, Relating to the implementation of ultraclean energy projects and other environmentally protective projects in this state.

**HB 3765**, Relating to the taking or unloading of fish in this state.

**SCR 44**, Designating September 2007 as Leukemia and Lymphoma Awareness Month.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **PHYSICIAN OF THE DAY**

Senator Ellis was recognized and presented Dr. Neeta Gautam of Houston as the Physician of the Day.

The Senate welcomed Dr. Gautam and thanked her for her 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: **SCR 55, SCR 59, SCR 66.**

### **GUESTS PRESENTED**

Senator Seliger was recognized and introduced to the Senate sixth-grade students from Midland Classical Academy in Midland, accompanied by their teachers and parents.

The Senate welcomed its guests.

### **GUESTS PRESENTED**

Senator Eltife was recognized and introduced to the Senate seventh-grade students from Full Armor Christian Academy in Henderson, accompanied by their teachers and sponsors.

The Senate welcomed its guests.

### **GUESTS PRESENTED**

Senator Van de Putte was recognized and introduced to the Senate students from Edgewood Fine Arts Academy in San Antonio, accompanied by their teachers and sponsors.

The Senate welcomed its guests.

### **SENATE RESOLUTION 892**

Senator Van de Putte offered the following resolution:

WHEREAS, Texas Democratic Women is celebrating 20 years of service in 2007; and

WHEREAS, Organized in 1987, Texas Democratic Women has as its goal a reemphasis of local, grassroots politics and specifically the role of women in the political process; and

WHEREAS, The organization serves as a communication network for existing Democratic women's organizations and offers statewide training conferences and workshops; and

WHEREAS, Building on its strong foundation, Texas Democratic Women is working to make a positive and lasting difference across the Lone Star State through its political activism and exceptional volunteer efforts; now, therefore, be it

RESOLVED, That the Senate of the 80th Texas Legislature hereby recognize Texas Democratic Women on its 20th anniversary and extend to its officers and members sincere best wishes for the future; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the organization as an expression of high regard by the Texas Senate.

VAN DE PUTTE  
ZAFFIRINI

**SR 892** was read and was adopted without objection.

#### **GUESTS PRESENTED**

Senator Van de Putte, joined by Senator Zaffirini, was recognized and introduced to the Senate representatives of Texas Democratic Women: Anne Mauzy, founder; Marcia Mainord, President; and Past Presidents, Nettie Ruth Bratton, Alieca Hux, Betty Richie, Roberta Hicks, and Jo Ann Jenkins.

The Senate welcomed its guests.

#### **GUESTS PRESENTED**

Senator Lucio was recognized and introduced to the Senate students from Gonzalez Elementary School in Weslaco, accompanied by their teachers and sponsors.

The Senate welcomed its guests.

#### **GUESTS PRESENTED**

Senator Shapleigh was recognized and introduced to the Senate seventh- and eighth-grade students from Terrace Hills Middle School in El Paso, accompanied by their teachers.

The Senate welcomed its guests.

#### **INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED**

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

There was no objection.

#### **CONCLUSION OF MORNING CALL**

The President at 10:54 a.m. announced the conclusion of morning call.

#### **COMMITTEE SUBSTITUTE SENATE BILL 887 ON THIRD READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 887** at this time on its third reading and final passage:

**CSSB 887**, Relating to the use of certain revenue generated by Texas Department of Transportation toll projects and to the membership and functions of metropolitan planning organizations.

The bill was read third time and was passed by the following vote: Yeas 22, Nays 9.

Yeas: Brimer, Carona, Deuell, Ellis, Eltife, Estes, Gallegos, Harris, Hegar, Jackson, Janek, Nelson, Nichols, Patrick, Shapiro, Shapleigh, Van de Putte, Watson, Wentworth, West, Whitmire, Williams.

Nays: Averitt, Duncan, Fraser, Hinojosa, Lucio, Ogden, Seliger, Uresti, Zaffirini.

### **COMMITTEE SUBSTITUTE SENATE BILL 308 ON THIRD READING**

Senator Deuell moved to suspend the regular order of business to take up for consideration **CSSB 308** at this time on its third reading and final passage:

**CSSB 308**, Relating to disease control programs to reduce the risk of certain communicable diseases.

The motion prevailed by the following vote: Yeas 23, Nays 8.

Yeas: Averitt, Carona, Deuell, Duncan, Ellis, Eltife, Gallegos, Harris, Hegar, Hinojosa, Janek, Lucio, Nelson, Nichols, Seliger, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Brimer, Estes, Fraser, Jackson, Ogden, Patrick, Shapiro, Williams.

The bill was read third time and was passed by the following vote: Yeas 23, Nays 8. (Same as previous roll call)

### **GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate students from Gateway Academy in Laredo, accompanied by their teachers and sponsors.

The Senate welcomed its guests.

### **COMMITTEE SUBSTITUTE SENATE BILL 947 ON SECOND READING**

Senator Duncan moved to suspend the regular order of business to take up for consideration **CSSB 947** at this time on its second reading:

**CSSB 947**, Relating to delivery of certain unclaimed money to a rural scholarship fund.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent: Shapiro.

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: Shapiro.

**COMMITTEE SUBSTITUTE  
SENATE BILL 947 ON THIRD READING**

Senator Duncan moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 947** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent: Shapiro.

**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 947**, 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 947** 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: Shapiro.

**(Senator Averitt in Chair)**

**COMMITTEE SUBSTITUTE  
SENATE BILL 513 ON SECOND READING**

On motion of Senator Harris and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 513** at this time on its second reading:

**CSSB 513**, Relating to the requirement that certain applicants for a vehicle dealer general distinguishing number complete a dealer education course.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 513 ON THIRD READING**

Senator Harris moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 513** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 513**, 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 513** 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 31, Nays 0.

**(President in Chair)**

**COMMITTEE SUBSTITUTE  
SENATE BILL 792 ON SECOND READING**

Senator Williams moved to suspend the regular order of business to take up for consideration **CSSB 792** at this time on its second reading:

**CSSB 792**, Relating to the authority of certain counties and other entities with respect to certain transportation projects and to comprehensive development agreements with regard to such projects.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Averitt, Brimer, Carona, Deuell, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Nelson, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams.

Nays: Duncan, Lucio, Ogden, Zaffirini.

The President ordered that **CSHB 1892** be considered in lieu of **CSSB 792**, pursuant to the provisions of Senate Rule 7.14, which provides that when any Senate Bill shall be reached on the calendar or shall be before the Senate for consideration, it shall be the duty of the President to give the place of such bill on the calendar to any House Bill which has been referred to and reported from a committee of the Senate containing the same subject or to lay such House Bill before the Senate to be considered in lieu of such Senate Bill.

**COMMITTEE SUBSTITUTE  
HOUSE BILL 1892 ON SECOND READING**

The President laid before the Senate **CSHB 1892**, sponsored by Senator Williams, on its second reading and passage to third reading:

**CSHB 1892**, Relating to the authority of certain counties and other entities with respect to certain transportation projects; providing penalties.

The bill was read second time.

Senator Williams offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSHB 1892** (Senate committee printing) in SECTION 5 by adding the following Subsection 284.003(g):

(g) An action of a county taken under this chapter must comply with the requirements of applicable federal law. The foregoing compliance requirement shall apply to the role of metropolitan planning organizations under federal law, including the approval of projects for conformity to the state implementation plan relating to air quality, the use of toll revenue, and the use of the right-of-way of and access to Federal-aid highways. Notwithstanding an action of a county taken under this chapter, the commission or department may take any action that is necessary to comply with any federal requirement to enable the state to receive Federal-aid highway funds.

The amendment to **CSHB 1892** was read and was adopted by a viva voce vote.

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

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSHB 1892** (Senate committee printing) as follows:

(1) Add the following appropriately numbered SECTIONS to the bill and renumber subsequent SECTIONS accordingly:

SECTION \_\_\_\_ . Section 223.201(f), Transportation Code, is amended to read as follows:

(f) The authority to enter into comprehensive development agreements provided by this section expires on August 31, 2009 [~~2011~~].

SECTION \_\_\_\_ . Section 370.305(d), Transportation Code, is amended to read as follows:

(d) This section expires on August 31, 2009 [~~2011~~].

SECTION \_\_\_\_\_. Subtitle G, Title 6, Transportation Code, is amended by adding Chapter 371 to read as follows:

CHAPTER 371. COMPREHENSIVE DEVELOPMENT AGREEMENTS FOR  
HIGHWAY TOLL PROJECTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 371.001. DEFINITIONS. In this chapter:

(1) "Toll project" means a toll project described by Section 201.001(b), regardless of whether the toll project is:

(A) a part of the state highway system; or

(B) subject to the jurisdiction of the department.

(2) "Toll project entity" means an entity authorized by law to acquire, design, construct, operate, and maintain a toll project, including:

(A) the department, including under Chapter 227;

(B) a regional tollway authority under Chapter 366;

(C) a regional mobility authority under Chapter 370; or

(D) a county under Chapter 284.

[Sections 371.002-371.050 reserved for expansion]

SUBCHAPTER B. OVERSIGHT

Sec. 371.051. ATTORNEY GENERAL REVIEW. A toll project entity may not enter into a comprehensive development agreement unless the attorney general reviews the proposed agreement and determines that it is legally sufficient.

Sec. 371.052. NOTIFICATION TO LEGISLATIVE BUDGET BOARD AND STATE AUDITOR. (a) Not later than the 10th day after the date of qualifying or shortlisting private entities to submit detailed proposals for a toll project, a toll project entity shall provide the Legislative Budget Board with the names of qualifying or shortlisted proposers and their team members.

(b) At least 30 days before entering into a comprehensive development agreement, a toll project entity shall provide the Legislative Budget Board with:

(1) a copy of the version of the proposed comprehensive development agreement to be executed;

(2) a copy of the proposal submitted by the apparent best value proposer;  
and

(3) a financial forecast prepared by the toll project entity that includes:

(A) toll revenue the entity projects will be derived from the project during the planned term of the agreement;

(B) estimated construction costs and operating expenses; and

(C) the amount of income the entity projects the private participant in the agreement will realize during the planned term of the agreement.

(c) Before entering into a comprehensive development agreement, a toll project entity shall provide the state auditor with the traffic and revenue report prepared by the toll project entity or its consultant for the project. The entity may not enter into the comprehensive development agreement before the 30th day after the date that the state auditor receives the report so that the state auditor may review and comment on the report and the methodology used to develop the report.

(d) Before the comprehensive development agreement is entered into, financial forecasts and traffic and revenue reports prepared by or for a toll project entity for the project are confidential and are not subject to disclosure, inspection, or copying under Chapter 552, Government Code.

[Sections 371.053-371.100 reserved for expansion]

SUBCHAPTER C. CONTRACT PROVISIONS

Sec. 371.101. TERMINATION FOR CONVENIENCE. (a) A toll project entity having rulemaking authority by rule and a toll project entity without rulemaking authority by official action shall develop a formula for making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. A formula must calculate an estimated amount of loss to the private participant as a result of the termination for convenience that is based on investments, expenditures, and rate of return associated with the project.

(b) A formula under Subsection (a) may not include an estimate of future revenue from the project.

Sec. 371.102. TERMINATION OF CERTAIN COMPREHENSIVE DEVELOPMENT AGREEMENTS. If a toll project entity elects to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a project, the entity may:

(1) if authorized to issue bonds for that purpose, issue bonds to:

(A) make any applicable termination payments to the private participant; or

(B) purchase the interest of the private participant in the comprehensive development agreement or related property; or

(2) provide for the payment of obligations of the private participant incurred pursuant to the comprehensive development agreement.

Sec. 371.103. PROHIBITION AGAINST LIMITING OR PROHIBITING CONSTRUCTION OF TRANSPORTATION PROJECTS. (a) A comprehensive development agreement may not contain a provision that limits or prohibits the construction, reconstruction, expansion, rehabilitation, operation, or maintenance of a highway or other transportation project, as that term is defined by Section 370.003, by the toll project entity or other governmental entity, or by a private entity under a contract with the toll project entity or other governmental entity.

(b) Except as provided by Subsection (c), a comprehensive development agreement may contain a provision authorizing the toll project entity to compensate the private participant in the agreement for the loss of toll revenues attributable to the construction by the entity of a limited access highway project located within an area that extends up to four miles from either side of the centerline of the project developed under the agreement, less the private participant's decreased operating and maintenance costs attributable to the highway project, if any.

(c) A comprehensive development agreement may not require the toll project entity to provide compensation for the construction of:

(1) a highway project contained in the state transportation plan or a transportation plan of a metropolitan planning organization in effect on the effective date of the agreement;

(2) work on or improvements to a highway project necessary for improved safety, or for maintenance or operational purposes;

(3) a high occupancy vehicle exclusive lane addition or other work on any highway project that is required by an environmental regulatory agency; or

(4) a transportation project that provides a mode of transportation that is not included in the project that is the subject of the comprehensive development agreement.

(d) The private participant has the burden of proving any loss of toll revenue resulting from the construction of a highway project described by Subsection (b).

(e) A comprehensive development agreement that contains a provision described by Subsection (b) must require the private participant to provide compensation to the toll project entity in the amount of any increase in toll revenues received by the private participant that is attributable to the construction of a highway project described by Subsection (b), less the private participant's increased operation and maintenance costs attributable to the highway project, if any.

[Sections 371.104-371.150 reserved for expansion]

#### SUBCHAPTER D. DISCLOSURE OF INFORMATION

Sec. 371.151. DISCLOSURE OF FINANCIAL INFORMATION. (a) Before a toll project entity enters into a contract for the construction of a toll project, the entity shall publish in the manner provided by Section 371.152 information regarding:

(1) project financing, including:

(A) the total amount of debt that has been and will be assumed to acquire, design, construct, operate, and maintain the toll project;

(B) a description of how the debt will be repaid, including a projected timeline for repaying the debt; and

(C) the projected amount of interest that will be paid on the debt;

(2) whether the toll project will continue to be tolled after the debt has been repaid;

(3) a description of the method that will be used to set toll rates;

(4) a description of any terms in the contract relating to competing facilities, including any penalties associated with the construction of a competing facility;

(5) a description of any terms in the contract relating to a termination for convenience provision, including any information regarding how the value of the project will be calculated for the purposes of making termination payments;

(6) the initial toll rates, the methodology for increasing toll rates, and the projected toll rates at the end of the term of the contract; and

(7) the projected total amount of concession payments.

(b) A toll project entity may not enter into a contract for the construction of a toll project before the 30th day after the date the information is first published under Section 371.152.

Sec. 371.152. DISCLOSURE BY PUBLICATION. (a) Information under Section 371.151 must be published in a newspaper published in the county in which the toll project is to be constructed once a week for at least two weeks before the time set for entering into the contract and in two other newspapers that the toll project entity may designate.

(b) Instead of the notice required by Subsection (a), if the toll project entity estimates that the contract involves an amount less than \$300,000, the information may be published in two successive issues of a newspaper published in the county in which the project is to be constructed.

(c) If a newspaper is not published in the county in which the toll project is to be constructed, notice shall be published in a newspaper published in the county:

(1) nearest the county seat of the county in which the improvement is to be made; and

(2) in which a newspaper is published.

Sec. 371.153. HEARING. (a) A toll project entity shall hold a public hearing on the information published under Section 371.152 not later than the 10th day after the date the information is first published and not less than 10 days before the entity enters into the contract.

(b) A hearing under this section must be held in the county seat of the county in which the toll project is located.

(c) A hearing under this section must include a formal presentation and a mechanism for responding to comments and questions.

SECTION \_\_\_\_. (a) Section 223.203, Transportation Code, is amended by adding Subsection (f-1) to read as follows:

(f-1) A private entity responding to a request for detailed proposals issued under Subsection (f) may submit alternative proposals based on comprehensive development agreements having different terms, with the alternative terms in multiples of 10 years, ranging from 10 years to 40 years or any lesser term provided in a comprehensive development agreement.

(b) Section 223.208(h), Transportation Code, is amended to read as follows:

(h) A ~~[Except as provided by this section, a]~~ comprehensive development agreement with a private participant that includes the collection by the private participant of tolls for the use of a toll project may be for a term not longer than 40 ~~[50]~~ years. The comprehensive development agreement must contain ~~[may be for a term not longer than 70 years if the agreement:~~

~~[(1) contains]~~ an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the comprehensive development agreement and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement~~[- and~~

~~[(2) outlines the benefit the state will derive from having a term longer than 50 years].~~

(c) Section 227.023(f), Transportation Code, is amended to read as follows:

(f) A contract with a private entity that includes the collection by the private entity of a fee for the use of a facility may not be for a term longer than 40 ~~[50]~~ years. The contract must contain an explicit mechanism for setting the price for the purchase by the department of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the contract.

(d) Section 370.302(i), Transportation Code, is amended to read as follows:

(i) An agreement with a private entity that includes the collection by the private entity of tolls for the use of a transportation project may not be for a term longer than 40 ~~[50]~~ years. The agreement must contain an explicit mechanism for setting the price for the purchase by the authority of the interest of the private participant in the contract and related property, including any interest in a highway or other facility designed, developed, financed, constructed, operated, or maintained under the agreement.

(e) The changes in law made by this section apply only to a contract entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

SECTION \_\_\_\_\_. Subchapter A, Chapter 227, Transportation Code, is amended by adding Sections 227.005, 227.006, 227.007, and 227.008 to read as follows:

Sec. 227.005. PUBLIC ACCESS TO INFORMATION. (a) The department shall:

(1) seek to achieve transparency in the department's functions related to the Trans-Texas Corridor by providing, to the greatest extent possible under the public information law (Chapter 552, Government Code) and other statutes governing the access to records, public access to information collected, assembled, or maintained by the department relating to the Trans-Texas Corridor;

(2) make public in a timely manner all documents, plans, and contracts related to the Trans-Texas Corridor; and

(3) make public in a timely manner all updates to the master development plan for the Trans-Texas Corridor, including financial plans.

(b) The department shall send electronic versions of all updates to the master development plan for the Trans-Texas Corridor to the Governor's Office of Budget and Planning, the Senate Finance Committee, the House Appropriations Committee, the Legislative Budget Board, the state auditor's office, and the comptroller in a timely manner.

Sec. 227.006. POSTING INFORMATION RELATING TO TRANS-TEXAS CORRIDOR ON DEPARTMENT'S WEBSITE. (a) The department shall post on the department's Internet website, in a timely manner, the costs incurred by the department in connection with the financing, design, construction, maintenance, or operation of the Trans-Texas Corridor.

(b) Not later than the 10th day after the date the department enters into a contract relating to the Trans-Texas Corridor, the department shall post a copy of the contract on the department's Internet website.

SECTION \_\_\_\_\_. Section 223.203(m), Transportation Code, is amended to read as follows:

(m) The department may ~~[shall]~~ pay an unsuccessful private entity that submits a responsive proposal in response to a request for detailed proposals under Subsection (f) a stipulated amount in exchange for the work product contained in that proposal. A ~~[The]~~ stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the department, be used by the department in the performance of its functions. The use by the department of any design element contained in an

unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

(1) the department owns with the unsuccessful proposer jointly the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the project design; and

(2) the use by the unsuccessful proposer of any portion of the work product contained in the proposal is at the sole risk of the unsuccessful proposer and does not confer liability on the department.

SECTION \_\_\_\_ . Section 370.306(m), Transportation Code, is amended to read as follows:

(m) An authority may ~~shall~~ pay an unsuccessful private entity that submits a response to a request for detailed proposals under Subsection (f) a stipulated amount of the final contract price for any costs incurred in preparing that proposal. A ~~The~~ stipulated amount must be stated in the request for proposals and may not exceed the value of any work product contained in the proposal that can, as determined by the authority, be used by the authority in the performance of its functions. The use by the authority of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the authority and does not confer liability on the recipient of the stipulated amount under this subsection. After payment of the stipulated amount:

(1) the authority owns the exclusive rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, and information contained in the project design; and

(2) the work product contained in the proposal becomes the property of the authority.

(2) In SECTION 1 of the bill, in proposed Section 223.210, Transportation Code (page 1, between lines 53 and 54), insert the following:

(c-1) Subsection (b) does not apply to a comprehensive development agreement in connection with a project associated with any portion of the Loop 9 project that is located in a nonattainment air quality area as designated by the United States Environmental Protection Agency that includes two adjacent counties that each have a population of one million or more.

(3) In SECTION 1 of the bill, in proposed Section 223.210, Transportation Code (page 2, between lines 22 and 23), insert the following:

(c-3) Subsection (c) does not apply to any toll project or managed lane facility project located on any portion of U.S. Highway 281 that is located in a county with a population of more than one million in which more than 80 percent of the population lives in a single municipality.

(4) In SECTION 12 of the bill, in the introductory language (page 12, line 56), strike "366.037 and 366.038" and substitute "366.037, 366.038, and 366.039".

(5) In SECTION 12 of the bill, at the end of proposed Section 366.038, Transportation Code (page 14, between lines 13 and 14), insert the following:

(h) A local toll project entity that exercises the option under Subsection (b) must begin the environmental phase of the project within 18 months of the action taken by the entity under Subsection (b).

Sec. 366.039. USE OF STATE HIGHWAY ALIGNMENT, RIGHT-OF-WAY, AND ACCESS. (a) Notwithstanding any other law, an authority may use any authority property, state highway right-of-way, or access to the state highway system, regardless of when or how the property, right-of-way, or access is acquired. The department or the commission may require the authority to comply with any covenant, condition, restriction, or limitation that affects state highway right-of-way, but may not:

(1) adopt rules or establish policies that have the effect of denying the authority the use of the right-of-way or access that the authority has determined to be necessary or convenient for the construction, acquisition, improvement, operation, maintenance, or pooling of a project under this chapter; or

(2) require the authority to pay for the use of the right-of-way or access, except to reimburse the commission or department for actual costs incurred or to be incurred by a third party, including the federal government, as a result of that use by the authority.

(b) If a project of an authority under this chapter includes the proposed use of improved state highway right-of-way, the authority and the commission or the department must enter into an agreement that includes reasonable terms to accommodate that use of the right-of-way by the authority and to protect the interests of the commission and the department in the use of the right-of-way for operations of the department, including public safety and congestion mitigation on the improved right-of-way.

(c) Notwithstanding any other law, the commission and the department are not liable for any damages that result from an authority's use of state highway right-of-way or access to the state highway system under this chapter, regardless of the legal theory, statute, or cause of action under which liability is asserted.

The amendment to **CSHB 1892** was read.

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

### **Floor Amendment No. 3**

Amend Floor Amendment No. 2 by Carona to **CSHB 1892** as follows:

1. Page 1, between lines 9 and 10, insert the following:

Section 223.201(f), Transportation Code does not apply to a comprehensive development agreement in connection with a project that:

(a) that includes one or more managed lane facilities to be added to an existing controlled-access highway;

(b) the major portion of which is located in a nonattainment or near nonattainment air quality area as designed by the United States Environmental Protection Agency; and

(c) for which the department has issued a request for qualifications before the effective date of this section.

2. Page 1, between lines 12 and 13, insert the following:

Section 370.305(d), Transportation Code does not apply to a comprehensive development agreement in connection with a project that:

(a) that includes one or more managed lane facilities to be added to an existing controlled-access highway;

(b) the major portion of which is located in a nonattainment or near nonattainment air quality area as designed by the United States Environmental Protection Agency; and

(c) for which the department has issued a request for qualifications before the effective date of this section.

The amendment to Floor Amendment No. 2 to **CSHB 1892** was read and was adopted by a viva voce vote.

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

Question recurring on the adoption of Floor Amendment No. 2 to **CSHB 1892**, 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.

**Floor Amendment No. 4 was not offered.**

Senator Harris offered the following amendment to the bill:

**Floor Amendment No. 5**

Amend the **CSHB 1892** as follows:

(1) On page 2, line 3, strike "90" and substitute "60".

The amendment to **CSHB 1892** was read and was adopted by a viva voce vote.

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

Senator Shapiro offered the following amendment to the bill:

**Floor Amendment No. 6**

Amend **CSHB 1892** (Senate committee printing) as follows:

(1) Add a new SECTION 10 to read as follows and renumber subsequent sections appropriately:

SECTION 10. Section 366.301, Transportation Code, is amended by adding the following new Subsection 366.301(e):

(e) An action of an authority under this chapter must comply with the requirements of applicable federal law, if any, including standards regarding the role of metropolitan planning organizations under federal law, the use of toll revenue, the planning, design, financing, construction, and operation of turnpike projects, and the use of right-of-way of and access to federal-aid highways, to the extent such standards are otherwise applicable to an authority's turnpike project. Nothing in this chapter shall impair the ability of the commission or the department to ensure compliance with any federal requirement enabling the state to receive federal highway money.

The amendment to **CSHB 1892** was read and was adopted by a viva voce vote.

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

Senator Watson offered the following amendment to the bill:

**Floor Amendment No. 7**

Amend **CSHB 1892** (Senate committee printing) as follows:

(1) Add a new SECTION \_\_\_\_ to read as follows and renumber subsequent sections appropriately:

SECTION \_\_\_\_ . Section 370.301(d), Transportation Code, is amended as follows:

(d) The commission or department may use federal money for any purpose described by this chapter. An action of an authority under this chapter or chapter 228 must comply with the requirements of applicable federal law, if any, including standards regarding the role of metropolitan planning organizations under federal law, the use of toll revenue, the planning, design, financing, construction, and operation of turnpike projects, and the use of right-of-way of and access to federal-aid highways, to the extent such standards are otherwise applicable to an authority's turnpike project. Nothing in this chapter or chapter 228 shall impair the ability of the commission or the department to ensure compliance with any federal requirement enabling the state to receive federal highway money.

The amendment to **CSHB 1892** 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. 7.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 8**

Amend **CSHB 1892** by adding the following SECTION to the bill, appropriately numbered, and renumbering existing SECTIONS accordingly:

SECTION \_\_\_\_ . Subchapter A. Chapter 284, Transportation Code, is amended by adding Section 284.010 to read as follows:

Sec. 284.010. CONTRACTOR CONTRIBUTIONS PROHIBITED. (a) A person who enters, or may enter, into a contract with a county under this chapter may not make a political contribution to a person who is a commissioner or county judge of the county or who is a candidate for the office of commissioner or county judge of the county.

(b) A person who violates Subsection (a) commits an offense that is a Class A misdemeanor.

(c) If conduct that constitutes an offense under this section also constitutes an offense under another law of this state, the actor may be prosecuted under this section or the other law.

The amendment to **CSHB 1892** was read.

**POINT OF ORDER**

Senator Williams raised a point of order against further consideration of Floor Amendment No. 8, stating that it was not germane to the body of the bill.

**POINT OF ORDER RULING**

The President ruled that the point of order was well-taken and sustained.

**APPEAL OF POINT OF ORDER RULING**

Pursuant to Senate Rules 5.15 and 20.02, an appeal by Senator Duncan was made to the President's ruling on the point of order raised by Senator Williams. Accordingly, the Dean of the Senate, Senator Whitmire, took the Chair.

Question — Shall the ruling of the President be sustained?

Senator Carona moved to call the previous question.

Senator Duncan withdrew the appeal of the President's ruling.

The ruling by the President was sustained.

**MOTION TO SUSPEND SENATE RULES 7.11(a) AND 7.15**  
**(Committee Substitute Bills)**  
**(Germaneness)**

Senator Duncan moved to suspend Senate Rules 7.11(a) and 7.15 as they relate to the germaneness of Floor Amendment No. 8 to **CSHB 1892**.

The motion was lost by the following vote: Yeas 4, Nays 27.

Yeas: Averitt, Duncan, Ogden, Uresti.

Nays: Brimer, Carona, Deuell, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

**(President in Chair)**

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

**CSHB 1892** as amended was passed to third reading by the following vote: Yeas 28, Nays 3.

Yeas: Brimer, Carona, Deuell, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Averitt, Duncan, Ogden.

**COMMITTEE SUBSTITUTE**  
**HOUSE BILL 1892 ON THIRD READING**

Senator Williams moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSHB 1892** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Brimer, Carona, Deuell, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Averitt, Duncan, Ogden, Wentworth.

### 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 **CSHB 1892**, 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 **CSHB 1892** 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 27, Nays 4.

Yeas: Brimer, Carona, Deuell, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Nelson, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Averitt, Duncan, Lucio, Ogden.

### LEGISLATIVE INTENT

On motion of Senator Seliger and by unanimous consent, the exchange between Senators Williams and Seliger regarding **CSHB 1892** was ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Seliger:** Thank you Senator Williams. It's important, in the context of this bill, to establish some intent because there's some different renditions of CDA and I would like to know how you construe them. They're particularly important in the districts represented by Senator Duncan and Senator Uresti and myself. In House Bill 1892, the toll project under 201 of the Transportation Code's provisions that defines the toll project to mean more and more toll lanes, or in a toll highway constructed, maintained, or operated as part of the state highway system, including its improvements and things like that, describes the items that one would find in such project, bridges, toll booths, and toll plazas. But basically, we're referring to a project where the person driving in a vehicle pays for the use of the road, which we described as a toll project, is that correct?

**Senator Williams:** I believe that's correct, Senator Seliger.

**Senator Seliger:** OK. In this district, there are two major proposed corridors that really merge, La Entrada al Pacifico and Ports-to-Plains. And it's my understanding—

**Senator Williams:** Could you repeat that? I didn't quite understand what the two—

**Senator Seliger:** La Entrada al Pacifico and Ports-to-Plains.

**Senator Williams:** OK.

**Senator Seliger:** And it's my understanding that these corridors may eventually utilize what are referred to as utility corridors for financing, and the way they intend to utilize that is to find a private entity that would pay for the road portions of those in order to use the utility ways underneath those roads and provide the road with no toll booths, with no vehicle tolls, but we'll be able to provide and use those utility corridors, used for natural gas, water in certain cases, electricity, to pay for those roads. There would be an agreement between the private participant and the utility companies paying it for use of the corridor and the funds received would go for paying for the road. For the purpose of legislation, it's my understanding, these utility corridors would be exempt from the moratorium language in this legislation. Is that correct?

**Senator Williams:** It's my belief that this legislation does not touch the utility corridors.

**Senator Seliger:** OK. That's what I needed to know. Thank you very much.

#### MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

April 27, 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:

**SB 271**, Relating to the qualifications to serve as an associate judge in certain family law proceedings.

**SB 526**, Relating to providing that a municipality may allow a municipal fire marshal or arson investigator to travel in an unmarked municipal vehicle when performing official duties.

**SB 673**, Relating to allowing a student receiving special education services to participate in a graduation ceremony after the fourth year of high school.

**SB 699**, Relating to the use of only parts of driver's license and social security numbers in certain court documents.

(Amended)

**SB 849**, Relating to the submission of annual reports by farm mutual insurance companies.

**SB 884**, Relating to the regulation of consumer debt management services.

**SB 1012**, Relating to the establishment of regional participation agreements between certain municipalities and districts; authorizing the issuance of bonds.  
(Committee Substitute)

**SB 1106**, Relating to county accounting procedures regarding certain audits, debts, and records.  
(Committee Substitute)

**SB 1340**, Relating to the requirements for a surveyor-in-training certificate.

**SB 1375**, Relating to the issuance of commercial paper notes by certain regional transportation authorities.

**SB 1405**, Relating to the requirement that the chief appraiser of an appraisal district provide an estimate of taxable value and related assistance to certain taxing units.

**SB 1672**, Relating to nitrogen oxide allowance allocation adjustments and the incorporation of modifications to federal rules under the state implementation plan.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

### **SENATE BILL 482 WITH HOUSE AMENDMENTS**

Senator Fraser called **SB 482** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

#### **Amendment**

Amend **SB 482** by substituting in lieu thereof the following:

#### **A BILL TO BE ENTITLED AN ACT**

relating to competition and customer choice in the retail electric power market; providing an administrative penalty.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:**

**SECTION 1.** Sections 17.157(a) and (b), Utilities Code, are amended to read as follows:

(a) The commission may investigate or resolve disputes between a residential retail customer and a billing utility, service provider, telecommunications utility, retail electric provider, or electric utility.

(b) In exercising its authority under Subsection (a), the commission may:

(1) order a billing utility, service provider, retail electric provider, or electric utility to produce information or records;

(2) require that all contracts, bills, and other communications from a billing utility, service provider, retail electric provider, or electric utility display a working toll-free telephone number that residential customers may call with complaints and inquiries;

(3) require a billing utility, service provider, retail electric provider, or electric utility to refund or credit overcharges or unauthorized charges with interest if the billing utility, service provider, retail electric provider, or electric utility has failed to comply with commission rules or a contract with the residential customer;

(4) order appropriate relief to ensure that a residential customer's choice of a telecommunications service provider, a retail electric provider, or an electric utility that encompasses a geographic area in which more than one provider has been certificated is honored;

(5) require the continuation of service to a residential [~~or small commercial~~] customer while a dispute is pending regarding charges the customer has alleged were unauthorized; and

(6) investigate an alleged violation.

SECTION 2. Section 39.051, Utilities Code, is amended by adding Subsection (h) to read as follows:

(h) On or before January 1, 2008, an electric utility and the competitive affiliates of the utility created in accordance with Subsection (b) and owned by a common holding company each shall:

(1) have a name and logo that is distinct from the name and logo of each of the other entities owned by the common holding company and distinct from the name and logo of the common holding company;

(2) have its board of directors composed exclusively of individuals who are not members of the board of directors of any of the other entities owned by the common holding company and are not members of the board of the common holding company;

(3) have a chief executive officer who is the chief executive officer only of that entity;

(4) have its headquarters located in a building separate and apart from the building or buildings in which the headquarters of any of the other entities owned by the common holding company is located or in which the headquarters of the common holding company is located;

(5) maintain an arm's-length relationship with the other entities owned by the common holding company;

(6) enter into transactions with another entity owned by the common holding company only on a commercially reasonable basis and only as approved by a majority of the directors of its governing board of directors;

(7) prepare its separate annual financial statement in accordance with generally accepted accounting principles showing its assets and liabilities as separate and distinct from the assets of the other entities owned by the common holding company; and

(8) ensure that the commission has complete access to all of the entity's books and records pertaining to transactions between the entity and another entity owned by the common holding company.

SECTION 3. Section 39.101, Utilities Code, is amended by adding Subsection (i) to read as follows:

(i) A retail electric provider may not state or imply that it can provide a level of reliability of electric service or preferential treatment in the restoration of service following an outage that is better than another provider can provide. A retail electric provider may make claims regarding the provider's customer service reliability. The commission may impose an administrative penalty for a violation of this subsection in accordance with Section 15.024. A violation of this subsection shall be included in the highest class of violations in the classification system established by the commission under Section 15.023.

SECTION 4. Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.110 to read as follows:

Sec. 39.110. PROMOTION OF RESIDENTIAL CUSTOMER CHOICE. (a) A reference in this section to "retail electric provider" includes:

(1) a successor in interest to the retail electric provider; and

(2) a provider that was an affiliate of the retail electric provider on December 31, 2006.

(b) The purpose of this section is to promote customer choice for residential customers by imposing a charge on certain retail electric providers to provide an additional incentive for them to compete for residential customers.

(c) This section applies only to a retail electric provider with more than 250,000 residential customers in this state that on December 31, 2006, was required to offer service to residential customers at the price to beat in accordance with Section 39.202. This section does not apply to a retail electric provider at any time after the retail electric provider has not been assessed a charge under Subsection (d) for two consecutive years.

(d) The commission annually shall impose a charge on a retail electric provider if the gross number of residential customers the provider gained during a calendar year, as measured by move-in and switch transactions processed by the independent organization, in areas where customer choice is available outside the transmission and distribution utility service territory in which it was required to offer the price to beat was less than the following customer target number:

(1) for a retail electric provider with one million or more residential customers in this state on December 31, 2006, a gain of 90,000 residential customers; and

(2) for a retail electric provider with fewer than one million residential customers in this state on December 31, 2006, a gain of 45,000 residential customers.

(e) The annual charge the commission shall impose under Subsection (d) is computed by multiplying the difference between the applicable target number of residential customers gained as provided by Subsection (d)(1) or (2) and the gross number of residential customers that the retail electric provider actually gained during the relevant calendar year by:

(1) \$100 on December 31, 2007;

(2) \$200 on December 31, 2008; and

(3) \$300 on December 31, 2009.

(f) Money collected from the charge assessed under this section may be appropriated only for programs devised and directed by the commission as provided by this subsection. If appropriations from the system benefit fund are sufficient to assist low-income electric customers by providing the 10 percent reduced rate prescribed by Section 39.903(h), the money collected from the charges under Subsection (d) may be used only for a residential customer education program under Section 39.903, including the provision of call center services when the commission conducts a customer education program under Section 39.2021(e). If appropriations from the system benefit fund are not sufficient to assist low-income electric customers by providing the 10 percent reduced rate prescribed by Section 39.903(h), the money collected from the charges under Subsection (d) may be appropriated only for the following purposes, in the following order of priority:

(1) to assist low-income electric customers by providing the 10 percent reduced rate prescribed by Section 39.903(h); and

(2) for a residential customer education program under Section 39.903, including the provision of call center services when the commission conducts a customer education program under Section 39.2021(e), using money remaining after the reduced rate prescribed by Section 39.903(h) has been fully implemented.

(g) The commission may adopt rules as necessary or appropriate to carry out this section.

(h) This section expires March 31, 2010.

SECTION 5. Subchapter E, Chapter 39, Utilities Code, is amended by adding Section 39.2021 to read as follows:

Sec. 39.2021. ASSISTANCE IN CUSTOMER CHOICE. (a) In this section, "residential customers under a price to beat tariff on December 31, 2006" includes:

(1) residential customers served at the price to beat on that date;

(2) residential customers who received discounts off of the price to beat on that date in the form of reduced rates, bill credits, or customer appreciation bonuses without affirmatively choosing an electric service plan other than the price to beat; and

(3) any other residential customers who as of December 31, 2006, had not affirmatively chosen an electric service plan.

(b) This section applies only to:

(1) a retail electric provider that served residential customers under a price to beat tariff on December 31, 2006; and

(2) the residential customers under a price to beat tariff on December 31, 2006, served by the retail electric provider.

(c) Until March 1, 2008, a retail electric provider shall assist the provider's residential customers who have not affirmatively chosen an electric service plan in choosing an alternative electric service plan offered by the retail electric provider.

(d) After March 1, 2008, a retail electric provider may provide to the provider's residential customers who have not affirmatively chosen an electric service plan offered by the provider a ballot that describes the alternative electric service plans the provider offers to residential customers and that allows the customer to affirmatively choose a particular alternative electric service plan. If a residential customer does not affirmatively choose an alternative electric service plan under the balloting process,

the provider shall, after giving the customer at least 45 days' notice, modify the terms of service for the customer to conform to the terms of service for an alternative electric service plan offered to residential customers that does not include a termination fee. The notice may be included with the ballot provided under this subsection.

(e) If a retail electric provider did not provide ballots to its residential customers under Subsection (d) or if the provider paid a charge imposed under Section 39.110(d) for the calendar year 2007, on or before May 1, 2008, the provider shall release to the commission the names and addresses of its residential customers who have not affirmatively chosen an alternative electric service plan. The commission may use this customer information to conduct a customer education program under Section 39.903 to inform those residential customers of the availability of an alternative electric service plan offered by that provider or of alternative retail electric providers from whom the customers may receive service.

(f) For purposes of this section, a residential customer is not considered to have affirmatively chosen an electric service plan offered by a retail electric provider if electric service is provided under a plan that is initiated through negative option marketing.

(g) A retail electric provider shall include on a ballot provided under Subsection (d) the following statement: "You may obtain important information that will allow you to compare the products offered on this ballot with other retail electric services by contacting the Public Utility Commission of Texas or by viewing the Internet site at <http://www.powertochoose.com>."

SECTION 6. Section 39.902, Utilities Code, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

(c) After the opening of the retail electric market, the commission shall conduct ongoing customer education designed to help customers make informed choices of electric services and retail electric providers. As part of ongoing education, the commission may provide customers information concerning prices available in the marketplace, savings available to customers by switching retail electric providers or service plans, and information concerning specific retail electric providers, including instances of complaints against them and records relating to quality of customer service.

(d) The commission may require a transmission and distribution utility to issue public service announcements that inform customers that service reliability and the restoration of electric service following an outage is not contingent on the customer's receiving service from a particular retail electric provider.

SECTION 7. The change in law made to Section 17.157(a), Utilities Code, by this Act does not apply to a dispute for which a final administrative order is entered on or before the effective date of this Act.

SECTION 8. This Act takes effect immediately if it 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 immediate effect, this Act takes effect September 1, 2007.

### **Floor Amendment No. 1**

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

(1) Strike SECTION 1 of the bill (page 1, line 5 through page 2, line 12) and SECTION 7 of the bill (page 9, lines 19-22).

(2) Strike SECTION 2 of the bill (page 2, line 13, through page 3, line 20) and substitute the following:

SECTION 2. Section 39.051, Utilities Code, is amended by adding Subsection (h) to read as follows:

(h) On or before January 1, 2008, a transmission and distribution utility that is an affiliate of a power generation company or a retail electric provider under Section 11.003(2) or 11.006 shall:

(1) have a name and logo that is distinct from the name and logo of its affiliated power generation company or retail electric provider;

(2) have its board of directors composed exclusively of individuals who are not members of the board of directors of its affiliated power generation company or retail electric provider;

(3) have a chief operating officer who is not the chief operating officer of its affiliated power generation company or retail electric provider;

(4) have its headquarters located in a building separate and apart from the building or buildings in which the headquarters of its affiliated power generation company or retail electric provider is located;

(5) maintain an arm's-length relationship with its affiliated power generation company or retail electric provider;

(6) enter into transactions with its affiliated power generation company or retail electric provider only on a commercially reasonable basis and only as approved by a majority of the directors of its governing board of directors;

(7) prepare its separate annual financial statement in accordance with generally accepted accounting principles showing its assets and liabilities as separate and distinct from the assets of its affiliated power generation company or retail electric provider; and

(8) ensure that the commission has complete access to all of the transmission and distribution utility's books and records pertaining to transactions between the utility and its affiliated power generation company or retail electric provider.

(3) In the recitation to SECTION 3 of the bill (page 3, line 22), strike "adding Subsection (i)" and substitute "amending Subsection (h) and adding Subsection (i)".

(4) In Section 39.101, Utilities Code, as amended by SECTION 3 of the bill (page 3, between lines 22 and 23), insert the following:

(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 in a county 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 in a county 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 previous day's highest temperature did not exceed 32 degrees Fahrenheit anywhere in the county, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service reports; [~~or~~]

(2) a day for which the National Weather Service issues a heat advisory for the [~~any~~] county or when that advisory has been issued on any one of the preceding two calendar days in the county; or

(3) a day for which the heat index in the county reaches 105 degrees Fahrenheit, if the National Weather Service does not issue heat advisories for that county, or when the heat index in that county reaches 105 degrees Fahrenheit [~~in the relevant service territory, or when such an advisory has been issued]~~ on any one of the preceding [~~previous~~] two calendar days.

(5) Add to the bill the following SECTION, numbered appropriately:

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 residential 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 residential 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 residential 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).

(h) The commission by rule shall prohibit a customer who receives a deferred payment plan under Subsection (d) and who owes a past due deferred balance from switching to a different retail electric provider.

(6) Add to the bill the following SECTION, numbered appropriately:

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

Sec. 39.1016. CANCELLATION FEE. A retail electric provider may not charge a residential customer who requests cancellation of retail electric service provided on a month-to-month basis a fee relating to cancellation.

(7) Strike the first sentence of Section 39.110(c), Utilities Code, as added by SECTION 4 of the bill (page 4, lines 18-21) and substitute the following:

This section applies only to a retail electric provider that, on December 31, 2006, had more than 250,000 residential customers in this state and was required to offer service to residential customers at the price to beat in accordance with Section 39.202.

(8) Add to the bill the following SECTION, numbered appropriately:

SECTION \_\_\_\_\_. (a) The legislature finds that:

(1) the "filed rate" doctrine is at odds with the intent of the state legislature to restructure the electric industry in this state;

(2) the "filed rate" doctrine in a private right of action for a violation of Section 39.157, Utilities Code, or of Sections 15.01 through 15.26, Business & Commerce Code, is abolished; and

(3) the deregulated wholesale and retail markets in ERCOT are the relevant markets for the purposes of determining standing to sue and the existence of market power abuses under Section 39.157, Utilities Code.

(b) Section 39.157, Utilities Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) To prevent market power abuses or other violations of this section, the [The] commission shall monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. On a finding that market power abuses or other violations of this section are occurring, the commission shall require reasonable mitigation of the market power by ordering the construction of additional

transmission or distribution facilities, by seeking an injunction or civil penalties as necessary to eliminate or to remedy the market power abuse or violation as authorized by Chapter 15, by imposing an administrative penalty as authorized by Chapter 15, or by suspending, revoking, or amending a certificate or registration as authorized by Section 39.356. Section 15.024(c) does not apply to an administrative penalty imposed under this section. For purposes of this subchapter, market power abuses are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition, including practices that tie unregulated products or services to regulated products or services or unreasonably discriminate in the provision of regulated services. For purposes of this section, "market power abuses" include predatory pricing, withholding of production, precluding entry, and collusion. A violation of the code of conduct provided by Subsection (d) that materially impairs the ability of a person to compete in a competitive market shall be deemed to be an abuse of market power. The possession of a high market share in a market open to competition may not, of itself, be deemed to be an abuse of market power; however, this sentence shall not affect the application of state and federal antitrust laws.

(a-1) Notwithstanding any other law, a qualifying person may pursue a private right of action under Section 39.158(b) or under Sections 15.01 through 15.26, Business & Commerce Code, based on a violation of this section, for damages or for injunctive relief, against a power generation company, a power marketer, a retail electric provider, or any other supplier of wholesale or retail electricity, other than a transmission and distribution utility, operating in ERCOT. A qualifying person is not required to bring an administrative action before pursuing a private right of action. In this subsection, "qualifying person" means a retail electric provider that meets the requirements for standing to sue for market power abuses under Sections 15.01 through 15.26, Business & Commerce Code.

(9) Add to the bill the following SECTION, numbered appropriately:

SECTION \_\_\_\_\_. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.159 to read as follows:

Sec. 39.159. CONSIDERATION AND APPROVAL OF CERTAIN TRANSACTIONS. (a) To protect retail customers in this state, notwithstanding any other provision of this title, an electric utility or transmission and distribution utility must report to the commission not less than 120 days before the closing of any transaction in which:

(1) the electric utility or transmission and distribution utility will be merged or consolidated with another electric utility or transmission and distribution utility; or

(2) at least 50 percent of the stock of the electric utility or transmission and distribution utility will be sold.

(b) The parties to a transaction described by Subsection (a) may not be required to obtain commission approval or to complete the commission review process before the closing of the transaction.

(c) The commission shall review a transaction described by Subsection (a) to determine whether the transaction is consistent with the public interest under the standards provided by Section 14.101.

(d) If an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility files with the commission a stipulation, representation, or commitment in advance of or as part of a filing described by this section or by Section 14.101, the commission may enforce the stipulation, representation, or commitment to the extent that the stipulation, representation, or commitment is consistent with the standards provided by this section and Section 14.101.

(10) In Section 39.2021(d), Utilities Code, as added by SECTION 5 of the bill (page 8, line 1), strike "service plan offered to residential customers" and substitute "service plan offered by the provider to residential customers".

(11) Add to the bill the following SECTION, numbered appropriately:

SECTION \_\_\_\_\_. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.911 to read as follows:

Sec. 39.911. BILL FOR UTILITY SERVICES. A retail electric provider with more than 250,000 residential customers in this state that, on December 31, 2006, was required to offer service to residential customers at the price to beat under Section 39.202, shall include on the first page of a bill for services sent to a customer the following language printed in at least 12-point type: "To see competitor pricing and service plans, please visit the Public Utility Commission website: [www.powertochoose.com](http://www.powertochoose.com)."

(12) Renumber SECTIONS accordingly.

## **Floor Amendment No. 2**

Amend Amendment No. 1 by King of Parker to **CSSB 482** by adding the following appropriately numbered items and renumbering subsequent items accordingly:

( ) In Section 39.2021(c), Utilities Code, as added by SECTION 5 of the bill (page 7, line 12), strike "March 1, 2008" and substitute "September 1, 2007".

( ) In Section 39.2021(d), Utilities Code, as added by SECTION 5 of the bill (page 7, line 17), strike "March 1, 2008, a retail electric provider may" and substitute "September 1, 2007, a retail electric provider shall".

( ) In Section 39.2021(d), Utilities Code, as added by SECTION 5 of the bill (page 7, line 26), between "least 45" and "days' notice", insert ", but not more than 90,".

( ) In Section 39.2021(d), Utilities Code, as added by SECTION 5 of the bill (page 8, line 2), strike "may be included" and substitute "shall be included".

( ) In Section 39.2021(e), Utilities Code, as added by SECTION 5 of the bill (page 8, lines 4-5), strike "a retail electric provider did not provide ballots to its residential customers under Subsection (d) or if".

**Floor Amendment No. 4**

Amend Floor Amendment No. 1 by P. King to **CSSB 482** as follows:

(1) In existing Section 39.101, Utilities Code, page 2, lines 24-25 strike the following:

"providing for a period not less than five months for a customer to pay deferred amount".

(2) In new Section 39.1015, Utilities Code, page 3, line 24 between "customer" and ":" add the following:

"who is on the list maintained by the Low-Income Discount Administrator established under 39.903, or if there is no current list, an electric customer".

(3) In new Section 39.1015, Utilities Code, page 5, line 24, strike "25" and replace with "33".

(4) In new Section 39.1015, Utilities Code, page 6, line 12, strike "25" and replace with "33".

(5) In new Section 39.1015, Utilities Code, page 6, line 14, strike "five" and replace with "three".

**Floor Amendment No. 5**

Amend Amendment No. 1 by P. King to **CSSB 482** as follows:

(1) On page 2, line 20, strike "in a county".

(2) On page 2, lines 22-23, strike "in a county".

(3) Strike page 2, line 28 through page 3, line 11, and substitute the following:

(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.

**Floor Amendment No. 6**

Amend the P. King Amendment No. 1 to **CSSB 482** by adding the following:

(1) On page 8, after line 26, insert the following and renumber subsequent sections.

SECTION 6. Subchapter E, Chapter 39, Utilities Code, is amended by adding Section 39.2025 to read as follows:

Sec. 39.2025. MARKET REVIEW BASED ON PRICE OF ELECTRICITY.

(a) The commission shall review, as described in Subsection (b), the price of the electric service plan under which residential 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 if the price charged by a retail electric provider to such residential customers averages more than one and one-half cents per kilowatt hour higher for more than a six month period than the average of the prices actually charged on customers' bills by other retailers for comparable electric service plans in the relevant transmission and distribution utility service territory.

(b) If the commission determines that the retail electric provider's price charged to such customers is not reasonable based on its review, the commission shall 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 six month average of the prices charged by other retailers for comparable electric service plans in the relevant transmission and distribution utility service territory.

(d) The commission shall adopt rules to implement this Section and to ensure that the intent of this Section is carried out.

(e) This section shall not apply in the event of a natural disaster or other event of force majeure which causes interruption of the normal course of supply of fuel used in the generation of electricity within the state.

(f) This section expires on January 1, 2009.

#### **Floor Amendment No. 8**

Amend Floor Amendment No. 6 to **CSSB 482** by Oliveira by striking the text of the amendment and substituting:

Amend **CSSB 482** (House committee printing) in Section 5 of the bill as follows:

(1) In the heading to added Section 39.2021, Utilities Code (page 6, line 22), strike "CHOICE." and substitute "CHOICE; RATE REDUCTION."

(2) At the end of added Section 39.2021, Utilities Code (page 8, between lines 26 and 27), insert a new Subsection (h) of that section to read:

(h) On or before January 1, 2008, a retail electric provider shall give to a residential customer under a price to beat tariff on December 31, 2006, a rate reduction of 15 percent for a term of at least 12 months. The rate reduction given under this subsection may not be considered as a residential customer's affirmative choice of an electric service plan for purposes of this section.

#### **Floor Amendment No. 9**

Substitute the following for the Oliveira Amendment No. 8 to the P. King Amendment to **CSSB 482**:

Amend Amendment No. 1 by P. King to **CSSB 482** by adding the following appropriately numbered item to read as follows and renumbering subsequent items as necessary as follows:

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

SECTION \_\_\_\_\_. Subchapter E, Chapter 39, Utilities Code, is amended by adding Section 39.2025 to read as follows:

Sec. 39.2025. ELECTRICITY RATE REDUCTION. (a) In this section, "residential customers under a price to beat tariff on December 31, 2006" means residential customers who both:

(1) were served at the price to beat on December 31, 2006; and

(2) have not affirmatively chosen an electric service plan after December 31, 2006.

(b) Notwithstanding any other provision of this code, on the effective date of this section, a retail electric provider shall reduce the price charged to residential customers under a price to beat tariff on December 31, 2006, by 15 percent from the price charged on December 31, 2006.

(c) Every six months, the retail electric provider shall increase or decrease the price charged to residential customers under a price to beat tariff on December 31, 2006, by a percentage equal to the percentage by which alternative electric service plans increased or decreased during that period.

(d) Notwithstanding Subsections (b) and (c), the commission shall authorize a retail electric provider to adjust the price charged to residential customers under a price to beat tariff on December 31, 2006, to reflect increases in fuel costs resulting from natural disasters, other acts of God, or acts of war.

(e) This section expires September 1, 2009.

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

Amend proposed Floor Amendment No. 1 by P. King to **CSSB 482** (House committee printing) as follows:

(1) On page 9, beginning on line 25, strike "the commission not less than 120 days before the closing of any transaction in which" and substitute "and obtain approval from the commission prior to closing any transaction in which".

(2) On page 10, line 1, strike "." and substitute "; or".

(3) On page 10, line 2, insert the following:

"(3) a controlling interest or operational control of the electric utility or transmission and distribution utility will be transferred."

(4) On page 10, line 2 strike Subsection (b) and substitute the following:

"(b) The commission shall approve a transaction under Subsection (a) if it finds that the transaction is in the public interest. In making its determination, the commission shall consider whether the transaction will adversely affect the reliability of service, availability of service, or cost of service of the electric utility or transmission and distribution utility."

(5) On page 10, line 5, strike Subsection (c) and substitute the following:

"(c) The commission shall conclude its review under subsections (a) and (b) within 180 days of filing, without extension."

(6) On page 10, line 18, insert new Subsection (e) to read as follows:

"(e) For a transaction described in Subsection (a) for which a definitive agreement was executed prior to April 1, 2007, the electric utility or transmission and distribution utility shall not be subject to Subsections (a) and (b); provided, however, that the electric utility, transmission and distribution utility, or a person seeking to acquire or merge with an electric utility or transmission and distribution utility, made a filing for review of the transaction, supported by sworn testimony pursuant to Section 14.101 of this title prior to May 1, 2007, and the resulting proceeding was not withdrawn."

**Floor Amendment No. 12**

Substitute the following for the Amendment to Amendment No. 10 by Miller to **CSSB 482**:

Amend Floor Amendment No. 1 by P. King to **CSSB 482** as follows:

(1) Strike item (9) of the amendment (page 9, line 18 through page 10, line 17) and substitute:

(9) Add the following appropriately numbered SECTION to read as follows:

SECTION \_\_\_\_\_. Subchapter D, Chapter 39, Utilities Code, is amended by adding Section 39.159 to read as follows:

Sec. 39.159. CONSIDERATION AND APPROVAL OF CERTAIN TRANSACTIONS. (a) To protect retail customers in this state, notwithstanding any other provision of this title, an electric utility or transmission and distribution utility must report to and obtain approval of the commission before closing any transaction in which:

(1) the electric utility or transmission and distribution utility will be merged or consolidated with another electric utility or transmission and distribution utility;

(2) at least 50 percent of the stock of the electric utility or transmission and distribution utility will be transferred or sold; or

(3) a controlling interest or operational control of the electric utility or transmission and distribution utility will be transferred.

(b) The commission shall approve a transaction under Subsection (a) if the commission finds that the transaction is in the public interest. In making its determination, the commission shall consider whether the transaction will adversely affect the reliability of service, availability of service, or cost of service of the electric utility or transmission and distribution utility. The commission shall make the determination concerning a transaction under this subsection not later than the 180th day after the date the commission receives the relevant report. If the commission has not made a determination before the 181st day after that date, the transaction is considered approved.

(c) Subsections (a) and (b) do not apply to a transaction described by Subsection (a) for which a definitive agreement was executed before April 1, 2007, if an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility made a filing for review of the transaction under Section 14.101 before May 1, 2007, and the resulting proceeding was not withdrawn.

(d) If an electric utility or transmission and distribution utility or a person seeking to acquire or merge with an electric utility or transmission and distribution utility files with the commission a stipulation, representation, or commitment in advance of or as part of a filing under this section or under Section 14.101, the commission may enforce the stipulation, representation, or commitment to the extent that the stipulation, representation, or commitment is consistent with the standards provided by this section and Section 14.101. The commission may reasonably interpret and enforce conditions adopted pursuant to this subsection.

(2) Renumber subsequent SECTIONS accordingly.

**Floor Amendment No. 13**

Amend Amendment No. 1 by P. King to **CSSB 482** on page 10, line 17, by adding after the underlined period "The commission may reasonably interpret and enforce conditions adopted under this section.".

**Floor Amendment No. 15**

Amend **CSSB 482** as follows:

(1) Add the following appropriately numbered SECTIONS:

SECTION \_\_\_\_ . Section 39.903, Utilities Code, is amended by amending Subsections (a), (e), (h), (j), and (l) and adding Subsection (e-1) 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.

(e) Money in the system benefit fund may be appropriated only to provide funding [~~solely~~] for the following [~~regulatory~~] purposes, in the following order of priority:

(1) programs to:

(A) assist low-income electric customers by providing the 10-20 [~~40~~] percent reduced rate prescribed by Subsection (h); and

(B) provide one-time bill payment assistance to electric customers who are or who have in their households one or more seriously ill or disabled low-income persons and who have been threatened with disconnection for nonpayment;

(2) customer education programs;

(3) [~~5~~] administrative expenses incurred by the commission in implementing and administering this chapter, and expenses incurred by the office under this chapter;

(4) [~~3~~] programs to assist low-income electric customers by providing the targeted energy efficiency programs described by Subsection (f)(2); and

(5) the rate reductions for nursing homes under Subsection (e-1)[~~5~~];

~~[(4) programs to assist low-income electric customers by providing the 20 percent reduced rate prescribed by Subsection (h); and~~

~~[(5) reimbursement to the commission and the Health and Human Services Commission for expenses incurred in the implementation and administration of an integrated eligibility process created under Section 17.007 for customer service discounts relating to retail electric service, including outreach expenses the commission determines are reasonable and necessary].~~

(e-1) The commission by rule shall develop and implement a program through which a retail electric provider shall provide a rate reduction for an eligible nursing home customer. The commission shall accept applications from nursing homes for a rate reduction under this subsection and shall determine the rate reduction for each retail electric provider that supplies electricity to each approved nursing home so that each nursing home receives an equal percentage reduction from the rate the nursing home otherwise would be charged. The percentage reduction must be the maximum percentage reduction, not to exceed 20 percent, that the commission may finance from appropriated money available for that purpose. The commission may not apply to that purpose more than an amount equal to five percent of the annual income of the system

benefit fund, including the costs of administering this subsection. A nursing home is eligible for a rate reduction under this subsection only if the nursing home is a nonprofit entity and at least half of the entity's nursing residents are Medicaid eligible.

(h) The commission shall adopt rules for a retail electric provider to determine a reduced rate for eligible customers to be discounted off the standard retail service package as approved by the commission under Section 39.106, or the price to beat established by Section 39.202, whichever is lower. Municipally owned utilities and electric cooperatives shall establish a reduced rate for eligible customers to be discounted off the standard retail service package established under Section 40.053 or 41.053, as appropriate. The reduced rate for a retail electric provider shall result in a total charge that is at least 10 percent and, if sufficient money in the system benefit fund is available, up to 20 percent, lower than the amount the customer would otherwise be charged. ~~[To the extent the system benefit fund is insufficient to fund the initial 10 percent rate reduction, the commission may increase the fee to an amount not more than 65 cents per megawatt hour, as provided by Subsection (b). If the fee is set at 65 cents per megawatt hour or if the commission determines that appropriations are insufficient to fund the 10 percent rate reduction, the commission may reduce the rate reduction to less than 10 percent.]~~ For a municipally owned utility or electric cooperative, the reduced rate shall be equal to an amount that can be fully funded by that portion of the nonbypassable fee proceeds paid by the municipally owned utility or electric cooperative that is allocated to the utility or cooperative by the commission under Subsection (e) for programs for low-income customers of the utility or cooperative. The reduced rate for municipally owned utilities and electric cooperatives under this section is in addition to any rate reduction that may result from local programs for low-income customers of the municipally owned utilities or electric cooperatives.

(j) The commission shall adopt rules providing for methods of enrolling customers eligible to receive reduced rates under Subsection (h). The rules must provide for automatic enrollment as one enrollment option. ~~On [The Texas Department of Human Services, or]~~ request of the commission, each appropriate governmental entity shall assist in the adoption and implementation of these rules. Each assisting governmental entity [The commission and the Texas Department of Human Services] shall enter into a memorandum of understanding with the commission establishing the respective duties of the commission and the entity [department] in relation to the automatic enrollment. Each assisting governmental entity shall supply to the commission any information necessary for the commission to implement automatic enrollment for reduced rates under Subsection (h). The commission shall prepare a report each calendar quarter with information concerning the enrollment of customers eligible for the reduced rates. The commission shall compile the information into an annual report to be published for periodic distribution not later than January 1 of each odd-numbered year. The commission shall send a copy of each annual and quarterly report to each member of the legislature and the electric utility restructuring legislative oversight committee.

(l) For the purposes of this section, a "low-income electric customer" is an electric customer:

(1) whose household income is not more than 125 percent of the federal poverty guidelines; or

(2) in whose household resides a person who:

(A) receives food stamps from the Health and Human Services Commission [Texas Department of Human Services] or medical assistance from a state agency administering a part of the medical assistance program;

(B) receives federal housing assistance;

(C) has a child enrolled in the national school lunch program for free or reduced-price lunches; or

(D) receives lifeline telephone service.

SECTION \_\_\_\_. The Public Utility Commission of Texas shall adopt rules required by Section 39.903, Utilities Code, as amended by this Act, not later than January 1, 2008.

(2) Renumber subsequent SECTIONS of the bill accordingly.

### **Floor Amendment No. 16**

Amend Floor Amendment No. 15 to **CSSB 482** by Turner on page 3 of the amendment by striking lines 10-17 and substituting:

charged. To the extent the system benefit fund is insufficient to fund the initial 10 percent rate reduction, the commission may increase the fee to an amount not more than 65 cents per megawatt hour, as provided by Subsection (b). If the fee is set at 65 cents per megawatt hour or if the commission determines that appropriations are insufficient to fund the 10 percent rate reduction, the commission may reduce the rate reduction to less than 10 percent. For a municipally owned utility or electric

### **Floor Amendment No. 17**

Amend the Turner amendment to **CSSB 482** by adding:

(e) (3) reimbursement to the Department of Family and Protective Services, up to \$1.2 million for fiscal year 2008, and up to \$1.2 million for fiscal year 2009, for expenses incurred in providing full and/or partial payments of electric utility bills for individuals determined to be eligible for those payments through the adult protective services program of the department.

### **Floor Amendment No. 18**

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

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

Sec. 17.008. PROTECTION OF RESIDENTIAL ELECTRIC SERVICE APPLICANTS AND CUSTOMERS. (a) In this section and in Section 17.009:

(1) "Credit history":

(A) means information regarding an individual's past history of:

(i) financial responsibility;

(ii) payment habits; or

(iii) creditworthiness; and

(B) does not include an individual's outstanding balance for retail electric or telecommunications service.

(2) "Credit score" means a score, grade, or value that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), using data from a credit history in any type of model, method, or program for the purpose of grading or ranking credit report data, whether derived electronically, from an algorithm, through a computer software application model or program, or through any other analogous process.

(3) "Utility payment data" means a measure that is derived by a consumer reporting agency, as defined under Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)), from a model specifically designed to correlate to utility payment histories.

(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.~~

~~(d) On [(f) After the date described in Subsection (b), 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.~~

~~(e) [(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 ~~[(h) This section does not limit]~~ a retail electric provider's authority to require a deposit or advance payment as a condition of service.

(h) ~~[(h)]~~ Notwithstanding Subsection (c) ~~[(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.

### **Floor Amendment No. 20**

Amend **CSSB 482** by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Chapter 39, Utilities Code, is amended by adding Subchapter K to read as follows:

#### SUBCHAPTER K. STATUS OF COMPETITION IN CERTAIN NON-ERCOT AREAS

Sec. 39.501. APPLICABILITY. (a) This subchapter applies to an investor-owned electric utility:

(1) that is operating solely outside of ERCOT in areas of this state that were included in the Southwest Power Pool on January 1, 2004;

(2) that was not affiliated with the Southeastern Electric Reliability Council on January 1, 2004; and

(3) to which Subchapter I does not apply.

(b) The legislature finds that circumstances exist that require that areas served by an electric utility described by Subsection (a) not be transitioned to full retail customer choice at this time.

Sec. 39.502. REGULATION OF UTILITY AND TRANSITION TO COMPETITION. (a) Until the later of January 1, 2015, or the date on which an electric utility subject to this subchapter is authorized by the commission to implement customer choice, the rates of the electric utility shall be regulated under traditional cost of service regulation and the electric utility is subject to all applicable regulatory authority prescribed by this subtitle and Subtitle A, including Chapters 14, 32, 33, 36, and 37. Until the date on which an electric utility subject to this subchapter implements customer choice, the provisions of this chapter do not apply to that electric utility, other than this subchapter, Sections 39.904 and 39.905, and the provisions relating to the duty to obtain a permit from the Texas Commission on Environmental Quality for an electric generating facility and to reduce emissions from an electric generating facility.

(b) On or after January 1, 2015, the commission may require an electric utility subject to this subchapter to file a transition to competition plan with the commission. The transition to competition plan must identify how electric utilities subject to this subchapter intend to achieve full customer choice, including an evaluation of the transmission facilities, an explanation of how certification of the power region under

Section 39.152 will be achieved, auctioning rights to generation capacity, or any other measure that is consistent with the public interest. The utility must also include in the transition to competition plan a provision to establish a price to beat for residential customers and commercial customers having a peak load of 1,000 kilowatts or less. The commission may prescribe additional information or provisions that must be included in the plan. The commission shall approve, modify, or reject a plan within 180 days after the date of a filing under this section unless a hearing is requested by any party to the proceeding. If a hearing is requested, the 180-day deadline will be extended one day for each day of the hearing. The transition to competition plan may be updated or amended, subject to commission approval, until the applicable power region is certified as a qualifying power region under Section 39.152 and the plan is approved.

(c) On implementation of customer choice, an electric utility subject to this subchapter is subject to the provisions of this subtitle and Subtitle A to the same extent as other electric utilities, including the provisions of Chapter 37 concerning certificates of convenience and necessity.

Sec. 39.503. CUSTOMER CHOICE AND RELEVANT MARKET AND RELATED MATTERS. The commission may not authorize customer choice until the later of January 1, 2015, or the date the applicable power region has been certified as a qualifying power region under Section 39.152.

Sec. 39.504. EXISTING RIGHTS AND OBLIGATIONS. This subchapter may not be construed to:

(1) interfere with or abrogate the rights or obligations of any party, including a retail or wholesale customer, to a contract with an investor-owned electric utility, federal power marketer, federal power marketing agency, river authority, municipally owned utility, or electric cooperative;

(2) interfere with or abrogate the rights or obligations of a party under a contract or agreement concerning certificated utility service areas; or

(3) result in a change in wholesale power costs to wholesale customers in this state purchasing electricity under wholesale power contracts the pricing provisions of which are based on formulary rates, fuel adjustments, or average system costs.

### **Floor Amendment No. 21**

Amend **CSSB 482** by adding an appropriately numbered SECTION to read as follows and by renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Subchapter Z, Chapter 39, Utilities Code, is amended by adding Section 39.911 to read as follows:

Sec. 39.911. BILL FOR UTILITY SERVICES. A retail electric provider with more than 250,000 residential customers in this state that, on December 31, 2006, was required to offer service to residential customers at the price to beat under Section 39.202, shall include on the first page of a bill for services sent to a customer the following language printed in at least 12-point type: "To see competitor pricing and service plans, please visit the Public Utility Commission website: [www.powertochoose.com](http://www.powertochoose.com)."

**Floor Amendment No. 22**

Amend Floor Amendment No. 21 to **CSSB 482** by Bohac at the end of page 1, line 13, by striking lines 11-13 and substituting:

customer the following statements printed in at least 12-point type:

(1) "To see competitor pricing and service plans, please visit the Public Utility Commission of Texas website: www.powertochoose.com."; and

(2) a statement that a customer may obtain the same information by calling a specified toll-free telephone number.

**Floor Amendment No. 23**

Amend **CSSB 482** by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.1017 to read as follows:

Sec. 39.1017. COMMISSION RULES REGARDING DEPOSITS. (a) In this section, "elderly low-income customer" means an electric customer who is 65 years or older and:

(A) whose household income is not more than 125 percent of the federal poverty guidelines;

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

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

(b) Notwithstanding Section 17.008, the commission by rule shall require a retail electric provider to waive the requirement that an elderly low-income customer applying for residential electric service provide a security deposit or advance payment as a condition of service.

**Floor Amendment No. 24**

Amend **CSSB 482** by adding the following SECTION to the bill, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Subchapter A, Chapter 17, Utilities Code, is amended by adding Section 17.010 to read as follows:

Sec. 17.010. PAYMENT FOR SERVICES. (a) In this section, "retail provider" means a public or private provider of retail electric services. The term includes:

(1) a public utility;

(2) a cooperative corporation;

(3) a municipally owned utility; and

(4) a retail electric provider.

(b) A payment for retail electric services that is mailed to the retail provider using the United States Postal Service is considered made on the date the envelope or cover is postmarked by the postal service only if:

(1) the payment is not required by law or contract to be delivered by a method other than by mail;

(2) the payment has been deposited in the United States mail, with sufficient postage prepaid; and

(3) the envelope or cover has been properly addressed to the retail provider.

(c) A payment that does not conform to Subsection (b) is considered made on the date the payment is delivered to the retail provider.

(b) The change in law made by this section applies only to a payment due on or after the effective date of this Act. A payment due before the effective date of this Act is governed by the law in effect on the date the payment is due, and the former law is continued in effect for that purpose.

(c) Section 17.010, Utilities Code, as added by this section, does not apply to the date a payment for retail electric services is considered made to the extent its application may impair a contract entered into before the effective date of this Act that specifies the date a payment for retail electric services is considered made, and the law at the time the contract was entered into is continued in effect for that purpose.

#### **Floor Amendment No. 25**

Amend Floor Amendment No. 24 by Vo to **CSSB 482** on page 1, line 20, by striking "prepaid;" and substituting "prepaid, with a mark from a post office located in this state;".

#### **Floor Amendment No. 27**

Amend Amendment No. 24 by Vo to **CSSB 482**, by adding a new Subsection (d):

(d) A payment for retail electric services that is submitted electronically to the retail provider is considered made on the date reflected by the time-stamp.

#### **Floor Amendment No. 28**

Amend **CSSB 482** by adding the following appropriately numbered SECTION to read as follows and renumbering subsequent SECTIONS accordingly:

SECTION \_\_\_\_\_. (a) The Public Utility Commission of Texas shall develop a plan to reregulate the production and sale of electricity if, on July 1, 2007, the average price for average residential use of electricity in ERCOT is greater than the average price for average residential use of electricity in the United States.

(b) The plan required by Subsection (a) of this section must include:

(1) possible methods to reverse the restructuring of the electric utility industry made by Chapter 405, Acts of the 76th Legislature, Regular Session, 1999;

(2) an evaluation of the effect on residential electricity prices of each method; and

(3) necessary legislative changes to implement each method.

(c) Not later than January 5, 2009, the Public Utility Commission of Texas shall deliver the plan to the governor, the lieutenant governor, and the electric utility restructuring legislative oversight committee.

#### **Floor Amendment No. 29**

Amend Floor Amendment No. 28 by Burnam to **CSSB 482** as follows:

(1) On line 6, strike "July 1, 2007" and substitute "October 1, 2008".

**Floor Amendment No. 32**

Amend **CSSB 482** by adding the following language:

Sec. 39.105. LIMITATION ON SALE OF ELECTRICITY. (a) After January 1, 2002, a transmission and distribution utility may not sell electricity or otherwise participate in the market for electricity except for the purpose of buying electricity to serve its own needs.

(b) A person or retail electric utility may not provide, furnish, or make available electric service at retail within the certificated service area of an electric cooperative that has not adopted customer choice or a municipally owned utility that has not adopted customer choice. However, this subsection does not prohibit the provision of electric service in multiply certificated service areas to customers of any other retail electric utility.

(c) An affiliated power generation company may not provide, furnish or make available electric service to a consuming facility located in an area in which retail electric service is being lawfully furnished by an electric cooperative.

**Floor Amendment No. 33**

Amend **CSSB 482** (House committee printing) by adding the following SECTION to the bill, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. (a) Subchapter A, Chapter 39, Utilities Code, is amended by adding Section 39.0015 to read as follows:

Sec. 39.0015. DELAY OF RETAIL COMPETITION. (a) Notwithstanding any other provision of this chapter, the commission may not implement or consider the implementation of retail electric competition in an area in this state that is not currently engaged in retail electric competition unless a law enacted after the effective date of this section requires that action.

(b) Not later than the 180th day after the effective date of this Act, an electric utility operating in this state that is subject to traditional cost of service rate regulation and that on the effective date of this Act has a transition to competition plan on file with the Public Utility Commission of Texas shall:

- (1) withdraw the plan from the commission;
- (2) cease all activities related to the plan; and

(3) file with the commission an application for recovery of any costs incurred as a result of the preparation, filing, and implementation of the plan.

(c) An electric utility described by Section 39.0015, Utilities Code, as added by this section, is entitled to recover the costs described by Subsection (b)(3) of this section.

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

Amend **CSSB 482** on third reading in Section 39.159, Utilities Code, as added by the Amendment No. 12 by Geren to Amendment No. 1 by P. King as follows:

(1) Strike "an electric utility or transmission and distribution utility" each time it appears in the amendment and substitute "a transmission and distribution utility".

(2) Strike "electric utility or transmission and distribution utility" each time it appears in the amendment and substitute "transmission and distribution utility".

**Floor Amendment No. 2 on Third Reading**

Amend **CSSB 482** on third reading in Section 39.2025, Utilities Code, as added by Amendment No. 9 by Dunnam to Amendment No. 1 by P. King by striking Subsection (a) of that section, and substituting a new Subsection (a) of that section to read as follows:

(a) In this section, "residential customer under a price to beat tariff on December 31, 2006" means residential customers who both:

(1) were served on December 31, 2006, at the price to beat tariff regardless of whether the tariff was revised under an order issued by the commission before December 31, 2006, implementing an agreed settlement; and

(2) have not affirmatively chosen an electric service plan after December 31, 2006.

The amendments were read.

Senator Fraser moved that the Senate do not concur in the House amendments, but that a conference committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed without objection.

The President asked if there were any motions to instruct the conference committee on **SB 482** before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate: Senators Fraser, Chair; Harris, Eltife, Brimer, and Whitmire.

**COMMITTEE SUBSTITUTE**  
**SENATE BILL 828 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **CSSB 828** at this time on its second reading:

**CSSB 828**, Relating to the collection and use of certain information by certain insurers.

The motion prevailed.

Senator Wentworth asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

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

Nays: Wentworth.

**COMMITTEE SUBSTITUTE**  
**SENATE BILL 828 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 828** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 828**, 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 828** 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 1. (Same as previous roll call)

**(Senator Brimer in Chair)**

**COMMITTEE SUBSTITUTE**  
**SENATE BILL 689 ON SECOND READING**

On motion of Senator Shapleigh and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 689** at this time on its second reading:

**CSSB 689**, Relating to the sale or transport of certain desert plants; providing a penalty.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 689 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 689** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 689**, 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 689** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1336 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1336** at this time on its second reading:

**CSSB 1336**, Relating to the authority of a municipality with a population of less than 10,000 to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under certain revitalization or redevelopment programs to prohibit ad valorem tax increases on the owner's property for a limited period.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1336 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1336** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 1336**, 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 1336** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE JOINT RESOLUTION 44 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSJR 44** at this time on its second reading:

**CSSJR 44**, Proposing a constitutional amendment authorizing the legislature to permit the voters of a municipality with a population of less than 10,000 to authorize the governing body of the municipality to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under certain revitalization or redevelopment programs to prohibit ad valorem tax increases on the owner's property for a limited period.

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

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

**COMMITTEE SUBSTITUTE**  
**SENATE JOINT RESOLUTION 44 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSJR 44** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 **CSSJR 44**, 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 **CSSJR 44** 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 resolution was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE**  
**SENATE BILL 380 ON SECOND READING**

On motion of Senator Van de Putte and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 380** at this time on its second reading:

**CSSB 380**, Relating to required disclosures to health benefit plan enrollees regarding professional services provided by certain non-network health care providers; providing administrative penalties.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 380 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 380** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 380**, 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 380** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1696 ON SECOND READING**

On motion of Senator Nelson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1696** at this time on its second reading:

**CSSB 1696**, Relating to eligibility for medical assistance for treatment of breast or cervical cancer.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1696 ON THIRD READING**

Senator Nelson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1696** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 1696**, 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 1696** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1463 ON SECOND READING**

On motion of Senator Seliger and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1463** at this time on its second reading:

**CSSB 1463**, Relating to the authority of certain counties to impose a hotel occupancy tax.

The bill was read second time.

Senator Seliger offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 1463** (committee printing) in Section 1 of the bill, in added Subsection (a-1), Section 352.002, Tax Code, as follows:

(1) Strike the language beginning with "a county" and ending with "airport" (page 1, lines 16-20) and substitute "a county in which an airport essential to the economy of the county is located".

(2) At the end of the subsection, following the period (page 1, line 25), insert "For the purposes of this subsection, an airport is considered to be essential to the economy of a county only if the airport is a commercial-service international airport within Class C airspace and is located in a county and owned by a municipality each having a population of less than 125,000."

The amendment to **CSSB 1463** was read and was adopted by a viva voce vote.

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

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

**CSSB 1463** as amended was passed to engrossment by a viva voce vote.

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

#### **COMMITTEE SUBSTITUTE SENATE BILL 1463 ON THIRD READING**

Senator Seliger moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1463** be placed on its third reading and final passage.

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

Nays: Wentworth.

#### **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 1463**, 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 1463** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1699 ON SECOND READING**

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1699** at this time on its second reading:

**CSSB 1699**, Relating to financial aid to assist students with paying the costs of higher education.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1699 ON THIRD READING**

Senator Shapiro moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1699** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 1699**, 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 1699** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1098 ON SECOND READING**

On motion of Senator Patrick and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1098** at this time on its second reading:

**CSSB 1098**, Relating to a subsidy for health benefits coverage for certain adopted children.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1098 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1098** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 1098**, 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 1098** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1762 ON SECOND READING**

Senator Shapleigh moved to suspend the regular order of business to take up for consideration **CSSB 1762** at this time on its second reading:

**CSSB 1762**, Relating to a study by the Texas Water Development Board regarding the impact of climate change on surface water supplies from the portion of the Rio Grande in Texas subject to the Rio Grande Compact.

The motion prevailed.

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

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

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

Nays: Fraser.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1762 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1762** be placed on its third reading and final passage.

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

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Fraser, Wentworth.

**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 1762**, 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 1762** 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 1.

Nays: Fraser.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1013 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1013** at this time on its second reading:

**CSSB 1013**, Relating to the authority of the Railroad Commission of Texas to regulate warning signs appurtenant to certain pipeline facilities; providing an administrative penalty.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1013 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1013** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 1013**, 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 1013** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 997 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 997** at this time on its second reading:

**CSSB 997**, Relating to the regulation of commercially operated party boats on public water of this state.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 997 ON THIRD READING**

Senator Watson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 997** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 997**, 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 997** 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 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1587 ON SECOND READING**

Senator Shapleigh moved to suspend the regular order of business to take up for consideration **CSSB 1587** at this time on its second reading:

**CSSB 1587**, Relating to contractors with the Health and Human Services Commission or with a health and human services agency that provide services to persons with limited English proficiency.

The motion prevailed.

Senator Patrick asked to be recorded as voting "Nay" on suspension of the regular order of business.

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

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

Nays: Patrick.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1587 ON THIRD READING**

Senator Shapleigh moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1587** be placed on its third reading and final passage.

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

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Patrick, Wentworth.

**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 1587**, 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 1587** 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 1.

Nays: Patrick.

**COMMITTEE SUBSTITUTE  
SENATE BILL 979 ON SECOND READING**

On motion of Senator West and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 979** at this time on its second reading:

**CSSB 979**, Relating to the operation of property owners' associations.

The bill was read second time.

Senator West offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 979** (Senate committee printing) as follows:

(1) In SECTION 2 of the bill, in the recital, strike "Subsection (f)" (page 1, line 19) and substitute "Subsections (f) and (g)".

(2) In SECTION 2 of the bill, strike added Subsection (f), Section 5.012, Property Code (page 1, lines 52 through 56), and substitute the following:

(f) On the purchaser's request for a resale certificate from the seller, the seller shall:

(1) promptly deliver a copy of a current resale certificate if one has been issued for the property under Chapter 207; or

(2) if the seller does not have a current resale certificate:

(A) request the property owners' association or its agent to issue a resale certificate under Chapter 207; and

(B) promptly deliver a copy of the resale certificate to the purchaser on receipt of the resale certificate from the property owners' association or its agent.

(g) The seller or the purchaser, as agreed to by the parties, shall pay the fee to the property owners' association or its agent for issuing the resale certificate under Chapter 207.

(3) In SECTION 4 of the bill, in Subdivision (14), Subsection (b), Section 207.003, Property Code (page 3, line 12), strike "and" and substitute "[~~and~~]".

(4) In SECTION 4 of the bill, in Subdivision (15), Subsection (b), Section 207.003, Property Code, between "assessments" and the period (page 3, line 15), insert the following:

; and

(16) a statement of all fees associated with the transfer of ownership, including a description of each fee, to whom each fee is paid, and the amount of each fee

(5) In SECTION 5 of the bill, in the heading of added Section 209.0041, Property Code, strike "RESTRICTIVE COVENANTS" (page 3, line 18) and substitute "DECLARATION".

(6) In SECTION 5 of the bill, in added Subsection (b), Section 209.0041, Property Code, strike "or restriction" wherever it appears (page 3, lines 22 and 23).

(7) In SECTION 5 of the bill, in added Subsection (e), Section 209.0041, Property Code, strike "restrictions" (page 3, line 32) and substitute "declarations" and strike "51" (page 3, line 32) and substitute "67".

(8) In SECTION 5 of the bill, between added Section 209.0041, Property Code, and added Section 209.0042, Property Code (page 3, between lines 35 and 36), insert the following:

(f) All ballots cast in an election that results in the amendment of a declaration under this section shall be filed of record in each county in which the declaration is recorded.

(9) In SECTION 5 of the bill, strike added Subsection (a), Section 209.0042, Property Code (page 3, lines 36 through 43), and substitute the following:

(a) In any matter subject to a vote of the members of the property owners' association, the association shall utilize a neutral third party to tabulate the votes:

(1) if the association schedules the election with less than 30 days' notice; or  
(2) for an election scheduled with notice of 30 days or more, if the association receives written requests from at least 25 percent of the owners of property in the subdivision or 50 owners of property in the subdivision, whichever is less:

(A) at least 10 days before the date of the meeting at which the vote will be taken; or

(B) if no meeting is to be held, at least 10 days before the deadline to cast a vote.

(10) In SECTION 5 of the bill, strike added Sections 209.0043 and 209.0044, Property Code (page 3, lines 52 through 63), and substitute the following:

Sec. 209.0043. RIGHT TO VOTE. A provision of a dedicatory instrument that would disqualify a property owner from voting in an association election of board members or on any matter concerning the rights or responsibilities of the owner is void.

Sec. 209.0044. BOARD MEMBERSHIP. (a) A provision of a dedicatory instrument that restricts a property owner's right to run for a position on the board of the property owners' association is void.

(b) A property owners' association board may make information available to members of the association regarding a candidate for a position on the board regarding:

(1) any amount owed to the association by the candidate that is six months or more overdue;

(2) any violation of a restrictive covenant of which notice was delivered to a board candidate under Section 209.006 more than 30 days before the date of the election; and

(3) any lawsuits to which both the property owners' association or any of its directors or agents and the board candidate are a party.

(11) In SECTION 6 of the bill, in the recital, strike "adding Subsection (c)" (page 3, line 65) and substitute "amending Subsection (a) and adding Subsection (c)".

(12) In SECTION 6 of the bill, between the recital and added Subsection (c), Section 209.005, Property Code (page 3, between lines 65 and 66), insert the following:

(a) A property owners' association shall make the books and records of the association, including financial records, reasonably available to an owner in accordance with Section B, Article 2.23, Texas Non-Profit Corporation Act (Article 1396-2.23, Vernon's Texas Civil Statutes), or a successor to that statute.

(13) In SECTION 7 of the bill, in added Subsection (c), Section 209.006, Property Code, strike "five-day return requested" (page 4, line 29) and substitute "return receipt requested".

(14) In SECTION 8 of the bill, between added Section 209.0061, Property Code, and added Section 209.0062, Property Code (page 4, between lines 52 and 53), insert the following:

(c) Sections 209.006 and 209.007 apply to a nonowner occupant.

(15) In SECTION 8 of the bill, in added Subsection (a), Section 209.0062, Property Code, before "guidelines", insert "reasonable" (page 4, line 55).

(16) In SECTION 8 of the bill, in added Subdivision (3), Section 209.0063, Property Code, between "assessments" and the semicolon (page 5, line 5), insert "or any other charge that could provide the basis for foreclosure".

(17) In SECTION 8 of the bill, in added Subdivision (5), Section 209.0063, Property Code, strike "associated solely with fines assessed by the association" (page 5, line 8) and substitute "that are not subject to Subdivision (3)".

(18) Strike SECTION 10 of the bill (page 5, lines 34 through 41) and renumber subsequent SECTIONS accordingly.

(19) In existing SECTION 13 of the bill, strike Subsection (d) (page 6, lines 3 through 5) and Subsection (i) (page 6, lines 33 through 37) and reletter remaining subsections of the SECTION accordingly.

The amendment to **CSSB 979** was read and was adopted by a viva voce vote.

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

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

**CSSB 979** as amended was passed to engrossment by a viva voce vote.

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

### **COMMITTEE SUBSTITUTE SENATE BILL 1983 ON SECOND READING**

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1983** at this time on its second reading:

**CSSB 1983**, Relating to the creation of the Upper Trinity Groundwater Conservation District; providing authority to issue bonds.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1983 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1983** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 1983**, 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 1983** 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 31, Nays 0.

**PERMISSION TO INTRODUCE BILLS**

On motion of Senator Whitmire and by unanimous consent, Senate Rule 7.07(b) was suspended to permit the introduction of the following bills: **SB 2039**, **SB 2040**.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1829 ON SECOND READING**

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1829** at this time on its second reading:

**CSSB 1829**, Relating to fees for certain commercial licenses issued by the Parks and Wildlife Department.

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

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

**COMMITTEE SUBSTITUTE  
SENATE BILL 1829 ON THIRD READING**

Senator Jackson moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1829** be placed on its third reading and final passage.

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

Nays: Wentworth.

**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 1829**, 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 1829** 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 31, Nays 0.

**(President in Chair)**  
**COMMITTEE SUBSTITUTE  
SENATE BILL 772 ON SECOND READING**

Senator Van de Putte moved to suspend the regular order of business to take up for consideration **CSSB 772** at this time on its second reading:

**CSSB 772**, Relating to conditions of employment for certain peace officers.

The motion prevailed.

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

The bill was read second time.

Senator Van de Putte offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 772** by striking all below the enacting clause and substituting the following:

SECTION 1. Chapter 142, Local Government Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. LOCAL CONTROL OF AIRPORT PEACE OFFICER AND  
PARKS PEACE OFFICER EMPLOYMENT MATTERS IN CERTAIN  
MUNICIPALITIES

Sec. 142.151. APPLICABILITY. (a) This subchapter applies only to a municipality with a population of more than one million that:

(1) has adopted Chapter 174; and

(2) is not covered by Chapter 146.

(b) This subchapter does not apply to:

(1) a police officer who is covered by an agreement adopted under Subchapter H, I, or J of Chapter 143 or under Chapter 174; or

(2) a municipality that has a population of one million or more and has not adopted Chapter 143.

(c) This subchapter applies only in relation to peace officers employed as municipal parks and recreation peace officers or airport peace officers.

Sec. 142.152. DEFINITIONS. In this subchapter:

(1) "Peace officer" means a peace officer under Article 2.12, Code of Criminal Procedure.

(2) "Peace officers association" means an employee organization in which peace officers employed by a municipal department other than the police department participate that exists for the purpose, wholly or partly, of dealing with the municipality concerning grievances, labor disputes, wages, rates of pay, hours of work, or conditions of work affecting peace officers.

Sec. 142.153. MEET AND CONFER PROCESS; AGREEMENTS. A municipality may design a meet and confer process and enter into a written agreement with a peace officers association recognized in accordance with the process as the sole and exclusive bargaining agent of a peace officers bargaining unit, under terms and conditions established by the municipality in accordance with this subchapter.

Sec. 142.154. GENERAL PROVISIONS. (a) A municipality that designs a meet and confer process under this subchapter may not be denied local control over wages, salaries, rates of pay, hours of work, other terms and conditions of employment, or other state-mandated personnel issues covered by a meet and confer agreement. A municipality may enter into a written agreement governing these issues with a peace officers association recognized under the municipality's meet and confer process as the sole and exclusive bargaining agent for a peace officers bargaining unit that does not advocate the illegal right to strike by municipal employees.

(b) The municipality may establish procedures the municipality considers necessary and proper for the implementation of this subchapter, including procedures for an election by the voters in the municipality regarding whether the municipality may meet and confer under this subchapter.

Sec. 142.155. STRIKES PROHIBITED. (a) A peace officer, peace officers representative, or peace officers association subject to this subchapter may not, either independently or jointly, declare or engage in a strike or organized work stoppage against this state or the municipality.

(b) A peace officer subject to this subchapter who participates in a strike forfeits any civil service rights, reemployment rights, and other rights, benefits, or privileges the peace officer may have as a result of the peace officer's employment or prior employment with the municipality.

(c) This section does not affect the right of a person to cease work if the person is not acting in concert with others in an organized work stoppage.

Sec. 142.156. ENFORCEABILITY OF AGREEMENT. A state district court of a judicial district in which the municipality is located has jurisdiction to hear and resolve a dispute under a ratified written meet and confer agreement on the application of a party to the agreement aggrieved by an action or omission of the other party when the action or omission is related to a right, duty, or obligation provided by the agreement. The court may issue proper restraining orders, temporary and permanent injunctions, or any other writ, order, or process, including contempt orders, that are appropriate to enforcing the agreement.

Sec. 142.157. AGREEMENT SUPERSEDES CONFLICTING PROVISIONS. A written meet and confer agreement ratified under this subchapter preempts, during the term of the agreement and to the extent of any conflict, all contrary state statutes or rules adopted by this state regarding wages, hours of work, and other conditions of employment, other than a statute or rule regarding pensions or pension-related matters.

SECTION 2. This Act takes effect September 1, 2007.

The amendment to **CSSB 772** was read.

Senator Hegar offered the following amendment to Floor Amendment No. 1:

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

Amend Floor Amendment No. 1 to **CSSB 772** by adding the following SECTION, appropriately numbered, and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION \_\_. Section 142.059, Local Government Code, is amended by adding Subsection (f) to read as follows:

(f) A meet and confer agreement under this subchapter may not contain a provision that confers any benefit on:

- (1) the recognized police officers association as an entity;
- (2) any other police officers or peace officers association providing support to the recognized police officers association;
- (3) any person by virtue of the person's status as a member, officer, employee, or contractor of the recognized police officers association; or
- (4) any person by virtue of the person's status as a member of the negotiation or bargaining team under Section 142.060.

The amendment to Floor Amendment No. 1 to **CSSB 772** 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.

Question recurring on the adoption of Floor Amendment No. 1 to **CSSB 772**, the amendment as amended was adopted by a viva voce vote.

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

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

**CSSB 772** as amended was passed to engrossment by a viva voce vote.

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

Nays: Harris, Nelson.

### **COMMITTEE SUBSTITUTE SENATE BILL 772 ON THIRD READING**

Senator Van de Putte moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 772** be placed on its third reading and final passage.

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

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Jackson, Janek, Lucio, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Harris, Nelson, Wentworth.

#### **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 772**, 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 772** 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 29, Nays 2.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Jackson, Janek, Lucio, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Harris, Nelson.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1782 ON SECOND READING**

Senator West moved to suspend the regular order of business to take up for consideration **CSSB 1782** at this time on its second reading:

**CSSB 1782**, Relating to arbitration proceedings.

The motion prevailed.

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

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

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

Nays: Harris, Nelson, Patrick.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1782 ON THIRD READING**

Senator West moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1782** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Jackson, Janek, Lucio, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Harris, Nelson, Patrick, Wentworth.

**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 1782**, 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 1782** 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 28, Nays 3.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Jackson, Janek, Lucio, Nichols, Ogden, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Harris, Nelson, Patrick.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1943 ON SECOND READING**

Senator Patrick moved to suspend the regular order of business to take up for consideration **CSSB 1943** at this time on its second reading:

**CSSB 1943**, Relating to participation by private school students in University Interscholastic League sponsored activities.

The motion prevailed.

Senators Seliger, Van de Putte, and West asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time and was passed to engrossment by the following vote: Yeas 28, Nays 3.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Shapiro, Shapleigh, Uresti, Watson, Wentworth, Whitmire, Williams, Zaffirini.

Nays: Seliger, Van de Putte, West.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1943 ON THIRD READING**

Senator Patrick moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1943** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 4.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Shapiro, Shapleigh, Uresti, Watson, Whitmire, Williams, Zaffirini.

Nays: Seliger, Van de Putte, Wentworth, West.

### **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 1943**, 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 1943** 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 28, Nays 3.

Yeas: Averitt, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Shapiro, Shapleigh, Uresti, Watson, Wentworth, Whitmire, Williams, Zaffirini.

Nays: Seliger, Van de Putte, West.

**(Senator Whitmire in Chair)**

### **COMMITTEE SUBSTITUTE SENATE BILL 966 ON SECOND READING**

Senator Ellis moved to suspend the regular order of business to take up for consideration **CSSB 966** at this time on its second reading:

**CSSB 966**, Relating to a qualified privilege of a journalist not to testify.

The motion prevailed by the following vote: Yeas 19, Nays 8.

Yeas: Averitt, Brimer, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hegar, Lucio, Nelson, Nichols, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Jackson, Janek, Ogden, Patrick, Seliger, Shapiro, Williams.

Absent: Carona, Fraser, Hinojosa, Shapleigh.

The bill was read second time.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 966** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, add proposed Subdivision (6), Section 22.021, Civil Practices and Remedies Code (page 2, between lines 20 and 21), to read as follows:

(6) "Violent offense" has the meaning assigned by Article 17.032(a), Code of Criminal Procedure.

(2) In SECTION 1 of the bill, strike proposed Subsection (a), Section 22.025, Civil Practices and Remedies Code (page 3, lines 7-21), and substituting the following:

(a) A journalist may be compelled to testify, produce, or disclose, any information, document, or item or the source of any information, document, or item obtained while acting as a journalist if the person seeking the testimony, production, or disclosure makes a clear and specific showing that the information, document, or item or the source of any information, document, or item:

(1) was obtained as the result of an eyewitness observation of criminal conduct by the journalist and a court determines by clear and specific evidence that the person requesting the testimony, production, or disclosure has exhausted reasonable efforts to obtain the information, document, or item from alternative sources;

(2) was obtained from any person who has confessed or admitted to the commission of a violent offense or to a crime against a child victim younger than 14 years of age at the time the offense was committed and a court determines by clear and specific evidence that the person requesting the testimony, production, or disclosure has exhausted reasonable efforts to obtain the information, document, or item from alternative sources;

(3) was obtained from any person from whom probable cause exists that the person has participated in a violent offense or in a crime against a child victim younger than 14 years of age at the time the offense was committed and a court determines by clear and specific evidence that the person requesting the testimony, production, or disclosure has exhausted reasonable efforts to obtain the information, document, or item from alternative sources;

(4) is reasonably necessary to stop or prevent reasonably certain death or substantial bodily harm.

The amendment to **CSSB 966** was read and was adopted by a viva voce vote.

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

Senator Ogden offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSSB 966** as follows:

(1) In SECTION 1 of the bill, on page 3, between lines 38 and 39, insert "Sec. 22.028. NOT APPLICABLE TO CRIMINAL MATTERS. This subchapter is not applicable to criminal proceedings.".

(2) Strike SECTION 2 of the bill in its entirety, and insert new SECTION 2 to read as follows:

SECTION 2. Chapter 24, Code of Criminal Procedure, is amended by adding Article 24.031 to read as follows:

Art. 24.031. SUBPOENA TO JOURNALIST. If a journalist, as defined in Chapter 22, Civil Practices and Remedies Code, contests the issuance of a subpoena for any information, document or item gathered in preparation of dissemination by a news medium, the court, after notice and a hearing to the parties, may quash the subpoena if the court determines that the subpoena fails to request the production of relevant and material evidence, or if the subpoena was issued for the purpose of harassment. The court may require testimony at the hearing, may require an in camera inspection of the contested information or evidence, and may require modification to the scope of the subpoena.

The amendment to **CSSB 966** was read.

Senator Ogden withdrew Floor Amendment No. 2.

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

**CSSB 966** as amended was passed to engrossment by the following vote: Yeas 21, Nays 6.

Yeas: Averitt, Brimer, Deuell, Duncan, Ellis, Eltife, Estes, Gallegos, Hegar, Jackson, Lucio, Nelson, Nichols, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Harris, Janek, Ogden, Patrick, Seliger, Williams.

Absent: Carona, Fraser, Hinojosa, Shapleigh.

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Shapiro and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Education might meet and consider **SB 101** today.

**SENATE RULE 11.13 SUSPENDED  
(Consideration of Bills in Committees)**

On motion of Senator Brimer and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate was meeting today.

### MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 4:12 p.m. agreed to adjourn, in memory of James Tinsley of Houston and Ken Ward of Houston, upon completion of the introduction of bills and resolutions on first reading, until 1:30 p.m. Monday, April 30, 2007.

### SENATE BILLS ON FIRST READING

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

**SB 2039** by Ellis, West

Relating to the governance of certain state agencies.

To Committee on Finance.

**SB 2040** by Jackson

Relating to coverage for bariatric surgical procedures for certain state employees.

To Committee on State Affairs.

### HOUSE BILLS ON FIRST READING

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

**HB 921** to Committee on Government Organization.

**HB 1038** to Committee on Business and Commerce.

**HB 1170** to Committee on State Affairs.

**HB 1355** to Committee on Criminal Justice.

**HB 1602** to Committee on State Affairs.

**HB 1928** to Committee on Finance.

**HB 2144** to Committee on Business and Commerce.

**HB 2338** to Committee on Intergovernmental Relations.

**HB 2559** to Committee on Transportation and Homeland Security.

**HB 2636** to Committee on Administration.

**HB 2818** to Committee on Business and Commerce.

**HB 2983** to Committee on Natural Resources.

**HB 2984** to Committee on Natural Resources.

**HB 2994** to Committee on Business and Commerce.

**HB 3074** to Committee on Business and Commerce.

**HB 3140** to Committee on Government Organization.

**HB 3226** to Committee on Education.

**HB 3352** to Committee on Criminal Justice.

**HB 3564** to Subcommittee on Higher Education.

### RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

#### Memorial Resolution

**SR 894** by West, In memory of Carol Ann Brandon of Dallas.

### **Congratulatory Resolutions**

**SR 891** by Patrick, Recognizing James Christopher Schilling on the occasion of his 38th birthday.

**SR 893** by Hinojosa, Congratulating Carlette Villarreal for receiving a Texas Media Award.

**SR 896** by Duncan, Recognizing Sunny M. Shelley on the occasion of her retirement from the Amherst Independent School District.

**SR 897** by Duncan, Recognizing Byron L. Shelley on the occasion of his retirement from the Amherst Independent School District.

**SR 898** by West, Recognizing the Dallas Black Dance Theatre on the occasion of its 30th anniversary.

**SR 901** by Zaffirini, Commending the citizens of Laredo who are supporting El Día de los Niños.

**SR 902** by Van de Putte, Recognizing G. W. Brackenridge High School in San Antonio for receiving the 2007 Inspiration Award from the College Board.

**SR 904** by West, Commending Jamie Foxx for his accomplishments in the field of arts and entertainment.

### **ADJOURNMENT**

Pursuant to a previously adopted motion, the Senate at 4:38 p.m. adjourned, in memory of James Tinsley of Houston and Ken Ward of Houston, until 1:30 p.m. Monday, April 30, 2007.

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### **APPENDIX**

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### **COMMITTEE REPORTS**

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

April 27, 2007

TRANSPORTATION AND HOMELAND SECURITY — **HCR 173**

BUSINESS AND COMMERCE — **CSHB 899**

FINANCE — **SB 2015, SJR 61**

CRIMINAL JUSTICE — **CSSB 130, CSSB 443**

NATURAL RESOURCES — **SB 662, SB 1836, SB 1985, SB 2038, HB 407, HB 1853**

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — **CSHB 1852**

HEALTH AND HUMAN SERVICES — **CSSB 623, CSSB 920, CSSB 1144, CSSB 1313**

STATE AFFAIRS — **SB 1398**

JURISPRUDENCE — **CSSB 2025**

INTERGOVERNMENTAL RELATIONS — **CSSB 822, SB 1070, CSSB 1588, CSSB 1778, SB 1889, SB 1957, SB 1960, CSSB 1990, SB 2008, HB 239, HB 1780, HB 1947**

STATE AFFAIRS — **CSSB 1101**

HEALTH AND HUMAN SERVICES — **CSSB 1115, CSSB 1620, CSSB 1649**

EDUCATION — **SCR 47, HB 1622, CSSB 1138**

INTERGOVERNMENTAL RELATIONS — **CSSB 1380, CSSB 1510**

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — **CSHB 1260**

JURISPRUDENCE — **CSHB 564, CSSB 1520**

CRIMINAL JUSTICE — **CSSB 503, CSSB 1175, CSSB 1283, CSSB 1288, CSSB 1901**

**SIGNED BY GOVERNOR**

April 27, 2007

**SB 112**

