

# SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

---

---

AUSTIN, TEXAS

---

---

PROCEEDINGS

---

**TWENTY-FOURTH DAY**

(Thursday, March 19, 2009)

The Senate met at 10:14 a.m. pursuant to adjournment and was called to order by President Pro Tempore Duncan.

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

Absent-excused: Jackson, Ogden.

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

Dr. Charles Whitmire, Austin, offered the invocation as follows:

Dear heavenly Father, in the entire history of the universe, there has never been a day before exactly like this one. Yesterday is now a thing of the past and tomorrow seems very distant in the future. Help us to embrace and live fully in this moment today. Help us to slow down long enough to enjoy every opportunity that You have placed before us. As we start this day, we pause to reflect and remind ourselves that You are God and we are not. It is Your hands that created everything. You spoke and everything came into being. Today, we gladly ask for Your help with the business at hand. We seek Your counsel and ask that You fill us with Your wisdom. We also pause to remember that we are not alone. Thank You for giving us the opportunity to serve this great state. Help us to recognize and appreciate that there are many people in Texas that count on us today. Help us to balance our desires with theirs. Finally, we ask that You bless our families and keep them safe while we are here serving Texas. It's in the name of Jesus Christ that I pray these things. 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.

## LEAVES OF ABSENCE

On motion of Senator Whitmire, Senator Jackson was granted leave of absence for today on account of important business.

On motion of Senator Whitmire, Senator Ogden was granted leave of absence for today on account of important business.

**CO-AUTHORS OF SENATE BILL 188**

On motion of Senator Deuell, Senators Hinojosa and West will be shown as Co-authors of **SB 188**.

**CO-AUTHOR OF SENATE BILL 346**

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

**CO-AUTHOR OF SENATE BILL 576**

On motion of Senator Davis, Senator Nelson will be shown as Co-author of **SB 576**.

**CO-AUTHOR OF SENATE BILL 586**

On motion of Senator Carona, Senator Deuell will be shown as Co-author of **SB 586**.

**CO-AUTHORS OF SENATE BILL 594**

On motion of Senator Van de Putte, Senators Carona, Ellis, and Watson will be shown as Co-authors of **SB 594**.

**CO-AUTHOR OF SENATE BILL 752**

On motion of Senator Davis, Senator Nelson will be shown as Co-author of **SB 752**.

**CO-AUTHOR OF SENATE BILL 902**

On motion of Senator Davis, Senator Nelson will be shown as Co-author of **SB 902**.

**CO-AUTHOR OF SENATE BILL 983**

On motion of Senator Davis, Senator Deuell will be shown as Co-author of **SB 983**.

**CO-AUTHOR OF SENATE BILL 1811**

On motion of Senator Duncan, Senator Estes will be shown as Co-author of **SB 1811**.

**CO-AUTHOR OF SENATE BILL 2251**

On motion of Senator Zaffirini, Senator Hinojosa will be shown as Co-author of **SB 2251**.

**CO-AUTHOR OF SENATE BILL 2403**

On motion of Senator Davis, Senator Carona will be shown as Co-author of **SB 2403**.

**MESSAGES FROM THE GOVERNOR**

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

Austin, Texas  
March 18, 2009

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

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

To be a member of the Finance Commission of Texas for a term to expire February 1, 2012:

Darby Ray Byrd, Sr.  
Orange, Texas

(Mr. Byrd is replacing John L. Snider of Center who resigned)

To be a member of the Texas Public Finance Authority for a term to expire February 1, 2015:

Gary Eugene Wood  
Lakeway, Texas

(Dr. Wood is being reappointed)

To be members of the Texas State Affordable Housing Corporation Board of Directors for terms to expire February 1, 2015:

Robert Elliott Jones  
Corpus Christi, Texas

(Mr. Jones is being reappointed)

A. Cynthia "Cindy" Leon  
Mission, Texas

(replacing Jesse Coffey of Denton whose term expired)

Respectfully submitted,

/s/Rick Perry  
Governor

Austin, Texas  
March 18, 2009

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

On January 22, 2009, I submitted the name of Barbara S. Lorraine for appointment to the Board of Pardons and Paroles for a term to expire February 1, 2013.

Because she resigned, I hereby withdraw her nomination and request that the Senate return the appointment to me.

Respectfully submitted,

/s/Rick Perry  
Governor

**LETTER FROM SPEAKER OF THE HOUSE OF REPRESENTATIVES**

The following letter from the Speaker of the House of Representatives was read and was referred to the Committee on Nominations:

**HOUSE OF REPRESENTATIVES**

Joe Straus  
Speaker

March 10, 2009

The Honorable David Dewhurst  
Lieutenant Governor  
P.O. Box 12068  
Austin, TX 78711-2068

Dear Governor Dewhurst:

In January of this year, Speaker Tom Craddick appointed Mr. Don E. Wood to serve on the Employees Retirement System of Texas Board of Trustees.

This appointment is subject to confirmation by the Senate.

I respectfully request the advice, consent, and the confirmation of the Senate with regard to the appointment of Mr. Wood for service in this role.

Respectfully,

/s/ Joe Straus  
Speaker

**CONCLUSION OF MORNING CALL**

The President Pro Tempore at 10:18 a.m. announced the conclusion of morning call.

**COMMITTEE SUBSTITUTE  
SENATE BILL 188 ON THIRD READING**

Senator Deuell moved to suspend the regular order of business to take up for consideration **CSSB 188** at this time on its third reading and final passage:

**CSSB 188**, Relating to disease control programs to reduce the risk of certain communicable diseases.

The motion prevailed by the following vote: Yeas 23, Nays 6.

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

Nays: Estes, Fraser, Huffman, Patrick, Shapiro, Williams.

Absent-excused: Jackson, Ogden.

The bill was read third time and was passed by the following vote: Yeas 23, Nays 6. (Same as previous roll call)

**COMMITTEE SUBSTITUTE  
SENATE BILL 434 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 434** at this time on its third reading and final passage:

**CSSB 434**, Relating to the establishment and operation of a motor-bus-only lane pilot program in certain counties.

The bill was read third time.

Senator Wentworth offered the following amendment to the bill:

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

Amend **CSSB 434** on third reading (Senate committee printing), in SECTION 1 of the bill, as follows:

(1) In added Section 455.006(a), Transportation Code (page 1, line 18), between "authorities" and the comma, insert "and with any municipality that has a mass transit department".

(2) In added Section 455.006(b), Transportation Code (page 1, line 34), strike "and".

(3) In added Section 455.006(b), Transportation Code (page 1, line 40), strike the period and substitute:  
; and

(5) be limited only to motor buses operated by the mass transit authorities or municipal mass transit departments in the counties specified by Subsection (a).

The amendment to **CSSB 434** was read and was adopted by a viva voce vote.

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

Absent-excused: Jackson, Ogden.

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

**CSSB 434** as again amended was finally passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Jackson, Ogden.

**SENATE BILL 503 ON SECOND READING**

On motion of Senator Eltife and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 503** at this time on its second reading:

**SB 503**, Relating to the required public notice of the name of each finalist for the position of superintendent of a public school district.

The bill was read second time and was passed to engrossment by the following vote: Yeas 29, Nays 0.

Absent-excused: Jackson, Ogden.

**SENATE BILL 503 ON THIRD READING**

Senator Eltife moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 503** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Jackson, Ogden.

**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 503**, 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 503** 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: Jackson, Ogden.

**COMMITTEE SUBSTITUTE  
SENATE BILL 445 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 445** at this time on its third reading and final passage:

**CSSB 445**, Relating to juror questions and juror note-taking during civil trials.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 0.

Absent-excused: Jackson, Ogden.

**REMARKS ORDERED PRINTED**

On motion of Senator Shapleigh and by unanimous consent, the exchange between Senators Wentworth and Shapleigh regarding **CSSB 445** was ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Shapleigh:** There's been quite a bit of literature and now appeals with respect to Twitter, with respect to accessing Google off electronic devices, PDAs, both in the jury box and the deliberation room, and your intent is not at all to alter any of those rules and to continue to let the Supreme Court set the rules with respect to the use of electronic devices in the courtroom. Is that correct?

**Senator Wentworth:** I'm hopeful, Senator, based on the language in this bill that talks about the bailiff retrieving the notes every day and their being destroyed at the end of the trial, that they can, by implication, rule that those sorts of cellular phones and personal digital assistants are barred from being used as the medium that they take notes on.

**PHYSICIAN OF THE DAY**

Senator Davis was recognized and presented Dr. Joane Baumer of Fort Worth as the Physician of the Day.

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

**(President in Chair)****SENATE BILL 759 ON SECOND READING**

On motion of Senator Williams and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 759** at this time on its second reading:

**SB 759**, Relating to certain standards for group-administered achievement tests used by school districts.

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: Jackson, Ogden.

**SENATE BILL 759 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 **SB 759** be placed on its third reading and final passage.

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

Nays: Wentworth.

Absent-excused: Jackson, Ogden.

### 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 759**, 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 759** 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: Jackson, Ogden.

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

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

### **SENATE RULE 11.10(a) SUSPENDED (Public Notice of Committee Meetings)**

On motion of Senator Eltife and by unanimous consent, Senate Rule 11.10(a) was suspended in order that the Committee on Nominations might meet today.

### **MOTION TO ADJOURN**

On motion of Senator Whitmire and by unanimous consent, the Senate at 10:55 a.m. agreed to adjourn, upon completion of the introduction of bills and resolutions on first reading, until 1:30 p.m. Monday, March 23, 2009.

### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

#### **Memorial Resolutions**

**SR 467** by Estes, In memory of John D. Moseley of Sherman.

**SR 478** by Williams, In memory of John Andrew Collins of The Woodlands.



### **Congratulatory Resolutions**

**SR 446** by Van de Putte, Recognizing the Braille Revival League of Texas for its work in fostering the use of Braille.

**SR 466** by Van de Putte, Recognizing the Bexar County Juvenile Probation Department on the occasion of its 100th anniversary.

**SR 468** by Davis, Congratulating Becky Moeller for being elected president of the Southern Region of the AFL-CIO.

**SR 469** by Ellis, Recognizing Geneva Brown Zachary on the occasion of her 89th birthday.

**SR 470** by Ellis, Recognizing the Thurgood Marshall Legal Society at The University of Texas School of Law for its contributions to the community.

**SR 471** by Ellis, Recognizing the Houston Parks and Recreation Department on the occasion of the renaming of the Cloverland Community Center as the Bessie Swindle Community Center.

**SR 472** by Ellis, Recognizing Raul Humberto Yzaguirre for his contributions to our country.

**SR 473** by Ellis, Congratulating Marcus and Audrey Cosby of Houston on the birth of their daughter, Aliyah Marie Cosby.

**SR 474** by Nelson and Harris, Recognizing PediPlace on the occasion of its 15th anniversary.

**SR 475** by Nelson, Recognizing the Texas Board of Nursing on the occasion of its 100th anniversary.

**SR 476** by Nelson, Recognizing the boys basketball team of Ponder High School in Ponder for winning a Class 2A state championship.

### **Official Designation Resolutions**

**SR 445** by Van de Putte, Recognizing May 16 through 22, 2009, as Safe Boating Week in Texas.

**SR 465** by Van de Putte, Recognizing April 29, 2009, as The University of Texas Health Science Center San Antonio Day.

**SR 477** by Nelson, Averitt, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Hegar, Huffman, Jackson, Nichols, Ogden, Patrick, Seliger, Shapiro, Wentworth, and Williams, Proclaiming April 16, 2009, Texas Federation of Republican Women Legislative Day at the State Capitol.

### **RECESS**

On motion of Senator Whitmire, the Senate at 10:56 a.m. recessed until 10:00 a.m. tomorrow.

---

**APPENDIX**

---

**COMMITTEE REPORTS**

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

March 19, 2009

BUSINESS AND COMMERCE — **SB 731, SB 538, SB 507, CSSB 470**

INTERGOVERNMENTAL RELATIONS — **SB 764, CSSB 820**

CRIMINAL JUSTICE — **SB 223, SB 554, CSSB 839**

JURISPRUDENCE — **SB 82, SB 491, SB 518, SB 658, SB 659, SB 742, SB 780, SB 812**

HIGHER EDUCATION — **SB 596, CSSB 297**

**BILLS ENGROSSED**

March 18, 2009

**SB 52, SB 90, SB 362, SB 555, SB 987**

**RESOLUTIONS ENROLLED**

March 18, 2009

**SR 378, SR 438, SR 448, SR 449, SR 450, SR 451, SR 452, SR 453, SR 454, SR 455, SR 456, SR 457, SR 458, SR 459, SR 460, SR 461, SR 462, SR 463, SR 464**