

SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

TWENTY-NINTH DAY

(Monday, March 30, 2009)

The Senate met at 1:41 p.m. pursuant to adjournment and was called to order by the President.

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

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

The Reverend Kalvin Lillard, Bread of Life Ministries Church, San Antonio, offered the invocation as follows:

Father, I am grateful for this opportunity to stand before these men and women of this great State of Texas. Father, I pray that You give them the guidance, wisdom, understanding, and concern for the people of Texas. I pray that You strengthen them and guide them to make the right decisions in a difficult time. Protect them and watch over them and their families. We pray this in Your sovereign name. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of Thursday, March 26, 2009, be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

CO-AUTHOR OF SENATE BILL 9

On motion of Senator Zaffirini, Senator West will be shown as Co-author of **SB 9**.

CO-AUTHORS OF SENATE BILL 261

On motion of Senator Deuell, Senators Patrick and Zaffirini will be shown as Co-authors of **SB 261**.

CO-AUTHOR OF SENATE BILL 298

On motion of Senator Carona, Senator Patrick will be shown as Co-author of **SB 298**.

CO-AUTHORS OF SENATE BILL 427

On motion of Senator Shapiro, Senators Shapleigh and Van de Putte will be shown as Co-authors of **SB 427**.

CO-AUTHOR OF SENATE BILL 515

On motion of Senator Ellis, Senator Davis will be shown as Co-author of **SB 515**.

CO-AUTHOR OF SENATE BILL 541

On motion of Senator Watson, Senator Van de Putte will be shown as Co-author of **SB 541**.

CO-AUTHOR OF SENATE BILL 544

On motion of Senator Ellis, Senator Shapleigh will be shown as Co-author of **SB 544**.

CO-AUTHOR OF SENATE BILL 545

On motion of Senator Fraser, Senator Van de Putte will be shown as Co-author of **SB 545**.

CO-AUTHOR OF SENATE BILL 564

On motion of Senator Jackson, Senator Nelson will be shown as Co-author of **SB 564**.

CO-AUTHOR OF SENATE BILL 605

On motion of Senator Deuell, Senator West will be shown as Co-author of **SB 605**.

CO-AUTHORS OF SENATE BILL 843

On motion of Senator Uresti, Senators Lucio and Wentworth will be shown as Co-authors of **SB 843**.

CO-AUTHOR OF SENATE BILL 1140

On motion of Senator Shapiro, Senator West will be shown as Co-author of **SB 1140**.

CO-AUTHORS OF SENATE BILL 1443

On motion of Senator Zaffirini, Senators Duncan and West will be shown as Co-authors of **SB 1443**.

CO-AUTHOR OF SENATE BILL 2407

On motion of Senator Zaffirini, Senator Lucio will be shown as Co-author of **SB 2407**.

MESSAGES FROM THE GOVERNOR

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

Austin, Texas
March 27, 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 members of the Brazos River Authority Board of Directors for terms to expire as indicated:

To Expire February 1, 2013:

G. Dave Scott
Richmond, Texas

(replacing Zachary Brady of Lubbock who resigned)

To Expire February 1, 2015:

James F. "Jim" Landtroop, Jr.
Plainview, Texas

(replacing Wade Gear of Fort Worth whose term expired)

Nancy Kay Whitehead Porter
Sugar Land, Texas

(Ms. Porter is being reappointed)

John D. Steinmetz
Lubbock, Texas

(Mr. Steinmetz is being reappointed)

Robert E. "Bob" Tesch
Georgetown, Texas

(replacing Scott Smith of Cedar Park whose term expired)

To be members of the Texas Facilities Commission for terms to expire January 31, 2015:

William Derek Darby
Houston, Texas

(Mr. Darby is being reappointed)

Virginia I. Hermosa
Austin, Texas

(Ms. Hermosa is being reappointed)

Brant C. Ince
Dallas, Texas

(replacing Victor Leal of Canyon whose term expired)

To be members of the Texas Lottery Commission for terms to expire as indicated:

To Expire February 1, 2011:

J. Winston Krause
Austin, Texas

(replacing Mary Ann Williamson of Weatherford)

To Expire February 1, 2015:

Mary Ann Williamson

Weatherford, Texas

(replacing James Cox of Austin whose term expired)

To be members of the Texas State Board of Social Worker Examiners for terms to expire February 1, 2015:

Jody Anne Montgomery Armstrong

Abilene, Texas

(Ms. Armstrong is being reappointed)

Stewart Ogden Geise

Austin, Texas

(replacing Matt Shaheen of Plano whose term expired)

Nary Spears

Houston, Texas

(Ms. Spears is being reappointed)

To be members of the Upper Colorado River Authority Board of Directors for terms to expire February 1, 2015:

Ronny Alexander

Paint Rock, Texas

(replacing Fred Campbell of Paint Rock whose term expired)

Hope Wilson Huffman

San Angelo, Texas

(Ms. Huffman is being reappointed)

William Hood

Robert Lee, Texas

(Mr. Hood is being reappointed)

To be members of the Real Estate Research Advisory Committee for terms to expire January 31, 2015:

James Michael Boyd

Houston, Texas

(Mr. Boyd is being reappointed)

Ronald Charles Wakefield

San Antonio, Texas

(Mr. Wakefield is being reappointed)

Louis A. "Tony" Cortes

San Antonio, Texas

(replacing Catarina Cron of Houston whose term expired)

To be members of the Aging and Disability Services Council for terms to expire February 1, 2015:

Glyn S. Crane

Longview, Texas

(replacing Terry Wilkinson of Midland whose term expired)

Carolyn Harvey

Tyler, Texas

(replacing Abigail Barrera of San Antonio whose term expired)

Ann Schneider

Austin, Texas

(replacing Nancy Lund of Texarkana whose term expired)

To be members of the Texas School Safety Center Board for terms to expire February 1, 2011:

Carl A. Montoya

Brownsville, Texas

James Richard Pendell

Fabens, Texas

Ruben Gonzales Reyes

Lubbock, Texas

Severita Sanchez

Laredo, Texas

(the individuals listed above are being reappointed)

To be members of the Judicial Compensation Commission for terms to expire February 1, 2015:

William M. Strawn

Austin, Texas

(Mr. Strawn is being reappointed)

Paul Bane Phillippi

Cedar Creek, Texas

(replacing Elizabeth Whitaker of Dallas whose term expired)

To be a member of the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2009:

William F. "Dubb" Smith III

Dripping Springs, Texas

(Mr. Smith is replacing Kosse Maykus of Southlake whose term expired)

To be members of the Texas Private Security Board for terms to expire January 31, 2015:

John E. Chism

Irving, Texas

(Mr. Chism is being reappointed)

Patrick A. Patterson

Boerne, Texas

(replacing Harold Warren of Austin whose term expired)

To be a member of the Teacher Retirement System of Texas Board of Trustees for a term to expire August 31, 2013:

Eric Craig McDonald
Lubbock, Texas

(Mr. McDonald is replacing James H. Lee of Houston who resigned)

Respectfully submitted,

/s/Rick Perry

Governor

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate: **HCR 83, HCR 84, HCR 133.**

PHYSICIAN OF THE DAY

Senator Duncan was recognized and presented Dr. Steven Rossi of Tulia as the Physician of the Day.

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

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

March 30, 2009

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 394, Relating to use of the money from the Texas Enterprise Fund to benefit small businesses.

HB 400, Relating to the dismissal of a charge of unlawfully parking a vehicle in a space designated specifically for persons with disabilities.

HB 448, Relating to requiring the Department of State Health Services to implement a provider choice system.

HB 605, Relating to mileage reimbursement for state employees.

HB 621, Relating to public improvement districts designated by a county or municipality.

HB 693, Relating to an exemption from the structural pest control license requirement for certain falconers.

HB 762, Relating to filing a wage claim.

- HB 782**, Relating to registration exemptions for certain foreign commercial motor vehicles.
- HB 867**, Relating to the transfer of certain state property from the Texas Department of Criminal Justice to the City of Burnet.
- HB 873**, Relating to incentives for the film, television, video, and digital interactive media production industries.
- HB 968**, Relating to the use of crossbows for hunting.
- HB 1510**, Relating to including information on sudden infant death syndrome in a resource pamphlet for parents of newborn children.
- HB 1637**, Relating to normal weekly hours of work under the shared work unemployment compensation program.
- HB 1695**, Relating to the requirement that electric utilities create and implement a plan for infrastructure improvement and maintenance.
- HB 1761**, Relating to the reserve requirements for credit life and credit accident and health insurance.
- HB 1822**, Relating to the use of certain terms by certificated telecommunications utilities, retail electric providers, and electric utilities in retail bills.
- HCR 89**, Commemorating the 60th anniversary of the creation of the Texas Legislative Council.
- HCR 92**, Commemorating the 100th anniversary of the Denton Chamber of Commerce.
- HCR 99**, In memory of John H. Hanna of Paris.
- HCR 100**, In memory of the Reverend James M. Elsom of Paris, Texas.
- HCR 101**, In memory of Jeniavee "Jenny" Hatcher of Paris, Texas.
- HCR 102**, In memory of Juanita Daughtrey of Powderly.
- HCR 103**, In memory of Carl Walter Smith of Paris, Texas.
- HCR 104**, In memory of Billy Joe Patterson of Brookston.
- HCR 105**, In memory of Monroe Travis Hardin of Paris, Texas.
- HCR 106**, In memory of Danise Blalock of Mount Pleasant.
- HCR 107**, In memory of Roslyn Davis Sample of Powderly.
- HCR 108**, In memory of Bishop Othoe Stegall of Lubbock.
- HCR 109**, In memory of Joe Bob Stone of Paris, Texas.
- HCR 110**, In memory of Mary Jo Floyd Hughes of Belk.
- HCR 111**, In memory of Wayne Wilson Streety, Sr., of Paris.
- HCR 112**, In memory of Cory Lee Ellis of Mount Pleasant.
- HCR 117**, In memory of Professor Robert Osborne Reid of College Station.

HCR 118, Honoring the legacy of Caesar Kleberg.

HCR 122, Designating April 27, 2009, as Social Work Day at the State Capitol.

SCR 37, Welcoming members of the Texas Organization of Rural and Community Hospitals and the Texas Rural Health Association to the Capitol.

SCR 50, Recognizing Arturo E. Guerra, Jr., for his contributions to the justice system in Texas.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

GUESTS PRESENTED

Senator Van de Putte was recognized and introduced to the Senate eighth-grade students and their teacher from Mount Sacred Heart Catholic School in San Antonio.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate his guests from the City of Brownsville.

The Senate welcomed its guests.

INTRODUCTION OF BILLS AND RESOLUTIONS POSTPONED

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

There was no objection.

SENATE RESOLUTION 542

Senator Patrick offered the following resolution:

WHEREAS, Drunk driving is a serious problem in the State of Texas, and its far-reaching consequences can include damage to property, injury of innocent victims, and loss of life; and

WHEREAS, A contributing factor in more than one third of all traffic-related deaths in Texas, drunk driving also results in tens of thousands of injuries every year in this state; and

WHEREAS, Texas led the nation in drunk driving fatalities in 2007 with 1,292, and this state's percentage of traffic fatalities associated with drunk driving was well above the national average of 31.7 percent; and

WHEREAS, In just one terrible instance of the devastation that can result from driving under the influence of alcohol, Nicole "Lilly" Lalime was killed by a suspected drunk driver immediately after getting off her school bus in front of her home on December 16, 2008; and

WHEREAS, In her case, the driver already had one conviction for a drunk driving offense; and

WHEREAS, Increased enforcement and penalties offer a potential tool in the fight against this serious problem, which exacts a great toll on our society at large and on individual families, like Bill and Valoree Lalime, whose tragic loss is a stark reminder of the consequences of drunk driving; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 81st Legislature, hereby call on all Texans to work tirelessly to reduce the incidence of drunk driving in our state; and, be it further

RESOLVED, That a copy of this Resolution be prepared in honor of the victims of drunk driving.

SR 542 was read and was adopted without objection.

GUESTS PRESENTED

Senator Patrick, joined by Senator Ellis, was recognized and introduced to the Senate Bill and Valoree Lalime, parents of Nicole "Lilly" Lalime.

The Senate welcomed its guests.

CONCLUSION OF MORNING CALL

The President at 1:58 p.m. announced the conclusion of morning call.

SENATE RULE 7.12(a) SUSPENDED (Printing of Bills)

On motion of Senator Hinojosa and by unanimous consent, Senate Rule 7.12(a) was suspended and the committee report for **SB 1** was ordered not printed.

SENATE BILL 538 ON SECOND READING

On motion of Senator Estes and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 538** at this time on its second reading:

SB 538, Relating to the amount of wine certain wineries may sell directly to consumers.

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 538 ON THIRD READING

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 538** 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 538**, 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 538** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

SENATE BILL 899 ON SECOND READING

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **SB 899** at this time on its second reading:

SB 899, Relating to hospital district participation in state travel service contracts.

The bill was read second time.

Senator Watson offered the following amendment to the bill:

Floor Amendment No. 1

Amend **SB 899** (Senate committee report) as follows:

(1) In the recital to SECTION 1 of the bill (page 1, line 12), strike "Subsection (j)" and substitute "Subsections (i) and (j)".

(2) In SECTION 1 of the bill, immediately following the recital (page 1, between lines 12 and 13), insert the following:

(i) An officer or employee of a transportation or transit authority, department, district, or system established under Subtitle K, Title 6, Transportation Code, who is engaged in official business of the authority, department, district, or system may participate in the comptroller's contracts for travel services. The comptroller may charge a participating authority, department, district, or system a fee not to exceed the costs incurred by the comptroller in providing services under this subsection. The comptroller shall periodically review fees and shall adjust them as needed to ensure recovery of costs incurred in providing services to authorities, departments, districts, and systems under this subsection.

The amendment to **SB 899** 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 Deuell and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

SB 899 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 899 ON THIRD READING

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 899** 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 899**, 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 899** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

COMMITTEE SUBSTITUTE SENATE BILL 540 ON SECOND READING

Senator Estes moved to suspend the regular order of business to take up for consideration **CSSB 540** at this time on its second reading:

CSSB 540, Relating to notice of an application for a permit to dispose of oil and gas waste in a disposal well.

The motion prevailed.

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

The bill was read second time and was passed to engrossment by the following vote: Yeas 28, Nays 3.

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

Nays: Eltife, Harris, Ogden.

**COMMITTEE SUBSTITUTE
SENATE BILL 540 ON THIRD READING**

Senator Estes moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 540** be placed on its third reading and final passage.

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

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

Nays: Eltife, Harris, Ogden, Wentworth.

Reason for Vote

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

I cast a "No" vote on the procedural motion to suspend the Constitutional Rule requiring that bills be read on three several days in order to take up and consider **CSSB 540**, 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 540** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

The bill was read third time and was passed by the following vote: Yeas 28, Nays 3.

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

Nays: Eltife, Harris, Ogden.

**COMMITTEE SUBSTITUTE
SENATE BILL 261 ON SECOND READING**

On motion of Senator Deuell and by unanimous consent, the regular order of business was suspended to take up for consideration **CSSB 261** at this time on its second reading:

CSSB 261, Relating to the taking of a specimen of the breath or blood of a person arrested for an intoxication offense under certain circumstances.

The bill was read second time.

Senator West offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 261** (Senate committee printing) as follows:

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

SECTION ____. Article 18.01, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsection (j) to read as follows:

(c) A search warrant may not be issued under Article 18.02(10) [~~pursuant to Subdivision (10) of Article 18.02 of this code~~] unless the sworn affidavit required by Subsection (b) [~~of this article~~] sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Except as provided by Subsections (d), [~~and~~] (i), and (j) [~~of this article~~], only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, or a justice of the Supreme Court of Texas, including the chief justice, may issue warrants under Article 18.02(10) [~~pursuant to Subdivision (10), Article 18.02 of this code~~].

(j) Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(10) to collect a blood specimen from a person who:

(1) is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and

(2) refuses to submit to a breath or blood alcohol test.

(2) In SECTION 2 of the bill (page 1, line 53), strike "The change in law made by this Act" and substitute "(a) Section 724.012, Transportation Code, as amended by this Act,".

(3) Between SECTIONS 2 and 3 of the bill (page 1, between lines 60 and 61), insert the following:

(b) Article 18.01, Code of Criminal Procedure, as amended by this Act, applies only to a search warrant issued on or after the effective date of this Act. A search warrant issued before the effective date of this Act is governed by the law in effect on the date the warrant was issued, and the former law is continued in effect for that purpose.

The amendment to **CSSB 261** was read and was adopted by a viva voce vote.

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

Senator Patrick offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 261** (Senate committee printing) immediately following the enacting clause (page 1, between lines 13 and 14) by adding the following new SECTION 1 to the bill and renumbering existing SECTIONS of the bill accordingly:

SECTION 1. This Act shall be known as the Nicole "Lilly" Lalime Act.

The amendment to **CSSB 261** 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.

Senator Williams offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 261** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, in amended Section 724.012(2)(A), Transportation Code (page 1, line 40), strike "arrested" and substitute "convicted or placed on probation".

(2) (1) In SECTION 1 of the bill, in amended Section 724.012(2)(B), Transportation Code (page 1, line 43), strike "arrested" and substitute "convicted or placed on probation".

The amendment to **CSSB 261** was read and was adopted by the following vote: Yeas 26, Nays 5.

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

Nays: Deuell, Hegar, Huffman, Patrick, Wentworth.

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

CSSB 261 as amended was passed to engrossment by a viva voce vote.

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

COMMITTEE SUBSTITUTE SENATE BILL 261 ON THIRD READING

Senator Deuell moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **CSSB 261** 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 261**, 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 261** would have occurred on the next legislative day, allowing for Texans to have learned through news reports of our second reading vote exactly what we had tentatively passed. Third reading and a vote on the next legislative day would also have allowed our professional staff an opportunity overnight to make sure any amendments passed on second reading are technically correct.

/s/Jeff Wentworth
Senator, District 25

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

REMARKS ORDERED PRINTED

On motion of Senator Patrick and by unanimous consent, his remarks regarding **SR 542** were ordered reduced to writing and printed in the *Senate Journal*.

The remarks will be printed in an addendum to this day's journal.

**COMMITTEE SUBSTITUTE
SENATE BILL 298 ON SECOND READING**

Senator Carona moved to suspend the regular order of business to take up for consideration **CSSB 298** at this time on its second reading:

CSSB 298, Relating to the authority of the Department of Public Safety of the State of Texas and certain local law enforcement agencies to establish a checkpoint on a highway or street to determine whether persons are driving while intoxicated.

The motion prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Fraser, Harris, Huffman, Lucio, Nelson, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Van de Putte, Watson, Wentworth, West, Zaffirini.

Nays: Eltife, Estes, Gallegos, Hegar, Hinojosa, Jackson, Ogden, Uresti, Whitmire, Williams.

The bill was read second time.

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSSB 298** (Senate committee printing), in SECTION 1 of the bill, in added Article 65.04(g)(1), Code of Criminal Procedure (page 2, line 20), between "video" and "recording", by inserting "and audio".

The amendment to **CSSB 298** was read and was adopted by a viva voce vote.

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

Senator Carona offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSSB 298** (Senate committee printing), in SECTION 1 of the bill, in added Article 65.04(k), Code of Criminal Procedure (page 2, line 54), by striking "The law enforcement agency shall publicize" and substituting "Before beginning the operation of a sobriety checkpoint, the law enforcement agency shall publicize through the use of the media".

The amendment to **CSSB 298** 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.

Senator Lucio offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSSB 298** (Senate committee printing), in SECTION 1 of the bill, by striking added Article 65.02, Code of Criminal Procedure (page 1, lines 30-35), and substituting the following:

Art. 65.02. AUTHORIZATION FOR SOBRIETY CHECKPOINTS. A law enforcement agency may operate a temporary checkpoint as provided by this chapter to determine whether persons operating motor vehicles on a highway or street are intoxicated and in violation of Section 49.04 or 49.045, Penal Code. The checkpoint must be operated on a highway or street other than:

- (1) a limited-access or controlled-access highway;
- (2) an overpass;
- (3) a bridge or causeway; or
- (4) the single ingress to or egress from a designated area.

The amendment to **CSSB 298** was read.

Senator Carona offered the following amendment to Floor Amendment No. 3:

Floor Amendment No. 4

Amend Floor Amendment No. 3 by Lucio, to **CSSB 298** as follows:

(1) At page 1, line 5 in proposed Article 65.02, Code of Criminal Procedure, after "CHECKPOINTS.", strike "A" and insert "(a) Except as provided by Subsection (b), a".

(2) In proposed Article 65.02, Code of Criminal Procedure, add a new Subsection (b) to read as follows:

(b) The Department of Public Safety may not operate a temporary checkpoint in a county with a population of less than 250,000.

The amendment to Floor Amendment No. 3 to **CSSB 298** was read and was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Fraser, Harris, Hegar, Huffman, Jackson, Lucio, Nichols, Patrick, Seliger, Shapiro, Uresti, Watson, Wentworth, Zaffirini.

Nays: Estes, Gallegos, Hinojosa, Nelson, Ogden, Shapleigh, Van de Putte, West, Whitmire, Williams.

Question recurring on the adoption of Floor Amendment No. 3 to **CSSB 298**, the amendment as amended was adopted by the following vote: Yeas 25, Nays 6.

Yeas: Averitt, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hegar, Hinojosa, Huffman, Jackson, Lucio, Nichols, Patrick, Seliger, Shapiro, Uresti, Watson, Wentworth, Whitmire, Zaffirini.

Nays: Nelson, Ogden, Shapleigh, Van de Putte, West, Williams.

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

Floor Amendment No. 5

Amend **CSSB 298** as follows:

On page 2, line 28, after "license" insert "concealed hand gun license,"

VAN DE PUTTE
HEGAR

The amendment to **CSSB 298** was read and was adopted by a viva voce vote.

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

Senator Davis offered the following amendment to the bill:

Floor Amendment No. 6

Amend **CSSB 298** (Senate committee printing), in SECTION 1 of the bill, in added Article 65.04, Code of Criminal Procedure (page 3, between lines 6 and 7), by inserting the following:

(n) A law enforcement agency shall maintain until at least the second anniversary of the date on which the agency concludes the operation of a sobriety checkpoint any video and/or audio recording made at the checkpoint of an encounter between a motor vehicle operator and a peace officer under Subsection (g)(1).

The amendment to **CSSB 298** was read and was adopted by a viva voce vote.

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

Senator Ellis offered the following amendment to the bill:

Floor Amendment No. 7

Amend **CSSB 298** (Senate committee printing) as follows:

(1) In SECTION 1 of the bill, immediately following added Article 65.04, Code of Criminal Procedure (page 3, between lines 6 and 7), insert the following:

Art. 65.05. REPORT ON EFFECTIVENESS OF CHECKPOINTS. (a) Not later than January 15 of each calendar year, a law enforcement agency shall report the operation of each checkpoint during the preceding calendar year to the traffic safety section of the traffic operations division of the Texas Department of Transportation at its offices in Austin.

(b) The traffic operations division is entitled to inspect any information in the possession of the law enforcement agency that relates to the operation of a sobriety checkpoint by the agency.

(c) Not later than February 1, 2015, the traffic operations division shall submit a report on the effectiveness of sobriety checkpoints operated under this chapter to the governor, the lieutenant governor, and the speaker of the house of representatives.

Art. 65.06. EXPIRATION. This chapter expires August 31, 2015.

(2) Between SECTIONS 1 and 2 of the bill (page 3, between lines 6 and 7), insert an appropriately numbered SECTION to the bill to read as follows and renumber subsequent SECTIONS of the bill accordingly:

SECTION ____ . A law enforcement agency authorized to operate a sobriety checkpoint under Chapter 65, Code of Criminal Procedure, as added by this Act, shall submit the first report required by Article 65.05 of that chapter not later than January 15, 2010.

The amendment to **CSSB 298** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 7.

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

CSSB 298 as amended was passed to engrossment by the following vote: Yeas 20, Nays 11.

Yeas: Averitt, Carona, Davis, Duncan, Ellis, Fraser, Harris, Huffman, Lucio, Nelson, Nichols, Patrick, Seliger, Shapiro, Shapleigh, Van de Putte, Watson, Wentworth, West, Zaffirini.

Nays: Deuell, Eltife, Estes, Gallegos, Hegar, Hinojosa, Jackson, Ogden, Uresti, Whitmire, Williams.

SENATE RULES SUSPENDED (Posting Rules)

On motion of Senator Harris 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 945** today.

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 is meeting tomorrow.

MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 4:18 p.m. agreed to adjourn, upon completion of the introduction of bills and resolutions on first reading, until 11:00 a.m. tomorrow.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 531 by Ellis, In memory of Billy G. Moore of Houston.

SR 536 by Nichols, In memory of Richard P. Sheffield of Jacksonville.

Congratulatory Resolutions

SR 529 by Davis, Commending Truevine Missionary Baptist Church in Fort Worth for participating in the American Heart Association's Search Your Heart program.

SR 530 by Ellis, Commending the boys basketball team of Jack Yates High School in Houston for winning the Class 4A state championship.

SR 532 by Uresti, Congratulating Elvira Cisneros of San Antonio on the occasion of the dedication of the Elvira Cisneros Senior Community Center by WellMed.

SR 533 by Duncan, Recognizing the Ozark Trail Barbecue Cook-off for being declared a Texas State Barbecue Championship competition.

SR 535 by Nichols, Commending the men's basketball team of Stephen F. Austin State University for winning the Southland Conference.

SR 537 by Carona and Shapiro, Recognizing participants in the McDermott Scholars Program for their commitment to education.

Official Designation Resolution

SR 534 by Whitmire, Recognizing April 24, 2009, as Pearlee Holman Day.

RECESS

On motion of Senator Whitmire, the Senate at 4:19 p.m. recessed until 8:00 a.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

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

March 30, 2009

BUSINESS AND COMMERCE — CSSB 778, CSSB 1034, CSSB 1354

INTERGOVERNMENTAL RELATIONS — CSSB 237, CSSB 238, CSSB 240, SB 241, CSSB 361, SB 490, SB 575, SB 874, SB 959, SB 1021, CSSB 1398, CSSB 1522

JURISPRUDENCE — SCR 33, SB 1048, SB 1053, SB 1055, SB 1056, SB 1066, SB 1067, SB 1369, SB 1575

HIGHER EDUCATION — CSSB 98

AGRICULTURE AND RURAL AFFAIRS — CSSB 344

JURISPRUDENCE — CSSB 1259

CRIMINAL JUSTICE — CSSB 707

JURISPRUDENCE — CSSB 866, CSSB 915, CSSB 1057

NATURAL RESOURCES — CSSB 1080, CSSB 1121, CSSB 1122

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — CSSCR 22, SCR 38, CSSB 1075, SB 1408

HEALTH AND HUMAN SERVICES — CSSB 493, SB 571, CSSB 791, CSSB 796, CSSB 887, SB 1082, CSSB 1083, SB 1129

BUSINESS AND COMMERCE — CSSB 338

HEALTH AND HUMAN SERVICES — CSSB 67, CSSB 69, CSSB 790, CSSB 821

CRIMINAL JUSTICE — CSSB 1091

VETERAN AFFAIRS AND MILITARY INSTALLATIONS — CSSB 1537, CSSCR 5

NATURAL RESOURCES — SB 940, CSSB 1209, SB 1253

TRANSPORTATION AND HOMELAND SECURITY — CSSB 404, CSSB 375, SB 898

FINANCE — CSSB 1 (Ordered not printed)

INTERGOVERNMENTAL RELATIONS — CSSB 359, CSSB 534, CSSB 968

BILLS ENGROSSED

March 26, 2009

SB 220, SB 532

RESOLUTIONS ENROLLED

March 26, 2009

SR 525, SR 527, SR 528