

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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## THIRTY-EIGHTH DAY

(Wednesday, April 6, 2011)

The Senate met at 11:08 a.m. pursuant to adjournment and was called to order by the President.

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

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

Bishop Daniel E. Flores, Catholic Diocese of Brownsville, was introduced by Senator Lucio and offered the invocation as follows:

Lord God, heavenly Father, we humbly invoke Your assistance over this legislative assembly and over each of its Members. We ask that the deliberations of the Senate of the State of Texas be imbued with a spirit of right judgment and wisdom and that the decisions made here reflect a selfless and disinterested concern for the public good. May each Senator act with generous concern for the good of all who dwell here, and may their votes be a reflection of a good and clear conscience. May they take to heart how their exercise of political judgment will affect the lives of the children, women, and men who form the communities, great and small, wealthy and poor, that make up the State of Texas. O Lord, bless all of us in this state to take up generously our responsibilities to one another, that ours may be a peaceable reflection of that kingdom of justice, compassion, and peace which, though not yet come to fulfillment, is yet destined by Your grace to renew the face of the Earth. Through Christ our Lord. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the previous day be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

## ACKNOWLEDGMENT

The President acknowledged the presence of the Catholic Bishops visiting the Capitol today.

The Senate welcomed its guests.

**MESSAGE FROM THE HOUSE**

HOUSE CHAMBER

Austin, Texas

Wednesday, April 6, 2011 - 1

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 109** Brown

Relating to the temporary lowering of prima facie speed limits at a vehicular accident reconstruction site.

**HB 252** Hilderbran

Relating to application and eligibility for an exemption from ad valorem taxation of the residence homestead of a person.

**HB 371** Hochberg

Relating to prohibiting deferred adjudication community supervision for certain defendants convicted of murder.

**HB 716** Miller, Sid

Relating to the taking of certain feral hogs and coyotes using a helicopter.

**HCR 128** Aliseda

In memory of U.S. Marine Corps Sergeant Jose Luis Saenz III of Pleasanton.

Respectfully,

/s/Robert Haney, Chief Clerk  
House of Representatives

**SENATE RESOLUTION 717**

Senator Lucio offered the following resolution:

**SR 717**, Welcoming members of the Texas Catholic Conference delegation and recognizing April 6, 2011, as Texas Catholic Conference Advocacy Day at the State Capitol.

The resolution was read.

On motion of Senator Ogden and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Lucio, the resolution was adopted without objection.

**GUESTS PRESENTED**

Senator Lucio, joined by Senator Zaffirini, was recognized and introduced to the Senate a Catholic Conference delegation: Archbishop Daniel Cardinal DiNardo, Galveston-Houston; Archbishop Gustavo Garcia-Siller, San Antonio; Bishop William Michael Mulvey, Corpus Christi; Bishop Daniel E. Flores, Brownsville; Bishop Placido Rodriguez, Lubbock; Bishop Kevin J. Farrell, Dallas; Bishop Kevin W. Vann, Fort Worth; Bishop Joe S. Vasquez, Austin; Bishop Mark Seitz, Dallas; and Bishop Oscar Cantu, San Antonio.

The Senate welcomed its guests.

**PHYSICIAN OF THE DAY**

Senator Watson was recognized and presented Dr. C. Mark Chassay of Austin as the Physician of the Day.

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

**GUESTS PRESENTED**

Senator Jackson was recognized and introduced to the Senate a Leadership Mainland delegation.

The Senate welcomed its guests.

**GUEST PRESENTED**

Senator Uresti was recognized and introduced to the Senate his son, Carlos Uresti, Jr.

The Senate welcomed its guest.

**SENATE RESOLUTION 709**

Senator Nelson offered the following resolution:

**SR 709**, Proclaiming April of 2011 to be Child Abuse Prevention Month in Texas.

NELSON  
URESTI

The resolution was again read.

The resolution was previously adopted on Tuesday, April 5, 2011.

**GUESTS PRESENTED**

Senator Nelson, joined by Senator Uresti, was recognized and introduced to the Senate a Texas Department of Family and Protective Services delegation.

The Senate welcomed its guests.

**GUESTS PRESENTED**

Senator Nelson was recognized and introduced to the Senate members of the Tour 18 Women's Club of Flower Mound.

The Senate welcomed its guests.

**SENATE RESOLUTION 713**

Senator Fraser offered the following resolution:

**SR 713**, Recognizing April 6, 2011, as Burnet County Day at the State Capitol.

The resolution was read and was adopted without objection.

**GUESTS PRESENTED**

Senator Fraser was recognized and introduced to the Senate a Burnet County delegation.

The Senate welcomed its guests.

**GUESTS PRESENTED**

Senator Lucio was recognized and introduced to the Senate a 2011 Class of Leadership Big Valley delegation.

The Senate welcomed its guests.

**SENATE RESOLUTION 546**

Senator Watson offered the following resolution:

**SR 546**, Recognizing Jane Smoot of Austin for her work as an educator.

The resolution was again read.

The resolution was previously adopted on Thursday, March 17, 2011.

**GUESTS PRESENTED**

Senator Watson was recognized and introduced to the Senate Jane Smoot and John Plyler.

The Senate welcomed its guests.

**MESSAGE FROM THE GOVERNOR**

The following Message from the Governor was read and was referred to the Committee on Nominations:

April 5, 2011

Austin, Texas

TO THE SENATE OF THE EIGHTY-SECOND LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

To be members of the Guadalupe-Blanco River Authority Board of Directors for terms to expire as indicated:

To Expire February 1, 2013:

Myrna Patterson McLeroy

Gonzales, Texas

(Ms. McLeroy is being reappointed)

To Expire February 1, 2015:

Thomas O. Mathews, II

Boerne, Texas

(replacing Michael Schultz of Fair Oaks Ranch who resigned)

Dennis L. Patillo

Victoria, Texas

(replacing Clifton Thomas, Jr. of Victoria who resigned)

To Expire February 1, 2017:

Robert "Rusty" Brockman, Jr.

New Braunfels, Texas

(replacing Tilmon Lee Walker of New Braunfels whose term expired)

Oscar H. Fogle

Lockhart, Texas

(Mr. Fogle is being reappointed)

Arlene N. Marshall

Port Lavaca, Texas

(Judge Marshall is being reappointed)

Respectfully submitted,

/s/Rick Perry

Governor

### **HOUSE CONCURRENT RESOLUTION 128**

The President laid before the Senate the following resolution:

**HCR 128**, In memory of U.S. Marine Corps Sergeant Jose Luis Saenz III of Pleasanton.

ZAFFIRINI

The resolution was read.

On motion of Senator Zaffirini, the resolution was considered immediately and was adopted by a rising vote of the Senate.

In honor of the memory of Jose Luis Saenz III, the text of the resolution is printed at the end of today's *Senate Journal*.

### **GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate family members of Jose Luis Saenz III: his parents, Leonor Mata Saenz and Jose Luis Saenz, Jr.; his wife, Christy Heritage-Saenz; and his son, Jose Luis Saenz IV.

The Senate welcomed its guests and extended its sympathy.

### **SENATE RESOLUTION 657**

Senator Zaffirini offered the following resolution:

WHEREAS, On April 6, 2011, residents from across Atascosa County are traveling to the State Capitol to celebrate their community's heritage and to share with fellow Texans their history, traditions, and achievements; and

WHEREAS, The name Atascosa, derived from the Spanish word for boggy terrain, was used to describe the area as early as 1788; during the first part of the 19th century, this grassy prairie region of South Texas attracted Spanish, Mexican, and Anglo-American settlers, and by the time of the Texas Revolution, its ranching industry was flourishing; and

WHEREAS, In 1856, the region was sufficiently populated to be sectioned off from Bexar County; the county seat, originally at Navatasco, was later permanently moved to the centrally located town of Jourdanton; and

WHEREAS, Situated near the famous Camino Real, the county has long benefited from its proximity to major transportation arteries linking it with the Gulf Coast, the Rio Grande Valley, and Mexico, as well as other major population centers; and

WHEREAS, Atascosa County enjoys the economic benefits reaped by an abundance of natural resources and, blessed with productive range and irrigated farmland, the area is known for its agricultural industries; and

WHEREAS, Proud of its ranching heritage, Pleasanton, the county's trading center, bills itself as the birthplace of the cowboy, a designation symbolized by a large bronze statue in front of city hall; in nearby Poteet, known to many as the Strawberry Capital of the World, a seven-foot, 1,600-pound monument to the fruit graces the front lawn of city hall, and a Strawberry Festival, the fourth-largest agricultural festival in the state, takes place in April; and

WHEREAS, Other resources such as oil and gas also play a significant role in the county's ongoing development, but the most important asset in the area's increasingly diverse economy is undoubtedly its industrious citizenry; and

WHEREAS, The residents of Atascosa County have made many notable contributions to the economy and culture of Texas, and they may take justifiable pride in the place that they call home; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 82nd Legislature, hereby recognize April 6, 2011, as Atascosa County Day at the State Capitol and extend a warm welcome to all visitors from that fine county; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of this special day.

**SR 657** was again read.

The resolution was previously adopted on Wednesday, March 30, 2011.

### **GUESTS PRESENTED**

Senator Zaffirini was recognized and introduced to the Senate Diana Bautista, Atascosa County Judge; Atascosa County Commissioners, Lon Gillespie and William Torans; Diane Gonzales, Atascosa County Clerk; Larry Pryor, Mayor of Jourdanton; Irene Ramos, Mayor of Poteet; and Ramon DeLeon, President of the Jourdanton ISD Board of Trustees.

The Senate welcomed its guests.

**SESSION TO CONSIDER EXECUTIVE APPOINTMENTS**

The President announced the time had arrived to consider executive appointments to agencies, boards, and commissions. Notice of submission of these names for consideration was given yesterday by Senator Deuell.

Senator Deuell moved confirmation of the nominees reported yesterday by the Committee on Nominations.

The President asked if there were requests to sever nominees.

Senator Watson requested that the following nominee be severed:

Director, Office of State-Federal Relations: Charles Eugene Roy, Collin County.

The request was granted.

**NOMINEES CONFIRMED**

The following nominees, not severed and reported yesterday by the Committee on Nominations, were confirmed by the following vote: Yeas 31, Nays 0.

Judge, Court of Criminal Appeals: Elsa R. Alcalá, Harris County.

Member, Judicial Districts Board: Craig T. Enoch, Travis County.

Members, Board of Directors, Lower Colorado River Authority: James Scott Arbuckle, Wharton County; Steve K. Balas, Colorado County; John Mark Franklin, Burnet County; Jett Jay Johnson, Mills County.

Inspector General, Office of Inspector General, Health and Human Services Commission: Douglas Wilson, Travis County.

Members, Statewide Health Coordinating Council: James L. Alexander, Burleson County; Richard L. Beard, Dallas County; Abigail Hollis Blackburn, Travis County; Fred Sinclair Brinkley, Travis County; Janet Buckley Claborn, Bailey County; Brenda Dever-Armstrong, Bexar County; Steven Ngocthang Nguyen, Dallas County; Roger Michael Ragain, Lubbock County.

Members, Texas Appraiser Licensing and Certification Board: Walker Rankin Beard, El Paso County; Malachi Obadiah Boyuls, Dallas County; Luis F. De La Garza, Webb County; Laurie Carden Fontana, Harris County; Shannon K. McClendon, Hays County; Sheryl Rigsby Swift, Galveston County; Donna Lee Walz, Lubbock County; Jamie Lou Sanders Wickliffe, Ellis County.

Members, Texas Board of Physical Therapy Examiners: Robert Gary Gray, Midland County; Kathleen Ann Luedtke-Hoffmann, Dallas County; Daniel Reyna, McLennan County.

Members, Texas Board of Professional Geoscientists: Becky Lynn Johnson, Tarrant County; Justin Lynn McNamee, Dallas County; Judy Ann Reeves, Tarrant County; Gregory Clayton Ulmer, Harris County.

Members, Texas Commission on Fire Protection: Elroy Carson, Lubbock County; Christopher Martin Connealy, Williamson County; Louis Anthony Cortes, Bexar County; John Kelly Gillette, Collin County; John Weldon Green, Galveston County; John Tilden McMakin, Henderson County; Leonardo L. Perez, Cameron County.

Members, Texas Diabetes Council: Maria O. Duarte-Gardea, El Paso County; John W. Griffin, Victoria County; Don E. Yarborough, Dallas County.

Members, Texas Optometry Board: John Dale Coble, Rockwall County; Larry Wayne Fields, Panola County; Mario Gutierrez, Bexar County.

### **CONCLUSION OF MORNING CALL**

The President at 11:56 a.m. announced the conclusion of morning call.

### **COMMITTEE SUBSTITUTE SENATE BILL 1501 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 1501** at this time on its second reading:

**CSSB 1501**, Relating to energy and efficiency conservation programs administered by the Public Utility Commission of Texas.

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 1501 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 1501** 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 1501**, 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 1501** 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.

#### WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### SENATE BILL 1098 ON SECOND READING

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

**SB 1098**, Relating to certain offenses involving unauthorized recordings.

The bill was read second time.

#### (Senator Carona in Chair)

Senator Patrick offered the following amendment to the bill:

#### Floor Amendment No. 1

Amend **SB 1098** (senate committee printing) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. Section 641.051, Business & Commerce Code, is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to a person who, while engaged in radio or television broadcasting, transfers or causes to be transferred a recording:

(1) for or in connection with a broadcast or telecast transmission or for a related purpose; or

(2) for archival purposes.

The amendment to **SB 1098** 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 Huffman and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

**SB 1098** as amended was passed to engrossment by a viva voce vote.

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

#### SENATE BILL 1098 ON THIRD READING

Senator Huffman moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 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 **SB 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 **SB 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.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### SENATE BILL 324 ON SECOND READING

On motion of Senator Jackson and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 324** at this time on its second reading:

**SB 324**, Relating to the course levels offered by the University of Houston-Clear Lake.

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.

### SENATE BILL 324 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 **SB 324** 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 **SB 324**, because in my judgment no circumstance exists in this case to justify the

extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 324** 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.

#### WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

#### **COMMITTEE SUBSTITUTE SENATE BILL 1094 ON SECOND READING**

On motion of Senator Rodriguez and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 1094** at this time on its second reading:

**CSSB 1094**, Relating to the availability of online testing for high school equivalency examinations.

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 1094 ON THIRD READING**

Senator Rodriguez moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1094** 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 1094**, 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 1094** 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.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**COMMITTEE SUBSTITUTE  
SENATE BILL 122 ON SECOND READING**

On motion of Senator Ellis and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 122** at this time on its second reading:

**CSSB 122**, Relating to postconviction forensic DNA analysis.

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 122 ON THIRD READING**

Senator Ellis moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 122** 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 122**, 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 122** 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.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 701 ON SECOND READING**

On motion of Senator Watson and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 701** at this time on its second reading:

**SB 701**, Relating to high-value data sets of state agencies posted on the Internet.

The bill was read second time and was passed to engrossment by the following vote: Yeas 31, Nays 0.

### **SENATE BILL 701 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 **SB 701** 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 **SB 701**, because in my judgment no circumstance exists in this case to justify the extraordinary act of suspending a requirement of the Texas Constitution. The suspension of this Constitutional Rule has the direct and immediate effect of denying the people of Texas knowledge and notice of the passage of this measure until it has already been finally passed on third reading. Were we to have followed the requirement of the Texas Constitution, third reading and a vote on **SB 701** 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.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 31, Nays 0.

**(Senator West in Chair)**

**GUESTS PRESENTED**

Senator Whitmire, joined by Senators Gallegos and Patrick, was recognized and introduced to the Senate a Houston firefighters delegation.

The Senate welcomed its guests.

**COMMITTEE SUBSTITUTE  
SENATE BILL 1087 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **CSSB 1087** at this time on its second reading:

**CSSB 1087**, Relating to state-issued certificates of franchise authority to provide cable service and video service.

The motion prevailed.

Senators Birdwell, Harris, Nichols, Patrick, and Shapiro asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

**Floor Amendment No. 1**

Amend **CSSB 1087** (senate committee printing) as follows:

(1) In SECTION 2 of the bill, in added Section 66.004(b-1), Utilities Code (page 1, line 35), strike "September" and substitute "October".

(2) In SECTION 5 of the bill, in amended Section 66.009(c), Utilities Code (page 4, line 5), strike "minimum" and substitute "maximum".

(3) In SECTION 5 of the bill, in amended Section 66.009(c), Utilities Code (page 4, line 8), between "furnish" and the colon, insert "at the request of the municipality".

(4) In SECTION 6(a) of the bill (page 4, line 29), strike "September 1, 2011" both times the phrase appears and substitute "October 1, 2011" for both occurrences.

The amendment to **CSSB 1087** was read and was adopted by a viva voce vote.

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

Nays: Birdwell, Harris, Nichols, Patrick, Shapiro.

Senator Duncan offered the following amendment to the bill:

**Floor Amendment No. 2**

Amend **CSSB 1087** (senate committee report) as follows:

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

(2) In SECTION 2 of the bill, in amended Section 66.004, Utilities Code (page 1, between lines 45 and 46) insert the following new Subsection:

(b-2) Notwithstanding Subsection (b-1), a cable service provider or video service provider that is subject to a municipal franchise in effect on August 31, 2011, in a municipality that by ordinance requires the provider to bury a new or existing component or facility may not terminate the municipal franchise under Subsection (b-1) unless the provider agrees to comply with the terms of the ordinance until the date the municipal franchise is otherwise scheduled to expire or a date agreed on by the provider and the municipality. The commission may not issue a state-issued certificate of franchise authority to a provider under Subsection (b-1) unless the

provider provides proof that the provider has agreed to comply with this subsection. A person or other entity holding a right reserved in this subsection may enforce that right by an action brought in a court of competent jurisdiction.

The amendment to **CSSB 1087** was read and was adopted by a viva voce vote.

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

Nays: Birdwell, Harris, Nichols, Patrick, Shapiro.

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

**CSSB 1087** 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: Birdwell, Harris, Nichols, Patrick, Shapiro.

### **COMMITTEE SUBSTITUTE SENATE BILL 1087 ON THIRD READING**

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 1087** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Harris, Nichols, Patrick, Shapiro, 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 1087**, 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 1087** 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.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 26, Nays 5.

Yeas: Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Ogden, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Nays: Birdwell, Harris, Nichols, Patrick, Shapiro.

**(President Pro Tempore Ogden in Chair)**

**COMMITTEE SUBSTITUTE  
SENATE BILL 28 ON SECOND READING**

Senator Zaffirini moved to suspend the regular order of business to take up for consideration **CSSB 28** at this time on its second reading:

**CSSB 28**, Relating to eligibility for a TEXAS grant and to administration of the TEXAS grant program.

The motion prevailed by the following vote: Yeas 26, Nays 5.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nelson, Nichols, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Davis, Ellis, Harris, Patrick, Williams.

The bill was read second time.

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

**Floor Amendment No. 1**

Amend **CSSB 28** (senate committee printing) in SECTION 2 of the bill, in amended Section 56.303(e), Education Code (page 1, line 41), immediately after the period, by inserting the following new sentence:

In giving priority based on financial need as required by this subsection to students who meet the requirements for the highest priority as provided by Subsection (f), a general academic teaching institution shall determine financial need according to the relative expected family contribution of those students, beginning with students who have the lowest expected family contribution.

The amendment to **CSSB 28** was read and was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Birdwell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Fraser, Gallegos, Hegar, Hinojosa, Lucio, Rodriguez, Seliger, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Estes, Harris, Huffman, Jackson, Nelson, Nichols, Ogden, Patrick, Shapiro, Williams.

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

**CSSB 28** as amended was passed to engrossment by the following vote: Yeas 25, Nays 6.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Zaffirini.

Nays: Davis, Ellis, Harris, Nelson, Patrick, Williams.

**COMMITTEE SUBSTITUTE  
SENATE BILL 28 ON THIRD READING**

Senator Zaffirini moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 28** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 6.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Patrick, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini.

Nays: Davis, Ellis, Harris, Nelson, Wentworth, Williams.

**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 28**, 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 28** 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.

WENTWORTH

The bill was read third time and was passed by the following vote: Yeas 24, Nays 7.

Yeas: Birdwell, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Gallegos, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Ogden, Rodriguez, Seliger, Shapiro, Uresti, Van de Putte, Watson, Wentworth, West, Zaffirini.

Nays: Davis, Ellis, Harris, Nelson, Patrick, Whitmire, Williams.

**REASON FOR VOTE**

Senator Ellis submitted the following reason for vote on **CSSB 28**:

Today we passed legislation that will, in my view, widen the gaps in college participation.

Thanks to the TEXAS Grant Program, college participation is up, degrees awarded – the metric of success – are up and we are actually on-track to meet the *Closing the Gaps* plan. Since its creation in 1999, more than 310,000 students have received TEXAS Grants, totaling more than \$2 billion.

The program is working to close the gaps: 14.2 percent of TEXAS Grant recipients are African American, 48.3 percent are Hispanic, and 29.0 percent are Anglo. The students that have lagged in participation have had the doors to college opened for them thanks in large part to this program.

Last session, we worked to increase funding for the program by \$184 million, bringing the total budget to \$614 million over the 2010/11 biennium. This funding provided grants to an estimated 113,000 students, nearly 45,000 more than under the previous budget. Despite this increase, at best 70-75 percent of eligible students actually receive a TEXAS Grant, and the budget under discussion now will all but destroy the program.

Of course, that was *last* session and we all know what is about to happen under this budget.

The number of TEXAS Grants are dramatically slashed, from 86,830 budgeted for 2011 to only 27,135 in 2013 for a *68.7 percent reduction in students served*.

In pure dollar terms, funding for the TEXAS Grant program by 40.5 percent, from \$614.2 million in 2010/11 to only \$365.7 million for 2012/13. The number of students receiving a TEXAS Grant would be slashed by 69 percent (86,830 in the current FY, only 27,135 in FY 13), and funding would be reduced by 41 percent, from \$624 to \$361 million.

The issues we keep hearing about "rewarding success" and to spend our financial aid money "more wisely" by instituting new, more stringent eligibility standards for TEXAS Grants. But according to Texas Higher Education Coordinating Board data, TEXAS Grant recipients have a graduation and persistence rate above the overall student body average. The same data shows that TEXAS Grant students have a persistence rate nearly equal to students with incomes that are too high to be eligible for financial aid. Funding shortfalls for this need-based program have resulted in the bulk of TEXAS Grant recipients are from lower-income families, are minority students, often graduate from less prestigious high schools, and far more likely to be required to work – often full-time – to pay for the costs of college.

Yet these students – from families on the early bus – are succeeding now at a very high rate right now, despite the cost challenge. Under the current standards, the vast majority of TEXAS Grant students have either graduated *or are on the path to graduation*, despite the fact that the costs of going to school – and the burden these students must bear, hours they must work to pay for it – continue to rise.

I believe if that student graduates, it is SUCCESS. I don't care if it is 6 years or 7 years.

In my view, the two biggest problems facing the TEXAS Grant program are:

- 1) Not enough students are getting one.
- 2) Tuition deregulation, which has doubled the cost of tuition across the state.

Tuition deregulation is the main factor behind the rising costs of this program. Tuition deregulation already killed one wildly popular program and has deeply wounded another one, the TEXAS Grant program. And now the budget crisis is ready to strike another mortal blow to TEXAS Grants.

I am deeply concerned that these three things – tuition deregulation, lack of funds, and now new eligibility requirements – will end the TEXAS Grant program as we know it.

I also have a very serious concern about the double standard we are creating today. Under this legislation, students receiving state-funded financial aid to go to a public college or university will have a different set of eligibility standards than students receiving state-funded financial aid to go to a private college or university. I do not see how this legislature can defend that.

Under this legislation, a student going to the University of Houston or Texas Tech or the UT San Antonio or UT Pan Am will have to meet a higher standard to qualify for state financial aid, but the student at Baylor or St. Edwards will have to meet a lower standard to qualify.

Add this discrepancy to the funding question and we are truly creating a separate financial aid system for public schools versus private schools and I cannot see how that is justified, especially when you consider that we are not meeting our obligations to open the doors to college.

We have been told that instituting these changes will have no impact on the demographic breakdown of this program, and will not negatively impact the *Closing the Gaps* plan. Passage of this plan will make that the official viewpoint of this body.

If in two or four or six years from now we see that is not true, that the demographics of the program have significantly changed from what it is today, that more students from families that were already going to make sure their kids got to college are receiving TEXAS Grants and fewer students from families taking the early bus are, I hope you will all join me in repealing these new standards.

If in two or four or six years we have not seen the dramatic increase in degrees awarded, particularly to those students who are lagging – Hispanic, African American, and low-income – I hope you will all join me in repealing these new standards.

This plan represents a new vision for the TEXAS Grant program. I think it is the wrong step and will widen the gap in college participation, not close it. If I am right, I hope you will all join me in making those changes.

ELLIS

### **NOTICE GIVEN FOR LOCAL AND UNCONTESTED CALENDAR**

Senator Eltife announced that a Local and Uncontested Calendar had been furnished to each Member of the Senate. He then gave notice that the Local and Uncontested Calendar Session would be held at 8:00 a.m. tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

**SENATE RULE 11.13 SUSPENDED  
(Consideration of Bills in Committees)**

On motion of Senator Eltife and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate is meeting tomorrow during the Local and Uncontested Calendar Session.

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Fraser and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Natural Resources might meet and consider the following bills tomorrow: **SB 15, SB 1475**.

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Jackson and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Economic Development might meet and consider **SB 314** today.

**MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 1:09 p.m. agreed to adjourn, in memory of Robert Forrest Welch III, Scott H. Burgess, and Jose Luis Saenz III, upon conclusion of the Local and Uncontested Calendar Session, until 10:00 a.m. tomorrow.

**CO-AUTHOR OF SENATE BILL 789**

On motion of Senator Harris, Senator Nelson will be shown as Co-author of **SB 789**.

**CO-AUTHOR OF SENATE BILL 1545**

On motion of Senator Patrick, Senator Van de Putte will be shown as Co-author of **SB 1545**.

**CO-AUTHORS OF SENATE BILL 1625**

On motion of Senator Hegar, Senators Uresti, Van de Putte, and Wentworth will be shown as Co-authors of **SB 1625**.

**CO-AUTHORS OF SENATE BILL 1843**

On motion of Senator Carona, Senators Gallegos, Hegar, Hinojosa, Lucio, Seliger, Van de Putte, Wentworth, and Zaffirini will be shown as Co-authors of **SB 1843**.

**CO-AUTHOR OF SENATE JOINT RESOLUTION 12**

On motion of Senator Patrick, Senator Nelson will be shown as Co-author of **SJR 12**.

**RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

**Memorial Resolutions**

**SR 719** by Lucio, In memory of Maria Concepcion Cantu of Raymondville.

**SR 723** by Watson, In memory of William Marcus Gosdin.

**SR 724** by Watson, In memory of Carl Brian Vernon of Lago Vista.

**SR 727** by Lucio, In memory of Sergio Shearer of the Rio Grande Valley.

### **Welcome and Congratulatory Resolutions**

**SR 701** by Rodriguez, Welcoming Héctor Agustín Murguía Lardizábal of Ciudad Juárez to the State Capitol.

**SR 714** by Ellis, Recognizing the members of the Jack Yates High School Class of 1961 on the occasion of their 50th reunion.

**SR 715** by Ellis, Recognizing the Harris County Historical Commission on the occasion of the dedication of a Texas Historical Marker for Peacock Records.

**SR 718** by Lucio, Recognizing Giovanni J. Mejia for being named to "The Commandant's Own," the official drum and bugle corps of the United States Marine Corps.

**SR 720** by Lucio, Recognizing Danielle Doty for earning the 2011 Miss Texas Teen USA title.

**SR 721** by Lucio, Recognizing J. Manuel Bañales on the occasion of his retirement as judge of the 105th Judicial District Court.

**SR 722** by Lucio, Recognizing the dedication ceremony for the San Benito Veterans War Memorial.

**SR 726** by Nichols, Recognizing Gail Green for her service to the citizens of Texas.

### **Official Designation Resolution**

**SR 716** by Ellis, Celebrating April 16, 2011, as Fort Bend County Black Nurses Association Day.

### **RECESS**

On motion of Senator Whitmire, the Senate at 1:09 p.m. recessed until 8:00 a.m. tomorrow for the Local and Uncontested Calendar Session.

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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 6, 2011

JURISPRUDENCE — **SB 820, SB 910, SB 1195, SB 1494, SB 1521, SB 1607, SB 1617**

FINANCE — **CSSB 449, CSSB 776**

INTERNATIONAL RELATIONS AND TRADE — **CSSB 824**

JURISPRUDENCE — **SB 1886, SB 1887**

CRIMINAL JUSTICE — **CSSB 1416**

GOVERNMENT ORGANIZATION — **SB 663, SB 1058**

EDUCATION — **SB 746, SB 1349**

INTERNATIONAL RELATIONS AND TRADE — **CSSB 1019, CSSB 1363**

NATURAL RESOURCES — **SB 1082, SB 1140, SB 1492, SB 1361**

EDUCATION — **CSSB 1788**

STATE AFFAIRS — **CSSB 216, CSSB 100, CSSB 1612, CSSB 554**

#### **BILLS ENGROSSED**

April 5, 2011

**SB 27, SB 73, SB 142, SB 153, SB 315, SB 597, SB 626, SB 656, SB 907, SB 1097, SB 1230, SB 1308, SB 1702**

#### **RESOLUTIONS ENROLLED**

April 5, 2011

**SR 693, SR 702, SR 703, SR 705, SR 706, SR 708, SR 709, SR 710, SR 711, SR 712**

**In Memory****of****Jose Luis Saenz III****House Concurrent Resolution 128**

WHEREAS, Words cannot adequately express the sorrow felt at the loss of U.S. Marine Corps Sergeant Jose Luis Saenz III of Pleasanton, who died in Afghanistan on August 9, 2010, at the age of 30; and

WHEREAS, Assigned to 1st Battalion, 11th Marine Regiment, 1st Marine Division, I Marine Expeditionary Force out of Camp Pendleton, California, Sergeant Saenz was killed in Helmand Province by an explosive device while on patrol; and

WHEREAS, Born in San Antonio in 1980 to Leonor Mata Saenz and Jose Luis Saenz, Jr., Joey Saenz grew up in Pleasanton, where he was a member of the varsity football team and the band at Pleasanton High School; after graduating in 1999, he worked as a mechanic at Walmart, where he met his future wife, Christy; he was a member of St. Matthew's Catholic Church in Jourdanton; and

WHEREAS, Mr. Saenz joined the Marine Corps in 2003 and received his basic training in San Diego; after completing automotive mechanics training at Camp Lejeune in North Carolina, he was stationed with the 9th Engineer Support Battalion in Okinawa, Japan; in 2005, he was assigned to Marine Corps Combat Service Support Schools at Camp Johnson, North Carolina, where he worked as a motor transport mechanic and performed HAZMAT duties and funeral details; he was assigned the 1st Battalion, 11th Marine Regiment in 2007; and

WHEREAS, The following year, he deployed with India Battery and participated in various exercises in the Persian Gulf with the 15th Marine Expeditionary Unit aboard USS *Peliliu*; he deployed to Afghanistan in support of Operation Enduring Freedom in May 2010, and at the time of his death he was conducting daily operations as a squad leader; and

WHEREAS, In recognition of his sacrifice, Sergeant Saenz was posthumously awarded the Purple Heart and the Navy and Marine Corps Commendation Medal with the Combat Distinguishing Device; he had also earned the Navy and Marine Corps Achievement Medal with two gold stars, the Combat Action Ribbon, the Marine Corps Good Conduct Medal, the National Defense Service Medal, the Afghanistan Campaign Medal, the Global War on Terrorism Expeditionary Medal, the Global War on Terrorism Service Medal, and the Sea Service Deployment Ribbon; moreover, the members of his regiment in Afghanistan named their artillery position Firebase Saenz in his honor; and

WHEREAS, Our state and nation are fortunate to have men and women whose love of country inspires them to serve, yet the tragic death of this brave man is a sobering reminder of the cost of war; Sergeant Jose Saenz embodied the highest ideals of the U.S. armed forces, and those who knew him and loved him will forever carry him close in their hearts; now, therefore, be it

RESOLVED, That the 82nd Legislature of the State of Texas hereby pay tribute to the life of U.S. Marine Corps Sergeant Jose Luis Saenz III and extend sincere sympathy to the members of his family: to his wife, Christy Heritage-Saenz; to his son, Jose Luis Saenz IV; to his parents, Leonor Mata Saenz and Jose Luis Saenz, Jr.; to his sisters, Bettina Saenz-Salas and her husband, Alex, Melissa Saenz and Shad Crow, and Patricia Saenz and Luis Ramos III; to his grandparents, Jose Luis Saenz, Sr., Evangelina Saenz, and Celia P. Mata; to his nieces and nephews, Brianna Salas, Ignacio Salas, Luis Ramos IV, and Leigh Ramos; to his in-laws, Paula Heritage, Elogio Heritage, Lisa McLin and her husband, Matthew, Sandra Callejas and her husband, Jeffrey, and Elogio Heritage, Jr., and his wife, Ruby; and to his other relatives and friends; and, be it further

RESOLVED, That an official copy of this resolution be prepared for his family and that when the Texas House of Representatives and Senate adjourn this day, they do so in memory of Jose Luis Saenz III.

ZAFFIRINI