

# SENATE JOURNAL

EIGHTY-FIRST LEGISLATURE — FIRST CALLED SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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## FIRST DAY

(Wednesday, July 1, 2009)

In obedience to the Proclamation of the Honorable Rick Perry, Governor of the State of Texas, the Senate met in the Senate Chamber of the State Capitol at Austin, Texas, on the 1st day of July, 2009, at 10:46 a.m. and was called to order by the Honorable David Dewhurst, Lieutenant Governor and President of the Senate.

The President directed the Secretary of the Senate to call the roll of the Senate.

The roll was called and the following Senators were present: Averitt, Carona, Davis, Deuell, 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.

Absent-excused: Duncan.

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

The Reverend Christine S. Kenney, Saint David's Medical Center, Austin, offered the invocation as follows:

O God, the fountain of wisdom, whose will is good and whose law is truth, guide and bless Lieutenant Governor Dewhurst, the Senators here assembled, and all Texas Representatives that they may enact such laws as shall be for the welfare of the state's people. Give them wisdom, understanding, and strength in the exercise of their duties. Help them to be ever mindful of their responsibility to serve the people of Texas with a spirit of truth and integrity. This we pray, Amen.

## LEAVE OF ABSENCE

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

## CO-AUTHOR OF SENATE BILL 1

On motion of Senator Carona, Senator Wentworth will be shown as Co-author of **SB 1**.

## CO-AUTHORS OF SENATE BILL 6

On motion of Senator Shapleigh, Senators Averitt, Davis, Ellis, Gallegos, Hinojosa, Lucio, Uresti, Van de Putte, Watson, West, Whitmire, and Zaffirini will be shown as Co-authors of **SB 6**.

**PROCLAMATION BY THE  
GOVERNOR**

The following Proclamation by the Governor was read and was filed with the Secretary of the Senate:

**PROCLAMATION  
BY THE  
GOVERNOR OF THE STATE OF TEXAS**

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the legislature adjourned the 81st Regular Legislative Session without enacting sunset legislation for several state agencies that were subject to sunset review by the 81st Legislature; and

WHEREAS, without legislative action, the state's Sunset Act, Chapter 325, Government Code, in conjunction with statutory law applicable to those agencies, abolishes the agencies on September 1, 2009, and requires each of the agencies to begin on that date a wind-down process that will culminate in the termination and cessation of all activities of each agency on September 1, 2010; and

WHEREAS, the Sunset Advisory Commission, in its report presented to the legislature and the governor at the 81st Regular Legislative Session, recommended that the agencies be continued in existence; and

WHEREAS, the continuation of the existence of the agencies is crucial for the operation of state governmental activities; and

WHEREAS, passage of enabling legislation to implement the authority granted in Article III, Section 49-p, of the Texas Constitution to issue general obligation bonds for highway improvement projects is necessary to assist in providing adequate financing for future transportation infrastructure; and

WHEREAS, the general statutory authority to enter into comprehensive development agreements expires in August 2009, and, with limited means of funding transportation projects, comprehensive development agreements are a necessary tool for providing financing for future transportation infrastructure; and

WHEREAS, the people have placed the constitutional power to call and convene the legislature into special session in the hands of the Chief Executive Officer of the State;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by Article IV, Section 8, of the Texas Constitution, do hereby call an extraordinary session of the 81st Legislature, to be convened in the City of Austin, commencing at 10 a.m. on Wednesday, the 1st day of July 2009, for the following purposes:

To consider legislation that provides for extending the existence of several state agencies that were subject to sunset review by the 81st Legislature and will be abolished without legislative action under the state's Sunset Act, that changes the review schedule for certain state agencies to balance the workload of the Sunset Advisory Commission.

To consider legislation relating to the issuance by the Texas Transportation Commission, pursuant to Article III, Section 49-p, of the Texas Constitution, of general obligation bonds for highway improvement projects, and to the creation, administration, financing and use of a Texas Transportation Revolving Fund to provide financial assistance for transportation projects.

To consider legislation relating to the date on which the authority of the Texas Department of Transportation and a regional mobility authority to enter into a comprehensive development agreement expires.

The Secretary of State will take notice of this action and will notify the members of the legislature of my action.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 25th day of June, 2009.

/s/Rick Perry  
Governor of Texas

(seal)

ATTESTED BY:

Coby Shorter III  
Deputy Secretary of State

#### **PHYSICIAN OF THE DAY**

Senator Watson was recognized and presented Dr. Larry Kravitz of Austin as the Physician of the Day.

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

#### **SENATE RESOLUTION 1 (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 in the offices of the senate attended by 30 members of the senate, the caucus made the recommendations for the operation of the senate contained in this resolution.

**SECTION 2. SENATE OFFICERS.** (a) Senate officers for the 81st Legislature are:

- (1) Secretary of the Senate—Patsy Spaw;
  - (2) Calendar Clerk—Linda Tubbs;
  - (3) Doorkeeper—Austin Osborn;
  - (4) Enrolling Clerk—Mardi Alexander;
  - (5) Journal Clerk—Dianne Arrington; and
  - (6) Sergeant-at-arms—Rick DeLeon.
- (b) Officers named in this section serve at the will of the senate.

SECTION 3. PARLIAMENTARIAN. The parliamentarian, Karina Davis, is named by the lieutenant governor and serves at the will of the lieutenant governor. The parliamentarian is a senate officer.

SECTION 4. EMPLOYEES. (a) The lieutenant governor may employ staff for the office of the lieutenant governor at salaries set by the lieutenant governor.

(b) Each senator may employ staff for the senator's office at salaries set by the senator.

(c) The chairman of each committee may employ staff of the chair's selection as needed by the committee. A committee employee shall be compensated in amounts similar to the compensation paid to persons in similar senate positions.

(d) The secretary of the senate may employ other staff necessary for the operation of the senate at salaries approved by the administration committee.

(e) The lieutenant governor, the secretary of the senate, and each senator may use the assistance of any assistant sergeant-at-arms or other available senate employee for any and all services needed in and about the senate.

(f) In this resolution, "senate employee" includes an employee of the lieutenant governor, the secretary of the senate, a senator, a senate committee, and any other person compensated from funds appropriated for the operation of the senate.

SECTION 5. DUTIES OF ADMINISTRATION COMMITTEE. (a) 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.

(b) The committee shall establish appropriate and necessary controls over contracts, inventory, and property management.

(c) The committee may delegate any of its responsibilities to the committee chair or to the secretary of the senate to be performed under the general supervision of the committee.

(d) Policies adopted by the administration committee must be consistent with the provisions of this resolution. To the extent of a conflict between a policy and this resolution, this resolution prevails.

(e) Policies adopted by the administration committee are subject to the will of the senate, and a majority of the senate may reject or modify any policy adopted by the committee.

SECTION 6. EMPLOYMENT AND PERSONNEL POLICIES. (a) The administration committee may adopt and enforce personnel and employment policies governing senate employees.

(b) The administration committee may not adopt a policy that limits the salary of an employee of the lieutenant governor, a senator, or a senate committee, except that the administration committee may require approval by that committee of any senate committee employee salary that is proposed to exceed \$5,000 a month.

SECTION 7. 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 8. OUTSIDE EMPLOYMENT. An employee of the senate may not be employed by and receive compensation from any other person during the term of senate employment without the permission of the employee's senate employer.

SECTION 9. WORK HOURS. An employee shall report to work at the time, and work for the number of hours, set by the employee's senate employer.

SECTION 10. LIMIT ON MONTHLY STAFF SALARY AND TRAVEL EXPENSES. (a) The total amount of staff salaries and intrastate staff travel expenses for each senator may not exceed \$37,500 per month.

(b) This monthly 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 one month to the next and expended until the end of the fiscal year.

SECTION 11. SENATORS' EXPENSE REIMBURSEMENT AND PER DIEM. The secretary of the senate shall provide for the reimbursement of the expenses of each senator and the payment of each senator's per diem in accordance with law, this resolution, and the rules of the Texas Ethics Commission.

SECTION 12. OTHER SENATE EXPENSES. (a) The lieutenant governor, the secretary of the senate, and each senator may incur expenses for carrying out official duties, including expenses for items such as subscriptions, stationery, postage, and telecommunications.

(b) Expenses under this section shall be paid from the contingent expense fund of the senate.

SECTION 13. PAYMENT OF SALARIES AND EXPENSES. (a) Salaries and expenses authorized by this resolution shall be paid from the contingent expense fund as provided by this section.

(b) Vouchers for payment of any expense, including salaries and travel expenses, must be signed by the chair of the administration committee and the secretary of the senate.

(c) The administration committee shall adopt policies regarding the presentation of timely, properly completed, and signed vouchers.

SECTION 14. DESIGNATION FOR ATTENDANCE AT MEETINGS AND FUNCTIONS. (a) The administration committee shall designate a senator or any employee to attend an official meeting of a national governmental organization during a session of the 81st Legislature. The person designated is entitled to reimbursement for actual and necessary expenses.

(b) The lieutenant governor may designate a senator 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 adopted by the administration committee.

**SECTION 15. ELECTRONIC RECORDING BY MEMBER PROHIBITED.**

No member of the senate may electronically record a private conversation held within the brass rail on the senate floor during a legislative session without the knowledge and consent of all participants to the conversation.

**SECTION 16. JOURNAL.** (a) The secretary of the senate shall provide for the printing of not more than 500 copies of the daily journal. Of that number:

- (1) 175 shall be furnished to the house of representatives;
- (2) 60 shall be furnished to the Legislative Reference Library; and
- (3) the remainder shall be apportioned among the senators and the lieutenant governor.

(b) The secretary of the senate shall have 325 volumes of the Senate Journal of the 1st Called Session of the 81st 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.

**SECTION 17. INTERIM OPERATION PROVISIONS.** The provisions in S.R. No. 1116, 81st Legislature, Regular Session, 2009, for the operation of the Texas Senate adopted at the close of the Regular Session of the 81st Legislature continue in effect from the closing of this session until the convening of the next session.

**SR 1** was read and was adopted by the following vote: Yeas 30, Nays 0.

Absent-excused: Duncan.

### **MESSAGE FROM THE GOVERNOR**

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

Austin, Texas

July 1, 2009

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

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

**COASTAL COORDINATION COUNCIL**

James R. McCan - Victoria

Appointment Date: June 9, 2009

Expiration Date: May 31, 2011

Jerry A. Mohn - Galveston

Appointment Date: June 9, 2009

Expiration Date: May 31, 2011

**JUSTICE, 1ST COURT OF APPEALS, HARRIS COUNTY**

Michael Christopher Massengale - Houston

Appointment Date: June 15, 2009

Expiration Date:

**PARKS AND WILDLIFE COMMISSION**

Dan Allen Hughes, Jr. - Beeville

Appointment Date: June 4, 2009

Expiration Date: February 1, 2015

Respectfully submitted,

/s/Rick Perry

Governor

**ELECTION OF PRESIDENT PRO TEMPORE  
EIGHTY-FIRST LEGISLATURE, FIRST CALLED SESSION**

The President announced that the time had arrived for the election of President Pro Tempore of the 81st Legislature, 1st Called Session.

Senator Whitmire nominated Senator Troy Fraser of Senate District 24 as President Pro Tempore of the 81st Legislature, 1st Called Session, and President Pro Tempore Ad Interim.

Senator Fraser was elected President Pro Tempore of the 81st Legislature, 1st Called Session, and President Pro Tempore Ad Interim by a rising vote of the Senate.

The President administered the Oath of Office to Senator Fraser as follows:

I, Troy Fraser, do solemnly swear, that I will faithfully execute the duties of the office of President Pro Tempore 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.

**CONGRATULATIONS EXTENDED**

Senator Eltife was recognized and, on behalf of the Senate, extended congratulations to Lieutenant Governor Dewhurst on his recent marriage.

**SENATE BILLS AND RESOLUTIONS ON FIRST READING**

The following bills and resolutions were introduced, read first time, and referred to the committees indicated:

**SB 1** by Carona

Relating to certain sources of revenue for the funding of highways and transportation projects.

To Committee on Finance.

**SB 2** by Hegar, Hinojosa

Relating to the governmental entities subject to the sunset review process.

To Committee on Finance.

**SB 3** by Nichols

Relating to the design, development, financing, construction, and operation of certain toll projects; granting the authority to issue bonds.

To Committee on Finance.

**SJR 2** by Williams

Proposing a constitutional amendment relating to appropriations for the preservation and perpetuation of certain items of historical value; allowing the legislature and state agencies to accept on behalf of the state gifts of items of historical value and contributions to purchase such items.

To Committee on Administration.

**SCR 1** by Williams

Requesting the lieutenant governor and speaker to authorize a joint interim study on the benefits of establishing a statewide county park beautification and improvement program.

To Committee on Administration.

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Williams and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Administration might meet and consider the following resolutions today:

**SCR 1, SJR 2.**

**SENATE RULES SUSPENDED  
(Posting Rules)**

On motion of Senator Ogden and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Finance might meet and consider the following bills today: **SB 1, SB 2, SB 3.**

**GUEST PRESENTED**

Senator Hinojosa was recognized and introduced to the Senate his son, Johnathan Hinojosa.

The Senate welcomed its guest.

**RECESS**

On motion of Senator Whitmire, the Senate at 11:05 a.m. recessed until 3:00 p.m. today.

**AFTER RECESS**

The Senate met at 3:15 p.m. and was called to order by the President.

**CONCLUSION OF MORNING CALL**

The President at 3:16 p.m. announced the conclusion of morning call.

**SENATE BILL 2 ON SECOND READING**

Senator Hegar moved to suspend the regular order of business, Senate Rule 7.12(a), Senate Rule 7.18, and the Constitutional Rule requiring bills to be read on three several days to take up for consideration **SB 2** at this time on its second reading:

**SB 2**, Relating to the governmental entities subject to the sunset review process.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Duncan.



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: Duncan.

### **SENATE BILL 2 ON THIRD READING**

Senator Hegar moved that Senate Rule 7.18 and the Constitutional Rule requiring bills to be read on three several days be suspended and that **SB 2** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 30, Nays 0.

Absent-excused: Duncan.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0. (Same as previous roll call)

### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

#### **Memorial Resolutions**

**SR 6** by Lucio, In memory of John Reney of Brownsville.

**SR 7** by Lucio, In memory of Eddie Treviño, Sr., of the Rio Grande Valley.

#### **Congratulatory Resolutions**

**SR 3** by Lucio, Recognizing the International Order of Alhambra on the occasion of its 105th anniversary.

**SR 4** by Lucio, Commending Tim Hull for his achievements as a maker of hand-crafted Texas knives.

**SR 5** by Lucio, Congratulating Gregory Aymond of Austin for his appointment as Archbishop of New Orleans.

**SR 8** by Lucio, Commending Jon Hockenyo and Rebecca Yerly for their efforts in behalf of children with autism spectrum disorders.

**SR 9** by Lucio, Recognizing the Texas Association of Mexican American Chambers of Commerce on the occasion of its annual convention.

**SR 10** by West, Recognizing Joe M. Spigner on the occasion of his retirement from the Dallas Fire Department.

**SR 11** by Seliger, Commending Christy Bertolino for her service in the office of Senator Kel Seliger.

**SR 12** by Lucio, Congratulating Ernie Gonzalez, Jr., for his selection as finance director for the National Capital Area Council of the Boy Scouts of America.

**SR 13** by Lucio, Recognizing Robert Rodriguez on the occasion of his retirement as chief of police of the Town of South Padre Island.

**SR 14** by Ogden, Congratulating the men's and women's track and field teams from Texas A&M University for winning the National Collegiate Athletic Association Outdoor Track and Field Championships.

**SR 15** by Davis, Congratulating Kenneth Obinna Ekeh and Melanie Desiree Ekeh on the birth of their daughter, Meadow Adaugo Ekeh.

**SR 16** by Hinojosa, Congratulating Elbert "Lum" Wright for being inducted into the Rio Grande Valley Sports Hall of Fame.

### **ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 3:26 p.m. adjourned until 11:00 a.m. tomorrow.

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## **APPENDIX**

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### **COMMITTEE REPORTS**

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

July 1, 2009

ADMINISTRATION — **SJR 2, SCR 1**

FINANCE — **SB 2**