

SENATE JOURNAL

EIGHTIETH LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

TWENTY-FIFTH DAY

(Tuesday, March 13, 2007)

The Senate met at 11:22 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, Harris, Hegar, Hinojosa, Jackson, Janek, Lucio, Nelson, Nichols, Ogden, Patrick, Seliger, Shapiro, Shapleigh, Uresti, Van de Putte, Watson, Wentworth, West, Whitmire, Williams, Zaffirini.

Absent-excused: Gallegos.

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

The Reverend Dean Meade, Calvary Baptist Church, Brenham, offered the invocation as follows:

Heavenly Father, we pause with grateful hearts today, thankful for our country, thankful for this great state in which we are privileged to live. Help us, heavenly Father, not to take for granted the many blessings and provisions that each of us so graciously receive. We pray today for the immediate family members of our Texas Senate. During this busy season, heavenly Father, we pray for Your watchful eye, Your protection, and Your peace in the lives of these families. We pray for our Texas Senate, for You have placed them here for such a time as this. Give them wisdom, understanding, and clarity in the decisions that You would have them to make on behalf of the citizens of Texas. May we all be a people that strive to honor You, honor others, and make Texas and the world a better place for generations to come. 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.

LEAVE OF ABSENCE

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

CO-AUTHOR OF SENATE BILL 127

On motion of Senator Shapleigh, Senator Eltife will be shown as Co-author of **SB 127**.

CO-AUTHORS OF SENATE BILL 136

On motion of Senator Nelson, Senators Van de Putte and West will be shown as Co-authors of **SB 136**.

CO-AUTHOR OF SENATE BILL 210

On motion of Senator Ellis, Senator West will be shown as Co-author of **SB 210**.

CO-AUTHOR OF SENATE BILL 251

On motion of Senator Harris, Senator Shapleigh will be shown as Co-author of **SB 251**.

CO-AUTHOR OF SENATE BILL 299

On motion of Senator Van de Putte, Senator Shapleigh will be shown as Co-author of **SB 299**.

CO-AUTHORS OF SENATE BILL 310

On motion of Senator Van de Putte, Senators Shapleigh and West will be shown as Co-authors of **SB 310**.

CO-AUTHOR OF SENATE BILL 311

On motion of Senator Van de Putte, Senator Shapleigh will be shown as Co-author of **SB 311**.

CO-AUTHORS OF SENATE BILL 318

On motion of Senator Deuell, Senators Uresti and Watson will be shown as Co-authors of **SB 318**.

CO-AUTHOR OF SENATE BILL 332

On motion of Senator Carona, Senator West will be shown as Co-author of **SB 332**.

CO-AUTHOR OF SENATE BILL 344

On motion of Senator Carona, Senator Deuell will be shown as Co-author of **SB 344**.

CO-AUTHOR OF SENATE BILL 457

On motion of Senator Watson, Senator Van de Putte will be shown as Co-author of **SB 457**.

CO-AUTHOR OF SENATE BILL 458

On motion of Senator Watson, Senator Van de Putte will be shown as Co-author of **SB 458**.

CO-AUTHOR OF SENATE BILL 486

On motion of Senator Shapiro, Senator Janek will be shown as Co-author of **SB 486**.

CO-AUTHORS OF SENATE BILL 589

On motion of Senator Nelson, Senators Shapleigh and West will be shown as Co-authors of **SB 589**.

CO-AUTHOR OF SENATE BILL 782

On motion of Senator Deuell, Senator Eltife will be shown as Co-author of **SB 782**.

CO-AUTHOR OF SENATE BILL 855

On motion of Senator Shapleigh, Senator Van de Putte will be shown as Co-author of **SB 855**.

CO-AUTHOR OF SENATE BILL 999

On motion of Senator Eltife, Senator Van de Putte will be shown as Co-author of **SB 999**.

CO-AUTHOR OF SENATE JOINT RESOLUTION 28

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

March 13, 2007

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

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

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

HCR 2, Designating March 13, 2007, as Mount Pleasant/Titus County Day at the State Capitol.

HCR 67, Urging Congress to provide further drought relief for Texas.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

PHYSICIAN OF THE DAY

Senator Duncan was recognized and presented Dr. Shelton Jackson of San Angelo as the Physician of the Day.

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

GUESTS PRESENTED

Senator Averitt was recognized and introduced to the Senate students and their sponsors from Burluson.

The Senate welcomed its guests.

MESSAGES FROM THE GOVERNOR

The following Messages from the Governor were read and were referred to the Committee on Nominations:

Austin, Texas
March 12, 2007

TO THE SENATE OF THE EIGHTIETH LEGISLATURE, REGULAR SESSION:

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

To be Public Counsel for the Office of Public Insurance Counsel for a term to expire February 1, 2009:

Roderick A. Bordelon, Jr.
Austin, Texas

(Mr. Bordelon is being reappointed)

To be a member of the Texas Commission of Licensing and Regulation for a term to expire February 1, 2013:

Frank S. Denton
Conroe, Texas

(Mr. Denton is being reappointed)

To be a member of the Texas State Board of Public Accountancy for a term to expire January 31, 2013:

Evelyn M. Martinez
San Antonio, Texas

(Ms. Martinez is being reappointed)

To be a member of the Office of Rural Community Affairs for a term to expire February 1, 2013:

Wallace G. Klussmann
Fredericksburg, Texas

(Mr. Klussmann is being reappointed)

To be Adjutant General of Texas for a term to expire February 1, 2009:

Lieutenant General Charles G. Rodriguez, Ph.D.
Austin, Texas

(General Rodriguez is being reappointed)

Respectfully submitted,
/s/Rick Perry
Governor

SENATE RESOLUTION 462

Senator Zaffirini offered the following resolution:

WHEREAS, The Senate of the State of Texas is pleased to recognize March 13, 2007, as Bee County Day at the State Capitol and to welcome the citizens of Bee County who have traveled to Austin for this occasion; and

WHEREAS, Bee County covers over 800 square miles in the Rio Grande Plain of South Central Texas, an area known for its great people, its prime farmlands, its subtropical climate, and its mild winters and warm summers; and

WHEREAS, Bee County was created by an act of the Texas Legislature on December 8, 1857, from portions of San Patricio, Refugio, Goliad, Karnes, and Live Oak Counties; it was named for Colonel Bernard E. Bee, Sr., the father of then speaker of the House of Representatives General Hamilton P. Bee; and

WHEREAS, Beautiful Bee County offers its proud citizens a well-rounded community life, outstanding public schools, and a number of natural and cultural resources and historical sites that promote a climate for progress and achievement; Bee County is the home of Coastal Bend College, a two-year state college established in 1965 that provides vocational and academic courses leading to higher degrees with off-campus extension programs in three area counties; Bee County is also the home of Christus Spohn Hospital, a state-of-the-art health care institution with emergency services and intensive care, physical therapy resources, and complete surgical services; and

WHEREAS, Bee County Day at the Texas State Capitol provides an opportunity for friends and families to honor Bee County's history and to celebrate its assets and accomplishments, which are enjoyed today by residents and visitors; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 80th Legislature, hereby join the citizens of this historic and vital region in paying tribute to their county and extend to them best wishes for an enjoyable Bee County Day at the State Capitol; and, be it further

RESOLVED, That a copy of this Resolution be prepared for the residents of Bee County as a memento of this event.

SR 462 was read and was adopted without objection.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate officials from Bee County: Sheriff Carlos Carrizales; County Judge David Silva; Bee Development Authority Executive Director Joe B. Montez; and County Commissioners, Carlos Salazar, Jr., and Eloy Rodriguez; accompanied by a delegation of citizens from Bee County.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Hegar was recognized and introduced to the Senate a delegation of officials from Matagorda and Wharton counties.

The Senate welcomed its guests.

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate: **SCR 32, SCR 34.**

SENATE CONCURRENT RESOLUTION 31

The President laid before the Senate the following resolution:

SCR 31, In memory of Stephen Robert Sandler.

JANEK

The resolution was read.

Senator Janek was recognized and introduced to the Senate the widow of Stephen Robert Sandler, Sharon Wulf Sandler, and their daughter, Jennifer Greer Sandler.

The Senate welcomed its guests and extended its sympathy.

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 Janek, **SCR 31** was considered immediately and was adopted by a rising vote of the Senate.

In honor of the memory of Stephen Robert Sandler, the text of the resolution is printed at the end of today's *Senate Journal*.

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 Jackson.

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

The President asked if there were requests to sever nominees.

There were no requests offered.

NOMINEES CONFIRMED

The following nominees, as reported by the Committee on Nominations, were confirmed by the following vote: Yeas 30, Nays 0.

Absent-excused: Gallegos.

Commissioner, Canadian River Commission: Richard McDonald, Potter County.

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

Members, Lavaca-Navidad River Authority Board of Directors: Paul Koop Littlefield, Jackson County; David Martin Muegge, Jackson County; Kay W. Simons, Jackson County.

Member, Manufactured Housing Board: Carlos Z. Amaral, Collin County.

Members, Real Estate Research Advisory Committee: James Michael Boyd, Harris County; Catarina Gonzales Cron, Harris County; Jacquelyn K. Hawkins, Travis County; D. Marc McDougal, Lubbock County; Barbara A. Russell, Denton County; Ronald Charles Wakefield, Bexar County.

Rio Grande Compact Commissioner for Texas: Patrick R. Gordon, El Paso County.

Director, Rio Grande Regional Water Authority Board of Directors: Glenn D. Wilde, Willacy County.

Members, Texas Board of Physical Therapy Examiners: Robert "Gary" Gray, Midland County; Phillip B. Palmer, Ph.D., Taylor County; Daniel Reyna, McLennan County.

Members, Texas Board of Professional Geoscientists: Charles Thomas Hallmark, Robertson County; Ronald L. Kitchens, Gillespie County; Barbara O. Roeling, Travis County; Gregory Clayton Ulmer, Harris County.

Member, Texas Commission on Environmental Quality: H. S. Buddy Garcia, Travis County.

Members, Texas Real Estate Commission: Troy C. Alley, Jr., Dallas County; John D. Eckstrum, Montgomery County; Tom C. Mesa, Jr., Harris County.

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 11:48 a.m. announced the conclusion of morning call.

COMMITTEE SUBSTITUTE SENATE BILL 378 ON THIRD READING

On motion of Senator Wentworth and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 378** at this time on its third reading and final passage:

CSSB 378, Relating to the use of force or deadly force in defense of a person.

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

Absent-excused: Gallegos.

LEAVE OF ABSENCE

On motion of Senator Whitmire, Senator Williams was granted leave of absence for the remainder of the day on account of important business.

SENATE BILL 389 ON SECOND READING

On motion of Senator Shapiro and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 389** at this time on its second reading:

SB 389, Relating to the capacity of the permanent school fund bond guarantee program.

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

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

Absent-excused: Gallegos, Williams.

SENATE BILL 389 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 **SB 389** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Wentworth.

Absent-excused: Gallegos, 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 **SB 389**, 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 389** 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 0.

Absent-excused: Gallegos, Williams.

SENATE BILL 332 ON SECOND READING

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 332** at this time on its second reading:

SB 332, Relating to the responsibility of an employer in relation to a person who drives a commercial motor vehicle; providing a criminal 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 except as follows:

Absent-excused: Gallegos, Williams.

SENATE BILL 332 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 332** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Wentworth.

Absent-excused: Gallegos, 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 **SB 332**, 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 332** 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 0.

Absent-excused: Gallegos, Williams.

SENATE BILL 387 ON SECOND READING

On motion of Senator Carona and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 387** at this time on its second reading:

SB 387, Relating to loose material transported by vehicle.

The bill was read second time.

Senator Jackson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 387**, in SECTION 2 of the bill, amended Section 725.002, Transportation Code (committee printing, page 1, line 25), by striking "motor vehicle," and substituting "motor vehicle having a manufacturer's rated carrying capacity of three tons or more,".

The amendment to **SB 387** was read and was adopted by a viva voce vote.

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

Absent-excused: Gallegos, Williams.

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

SB 387 as amended was passed to engrossment by a viva voce vote.

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

Absent-excused: Gallegos, Williams.

SENATE BILL 387 ON THIRD READING

Senator Carona moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 387** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Wentworth.

Absent-excused: Gallegos, 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 **SB 387**, 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 387** 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 0.

Absent-excused: Gallegos, Williams.

**SENATE RULE 11.18(a) SUSPENDED
(Public Hearings)**

On motion of Senator Whitmire and by unanimous consent, Senate Rule 11.18(a) was suspended in order that the Committee on Criminal Justice might consider the following bills today: **SB 1921, HB 8**.

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

On motion of Senator Wentworth and by unanimous consent, Senate Rule 11.13 was suspended to grant all committees permission to meet while the Senate was meeting today.

**NOTICE GIVEN FOR
LOCAL AND UNCONTESTED CALENDAR**

Senator Brimer 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 upon recess tomorrow and that all bills and resolutions would be considered on second and third reading in the order in which they were listed.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 464 by Janek, In memory of Cindi Lazzari of Austin.

SR 465 by Van de Putte, In memory of Socorro S. "Cora" Rodriguez of San Antonio.

SR 466 by Van de Putte, In memory of Alex Vidal of San Antonio.

SR 467 by Van de Putte, In memory of Julia D. "Judy" Karam of San Antonio.

SR 468 by Van de Putte, In memory of Lucille G. Martinez of San Antonio.

Congratulatory Resolution

SR 469 by Van de Putte, Recognizing Ronnie Brooks on the occasion of his retirement from the TRiO Programs at Texas A&M University–Commerce.

Official Designation Resolution

HCR 2 (Eltife), Designating March 13, 2007, as Mount Pleasant/Titus County Day at the State Capitol.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 12:12 p.m. adjourned, in memory of Harry B. Orem and J. D. "Shady" Strickel of San Antonio and Stephen Robert Sandler, until 11:00 a.m. tomorrow.

APPENDIX

COMMITTEE REPORT

The following committee report was received by the Secretary of the Senate:

March 13, 2007

GOVERNMENT ORGANIZATION — **SB 717**

SENT TO SECRETARY OF STATE

March 13, 2007

SCR 34

In Memory
of
Stephen Robert Sandler
Senate Concurrent Resolution 31

WHEREAS, The passing of Stephen Robert Sandler on October 16, 2006, at the age of 65, brought to a close the life of a remarkable man who won the admiration of individuals throughout the nation as a talented writer, teacher, and political consultant; and

WHEREAS, Born on April 22, 1941, Steve Sandler grew up in Bangor, Pennsylvania, and attended Bangor High School; after graduating with a bachelor's degree in psychology from Penn State University, he went on to earn a master's degree in writing from Johns Hopkins University, where he later taught a graduate course in media analysis and strategy; and

WHEREAS, Mr. Sandler worked in commercial advertising for several years before taking a copywriting job with Bailey/Deardourff, then the nation's premier political media firm; from there he went on to become director of communications for the National Republican Congressional Committee, where he oversaw a \$14 million GOP national advertising campaign and directed the development of some of the most innovative political advertising of the day; and

WHEREAS, During those years, he received the prestigious "Andy" award from the Advertising Club of New York; he was also part of the team that created the campaign that ultimately led to the election of Ronald Reagan; and

WHEREAS, In 1983, this dynamic political strategist partnered with Jim Innocenzi to form the highly successful consulting and advertising firm of Sandler-Innocenzi; the Alexandria, Virginia-based company played a prominent role in crafting the media campaigns that led to the passage of tort reform legislation in Texas and helped achieve deregulation of electric power in 18 states; and

WHEREAS, Noted as much for his engaging personality and often irreverent sense of humor as his keen political acumen and writing skills, Mr. Sandler was recognized among his peers for his exceptional ability to communicate ideas and shape public opinion with a few well-chosen words and images; those same skills were enormously beneficial to him in his lifelong efforts to share his vast knowledge of advertising and marketing with coworkers, clients, and students; and

WHEREAS, Deeply devoted to his wife of 27 years, Sharon, and his three children, Steve Sandler lived his life to the fullest, taking time to enjoy small pleasures along the way without losing sight of the big picture, and

endeavoring to effect change in the world; his loss has left a void in the lives of those who were privileged to know him, yet his achievements will resonate for years to come; now, therefore, be it

RESOLVED, That the 80th Legislature of the State of Texas hereby pay tribute to the life of Stephen Robert Sandler and extend deepest sympathy to the members of his family: to his wife, Sharon Wulf Sandler; to his children, Michael Sandler, Melissa Faye Trimmer, and Jennifer Greer Sandler; to his sister, Susan Deborah Wachtel; to his beloved grandchildren; and to the other relatives and many friends of this esteemed gentleman; and, be it further

RESOLVED, That an official copy of this resolution be prepared for the members of his family and that when the Texas Senate and House of Representatives adjourn this day, they do so in memory of Stephen Robert Sandler.

JANEK