

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE — REGULAR SESSION

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AUSTIN, TEXAS

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PROCEEDINGS

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## FIRST DAY

(Tuesday, January 11, 2011)

In accordance with the Constitution and Laws of the State of Texas, the Senate of the Eighty-second Legislature met in the Senate Chamber of the State Capitol on Tuesday, the 11th day of January, 2011, at 12:05 p.m.

The Honorable David Dewhurst, Lieutenant Governor and President of the Senate, called the Senate to order.

Chaplain Steven Vaughn, Texas Army National Guard, offered the invocation as follows:

Psalm 31:24. Be strong and take heart, all you who hope in the Lord. Father, we are challenged in Your holy word to take heart as we trust in You. So it is today that we humbly ask Your wisdom and guidance upon this legislative body. As they set about preserving what makes our state so great and making changes that will make it better, they face many challenges, and there are honest differences in this honorable body. We pray that they would have Your wisdom in working through those differences for the greater good of our citizenry. May they feel Your divine hand as they seek to lead and guide us. We ask now, Father, for our citizenry. We have so many men and women, just ordinary people who make our state one of the premier places to reside within our country. Our police, our firemen, the EMS—so many who sacrifice so much. We pray Your hand of safety be upon them as they daily put themselves at risk for the people of Texas. And we remember this day the victims of the recent tragedy in Arizona. For the families of the victims and for those recovering from this terrible ordeal we ask Your hand of mercy and blessing. May they feel Your hand of love and healing. And last but not least, Father, we remember the men and women of our Armed Forces. We ask Your protection and blessings upon them and their families. We ask for their safe return and a happy reintegration with their loved ones. We ask these things in Your blessed and holy name. Amen.

## MOMENT OF SILENCE OBSERVED

At the request of the President, the Senate observed a moment of silence in honor of victims of the shooting in Tucson, Arizona.

### ACKNOWLEDGMENTS

The President acknowledged the presence of his wife, Tricia; his daughter, Carolyn; and his in-laws, Carolyn and Carlos Hamilton, Jr.

The Senate welcomed its guests.

### ROLL CALL OF SENATORS

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

The roll was called and the following Senators answered to their names: Carona, Davis, Duncan, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Lucio, Seliger, Van de Putte, West, Williams, Zaffirini.

### MESSAGE FROM THE SECRETARY OF STATE

The following message from the Secretary of State was read and was filed with the Secretary of the Senate:

THE STATE OF TEXAS

Secretary of State

I, HOPE ANDRADE, Secretary of State of the State of Texas, DO HEREBY CERTIFY that according to the records of this office the attached is a true and correct list, in alphabetical order, of the members of the Senate of the 82nd Legislature, 2011, whose election on November 2, 2010, has been duly and legally certified to this office.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, Texas this 7th day of December, 2010.

(Seal)

/s/Hope Andrade  
Secretary of State

The Honorable Brian Birdwell, representing the Twenty-second Senatorial District composed of: Bosque, Coryell, Ellis, Falls, Hill, Hood, Johnson, McLennan, Navarro, and Somervell counties.

The Honorable Robert F. Deuell, representing the Second Senatorial District composed of: Part of Dallas, Delta, Fannin, Hopkins, Hunt, Kaufman, Rains, Rockwall, part of Smith, and Van Zandt counties.

The Honorable Rodney Ellis, representing the Thirteenth Senatorial District composed of: Part of Fort Bend and part of Harris counties.

The Honorable Kevin Eltife, representing the First Senatorial District composed of: Bowie, Camp, Cass, Franklin, Gregg, Harrison, Lamar, Marion, Morris, Panola, Red River, Rusk, part of Smith, Titus, Upshur, and Wood counties.

The Honorable Glen Hegar, representing the Eighteenth Senatorial District composed of: Aransas, Austin, Bastrop, Caldwell, Calhoun, Colorado, DeWitt, Fayette, part of Fort Bend, Goliad, Gonzales, Jackson, Lavaca, Matagorda, Refugio, Victoria, Waller, Washington, and Wharton counties.

The Honorable Joan Huffman, representing the Seventeenth Senatorial District composed of: Part of Brazoria, part of Chambers, part of Fort Bend, part of Galveston, part of Harris, and part of Jefferson counties.

The Honorable Jane Nelson, representing the Twelfth Senatorial District composed of: Part of Denton and part of Tarrant counties.

The Honorable Robert Nichols, representing the Third Senatorial District composed of: Anderson, Angelina, Cherokee, Hardin, Henderson, Jasper, part of Montgomery, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, part of Smith, and Tyler counties.

The Honorable Steve Ogden, representing the Fifth Senatorial District composed of: Brazos, Burleson, Freestone, Grimes, Houston, Lee, Leon, Limestone, Madison, Milam, Robertson, Trinity, Walker, and Williamson counties.

The Honorable Dan Patrick, representing the Seventh Senatorial District composed of: Part of Harris County.

The Honorable Jose R. Rodriguez, representing the Twenty-ninth Senatorial District composed of: Part of El Paso County.

The Honorable Florence Shapiro, representing the Eighth Senatorial District composed of: Part of Collin and part of Dallas counties.

The Honorable Carlos I. Uresti, representing the Nineteenth Senatorial District composed of: Bandera, part of Bexar, Brewster, Crockett, Culberson, Edwards, part of El Paso, Hudspeth, Jeff Davis, Kinney, Loving, Maverick, Medina, Pecos, Presidio, Real, Reeves, Sutton, Terrell, Uvalde, Val Verde, Ward, and Winkler counties.

The Honorable Kirk Watson, representing the Fourteenth Senatorial District composed of: Part of Travis County.

The Honorable Jeff Wentworth, representing the Twenty-fifth Senatorial District composed of: Part of Bexar, Comal, Guadalupe, Hays, Kendall, and part of Travis counties.

The Honorable John Whitmire, representing the Fifteenth Senatorial District composed of: Part of Harris County.

### **ROLL CALL OF SENATORS-ELECT**

The President directed the Secretary of the Senate to call the roll of the Senators-elect as certified by the Secretary of State.

The roll was called and the following Senators-elect answered to their names: Birdwell, Deuell, Ellis, Eltife, Hegar, Huffman, Nelson, Nichols, Ogden, Patrick, Rodriguez, Shapiro, Uresti, Watson, Wentworth, and Whitmire.

**OATH OF OFFICE ADMINISTERED  
TO SENATORS-ELECT**

The President directed the Senators-elect to proceed to the Bar of the Senate.

Chief Justice Wallace B. Jefferson administered the Constitutional Oath of Office to the Senators-elect as follows:

I, \_\_\_\_\_, do solemnly swear, that I will faithfully execute the duties of the office of Senator 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.

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

**ACKNOWLEDGMENTS**

The President acknowledged the presence of and thanked Chief Justice Wallace B. Jefferson; Susan Combs, Comptroller; Todd Staples, Commissioner of Agriculture; and Railroad Commissioner David Porter.

The Senate welcomed its guests.

**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 82nd 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—Polly Emerson; 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 \$35,625 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 82nd 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. The secretary of the senate shall provide for the printing of not more than 250 copies of the daily journal. Of that number:

- (1) 140 shall be furnished to the house of representatives;
- (2) four shall be furnished to the Texas State Library and Archives Commission;
- (3) four shall be furnished to the Legislative Reference Library; and
- (4) the remainder shall be apportioned among the senators and the lieutenant governor.

**SR 1** was read and was adopted without objection.

**OATH OF OFFICE ADMINISTERED  
TO OFFICERS OF THE SENATE**

The President directed the officers of the Senate to proceed to the Bar of the Senate.

The President administered the Constitutional Oath of Office to the officers as follows:

I, \_\_\_\_\_, do solemnly swear, that I will faithfully execute the duties of the office of \_\_\_\_\_ 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.

**PHYSICIAN OF THE DAY**

Senator Nichols was recognized and presented Dr. Melissa Gerdes of Whitehouse as the Physician of the Day.

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

**MESSAGES FROM THE GOVERNOR**

The following Messages from the Governor were read and were filed with the Secretary of the Senate:

Austin, Texas  
January 11, 2011

STATE OF TEXAS  
OFFICE OF THE GOVERNOR

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE EIGHTY-SECOND TEXAS LEGISLATURE, REGULAR SESSION:

I, RICK PERRY, Governor of the State of Texas, pursuant to Article III, Section 5, of the Texas Constitution and by this special message, do hereby submit the following emergency matter for immediate consideration to the Senate and House of Representatives of the 82nd Legislature, now convened:

Legislation to protect private property rights and address eminent domain issues.

Respectfully submitted,  
/s/Rick Perry  
Governor  
Austin, Texas  
January 11, 2011

STATE OF TEXAS  
OFFICE OF THE GOVERNOR

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE EIGHTY-SECOND TEXAS LEGISLATURE, REGULAR SESSION:

I, RICK PERRY, Governor of the State of Texas, pursuant to Article III, Section 5, of the Texas Constitution and by this special message, do hereby submit the following emergency matter for immediate consideration to the Senate and House of Representatives of the 82nd Legislature, now convened:

Legislation to abolish sanctuary cities in Texas.

Respectfully submitted,

/s/Rick Perry

Governor

### **MOTION IN WRITING**

Senator Eltife offered the following Motion In Writing:

Mr. President:

I move that the President be authorized to appoint two committees of five Members each to notify the Governor and the House of Representatives that the Senate is organized and ready to transact business.

ELTIFE

The Motion In Writing was read and was adopted without objection.

Accordingly, the President appointed the following Committee to Notify the Governor: Senators Fraser, Chair; Nelson, Nichols, Van de Putte, and West, and the following Committee to Notify the House of Representatives: Senators Hegar, Chair; Birdwell, Huffman, Rodriguez, and Davis.

### **AT EASE**

The President at 12:21 p.m. announced the Senate would stand At Ease pending departure of its guests.

### **IN LEGISLATIVE SESSION**

The President at 12:26 p.m. called the Senate to order as In Legislative Session.

### **GOVERNOR NOTIFIED**

The Committee to Notify the Governor that the Senate was organized and ready to transact business appeared at the Bar of the Senate, accompanied by Governor Perry, and Senator Fraser notified the President and the Members that the committee had performed its duty.

Upon invitation by the President, the Governor was escorted by the Committee to Notify the Governor to the President's Rostrum.

The Senate welcomed Governor Rick Perry.

**ADDRESS BY GOVERNOR**

Thank you, Governor Dewhurst, it's great to see you again at the helm of this distinguished body. It's my honor, and my pleasure, to be with you all again today at the commencement of a historic legislative session. As we begin, it's fitting to reflect for a moment on the shootings Saturday in Arizona and continue praying for those forever affected by this senseless tragedy. Incidents like that one provide a stark reminder of the fragility of life and the importance of making one's mark on the world every single day. As elected leaders, we're called to make an even bigger mark. The decisions we make shape economies, affect employers, and touch the lives of all Texans. The actions we take can make the difference between success and failure for people in all walks of life all across this state. Now I'll be speaking to the House in a little bit and I expect to see a whole lot of new faces over there which is a nice balance with the more "seasoned" group here. I know a thing or two about being "well-seasoned" and it ain't all bad. Whether you're a newcomer or an old hand, we all heard the message Texans sent us on Election Day. They expect us to balance this budget without taking more money from employers and working families. They want state government leaner and more efficient. I'm confident we will heed that message. Many of you can attest that we've handled similar challenges before in the not too distant past. In 2003, we heard the same doom and gloom about the budget from many of the same sources; 2003 was no cakewalk, but we balanced that budget and set the stage for our state's job creation and economic success throughout the rest of the decade. That growth helped us weather the recent economic storms in better condition than anywhere else in the country. As we did in "aught-three," we'll balance the budget this time, too, by setting priorities and making tough choices, not by raising taxes. Together, we can make government work leaner and smarter and set the stage for Texas to emerge even stronger in job creation and educational achievement, in public safety and quality of life. While the budget is our top responsibility, there are other pressing issues that have waited too long already. That's why I'm declaring emergency items for the upcoming session starting with the pressing need for tougher eminent domain laws. Property ownership remains an essential freedom for Texans, and we must continue our efforts to properly protect it. I've been working with Senator Estes and Representative Geren and other stakeholders on this issue for years, and we agree that their bill will resolve the key issues of eminent domain in Texas for now and the future. Next, we must abolish sanctuary city rules and free up our peace officers to do their job keeping our families and neighborhoods safe. Immigration laws and their enforcement are the responsibility of the federal government. We cannot compound their failure by preventing Texas peace officers from doing their jobs. We must empower officers to apply their training, experience, and judgment to enforcing the laws by keeping municipalities from tying their hands. These are just a few of the issues we'll address in the next 140 days, but they merit our closest attention as they relate to the safety and security

of our citizens and, most of all, their liberty. I look forward to working with Governor Dewhurst and each of you in doing the people's business over the next 140 days. Will that work be easy? Probably not. Will there be disagreements within this building? I'd call that the safest bet in town. At the end of the day, though, I'm certain you'll work together in the best interest of our state and merit the faith placed in you by the millions of Texans who put you here. May God bless you, and, through you, may He continue to bless the great State of Texas.

(Note: Prepared text)

### **HOUSE OF REPRESENTATIVES NOTIFIED**

The Committee to Notify the House of Representatives that the Senate was organized and ready to transact business appeared at the Bar of the Senate and Senator Hegar notified the President and Members that the committee had performed its duty.

### **ELECTION OF PRESIDENT PRO TEMPORE EIGHTY-SECOND LEGISLATURE, REGULAR SESSION**

The President announced that the time had arrived for the election of President Pro Tempore of the 82nd Legislature, Regular Session.

Senator Duncan placed in nomination the name of Senator Steve Ogden of Bryan for the office of President Pro Tempore of the 82nd Legislature, Regular Session.

On motion of Senator Eltife and by unanimous consent, the nominating speech by Senator Duncan and the remarks made to second the nomination were ordered reduced to writing and printed in the *Senate Journal* as follows:

**Senator Duncan:** Thank you, Mr. President and Members. I rise to nominate our good friend, Senator Steve Ogden, the Senator from Bryan, to serve as President Pro Tempore of the Texas Senate. Steve Ogden has been a friend of all of us for a long time, has served ably in the Texas House, and then came over here in 1997, in the best freshman class the Texas Senate ever knew, to serve in the Texas Senate. The President Pro Tempore of the Texas Senate is a position that is mandated by the Texas Constitution. The Member who serves in that position serves and is third in succession to the Governor's Office, should something happen, or should the Governor and the Lieutenant Governor be out of the state at the same time. Senator Ogden deserves this position, not only because of his seniority and length of time in the Texas Senate, which is one of the factors, but also because of the respect that he has earned from each and every one of us in the Texas Senate. Steve has been, I think, a friend of all of us, but also a steady hand in times of chaos and trying to determine when and where we're going to spend the state's dollars or cut the state's dollars and come up with a budget that's good for all of Texas. Budgeting process and his job as Chairman of Senate Finance is the hardest job in the Texas Legislature. Not only does he have to balance the competing interests of this state but he also has to solve the problems of each and every one of our districts. He also has to deal with Members of the Texas Senate and Texas House that sometimes have a little bit of a different idea about the way to do things, and he always has a calming way to do it. He has a great sense of humor, which makes him a fun person to be around with and work through

with tough problems. Steve Ogden will serve us well. I don't know of anyone who has more respect in this building than Steve Ogden, and he's earned it. Steve was born in September in 1950, so that tells you how old he is, to Emil and Clementine Ogden. He's the oldest of six children. He was raised in Abilene, Texas. That's another reason why he's so good, as he's a good West Texas guy, Senator Fraser. Senator Ogden is married to Beverly. They were married in, don't want to say the time, but in 1973, in Maryland. Steve attended the United States Naval Academy, played football there, many of you didn't know that, graduated and was commissioned as an officer of the U.S. Navy in 1973. He and Beverly were married in Annapolis in 1973 and their children are Michael, Stephanie, Kristen, and Chaz. We all know Chaz, and we especially know Michael through his deployment in 2003 and other deployment since that time, and have kept up with them. We appreciate your family. We appreciate your dedication and your service to the people of the State of Texas. Mr. President, I rise to nominate Steve Ogden as President Pro Tempore of the Texas Senate.

**Senator Williams:** Mr. President, Members, it is my honor and privilege to rise and second the nomination of Steve Ogden for President Pro Tempore of the Texas Senate. I first got to know Steve after I was elected to the Texas House in 1996. After the November election, Steve moved to the Senate in a Special Election to fill a seat vacated by a Member who left for Congress. As a newly elected House Member it didn't take me long to figure out Steve Ogden was my go-to guy in the Senate. During the six years I served in the House, Steve and I got to know each other and he became a role model for me. Steve really cares about the folks he represents, the plain-spoken folks of Central Texas have come to count on him to represent their interests in Austin. I think the campaign slogan for his recent re-election sums it up pretty well, "If you send me back to Austin, I will do the job right." That sums it up, and he won an overwhelming victory in his re-election campaign because his constituents knew it wasn't a slogan, it's a promise from a man they've trusted to be their voice in Austin for over 20 years. Steve Ogden kept that promise and we all know he'll keep that sacred promise again this session. Thank you, Steve, for showing me how to serve my constituents. Steve is a remarkable man, a man of many accomplishments, but above all else when I think of Steve Ogden, I think of a man of deeply held convictions. A man with the courage to live his convictions, someone who is willing to walk the walk, someone who is willing to act on his most strongly held beliefs. Steve is a man of great intellect. After graduating from the Naval Academy, serving on a submarine as an officer, he was selected to attend Nuclear Propulsion School. After listening to him talk about Nuclear Propulsion School, I think he might have angled to attend just to prove he wasn't a dumb jock since he played football while attending the Academy. My point is this: Our state constitution only mentions one thing we have to do every biennial session—draft and enact a state budget. Steve Ogden is the guy we all trust to get the most important job done, craft and pass our state budget. Steve was first appointed to chair the Senate Finance Committee in 2005. Chairing the Senate Finance Committee is arguably the most demanding job in the Texas Legislature. Everyone was pensive about the budget at the beginning of the '05 session. We were worried how it would come together after the 2003 session that had been both a watershed budget and probably the most difficult budget session most of us had seen. Steve didn't miss a beat in his new role.

*Texas Monthly* had this to say about him when they named him one of the session's Ten Best Legislators, ". . . this session as chair of the Senate Finance Committee. From his basement office, (he) Ogden commanded the committee crafting the session's greatest success: the \$140 billion state budget . . ." Steve has a reputation as a no-nonsense kind of guy. If you've ever discussed legislation you are opposing with Steve, it's likely he's asked you, "What's your plan?" If he thinks someone has worked to find a solution, it's not good enough for Steve that you don't like the proposed solution, you'd better have an alternative. Sometimes his no-nonsense reputation keeps people from seeing the kinder, gentler Steve Ogden. Steve gave several of us (Senator Whitmire, Senator David Cain, and others) a tour of the Naval Academy. Seeing the Naval Academy through his eyes gave us a glimpse of Steve as a young midshipman from Abilene, Texas. He was a long way from home. The most interesting story was how he and Beverly met and married. They just celebrated their 37th wedding anniversary. Steve Ogden is a good and honorable man. He has served his country as an officer in the United States Navy. He has served his state with distinction as both a State Representative for six years and a State Senator since 1997. His accomplishments are many and I won't embarrass him by listing them here. The thing I think Steve is proudest of is his role as a husband to Beverly for almost 40 years, a father to Michael, Stephanie, Kristen, and Chaz Ogden. I know him, as all of you do, a good friend and a great Senator. I am proud to second his nomination for President Pro Tempore of the Texas Senate.

**Senator Lucio:** Mr. President and Members, ladies and gentlemen, it is truly an honor to be here today speaking on behalf of my very dear friend, Senator Steve Ogden, in seconding his nomination for President Pro Tempore of this great body. Senator Ogden is more than a Texas Senator and a close friend, he's an exemplary leader and a true statesman. If you want to know about the issues, just have a conversation with Steve and you'll learn a lot. I have learned as, after working with Steve over the years at the Capitol in this Chamber, as a Member of the Committee on Finance, I have witnessed firsthand Chairman Ogden's leadership qualities. Marian Anderson, a civil rights activist who sang at President John Kennedy's inauguration, once said that leadership should be born out of the understanding of the needs of those who would be affected by it. Senator Ogden exemplifies Ms. Anderson's definition of leadership. I would like to add my own definition and that is, the ability to make people want to do the right thing through example and, again, Senator Ogden exemplifies my definition as well. These are the kinds of leadership that need to be employed at the Capitol over this next session. I believe the state is fortunate to have Senator Ogden here in these hard and challenging times. He is fair, candid, and he places the needs of Texans above party and ideology. Many bills are passed during the legislative session, but Chairman Ogden takes the lead on the most important one, the state budget. Former Governor Bill Hobby recently said, I have written budgets in booms and busts, booms are better. Indeed, everyone knows the challenges we face during this session. It has been said that desperate times call for desperate measures, but I prefer the quote, cometh the hour, cometh the man. Cometh the hour, Senator Ogden will be here for Texas. As Chair of the Finance Committee, Senator Ogden has spoken to a lot of people over the years about budget issues. One of those he spoke to was my own daughter, Lynda. Several years ago, Lynda was undergoing treatment for

leukemia, she had cancer. Senator Ogden went to visit her at M.D. Anderson, the cancer center there in Houston, along with some other Senators. When Lynda found out that Steve was the Chair of the Finance Committee, she thought it would be a very good opportunity to challenge the Chairman and the Senators about the budget needs for M.D. Anderson at the time, right there from her hospital bed. And, but on the serious note, I just want to say that as a father, Senator Ogden's gesture meant the world to me. My wife, Minnie, who is here with me today, remembers that moment as well. We stood beside her for many months. Gestures like that are part of who Senator Ogden is, a caring and understanding public servant. Back in 2007 I was saddened by the death of Lance Corporal Anthony Aguirre, who died serving his country in Iraq. I went to the airport and picked up Senator Ogden, who came over to my desk after I asked Dean Whitmire to end the day in remembrance of this young man and his service to his country. I remember picking up Steve and driving over to Raymondville. I remember the conversation, it was about Americanism and patriotism and how he felt about our country, how we felt about it, and what we should do as State Senators to make sure that we supported our young men and women in uniform. When we got to the house, it was a cold and damp day with some light drizzle coming down, and the sun had just gone down, and we entered the house, and Steve, obviously, towered over everybody, and as we stepped into the first room, that very humble house had faulty floors, and we could actually hear the creaking, the cracking, creaking of the floor, and didn't take long for Steve to connect to that family. I introduced him, we paid our condolences, heartfelt sympathy, but he embraced the mama and the daddy and the family, and it showed me what a great man he truly was to leave his district on a weekend and to come down and to share some moments and all with me and my constituents in a very humble surrounding. Likewise, when Senator Ogden's son, Michael, a Major in the U.S. Marine Corps, served overseas in Iraq, I prayed for him, we prayed for him. We went to mass together. We held hands and prayed the Lord's Prayer. Over the years I have found great strength in the spiritual fellowship I've shared with Steve. We, again, attend mass at Saint Mary's Church, which is not far from here, during the session. Chairman Ogden, in many ways we're not very different, but the things we share are stronger than the things that divide us, and that's the great relationship that Steve and I have. There's never been any partisanship between us and there never will be. Chairman Ogden, the stakes are high and the problems are many this session. I am glad that the state faces these problems with your leadership skills and budgetary expertise at hand. Obviously, we will need your leadership as we tackle these most important issues. In closing, I would like to say that I believe the budget is essentially a moral document. A budget reveals what a community believes to be most important. It may be full of numbers but the effect is always felt by people. Senator Ogden, you have traveled to my district at the southern tip of Texas and all across the state. I know you have seen firsthand the needs of all Texans. I know that you are truly a compassionate man who understands the budget and has a human face, and that's what I like about you, Steve. Before I finish, I do want to end on, last night as I visited with Beverly, she made me promise to feed Steve while she was gone back to the district to rear their 15-year-old boy. I promised her I would feed him a lot of Mexican food and that he'd be talking

Spanish by the end of the session. With that, Mr. President, I gladly second the nomination of my very dear friend, Senator Steve Ogden, for the position of President Pro Tempore of our Texas Senate. Thank you.

The President declared that the Honorable Steve Ogden had been duly elected President Pro Tempore of the 82nd Legislature by acclamation.

The President appointed the following Committee to Escort Senator Ogden and his family to the President's Rostrum: Senators Duncan, Chair; Williams, Lucio, Hinojosa, and Shapiro.

Senator Ogden and his party were then escorted to the President's Rostrum by the committee.

### **OATH OF OFFICE ADMINISTERED**

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

I, \_\_\_\_\_, 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.

### **ADDRESS BY PRESIDENT PRO TEMPORE**

President Pro Tempore Ogden addressed the Senate as follows:

Thank you, my fellow Senators. Back on November 2, I think it was, the election day here in Texas, I woke my wife up and said, come on, Bev, get out of bed. You get to go vote for me one more time. Her response is not repeatable. But I think she did. You know, Tommy was talking about how long I've been married. Lucky man. I've been married for 37 years. Why? Well, you marry a woman because you love that woman. But there's always been something very special about my wife. She gave me confidence. It may surprise you that when I was younger, I was kind of an absent-minded, pencil-neck, awkward, geeky, jock type. Might surprise you. She didn't see it that way. And I still remember as a young man thinking how lucky and fortunate I was to have a woman of such beauty and talent to think I was something special. She gave me confidence. Because she believed in me, I believed in myself. And I've drug her all over this country. The day we got married, eleven in the morning in Annapolis, Maryland, at ten o'clock at night I was in San Francisco with her. Her comment on our wedding night that she was kind of tired was true. But from the time we were first married, to nine and a half months later when she presented me with our first son, to the time I said, you know, it's time to go to sea, take care of the family, to the time I said we're going back to Texas, to the time I volunteered her to be a CPS caseworker, she's always been there at my side. She has been the wind beneath my wings. And I would like to thank her for 37 years. Ken Herman wrote a beautiful piece in the *Austin American-Statesman* on January 6th, concerning a recent tragic and sorrowful event, the death of

Corporal Tevan Nguyen in Afghanistan. Much of what he wrote about, I observed myself. Corporal Tevan Nguyen was from Hutto, Texas. He was killed in Afghanistan on December the 28th while on patrol with his Marine unit. Since that time, our country has lost 10 more soldiers and Marines. Well, last Thursday I was in Brownwood, Texas, to pay my respects to Tevan Nguyen and his family and his memory. Now, Tevan Nguyen's last name is not spelled W-I-N. It's spelled N-G-U-Y-E-N. Tevan Nguyen's father, who lives and worked in Hutto, Texas, escaped from Vietnam and came here to this country and to this state for the freedom and the opportunity that it offers. Why was Tevan being born in Brownwood? Because his mother, Amy Salazar Nguyen was from Brownwood. And Tam Nguyen, his father, and Amy Nguyen, his mother, and Monique Stearns, the mother of his four-month-old son, and his four-month-old son, were all there in a small Catholic church in Brownwood, Texas, across the street from Howard Payne University. In this church, many people were there. His high school coaches were there, his friends, the people he played football with in Hutto. The service was in English. The choir sang in Spanish. The patriot guard, the Patriot Riders stood at attention outside the church. And when we left the church and joined the funeral procession, which was going to a country cemetery in Brown County, Texas, about 15 miles outside of Brownwood, the streets were lined with thousands of Texans. And they were all standing at attention and saluting Tevan Nguyen and waving their flags. And as I was standing at this cemetery, this beautiful, peaceful place in Central Texas, and I watched the Marines stand at attention as they lowered Tevan Nguyen's body in the ground, and I watched his father, and I watched his mother stay there until their son was properly buried, I thought, this is a snapshot of Texas in 2011. And all of us were there, all of us who were there, all several thousand of us who were there were all united, we were all united in our sorrow at the tragic loss of an American hero. But we were also united in our love for this country and our love for this state. And we were united in our determination to stay free. Tevan Nguyen and thousands like him have given their lives for our freedom and our right to govern ourselves. We owe it to him and we owe it to all who have sacrificed so much for us, to give them our best efforts on their behalf. So, let's roll up our sleeves and let's get to work. One of the things that I think has made our state better and stronger than other states, and to a certain extent the federal government, is that in our Constitution we are required to balance our budget. And we also, in our Constitution, generally have to ask the people for permission before we borrow their money. The federal government has neither of these requirements and it needs to change. The federal budget deficit is over \$14 trillion. Trillions are numbers that are so big it's hard to imagine. We usually associate them with space travel, and the reason that we don't use trillions in space is because it's too big. We use light years. A light year, by the way, is 5.6 trillion miles. The federal budget deficit is bigger than the entire economy of the United States. The annual deficit is bigger than the entire gross state product of the State of Texas. If you could

spend a million dollars every day since Christ was born, you would still have another 700 years to go before you spent your first trillion. After the last election, Congress of the United States along with the President got together and had a great, allegedly, bipartisan victory over taxes and over spending. The only problem with it is, it added \$850 billion to this \$14 trillion deficit. Article V of the United States Constitution gives us here in Texas an opportunity to change that. And one of the things that we need to debate and discuss and pass in this body, as soon as possible, is a resolution calling on the Congress, under Article V of the United States Constitution, to call a constitutional convention for the purposes of balancing the federal budget. Texas has done this before. Texas did this back in 1978 and '79. It was ignored. It was forgotten. We dare not let it happen again. A lot of the talk on my nominating speech is about our budget. I'd like to share with you a couple of numbers that haven't been widely discussed because there's a blizzard of numbers and a blizzard of opinions and blizzards of this and that. The Comptroller said that the total state revenue in the next biennium is 177.8 billion. That's everything, general revenue, federal funds, other funds, whole thing, 177.8 billion. Two years ago, her revenue estimate was 167.7 billion, 10 billion less than now. And my point is this, that a lot can happen in the next 140 days, and our job in this Texas Senate is to manage the problem and not let the problem manage us. And I know, with \$177.8 billion, and \$9.2 billion in the Rainy Day Fund, we can get the job done. It will not be easy, it will not be painless, but we can do it. One of the areas that we have got to address is Medicaid. How we deal with Medicaid will determine how the rest of the budget goes. In the current biennium we appropriated \$44 billion of all funds to Medicaid. And as a result of the federal stimulus that was enacted two years ago, the federal government reimbursed Texas out of that \$44 billion. Seventy percent was paid for with federal tax receipts and 30 percent was paid for with our tax receipts. We believe that there will no longer be such a stimulus. We believe that the federal government cannot do it and be fiscally responsible. And so, we're anticipating a federal match that's more like 58-32, 58-42. The difference between a 60-40 match and a 70-30 match, just to round off the numbers, is four and a half billion dollars, 10 percent of 44 billion. And that four and a half billion dollars that's not coming from the federal government has got to be replaced with something. Some of it has to be reform. Medicaid cries out for reform. Every hospital in this state and every procedure in every hospital in this state has a different formula for reimbursement. Makes no sense. It has been estimated by our Lieutenant Governor and others that if we converted Medicaid to a managed care program, we could save \$4 billion. The governor, 30, over 30 governors, of the State of Texas had petitioned the federal government for relief. A system that can, that only sends you 60 percent of the money but ties you up with 100 percent of the regulations will not work. And so, our first job, Senators, is to figure out how to save Medicaid. We have got to reform it and we have got to work together to fill, as a minimum, the four and a half billion dollar hole that exists because we

are not going to receive any more federal stimulus money. If you look at our budget with respect to education and health and human services, Article II and Article III, 81 percent of all the general revenue that we appropriate is appropriated in Article III and Article II. It is impossible to balance this budget without making cuts in Article II and Article III. In Article III, which is the entire education budget, we appropriate approximately \$50 billion. If you look at the Foundation School Program, we appropriate about 35 billion of that 50 billion. The Foundation School Program has serious structural problems. And in order to balance this budget we're going to have to fix public school finance. And the biggest problem with public school finance is a term called target revenue. If you go back and you remember what we did in 2006 and 2007, we basically held all of our school districts harmless. And what we said in 2006 was, look, school districts, we know that by cutting school property taxes, some of you guys are not going to get as much money as you used to, so we promise that you'll always get the same amount of money forever. School districts get to pick between how much money they got in 2005, or how much money they got in 2006, and we promised to keep giving them the same amount of money no matter what, per student. So, the money keeps going up because population's going up. We have to fix target revenue in order to balance this budget. Target revenue is a form of hold harmless. I asked the LBB how much hold harmless is costing us and the Foundation School Program, and the answer is five and a half billion dollars. So, there's where your hole is. Four and a half billion in Medicaid and five and a half billion in the Foundation School Program. We have got to fix that; we can. And the last thing I want to talk to you about with respect to the budget is the state's business tax, what's called the gross margins receipts tax. We enacted that, again, back in 2006 as part of the largest property tax cut in the history of this state. And we did. We cut school property taxes by \$14 billion. And we were going to pay for that in part with a new business tax called gross receipts, the margins tax. Problem is that the margin tax has underperformed what we have predicted ever since we enacted it. In fact, it's underperformed by a huge amount. On average, year after year after year, starting on 2006, the margins tax has underperformed what we predicted when we enacted all these property tax cuts by approximately \$2 billion a year. Part of the deficit that the Comptroller was talking about in the current biennium of 4.3 billion, 1.2 billion of that is as a result of the margins tax underperforming what we predicted. And here's the reality, none of us were elected to go out and raise taxes on anybody. But the margin tax is different because if we don't fix the margins tax, at least change the trajectory of the margins tax, then school property taxes will go up for sure. And so, when we're balancing this budget in the areas of public education, we have got to work on that issue of target revenue and fix it, and we have got to work with our colleagues in the House to fix the margins tax if we want to keep property taxes as low as they currently are. Last thing I'd like to share with you is my concerns about Border security. It's a big issue in the campaign. The Governor's already

brought up an aspect of that. I decided during the campaign that I didn't really know what I was talking about. So, I got on the plane, and I went to Del Rio, and I went to Laredo, and I'm going to go to El Paso, and I went to McAllen, and I spent a good week along the Border, and I came back more alarmed than before I left. I believe that this issue is a national security issue. I believe that Mexico could fail as a country because of the war that's going on in northern Mexico which is spilling across the river into Texas. Mexico is our largest trading partner. The United States runs the biggest trade surplus with Mexico than any other country in the world, the biggest trade surplus. If the Mexican economy collapses because of this drug war, the Texas economy will suffer. And the human cost is going to be bigger than that. And it is, and the refugees, and the people that are basically seeking political asylum in this country because Mexico is no longer governable, could overwhelm us. And so, we've got to petition the federal government for help. Because I believe if it was not so easy to import drugs in the United States across the Rio Grande River there probably wouldn't even be anything to fight for in northern Mexico, and the war could be won. So, we've got to do our part. And one of the things that we should do is put Border inspection stations for all vehicles going from the United States into Mexico. I think we have 27 ports of entry. Obviously, there's a lot of people checking you when you're going north, but there's not a 24-hour presence checking you going south. And what's going on in our drug war is that drugs are coming in the United States and stolen cars are leaving and stolen guns are leaving and millions of dollars of cash is leaving. I was in Laredo and I asked Senator Zaffirini, got any trouble with car theft down here? She laughed. The room, I said, how many people had your car stolen? Two-thirds of the people in Laredo, Texas, in that room, raised their hand and said my car's been stolen down here. Where are they going? They're going to Mexico. But we, as Members of this Legislature, need to think and work to secure our Border. It is a national security issue, it is a state security issue, and none of us can afford to have Mexico fail as a country because Mexico loses this war along the Border. Enough preaching. Thank you for this honor. I will do my very best to fulfill the duties that I have just sworn to undertake. And I ask every one of my fellow Senators to check your political considerations and your political ambition at the door, and let's work, and let's do our very best for the 25 million people that call Texas home. Thank you.

#### **VIDEO RELEASE POLICY WAIVED**

On motion of Senator Eltife and by unanimous consent, the Senate policy that governs the release of recordings of the Senate proceedings was waived in order to grant the request of Senator Ogden for a DVD of today's session.

**SENATE CONCURRENT RESOLUTION 3**

The President laid before the Senate the following resolution:

BE IT RESOLVED by the 82nd Legislature, That a joint committee, composed of six members of the senate appointed by the lieutenant governor and six members of the house of representatives appointed by the speaker of the house, arrange for the canvass of the votes cast for governor and lieutenant governor at the general election held on November 2, 2010, and that a joint session of the senate and house be held in the hall of the house of representatives at 10:00 a.m., on Thursday, January 13, 2011, for the purpose of counting the votes, receiving the report, and hearing the declaration of the results of the canvass; and, be it further

RESOLVED, That the senate and house of representatives sit in joint session at 11:00 a.m. on Tuesday, January 18, 2011, for the inauguration of the governor-elect and lieutenant governor-elect of Texas as determined by the canvass of the votes; and, be it further

RESOLVED, That a joint committee, composed of five members of the senate appointed by the lieutenant governor and five members of the house of representatives appointed by the speaker of the house, make arrangements for the joint session and oath-taking ceremony on January 18, 2011; and, be it further

RESOLVED, That the Department of Public Safety of the State of Texas be, and is hereby, instructed to close all vehicle entrances to the Capitol grounds on Tuesday, January 18, 2011, except for those vehicles approved by the inaugural committee as necessary for use in connection with the ceremony and the program following.

OGDEN

**SCR 3** was read.

On motion of Senator Ogden, the resolution was considered immediately and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

**BENEDICTION**

His Eminence, Daniel Cardinal DiNardo, Archdiocese of Galveston-Houston, offered the benediction as follows:

Almighty and compassionate Lord, You have revealed Your glory to all nations and have care for all. We humbly thank You for this land, our state, a land rich in resources but above all rich in its many people. May we be a people mindful of Your love, justice, and kindness. Save us from violence, discord, and confusion, from pride and arrogance, and from every evil way. God of wisdom and justice, through Your authority is rightly administered, laws are enacted, and judgment is decreed. Let the light of Your divine wisdom direct the deliberations of this Legislature and shine forth in all its proceedings and laws framed for our rule and governance. May this Senate seek to preserve the common good and continue to bring us the blessings of liberty and equality. Assist with Your spirit of counsel and fortitude the Lieutenant Governor, the State Senators, that their administration be conducted in right judgment and be eminently useful to the citizens of this

state. May they encourage due respect for virtue and religion and execute laws with justice and mercy. May they have the strength and purpose to be accountable to the people and fulfill their roles with responsibility and their duties with honesty and ability. We pray for the governor, for judges, elected civil officials, and all others who are entrusted to guard our political welfare. We ask for Your mercy on those who were killed last Saturday in Tucson and healing for those wounded. Please assist their families with Your grace. We above all commend to Your unbounded generosity and compassion all the citizens of this state, that we may be blessed in the knowledge and sanctified in the observance of Your holy law. May we be preserved in unity and in that peace the world cannot give. After enjoying the blessings of this life may we be admitted to those which are eternal. We pray to You, who are our Lord and God, forever and ever. Amen.

### **RESOLUTIONS OF RECOGNITION**

The following resolutions were adopted by the Senate:

#### **Memorial Resolutions**

**SR 5** by Ellis, In memory of Bill Bonham.

**SR 9** by West, In memory of Sharon Sternes of DeSoto.

#### **Congratulatory Resolutions**

**SR 4** by Zaffirini, Recognizing Raul Vasquez for his public service.

**SR 6** by Ellis, Recognizing Tracye McDaniel for her contributions to our state.

**SR 8** by Harris, Recognizing the Medical Center of Lewisville Grand Theater on the occasion of its grand opening.

### **ADJOURNMENT**

On motion of Senator Whitmire, the Senate at 1:38 p.m. adjourned, in memory of Tevan Nguyen of Hutto, until 11:00 a.m. tomorrow.