

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE — FIRST CALLED SESSION

AUSTIN, TEXAS

PROCEEDINGS

FIRST DAY

(Monday, May 27, 2013)

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 27th day of May, 2013, at 6:20 p.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: Birdwell, Campbell, Carona, Davis, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Garcia, Hancock, Hegar, Hinojosa, Huffman, Lucio, Nelson, Nichols, Patrick, Paxton, Rodríguez, Schwertner, Seliger, Taylor, Uresti, Van de Putte, Watson, West, Whitmire, Williams, Zaffirini.

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

Senator Eddie Lucio, Jr., offered the invocation as follows:

O Lord, to be better legislators, give us some of the faith of Abraham, who would have sacrificed his son, Isaac, at Your command. Touch us, too, and give us some of the forgiveness of Joseph, who forgave his brothers even after they sold him into slavery. To be better legislators, give us some of the leadership of Moses, who led a nation out of slavery. To be better legislators, give us some of the confidence of Joshua, who brought the walls of Jericho trembling down. To be better legislators, give us some of the strength of Samson, who could kill a lion with his bare hands. To be better legislators, give us some of the fidelity of Ruth, who stayed with Naomi. To be better legislators, give us some of the courage of David, who faced Goliath with only a slingshot. To be better legislators, give us some of the wisdom of Solomon, who judged a mother's love. To be better legislators, give us some of the patience of Job, whom You let the devil persecute. But surely, to be better legislators, may we serve others as did our redeemer, who was nailed to a cross. Amen.

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:

I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by Article III, Section 5 and Article IV, Section 8 of the Texas Constitution, do hereby call an extraordinary session of the 83rd Legislature, to convene in the City of Austin, commencing at 6 p.m. on Monday, May 27, 2013, for the following purposes:

To consider legislation which ratifies and adopts the interim redistricting plans ordered by the federal district court as the permanent plans for districts used to elect members of the Texas House of Representatives, Texas Senate and United States House of Representatives.

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 27th day of May 2013.

/s/Rick Perry
Governor of Texas

(Seal)

Attested by:

/s/John Steen
Secretary of State

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

The President announced that the time had arrived for the election of President Pro Tempore of the 1st Called Session, 83rd Legislature.

Senator Whitmire nominated Senator Craig Estes to serve as President Pro Tempore.

The President declared Senator Estes elected by acclamation to the office of President Pro Tempore and administered the Oath of Office.

OATH OF OFFICE ADMINISTERED

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

I, Craig Estes, 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.

REMARKS ORDERED PRINTED

Senator Ellis moved that the remarks regarding Senator Watson's parliamentary inquiries be ordered reduced to writing and printed in the *Senate Journal*.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Deuell.

Absent: Carona, Fraser, Paxton, Schwertner.

President: Senator Watson, for what purpose do you rise?

Senator Watson: Parliamentary inquiry, Mr. President.

President: State your inquiry.

Senator Watson: Mr. President, under which rules will the Senate operate during the 1st Called Session of the 83rd Legislature?

President: We're going to operate under the permanent rules of the Senate as immortalized in the 83rd session.

Senator Watson: Mr. President, parliamentary inquiry.

President: State your inquiry.

Senator Watson: Does Senate Rule 5.13 of those permanent rules of the 83rd legislative session provide that no bill, joint resolution, or resolution affecting state policy may be considered out of its regular calendar order unless the regular order is suspended by a vote of two-thirds of the Members present?

President: Yes.

Senator Watson: Alright, parliamentary inquiry, Mr. President.

President: State your inquiry.

Senator Watson: Mr. President, does a blocker bill, as has been traditionally used by the Senate and was used in the recently concluded regular session, require a vote of two-thirds of the Members present to suspend the regular order of business and take up other legislation?

President: In a regular session, that's right.

Senator Watson: In a regular session. Well, we're operating under the rules of the regular session, so my question would be, would a blocker bill, as—

President: No, you're, no, I think you're confused. The—

Senator Watson: I'm sorry, I don't believe I'm confused.

President: Well, let me answer your question. We're going to follow the rules as they are embodied in the rules of the 83rd Legislature. And in this session, in special session, and in regular session, we'll follow the regular order of business.

Senator Watson: And my question then, my parliamentary inquiry then, Mr. President, is, does a blocker bill, as has been traditionally used and was recently used in the regular session, if there is a blocker bill, does it require a vote of two-thirds of the Members present to suspend the regular order of business and take up other legislation?

President: Senator Watson, as you know, it always takes a two-thirds vote to take a bill out of its regular order of business.

Senator Watson: So, if there's a blocker bill in place, it would take a two-thirds vote to take a bill up that's behind the blocker bill?

President: That is correct.

Senator Watson: Mr. President, I have a parliamentary inquiry.

President: State your inquiry.

Senator Watson: Is there any rule or requirement of the Texas Senate that would prevent the placement of a blocker bill during a special called session?

President: Senator, the rules that we have in place allow for bills to be placed in the order, in the regular order of business as they are referred out of committee.

Senator Watson: So, there is no rule or requirement preventing a blocker bill in a special called session?

President: To the best of my knowledge, there's not one that prevents it nor requires it.

Senator Watson: In fact, Mr. President, parliamentary inquiry.

President: Could you pause just for a moment?

Senator Watson: Sure.

President: The rules of the Senate do not specifically address a blocker bill.

Senator Watson: The tradition of the Senate, and we've just referred to a blocker bill, and we referred to the fact that a blocker bill was utilized in the regular called session, there's no rule that would prevent the placement or referral of a bill at the top of the regular order of business requiring a two-thirds vote as was just used in the regular session.

President: That is also true, but the tradition of the Senate for the last 10 years, actually going back almost 22 years, is not to have a blocker bill in sessions, in special sessions, and particularly ones in which there is congressional redistricting. We have not had a blocker bill in the Texas Senate during a special session for 10 years.

Senator Watson: Parliamentary inquiry, Mr. President.

President: State your inquiry, Sir.

Senator Watson: Was there a blocker bill in the 78th first called special session in 2003?

President: There was in the first, but not in the subsequent second, third, and fourth.

Senator Watson: Mr. President, parliamentary inquiry.

President: State your inquiry.

Senator Watson: I believe, was there not a blocker bill in the called session, of the fourth called session in 2003?

President: I don't believe that there was.

Senator Watson: I believe the record will reflect it related to the creation of the County Park Beautification and Improvement Program, SB 7, but let me ask another parliamentary inquiry, Mr. President.

President: State your inquiry.

Senator Watson: Was there a blocker bill in the 79th, 1st Called Session, 2nd Called Session, and 3rd Called Session in 2005?

President: Senator, I'm not advised as we stand here right now. We'd have to go take a look at the Journals.

Senator Watson: Alright, thank you.

President: But the regular order of business is controlled by our rules, as laid out in our rules in the 83rd Legislature, and the Constitution controls what we can introduce and refer, and we're going to follow the Constitution.

Senator Watson: Parliamentary inquiry, Mr. President.

President: State your inquiry.

Senator Watson: Will there be a blocker bill during the 1st Called Session of the 83rd Legislature?

President: Senator Watson, at the present time, it's my intention to refer bills as they appear in the call.

Senator Watson: I'm sorry, I may be confused now, is that a yes or a no that there, whether there will be a blocker bill in the 1st Called Session of the 83rd Legislature?

President: My intention right now is to continue the practice that we've employed, that I've employed over the last 10 years, and refer bills that are on the call. The only bill that's on the call at the present time is the redistricting call, and that's what I intend to refer.

Senator Watson: Parliamentary inquiry, Mr. President.

President: State your inquiry, Sir.

Senator Watson: In special sessions, previously, where there has been a blocker bill filed, did you refer those bills? Even if they weren't on the call?

President: Senator Watson, I'm not advised as to which session you're talking about. It's my intention to follow strictly the Constitution on referring of bills and our rules. And it's my intention at the present time to refer bills that are on the call.

Senator Watson: Parliamentary inquiry, Mr. President.

President: State your inquiry.

Senator Watson: During the 1st Called Session of the 82nd Legislature, was there a blocker bill?

President: In the 82nd, if memory serves, no.

Senator Watson: Was that a legislative special called session that involved congressional redistricting?

President: No.

Senator Watson: Was congressional redistricting on the Governor's call for the 1st Called Session of the 82nd?

President: Senator, um, again, I'd have to refresh my memory, I'm not advised, I don't think it was on the call.

Senator Watson: Mr. President, parliamentary inquiry.

President: State your inquiry.

Senator Watson: If Members of the Senate have a Motion In Writing, what would be the appropriate parliamentary maneuver in order to make that motion, get a vote on that Motion In Writing?

President: Senator Watson, if you would bring your Motion In Writing forward so that we can take a look at it and see if it's a proper Motion In Writing to be before the body. Senator Watson, I'm advised by Senator Seliger, in the 82nd, 1st Called Session, we did have redistricting and there was not a blocker bill.

Senator Watson: That, that was my research as well, Mr. President, thank—

President: And I apologize, Senator Watson, I did not remember that.

Senator Watson: Parliamentary inquiry, Mr. President.

President: State your inquiry.

Senator Watson: Mr. President, is it your position that if redistricting were not on the call, then there would be, it would be appropriate for you to place a blocker bill, but your practice is to not have a blocker bill in cases where redistricting is on the call?

President: My position is that the tradition of the Senate and the precedent is that in special session involving redistricting that a blocker bill is not placed and there's no requirement to place a blocker bill in special sessions in which redistricting is not on the call.

Senator Watson: Parliamentary inquiry, Mr. President.

President: State your inquiry.

Senator Watson: Are you aware that the Democratic Members of the Senate after the last redistricting represent over 60 percent of the Hispanic population of Texas and over 57 percent of the Black and Hispanic population of Texas?

President: Mr. Watson, Senator Watson, that's not a proper parliamentary inquiry.

Senator Watson: Mr. President, parliamentary inquiry.

President: State your inquiry.

Senator Watson: Did a federal court find that the operation of the Senate and going outside of ordinary procedure resulted in purposeful discrimination in the congressional redistricting maps that were passed during the 82nd Legislature?

President: Senator Watson, after conferring with the Parliamentarian, that's not a proper parliamentary inquiry.

Senator Watson: Thank you, Mr. President.

President: Thank you, Senator Watson.

STATEMENT FROM LIEUTENANT GOVERNOR

Lieutenant Governor Dewhurst submitted the following statement:

I submit this statement to clarify my responses to Senator Kirk Watson's parliamentary inquiries raised on May 27, 2013. Senator Watson primarily inquired into the Senate's historical use of so-called "blocker bills" to alter the Regular Order of Business, particularly during called sessions of the Legislature (special sessions).

I have presided over the Texas Senate as Lieutenant Governor during ten special sessions. Blocker bills were not utilized in four of those sessions: the current special session (2013), the First Called Session of the 82nd Legislature (2011), and the Second and Third Called Sessions of the 78th Legislature (2003). Lieutenant Governors Bill Ratliff and Rick Perry did not preside over any special sessions. Lieutenant Governor Bob Bullock presided over four special sessions, all occurring during the 72nd Legislature (1991 - 1992). The Senate calendars operated without blocker bills in the Third and Fourth Called Sessions in 1992.

Senator Watson also asked whether it is my position that the placement of blocker bills is appropriate in special sessions where redistricting is not within the Governor's call, and further, whether it is my practice to forego the use of a blocker bill in cases where redistricting is on the call. Senator Watson's predicate should not mislead one to conclude that the Senate's adherence to the Regular Order of Business during special sessions has only been reserved for the consideration of redistricting bills. The journals of the Senate demonstrate the use of a majority vote on vital public policy measures for which consensus could not be reached during a regular session. The funding of our general government and our public schools, for example, are crucial to the well-being of Texas and no less important than our constitutional duty to reapportion legislative and congressional districts after every federal census. I believe that on these three critical issues the use of obstructive parliamentary maneuvers has arguably resulted in the virtual legislative delegation of constitutional responsibilities to the courts.

In conclusion, I believe in the constitutional imperative to pass fair and legal redistricting maps during this special session. For this reason I will not refer to committee any bills outside of the Governor's call which may be used to block action on redistricting. I believe majority passage is constitutional and consistent with Senate rules and practices.

/s/David Dewhurst
Lieutenant Governor

SENATE BILLS ON FIRST READING

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

SB 1 by Seliger

Relating to the composition of districts for the election of members of the Texas Legislature and the United States House of Representatives from Texas.

To Committee on Redistricting.

SB 2 by Seliger

Relating to the composition of districts for the election of members of the Texas Senate.

To Committee on Redistricting.

SB 3 by Seliger

Relating to the composition of districts for the election of members of the Texas House of Representatives.

To Committee on Redistricting.

SB 4 by Seliger

Relating to the composition of districts for the election of members of the United States House of Representatives from Texas.

To Committee on Redistricting.

ACKNOWLEDGMENT

The President and Senator Hegar acknowledged the interim appointment of Julia Rathgeber as Commissioner of Insurance.

REMARKS ORDERED PRINTED

On motion of Senator Ellis and by unanimous consent, the remarks regarding the interim appointment of Julia Rathgeber as Commissioner of Insurance were ordered reduced to writing and printed in the *Senate Journal* as follows:

President: Members, if you would, I'd like to recognize Senator Hegar for an announcement that I'm very pleased for this very capable lady, but I have certain regrets, and it's a little painful for me, but I wish her all the very, very best. Senator Hegar.

Senator Hegar: Thank you, Mr. President, and Members. I think most of you've heard by now that somebody we've known for a very long time, Julia Rathgeber, is now appointed to be our new Department of Insurance Commissioner, and I want to tell her congratulations, and I will see you before. Mr. President, I do have an inquiry, though. I'm not sure if she's crying out of joy, out of sadness, or if she's already heard that I've had 30 Members request that we have a very long hearing.

President: I need some help, Senator Watson.

Senator Watson: Well, Mr. President, I've, you know, she is a constituent of mine, and under the tradition that allows a Senator that has a constituent nominated by the Governor—

President: If you said no, then she'd have to stay.

Senator Watson: I was contacted by the Governor's office, and I told her that I have a whole list of bills that she would blame you for being slow getting here. I'm going to find out now whether she was the one responsible when we get into a hearing.

President: Well said, Senator Watson.

Senator Deuell: Mr. President. We, I think it's blocked. I think the nomination is blocked. I don't know if Senator Hegar's checked the votes yet, but—

President: Our loss is the state's gain, and she's going to do a phenomenal job at the insurance commission. Bless you. Julia, I just want you to know that Senator Seliger, in observation of how important you are to the Senate, important you are to me, is working the floor to try and make your replacement have to be confirmed by the Senate.

Senator Ellis: Mr. President.

President: Senator Ellis.

Senator Ellis: While you're all in a good mood, can I have these comments put in the record?

President: Members, Senator Ellis moves to reduce to writing and include in the Journal the comments that were just made about a fabulous, fabulous, fabulous state employee who's done so much for the Texas Senate and, certainly, for me, certainly for me. Is there objection from any Member? Chair hears no objection and the motion is adopted. Thank you, Senator Ellis. Very thoughtful, very thoughtful.

RECESS

On motion of Senator Whitmire and by unanimous consent, the Senate at 6:58 p.m. recessed until 12:00 noon Thursday, May 30, 2013.

