

FOURTH DAY

(CONTINUED)

TUESDAY, AUGUST 16, 2005

PROCEEDINGS

AFTER RECESS

The Senate met at 9:10 a.m. and was called to order by the President.

SENATORS ANNOUNCED PRESENT

Senators Carona, Harris, Seliger, Shapiro, and Williams, who had previously been recorded as "Absent-excused," were announced "Present."

LEAVES OF ABSENCE

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

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

PHYSICIAN OF THE DAY

Senator Armbrister was recognized and presented Dr. Barbara Conner of Hallettsville as the Physician of the Day.

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

SENATE RESOLUTION 6 ON SECOND READING

On motion of Senator Staples and by unanimous consent, Senate Rule 8.02 and the regular order of business were suspended to take up for consideration **SR 6** at this time on its second reading:

WHEREAS, The Texas Water Development Board estimates that by 2050 current water sources will fall short of meeting demand by 7.5 million acre-feet per year, affecting 900 cities representing 38 percent of the projected population; such a staggering shortfall would undoubtedly hold dire consequences for the people and economy of the State of Texas; and

WHEREAS, To prepare for the growing water needs of Texas, studies have been conducted to identify sites favorable for the construction of reservoirs; one such site, located on the Neches River in Cherokee and Anderson Counties, merits

consideration for the construction of a dam and reservoir by virtue of the storage and conservation advantages the location would afford the burgeoning population in the region and the state; and

WHEREAS, The construction and development of such a project and the associated use of the unappropriated flows of the Neches River are in the public interest and would certainly constitute a beneficial use of the water; in fact, analyses indicate that the firm yield of Fastrill Reservoir may range from 140,000 acre-feet per year to 155,000 acre-feet per year; and

WHEREAS, As a result, expected beneficiaries of the dependable water supply afforded by the development of the Fastrill Reservoir include users in Anderson, Cherokee, Henderson, and Smith Counties, as well as the City of Dallas; projections that population growth in the region will reach 50 percent highlight the importance of the development of Fastrill Reservoir; and

WHEREAS, In addition to the water storage and conservation advantages related to the Fastrill site, the associated economic development opportunities and potential increase in property value for communities in rural East Texas cannot be ignored; and

WHEREAS, Clearly, the Fastrill Reservoir Regional Water Supply Project is a critical resource that can help meet the water supply requirements of the region and state while offering additional economic benefits to the surrounding area; now, therefore, be it

RESOLVED, That the Senate of the 79th Texas Legislature, 2nd Called Session, express its support for the site known as Fastrill Reservoir, located on the Neches River in Cherokee and Anderson Counties, as a key component of the state's water conservation plan.

SR 6 was read second time and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution except as follows:

Absent-excused: Barrientos, Fraser, Hinojosa, Lindsay, Nelson, Van de Putte, West.

REMARKS ORDERED PRINTED

On motion of Senator Williams and by unanimous consent, the remarks between Senators Williams and Staples regarding **SR 6** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Williams: Senator Staples, I wanted to, for the purposes of intent of what we're doing here, ask you some questions about the language that you have on page 1, lines 14 through 19, where you discuss the associated use and unappropriated flows of the Neches River. In the, you had legislation, I think, during the session that dealt with a similar issue that failed over on the House side. We had a discussion about that on the floor. I guess my first question is, is one of the issues that's being discussed between the payor and the people, local people, where the reservoir would be built, is one of the issues at hand whether or not the junior water rights provision that's currently in law will apply to those unappropriated flows?

Senator Staples: I have not heard any formal discussions in regard to the junior water rights provision. It's been my understanding from day one that the junior water rights provisions in law today would apply without any exemptions, without any minimization of the impact of those requirements.

Senator Williams: And those provisions don't prohibit the interbasin transfer of water. They just make it a priority for their, for the river basin in the event that you have an unusual situation or drought or something like that. Is that—

Senator Staples: I—

Senator Williams: Correct?

Senator Staples: I think that's an, exactly the right point. This project is being contemplated under the junior water laws, the right laws that we have in the state today. There are investors willing to consider this. There's a local area willing to consider it. The, if appropriated, if this should go forward some point in the future, it will be junior to other appropriated rights in that basin.

Senator Williams: So, it, would it be fair to say it's not your intent if the Senate were to take up this resolution and adopt the resolution, it's not your intent in any way to indicate a lack of support in the Senate for the current junior water rights provision?

Senator Staples: That's correct. I'm— (inaudible, overlapping conversation)

Senator Williams: OK. Thank you, Senator Staples.

SENATE BILL 7 WITH HOUSE AMENDMENTS

Senator Janek again called **SB 7** from the President's table for consideration of the House amendments to the bill.

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

Amendment

Amend **SB 7** by substituting in lieu thereof the following:

A BILL TO BE ENTITLED AN ACT

relating to limits on the use of the power of eminent domain.

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

SECTION 1. Subtitle E, Title 10, Government Code, is amended by adding Chapter 2206 to read as follows:

CHAPTER 2206. LIMITATIONS ON USE OF EMINENT DOMAIN

Sec. 2206.001. LIMITATION ON EMINENT DOMAIN FOR PRIVATE PARTIES OR ECONOMIC DEVELOPMENT PURPOSES. (a) This section applies to the use of eminent domain under the laws of this state, including a local or special law, by any governmental or private entity, including:

(1) a state agency, including an institution of higher education as defined by Section 61.003, Education Code;

(2) a political subdivision of this state; or

(3) a corporation created by a governmental entity to act on behalf of the entity.

(b) A governmental or private entity may not take private property through the use of eminent domain if the taking:

(1) confers a private benefit on a particular private party through the use of the property;

(2) is for a public use that is merely a pretext to confer a private benefit on a particular private party; or

(3) is for economic development purposes, unless the economic development is a secondary purpose resulting from municipal community development or municipal urban renewal activities to eliminate an existing affirmative harm on society from slum or blighted areas under:

(A) Chapter 373 or 374, Local Government Code, other than an activity described by Section 373.002(b)(5), Local Government Code; or

(B) Section 311.005(a)(1)(I), Tax Code.

(c) This section does not affect the authority of an entity authorized by law to take private property through the use of eminent domain for:

(1) transportation projects, including railroads, airports, or public roads or highways;

(2) ports;

(3) water supply, wastewater, flood control, and drainage projects;

(4) the provision of utility services;

(5) a sports and community venue project approved by voters at an election held on or before December 1, 2005, under Chapter 334 or 335, Local Government Code;

(6) the operations of:

(A) a common carrier subject to Chapter 111, Natural Resources Code, and Section B(3)(b), Article 2.01, Texas Business Corporation Act; or

(B) an energy transporter, as that term is defined by Section 186.051, Utilities Code;

(7) a purpose authorized by Chapter 181, Utilities Code;

(8) underground storage operations subject to Chapter 91, Natural Resources Code; or

(9) a waste disposal project.

(d) This section does not affect the authority of a governmental entity to condemn a leasehold estate on property owned by the governmental entity.

SECTION 2. Subchapter A, Chapter 552, Government Code, is amended by adding Section 552.0037 to read as follows:

Sec. 552.0037. CERTAIN ENTITIES AUTHORIZED TO TAKE PROPERTY THROUGH EMINENT DOMAIN. Notwithstanding any other law, information collected, assembled, or maintained by an entity that is not a governmental body but is authorized by law to take private property through the use of eminent domain is subject to this chapter in the same manner as information collected, assembled, or maintained by a governmental body, but only if the information is related to the taking of private property by the entity through the use of eminent domain.

SECTION 3. Section 203.052, Transportation Code, is amended by adding Subsection (c) to read as follows:

(c) The commission may not condemn property for a purpose described in Subsection (b)(9) unless:

(1) subject to the provisions of Section 227.041(b-1), the purpose is for a gas station, convenience store, or similar facility; or

(2) the purpose is to provide a location between the main lanes of a highway or between a highway and a department rail facility for a gas station, convenience store, or similar facility that:

(A) provides services to and directly benefits users of a toll project; and

(B) is not located within 10 miles of an intersection of the toll project and a segment of another state highway that is designated as an interstate highway.

SECTION 4. (a) An interim committee is created to study the use of the power of eminent domain.

(b) The interim committee consists of:

(1) five members of the senate appointed by the lieutenant governor; and

(2) five members of the house of representatives appointed by the speaker of the house of representatives.

(c) The speaker of the house of representatives shall designate one member of the house of representatives appointed to the committee to act as co-chair. The lieutenant governor shall designate one senator appointed to the committee to act as co-chair.

(d) The interim committee shall:

(1) study the use of the power of eminent domain, including the use of the power of eminent domain for economic development purposes; and

(2) prepare a report of the committee's study for the 80th Legislature.

(e) The report required by Subsection (d)(2) of this section must be filed with the lieutenant governor and speaker of the house of representatives not later than December 1, 2006.

SECTION 5. Chapter 2206, Government Code, as added by this Act, applies only to the taking of private property by eminent domain for which a condemnation petition is filed on or after the effective date of this Act. A taking for which a condemnation petition is filed before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

Floor Amendment No. 2

Amend **CSSB 7** (House committee printing) by striking added Subdivision (2), Subsection (c), Section 2206.001, Government Code (page 2, line 13), and substituting the following:

"(2) entities authorized under Section 59, Article 16, Texas Constitution, including:

(A) port authorities;

(B) navigation districts; and

(C) any other conservation or reclamation districts that act as ports;"

Floor Amendment No. 3

Amend **CSSB 7** on page 2, line 16 by adding a new subsection (4) to Section 2206.001(c) as follows, and renumbering the subsequent subsections appropriately:

(3) including public buildings, hospitals, and parks

Floor Amendment No. 4

Amend **CSSB 7** in SECTION 1 of the bill, proposed Section 2206.001(c)(1), Government Code (page 2, line 11, committee printing) by inserting "but not limited to," between "including" and "railroads".

Floor Amendment No. 5

Amend **CSSB 7** (House committee printing) in SECTION 1 of the bill, in added Subsection (c), Section 2206.001, Government Code, as follows:

(1) At the end of Subdivision (8) (page 3, line 2), strike "or".

(2) At the end of Subdivision (9) (page 3, line 3), strike the underlined period and substitute "; or".

(3) Immediately following Subdivision (9) (page 3, between lines 3 and 4), insert the following:

"(10) a library, museum, or related facility and any infrastructure related to the facility."

Floor Amendment No. 6

Amend **CSSB 7** (House committee printing) in SECTION 4 of the bill, in Subdivision (1) of Subsection (d), between "economic development purposes" and the semicolon (page 4, line 22), by inserting "and the issue of what constitutes adequate compensation for property taken through the use of eminent domain".

Floor Amendment No. 8

Amend **CSSB 7** by adding the following appropriately numbered SECTION to the bill and renumbering the other SECTIONS of the bill accordingly:

SECTION _____. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9045 to read as follows:

Sec. 51.9045. LIMITATION ON USE OF EMINENT DOMAIN. (a) In this section:

(1) "Institution of higher education" has the meaning assigned by Section 61.003.

(2) "Lodging facility" does not include a dormitory or other student housing facility.

(b) the governing board of an institution of higher education may not use the power of eminent domain to acquire land to be used for a lodging facility or for parking or a parking structure intended to be used in connection with the use of a lodging facility.

Floor Amendment No. 9

Amend **CSSB 7** by striking SECTION 5 of the bill (page 5, lines 1-7, House committee printing) and renumbering the remaining sections as appropriate.

Floor Amendment No. 10

Amend **CSSB 7** in SECTION 1 of the bill in added Section 2206.001, Government Code, by inserting the following appropriately designated subsection:

() The determination by the governmental or private entity proposing to take the property that the taking does not involve an act or circumstance prohibited by Subsection (b) does not create a presumption with respect to whether the taking involves that act or circumstance.

Floor Amendment No. 11

Amend **CSSB 7** by adding the following sections, appropriately numbered:

SECTION __. Section 203.052, Transportation Code, as amended by H.B. No. 2702, Acts of the 79th Legislature, Regular Session, 2005, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Property necessary or convenient to a state highway for purposes of Subsection (a) includes an interest in real property, a property right, or a material that the commission determines is necessary or convenient to:

- (1) protect a state highway;
- (2) drain a state highway;
- (3) divert a stream, river, or other watercourse from the right-of-way of a state highway;
- (4) store materials or equipment for use or used in the construction or maintenance of a state highway;
- (5) construct or operate a warehouse or other facility used in connection with the construction, maintenance, or operation of a state highway;
- (6) lay out, construct, or maintain a roadside park;
- (7) lay out, construct, or maintain a parking lot that will contribute to maximum use of a state highway with the least possible congestion;
- (8) mitigate an adverse environmental effect that directly results from construction or maintenance of a state highway;
- (9) subject to Subsection (c), provide a location for an ancillary facility that is anticipated to generate revenue for use in the design, development, financing, construction, maintenance, or operation of a toll project, including a gas station, garage, store, hotel, restaurant, or other commercial facility;
- (10) construct or operate a toll booth, toll plaza, service center, or other facility used in connection with the construction, maintenance, or operation of a toll project; or
- (11) accomplish any other purpose related to the location, construction, improvement, maintenance, beautification, preservation, or operation of a state highway.

(c) The commission may not acquire property for an ancillary facility through the exercise of eminent domain.

SECTION __. Section 227.041(b), Transportation Code, as amended by H.B. No. 2702, Acts of the 79th Legislature, Regular Session, 2005, is amended to read as follows:

(b) An interest in real property or a property right is necessary or convenient for the construction or operation of a facility if it is located in or contiguous to an existing or planned segment of the Trans-Texas Corridor or is needed for mitigation of adverse environmental effects, and if its acquisition will further the primary purposes of the Trans-Texas Corridor. Primary purposes include:

- (1) providing right-of-way or a location for a facility;
- (2) providing land for mitigation of adverse environmental effects;
- (3) providing buffer zones for scenic or safety purposes;
- (4) allowing for possible future expansion of any facility; and
- (5) subject to Section 203.052(c), providing a location for a gas station, convenience store, or similar ancillary facility.

SECTION __. Section 227.041(e), Transportation Code, as added by H.B. No. 2702, Acts of the 79th Legislature, Regular Session, 2005, is repealed.

Floor Amendment No. 12

Amend Floor Amendment No. 11 by Kolkhorst to **CSSB 7** in Subsection (c), Section 203.052, Transportation Code, as added by the amendment, between "eminent domain" and the underscored period (page 2, line 11), by inserting:
, unless the acquisition of the property is for one of multiple ancillary facilities included in a comprehensive development plan approved by the county commissioners court of each county in which the property is located

Floor Amendment No. 13

Amend **CSSB 7** (House committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION __. Section 6, Chapter 178, Acts of the 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. (a) Except as provided by Subsection (b) of this section, the [The] power of eminent domain granted by this Act shall be exercised in accordance with Chapter 21, Property Code [the procedure, conditions, and provisions as prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended].

(b) If a charitable corporation to which this Act applies seeks to acquire any real property by condemnation or seeks to purchase any real property that the corporation intends to use in a manner that would not comply with any deed restriction that applies to the property immediately before the purchase, before the charitable corporation initiates condemnation proceedings or records the deed conveying title to the property the charitable corporation shall, in addition to providing any other notice required by law, provide written notice by certified mail to the owner of record, as recorded in the real property records of the county, of each unit of real property:

- (1) that the charitable corporation seeks to acquire or purchase; or
- (2) that is not more than 200 feet from any boundary of any unit of real property the charitable corporation seeks to acquire or purchase.

SECTION 10. The changes in law made by this Act to Chapter 178, Acts of the 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), apply to the acquisition of real property by eminent domain or the purchase

of real property on or after the effective date of this Act unless condemnation proceedings are initiated or a deed conveying title to the property is filed before the effective date of this Act, in which event the acquisition or purchase is governed by the law in effect at the time the proceedings are initiated or the deed is filed, and the former law is continued in effect for that purpose. The changes in law made by this Act to Chapter 178, Acts of the 56th Legislature, Regular Session, 1959 (Article 3183b-1, Vernon's Texas Civil Statutes), do not apply to acquisition of real property by eminent domain or the purchase of real property before the effective date of this Act.

The amendments were again read.

Senator Janek again moved to concur in the House amendments to **SB 7**.

(Senator Armbrister in Chair)

Senator Gallegos at 9:55 a.m. was recognized for questions on **SB 7**.

Senator Gallegos at 10:26 a.m. was recognized for extended discussion of **SB 7**.

(Senator Ogden in Chair)

POINT OF ORDER

Senator Armbrister raised a point of order that Senator Gallegos' remarks were not confined to the body of the bill.

POINT OF ORDER RULING

The Presiding Officer, Senator Ogden in Chair, ruled that the point of order was well-taken and warned Senator Gallegos to confine his remarks to the body of the bill.

(Senator Gallegos resumed discussion of SB 7)

(Senator Eltife in Chair)

POINT OF ORDER

Senator Armbrister again raised a point of order that Senator Gallegos was not confining his remarks to the body of the bill.

POINT OF ORDER RULING

The Presiding Officer, Senator Eltife in Chair, ruled that the point of order was well-taken and again warned Senator Gallegos that he must confine his remarks to the body of the bill.

(Senator Gallegos resumed discussion of SB 7)

(President in Chair)

Senator Gallegos at 12:20 p.m. yielded the floor.

Senator Janek moved to postpone further consideration of the House amendments to **SB 7** to a time certain of 4:00 p.m. today.

The motion prevailed.

Question — Shall the Senate concur in the House amendments to **SB 7**?

RECESS

On motion of Senator Whitmire, the Senate at 12:30 p.m. recessed until 4:00 p.m. today.

AFTER RECESS

The Senate met at 4:23 p.m. and was called to order by the President.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

August 16, 2005

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 18, Commemorating the 70th anniversary of Tyler State Park.

HCR 20, In memory of Charles Eugene Thielman of Paris.

HCR 21, In memory of John L. Starks of Paris.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILL 7 WITH HOUSE AMENDMENTS

The President laid before the Senate the House amendments to **SB 7**. The amendments had been read and further consideration postponed to a time certain of 4:00 p.m. today.

Question — Shall the Senate concur in the House amendments to **SB 7**?

The Senate concurred in the House amendments to **SB 7** by the following vote: Yeas 19, Nays 5.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Harris, Jackson, Janek, Lucio, Madla, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Ellis, Gallegos, Shapleigh, Whitmire, Zaffirini.

Absent-excused: Barrientos, Fraser, Hinojosa, Lindsay, Nelson, Van de Putte, West.

REMARKS ORDERED PRINTED

On motion of Senator Shapleigh and by unanimous consent, the remarks between Senators Shapleigh and Janek regarding **SB 7** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Shapleigh: Senator, you and I have had a running conversation about intent and proof of public use. And, so I've got some questions on your bill. Is the intent of this bill to limit condemnations for economic development purposes?

Senator Janek: Yes, it is. And I'm not sure, you understand that the, the discussion we had yesterday is already on the record.

Senator Shapleigh: Well, I don't think we had—

Senator Janek: Think it's been—

Senator Shapleigh: It recorded in the Journal.

Senator Janek: We didn't reduce that to writing? OK.

Senator Shapleigh: No. I think—

Senator Janek: The answer is, yes it is.

Senator Shapleigh: OK. In a Supreme Court case, in the *Kelo* opinion, that court adopted what is in eminent domain circles called a liberal view of what is meant by the phrase of public use, as it pertains to the United States Constitution. In this state, we've always adopted the *Borden* definition, which is the conservative view of what constitutes public use. Is it your intent that the public use definition in *Borden* be adopted and used as a test under this bill?

Senator Janek: It is my intent that we adopt the more conservative approach to what constitutes public use under the Constitution.

Senator Shapleigh: Is it your intent under Senate Bill 7 that when a litigant comes in and claims one of the exceptions, that they still have to prove public use?

Senator Janek: Yes, it is.

Senator Shapleigh: Thank you.

RECESS

On motion of Senator Whitmire, the Senate at 4:25 p.m. recessed until 4:40 p.m. today.

AFTER RECESS

The Senate met at 5:00 p.m. and was called to order by the President.

**SENATE RESOLUTION 120
(Caucus Report)**

Senator Whitmire offered the following resolution:

BE IT RESOLVED BY THE SENATE OF THE STATE OF TEXAS:

SECTION 1. CAUCUS REPORT. At a caucus held on August 16, 2005, and attended by 21 members of the senate, the caucus made the recommendations for the operation of the senate contained in this resolution.

SECTION 2. EMPLOYEES. (a) The lieutenant governor may employ the employees necessary for the operation of the office of the lieutenant governor from the closing of this session and until the convening of the next session. The lieutenant governor and the secretary of the senate shall be furnished postage, telegraph, telephone, express, and all other expenses incident to their respective offices.

(b) The secretary of the senate is the chief executive administrator and shall be retained during the interval between adjournment of this session and the convening of the next session of the legislature. The secretary of the senate may employ the employees necessary for the operation of the senate and to perform duties as may be required in connection with the business of the state from the closing of this session and until the convening of the next session.

(c) Each senator may employ secretarial and other office staff for the senator's office.

(d) The chairman of the administration committee is authorized to retain a sufficient number of staff employees to conclude the work of the enrolling clerk, calendar clerk, journal clerk, and sergeant-at-arms. The administration committee shall establish the salaries for the senate staff.

SECTION 3. SENATE OFFICERS. (a) The following elected officers of the 79th Legislature shall serve for the interval between adjournment of this session and the convening of the next session of the legislature:

- (1) Secretary of the Senate—Patsy Spaw;
- (2) Calendar Clerk—Linda Tubbs;
- (3) Enrolling Clerk—Mardi Alexander;
- (4) Journal Clerk—Dianne Arrington; and
- (5) Sergeant-at-Arms—Carleton Turner.

(b) All employees and elected officers of the senate shall operate under the direct supervision of the secretary of the senate during the interim.

(c) Officers named in this section serve at the will of the senate.

SECTION 4. DUTIES OF CHAIRMAN OF ADMINISTRATION COMMITTEE. (a) The chairman of the administration committee shall place the senate chamber in order and purchase supplies and make all necessary repairs and improvements between the adjournment of this session and the convening of the next session of the legislature.

(b) The chairman shall make an inventory of all furniture and fixtures in the senate chamber and in the private offices of the members, as well as of the supplies and equipment on hand in the purchasing and supply department and shall close the books for the 2nd Called Session of the 79th Legislature.

(c) The chairman shall not acquire any equipment on a rental/purchase plan unless the equipment is placed on the senate inventory at the termination of the plan.

(d) The chairman shall examine records and accounts payable out of the contingent expense fund as necessary to approve all claims and accounts against the senate, and no claim or account shall be paid without the consent and approval of the chairman.

(e) The chairman and any member of the administration committee shall be entitled to receive actual and necessary expenses incurred during the interim.

(f) In addition to the duties of the administration committee expressly imposed by this resolution, the committee shall take actions necessary to ensure that the administrative operations of the senate comply with applicable law and are conducted effectively and efficiently.

SECTION 5. JOURNAL. (a) The secretary of the senate shall have 325 volumes of the Senate Journal of the 2nd Called Session of the 79th Legislature printed. Two hundred and fifty copies shall be bound in buckram and delivered to the secretary of the senate who shall forward one volume to each member of the senate, the lieutenant governor, and each member of the house of representatives on request.

(b) The printing of the journals shall be done in accordance with the provisions of this resolution under the supervision of the chairman of the administration committee. The chairman shall refuse to receive or receipt for the journals until corrected and published in accordance with the preexisting law as finally approved by the chairman of the administration committee. When the accounts have been certified by the chairman of the administration committee, the accounts shall be paid out of the contingent expense fund of the 79th Legislature.

SECTION 6. PAYMENT OF SALARIES AND EXPENSES. (a) Salaries and expenses authorized by this resolution shall be paid out of the per diem and contingent expense fund of the 79th Legislature as provided by this section.

(b) The senate shall request the comptroller of public accounts to issue general revenue warrants for:

(1) payment of the employees of the lieutenant governor's office, the lieutenant governor, members of the senate, employees of the senate committees, and employees of the senate, except as provided by Subchapter H, Chapter 660, Government Code, upon presentation of the payroll account signed by the chairman of the administration committee and the secretary of the senate; and

(2) the payment of materials, supplies, and expenses of the senate, including travel expenses for members and employees, upon vouchers signed by the chairman of the administration committee and the secretary of the senate.

SECTION 7. EXPENSE REIMBURSEMENT AND PER DIEM. (a) In furtherance of the legislative duties and responsibilities of the senate, the administration committee shall charge to the individual member's office budget:

(1) the reimbursement of all actual expenses incurred by the members when traveling in performance of legislative duties and responsibilities or incident to those duties; and

(2) the payment of all other reasonable and necessary expenses for the operation of the office of the individual senator during any period the legislature is not in session. Expenditures for these services by the administration committee are authorized as an expense of the senate and shall not be restricted to Austin but may be incurred in individual senatorial districts. Such expenses shall be paid from funds appropriated for the use of the senate on vouchers approved by the chairman of the administration committee and the secretary of the senate in accordance with regulations governing such expenditures.

(b) Each senator shall be permitted a payroll of \$35,000 per month to employ secretarial and other office staff and for intrastate travel expenses for staff employees. This payroll amount accrues on the first day of the month and may not be expended

prior to the month in which it accrues, but any unexpended portion for a month may be carried forward from month to month until the end of the fiscal year. Other expenses, including travel expenses or other reasonable and necessary expenses incurred in the furtherance and performance of legislative duties or in operation of the member's office or incident thereto, shall be provided in addition to the maximum salary authorized.

(c) The secretary of the senate may order reimbursement for legislative expenses consistent with this resolution and the establishment by the Texas Ethics Commission of per diem rates.

(d) Any member of the senate and the lieutenant governor are eligible to receive such reimbursement on application of the member or the lieutenant governor to the secretary of the senate.

(e) On the application of a member of the senate or the lieutenant governor, the applicant shall be entitled to reimbursement for legislative expenses for each legislative day.

(f) For purposes of this section, a legislative day includes each day of a regular or special session of the legislature, including any day the legislature is not in session for a period of four consecutive days or less, and all days the legislature is not in session if the senator or lieutenant governor attends a meeting of a joint, special, or legislative committee as evidenced by the official record of the body, and each day, limited to 12 days per month for non-chairs or 16 days per month for chairs and the lieutenant governor, the senator or the lieutenant governor, including those living within a 50-mile radius, is otherwise engaged in legislative business as evidenced by claims submitted to the chairman of the administration committee.

SECTION 8. MEMBER'S EMPLOYEE LEAVE POLICY. (a) An employee of a senator accrues vacation leave, compensatory leave, or sick leave in accordance with policies adopted by the senator consistent with the requirements of this section.

(b) An employee may accrue vacation leave, compensatory leave, or sick leave only if the employee files a monthly time record with the senate human resources office. Time records are due not later than the 10th day of the following month.

(c) Compensatory time must be used not later than the last day of the 12th month following the month in which the time was accrued.

(d) An employee is not entitled to compensation for accrued but unused compensatory time.

SECTION 9. DESIGNATION FOR ATTENDANCE AT MEETINGS AND FUNCTIONS. (a) The lieutenant governor may appoint any member of the senate, the secretary of the senate, or any other senate employee to attend meetings of the National Conference of State Legislatures and other similar meetings. Necessary and actual expenses are authorized upon the approval of the chairman of the administration committee and the secretary of the senate.

(b) The lieutenant governor may designate a member of the senate to represent the senate at ceremonies and ceremonial functions. The necessary expenses of the senator and necessary staff for this purpose shall be paid pursuant to a budget approved by the administration committee.

SECTION 10. MEETINGS DURING INTERIM. (a) Each of the standing committees and subcommittees of the senate of the 79th Legislature may continue to meet at such times and places during the interim as determined by such committees and subcommittees and to hold hearings, recommend legislation, and perform research on matters directed either by resolution, the lieutenant governor, or as determined by majority vote of each committee.

(b) Each continuing committee and subcommittee shall continue to function under the rules adopted during the legislative session where applicable.

(c) Expenses for the operation of these committees and subcommittees shall be paid pursuant to a budget prepared by each committee and approved by the administration committee.

(d) The operating expenses of these committees shall be paid from the contingent expense fund of the senate, and committee members shall be reimbursed for their actual expenses incurred in carrying out the duties of the committees.

SECTION 11. SENATE OFFICES. Members not returning for the 80th Legislature shall vacate their senate offices by December 15, 2006.

SECTION 12. FURNISHING OF INFORMATION BY SENATE EMPLOYEE. An employee of the senate may not furnish any information to any person, firm, or corporation other than general information pertaining to the senate and routinely furnished to the public.

SECTION 13. OUTSIDE EMPLOYMENT. An employee of the senate may not be employed by and receive compensation from any other person, firm, or corporation during the employee's senate employment without the permission of the employee's senate employer.

SECTION 14. REMOVAL OF SENATE PROPERTY. The secretary of the senate is specifically directed not to permit the removal of any of the property of the senate from the senate chamber or the rooms of the senate except as authorized by the chairman of the administration committee.

SR 120 was read and was adopted without objection.

**ELECTION OF PRESIDENT PRO TEMPORE AD INTERIM
SEVENTY-NINTH LEGISLATURE, SECOND CALLED SESSION**

The President announced that the time had arrived for the election of President Pro Tempore Ad Interim of the 79th Legislature, 2nd Called Session.

Senator Lucio placed in nomination the name of Senator Frank Madla of San Antonio.

Senator Madla was declared by acclamation President Pro Tempore Ad Interim of the 79th Legislature, 2nd Called Session.

The President called the Honorable Frank Madla to the President's Rostrum and administered the Oath of Office as follows:

I, Frank Madla, do solemnly swear, that I will faithfully execute the duties of the office of President Pro Tempore Ad Interim of the Senate of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this state, so help me God.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 89 by Wentworth, In memory of William E. "Gene" Sharp of San Antonio.

SR 109 by Wentworth, In memory of John R Shaw of San Antonio.

SR 111 by Williams, In memory of Wallace Lee Luthy of Kingwood.

SR 115 by Barrientos, In memory of Sally Ann Kelso of Austin.

HCR 20 (Eltife), In memory of Charles Eugene Thielman of Paris.

HCR 21 (Eltife), In memory of John L. Starks of Paris.

Congratulatory Resolutions

SR 108 by Wentworth, Recognizing Winifred Sophie Kuehl Russell on the occasion of her 100th birthday.

SR 110 by Fraser, Recognizing Mrs. Pearl Day of Houston on the occasion of her 109th birthday.

SR 112 by Williams, Congratulating the Liberty Ponytails softball team of Liberty for winning a state championship.

SR 113 by Williams, Recognizing Peggy and Charles Mason of New Caney on the occasion of their 50th wedding anniversary.

SR 114 by Janek, Recognizing Jonathan Curran and Kathleen Chase of Boston, Massachusetts, on the occasion of their marriage.

SR 116 by Barrientos, Recognizing Charlie M. Yates on the occasion of his retirement.

SR 117 by Staples, Recognizing Dempsey and Kay Carter of Conroe and their daughters for their efforts in behalf of Texas agriculture.

SR 118 by Deuell, Recognizing the Mesquite Republican Women's Club on the occasion of its 30th anniversary.

SR 119 by Janek, Recognizing Thomas Ehlers and Allison Becker on the occasion of their marriage.

HCR 18 (Eltife), Commemorating the 70th anniversary of Tyler State Park.

RECESS

On motion of Senator Whitmire, the Senate at 5:03 p.m. recessed until 11:00 a.m. tomorrow.

APPENDIX

SENT TO GOVERNOR

August 16, 2005

SB 5

