

SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE — FIRST CALLED SESSION

AUSTIN, TEXAS

PROCEEDINGS

FIRST DAY

(Tuesday, July 18, 2017)

In obedience to the Proclamation of the Honorable Greg Abbott, Governor of the State of Texas, the Senate met in the Senate Chamber of the State Capitol at Austin, Texas, on the 18th day of July, 2017, at 10:00 a.m. and was called to order by the Honorable Dan Patrick, 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: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Garcia, Hall, Hancock, Hinojosa, Huffines, Huffman, Hughes, Kolkhorst, Lucio, Menéndez, Miles, Nelson, Nichols, Perry, Rodríguez, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin, Uresti, Watson, West, Whitmire, Zaffirini.

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

Captain Brett Anderson, Chaplain, Texas Army National Guard, Waco, offered the invocation as follows:

Lord of all creation, I would ask that as this session begins You would give wisdom to Governor Abbott, Lieutenant Governor Patrick, our elected Members of the Senate, and the House of Representatives and state agencies. Lord, I know these men and women are individuals that desire to do what is right, strengthen their courage as they strive for that goal. Make the way plain to them. Direct them to right and make it hard to turn away from that path. Lord, forgive their missteps and errors committed along the way, and give them boldness to admit their mistakes. Take away from us as a state and as individuals that stubborn pride which becomes conceited and imagines itself above reproach and beyond criticism. Save our leaders from themselves and from their friends as well as their enemies. Let no personal ambition blind them to their opportunities. Help them to give battle to hypocrisy wherever they find it. Give them not just common sense but divine sense and selflessness that will make them think of service and not gain. Even still, Lord, I would ask that You make them audacious in seeking the best for our great state and its wonderful people. 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:

WHEREAS, the legislature adjourned its 85th regular session without extending the existence of the Texas Medical Board, the Texas State Board of Examiners of Psychologists, the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, and the Texas State Board of Social Worker Examiners; and

WHEREAS, without legislative action, these five agencies will be abolished on September 1, 2017, pursuant to the Texas Sunset Act, Chapter 325, Government Code, and statutory law applicable to these agencies; and

WHEREAS, the continuation of these agencies is important to the operation of the professions subject to oversight by these agencies; and

WHEREAS, the people of Texas have placed the constitutional power to call the legislature into special sessions in the hands of the governor; and

WHEREAS, as soon as the Senate passes all bills necessary to extend the existence of the five state agencies referenced above, I intend to add to this first called session of the 85th Legislature the items I announced on June 6, 2017, including matters such as teacher compensation and retention practices, school finance reform, education options for students with special needs, property tax reform, constraining the growth of state and local government, municipal regulatory and annexation reforms, protection of property rights, privacy, the governmental collection of union dues, pro-life legislation, and mail-in ballot reforms; and

WHEREAS, bills related to the matters that I intend to add to this first called session of the 85th Legislature may be filed and may begin to be considered by the legislature before those matters are added to the call;

NOW, THEREFORE, I, GREG ABBOTT, 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 85th Legislature, to convene in the City of Austin, commencing at 10 a.m. on July 18, 2017, for the purpose of considering the following:

Legislation amending sections 151.004, 501.005, 502.003, 503.005, and 505.005 of the Texas Occupations Code to extend the expiration dates applicable to the Texas Medical Board, the Texas State Board of Examiners of Psychologists, the Texas State Board of Examiners of Marriage and Family Therapists, the Texas State Board of Examiners of Professional Counselors, and the Texas State Board of Social Worker Examiners.

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 the State to be affixed at my Office in the City of Austin, Texas, this the 10th day of July 2017.

/s/Greg Abbott
Governor of Texas

(Seal)

Attested by:

/s/Rolando B. Pablos
Secretary of State

SENATE BILLS ON FIRST READING

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

SB 20 by Taylor of Collin

Relating to the continuation and sunset review of certain governmental entities subject to abolishment on September 1, 2017.

To Committee on Business and Commerce.

SB 60 by Taylor of Collin

Relating to the repeal of certain riders for the Texas Medical Board and the Texas State Board of Examiners of Psychologists from the General Appropriations Act that are contingent upon the approval of certain Acts continuing those agencies during the 85th Regular Session.

To Committee on Business and Commerce.

COMMITTEE APPOINTED

The President announced the appointment of the following special committee for the 85th Legislature:

Select Committee on Government Reform: Bettencourt, Chair; Creighton, Hancock, Lucio, Perry, Uresti, Taylor of Collin.

GUESTS PRESENTED

Senator Zaffirini was recognized and introduced to the Senate school board trustees from across Texas.

The Senate welcomed its guests.

MOTION TO SUSPEND SENATE RULES

Senator Hancock moved to suspend Senate Rule 11.10, Senate Rule 11.18(a), and Senate Rule 11.19 in order that the Committee on Business and Commerce might meet and consider the following bills today: **SB 20, SB 60**.

POINT OF ORDER

Senator Rodríguez raised a point of order that once the action to tag a bill has been taken, the motion to suspend Senate Rule 11.19 was out of order.

POINT OF ORDER RULING

The President stated that the point of order was respectfully overruled.

Senator Garcia asked to divide the question.

Question: Shall the motion to suspend Senate Rules 11.10, 11.18(a), and 11.19 be divided?

REMARKS ORDERED PRINTED

On motion of Senator West and by unanimous consent, the exchange between the President and Senator West regarding the Senate Rules was ordered reduced to writing and printed in the *Senate Journal* as follows:

President: Senator West, for what purpose?

Senator West: Parliamentary inquiry.

President: State your inquiry.

Senator West: What is the procedure to make certain that the rationale for this decision is reduced to writing and placed in the rule book?

President: Which decision?

Senator West: The decision by the Chair as it relates to the parliamentary inquiry made by Senator Rodríguez, in terms of the issue concerning the tag. It's my understanding, and correct me if I'm wrong, I may have heard it wrong, that there was a motion that was made by, there was a tag made by Senator Rodríguez. Now there is a move to suspend the tag rule, which I've never seen before in the 24 years I've been here. And I believe that the Chair ruled on something, I think there was a procedural issue raised by Senator Rodríguez, and you overruled that. Is that correct?

President: Yes. Would you like for us to reduce that to writing, is that your question?

Senator West: Right. And not only reduce it to writing, but given the nature of it, and many of us have never seen it before. You're saying that's happened, okay, that's fine. But—

President: But we had it in the book, but—

Senator West: Okay, that's fine. And so, in order to make certain that future Senators have the benefit of this moment in history, I'd ask what the procedure is to reduce it to writing and make certain that it's a part of our rules, or interpretation of our rules.

President: Senator West, I'm happy to work with you and reduce something to writing and put in the Journal.

Senator West: Thank you. For—

President: Yes, Sir.

Senator West: —the Jour—

President: For the Journal.

Senator West: –for the Journal, so, parliamentary inquiry. By reducing it and for writing and placing it in the Journal, does that also mean that it would become a part of the interpretation of the rule in the rule book?

President: Would just be in the Journal.

Senator West: I'm sorry.

President: It would just be in the Journal.

Senator West: Parliamentary inquiry.

President: State your inquiry.

Senator West: How do we make certain that's a part of the interpretation that we receive in the Senate rule book? That's what I'm, that's the parliamentary inquiry.

President: Yeah, that would be something the next Legislature could take up.

Senator West: I didn't understand what you said.

President: Yeah, we can consider the next legislative session that issue.

Senator West: Parliamentary inquiry. What is–

President: State your inquiry.

Senator West: –what is the procedure to have it considered?

President: You have just asked if it can be reduced to writing. I said we can.

Senator West: So, it will be reduced to writing and placed in the Senate rule book as an interpretation of Rule 11.19. I'm just making sure we're on the record on that.

President: Senator, that would be for the next printing of the rules in the next legislative session, whether that would be an annotation or not.

Senator West: Parliamentary inquiry. How do we make this a Note of Rulings?

President: I'm sorry, I couldn't hear you.

Senator West: How do we make this a Note of Rulings? In our rule book we have a section under each rule called notes, Note of Rulings. I just want to make certain we know what the process is and what the vote requirement is and whether or not it can be suspended in terms of it in the Note of Rulings. That's my parliamentary inquiry.

President: Senator, right now, our rules that we're working under have been printed. They will be printed again in the next session. At that point, that decision can be made.

Senator West: And the question I'm asking is how is that decision made? Does that require a vote of this body to take your interpretation, which I understand that you're going to reduce to writing and place in the Journal, and make it a part of the Note of Rulings, what is that procedure?

President: Really trying to give you the correct answer, Senator West.

Senator West: Okay.

President: Okay.

Senator West: Alright.

President: And the correct answer is it's not appropriate for me at this time to say what the next legislative body would do and how they would address that. I could be directed to do it. I could do it. Caucus of the whole will take that discussion up. I cannot address that issue at this point.

Senator West: Parliamentary inquiry.

President: Yes, Sir.

Senator West: Would it be—

President: State your—

Senator West: —appropriate—

President: —inquiry.

Senator West: —would it be appropriate to vote today to instruct placing this particular interpretation of this decision into the Note of Rulings?

President: No, because the rules for this session have already been printed, this Legislature has already been printed.

Senator West: Let, so let me—

President: But that's why you would add it to the Journal for the next session.

Senator West: I'm trying to think of another one right now.

President: Okay.

Senator West: So, with—

President: I'm enjoying the discussion.

Senator West: —so, let me make certain I understand.

President: Do you want to come forward?

Senator West: Do I have to? Yes.

President: It may be easier, just you and me and probably 30 of your friends. Members, can we have order, please, quiet. Senator West.

Senator West: Parliamentary inquiry.

President: State your inquiry.

Senator West: Okay. I don't want to base this on a hypothetical because I recognize that a new Legislature may do something altogether different. I don't think it will, what is the current procedure in adopting rules to make a determination but as to whether or not rulings by the President, by the Lieutenant Governor, are placed in the rule book?

President: As we discussed, I just want to be sure we get it correct for you and the other Members. The normal procedure is before the next rules are printed, the Parliamentarian looks at decisions that have been made and decides whether they should be in the rules or not. The Lieutenant Governor can weigh in on that decision, and the Senate can weigh in on that decision and direct us as well. But that's what I'm,

and you're not trying to be tricky, I wasn't trying to be tricky, we were trying to get this worked out between us. It's the next legislative session when the rules are printed that those decisions will be made by the Parliamentarian, by the Lieutenant Governor, and if need, the Senate.

Senator West: Okay, so let me just—

President: That's the practice. That's what it's been. That's the practice now.

Senator West: That's been the practice in the past. Okay.

President: And to, and now, and it's up to the next session.

Senator West: Okay. So, it's a subjective determination by the Parliamentarian as to whether not to recommend to the Lieutenant Governor as to whether or not specific rulings that have been placed in the Journal should become a part of the Note of Rulings. Is that what I just heard?

President: Yes, one of the duties that the Parliamentarian has.

Senator West: So, what input will the Membership have, the Senators have, if there is a difference of opinion as, and I'm asking specifically, and I know it's hypothetical, but if there's a difference of opinion between the Lieutenant Governor and the Membership, what happens in that instance as it relates to, if working it out and making certain a ruling is placed in the book, historically, the rule book?

President: Next session, if you would happen to disagree with either the Parliamentarian or myself, then that would be a topic that you would want to bring up to me and to the other Senators, to bring up—

Senator West: Okay. Mr.—

President: —during the discussion of the rules.

Senator West: —okay. I'd like to move that this discussion be placed in the Journal as an indication of how Note of Rulings should be considered by future Legislators.

President: Members, does anyone have an objection to reducing this conversation, which will be a work of art, to writing? No objections.

Question: Shall the motion to suspend Senate Rules 11.10, 11.18(a), and 11.19 be divided?

The request to divide the question was granted.

SENATE RULE 11.10 SUSPENDED
(Public Notice of Committee Meetings)

Senator Hancock again moved to suspend Senate Rule 11.10 in order that the Committee on Business and Commerce might meet and consider the following bills today: **SB 20, SB 60.**

The motion prevailed by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

**SENATE RULE 11.18(a) SUSPENDED
(Public Hearings)**

Senator Hancock again moved to suspend Senate Rule 11.18(a) in order that the Committee on Business and Commerce might meet and consider the following bills today: **SB 20, SB 60.**

The motion prevailed by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

**SENATE RULE 11.19 SUSPENDED
(Tag Rule)**

Senator Hancock again moved to suspend Senate Rule 11.19 in order that the Committee on Business and Commerce might meet and consider the following bills today: **SB 20, SB 60.**

The motion prevailed by the following vote: Yeas 20, Nays 11.

Yeas: Bettencourt, Birdwell, Buckingham, Burton, Campbell, Creighton, Estes, Hall, Hancock, Huffines, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Perry, Schwertner, Seliger, Taylor of Galveston, Taylor of Collin.

Nays: Garcia, Hinojosa, Lucio, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini.

**STATEMENT REGARDING SUSPENSION OF
SENATE RULE 11.19**

Senators Rodríguez and Garcia submitted the following statement regarding the motion to suspend Senate Rule 11.19 for **SB 20**:

Today, Senator Rodríguez "tagged" Senate Bill 20, the Sunset bill, which extended the expiration date for the Texas Medical Board and four other state agencies by two years from Sept. 1, 2017 to Sept. 1, 2019. The tag is a right any member of the Senate has to request application of Senate Rule 11.19, which states that a Senator "shall receive at least 48 hours advance written notice of the time and place set for a public hearing on a specific bill." In other words, the notice has to go to the requesting Senator individually. This is distinct from, for example, a public posting, which goes out to the public at-large.

Several facts demonstrate that, when properly invoked, the tag rule creates a right to advance notice that vests with the individual Senator who places the tag.

- If more than one Senator invokes the rule, each is entitled to the individualized notice [Senate Rule 11.19(c)]. Similarly, if a Senator invokes the rule and then withdraws his request, another Senator may still invoke it and become entitled to the notice [Senate Rule 11.19(h)].

- The rule can be invoked without making a motion and even after the relevant hearing has begun. It also applies to House companions to Senate Bills that have been properly tagged. And if a bill is tagged and re-referred to a new committee, the tag goes with the bill and is still binding.
- If the tag rule is violated, the committee's action on the bill is void.

Again, these facts illustrate the importance of the individualized right the tag rule provides.

Instead of following tradition and our Senate rules, which provide order and transparency of our proceedings, the Senate voted 20-11 to suspend Senate Rules 11.10, 11.18, and 11.19.

Although S.B. 20 was tagged to give the public sufficient notice and an opportunity to participate in the hearing, the Senate voted, strictly along party lines, to retroactively suspend the rules, which was unprecedented. We can suspend the rule before it's been invoked, but once it's been invoked we cannot and should not retroactively suspend it to strip a vested right from a fellow member. To do so would run contrary to decades of precedent, as well as demonstrate that none of our rules are truly binding. In reviewing the Senate records, we could not find any instance where a member invoked his or her right, and the body subsequently voted to retroactively suspend the rule and take away that individual member's right.

The tag rule has been in place and respected by the Senate since at least 1939. Once invoked, the Senate should not be able to retroactively destroy the right it creates.

This is much bigger than any one Senator's desire to have more time to consider a bill, however. This rule serves the public, which has a right to stay informed and participate in the legislative process. That is almost impossible when we suspend all of our rules to hear a bill that has just been introduced.

S.B. 20 is an important bill. While it is non-controversial in the sense that most everyone agrees that these agencies need to continue, that doesn't mean the public doesn't have important things to contribute to the discussion. For example, there are valid questions about why we are just passing this safety net bill instead of passing the substantive bills that were introduced during the Regular Session. Significant work went into developing those substantive bills, and a lot of people would rather see those bills pass. That's a conversation we should be having in a robust and transparent way.

Furthermore, we have to acknowledge the elephant in the room. This is the only bill that needs to pass this session, and there's plenty of time to do that in accordance with our normal rules. But those in control of the Capitol want to speed things up with this bill so they can get to the supplemental call.

Once again we are giving inadequate attention to the real needs of this State in order to focus most of the Legislature's time and attention on issues that only matter to a small percentage of Republican primary voters. We're going to rush through safety net bills for an agency that issues thousands of licenses and oversees tens of thousands of doctors and other health professionals. Those professionals serve millions of patients. We are pushing past that so that we can talk about what bathroom transgender people should use. When the rules pose an obstacle to this plan, we simply set them aside, even if it means disrespecting the institution, our colleagues, and decades of precedent.

We talk a lot about the rule of law around here. If the rules can be disregarded at will, for expedience, then we have no rules. We've also heard talk about Texas not becoming California. By disregarding our traditions of comity in the Texas Senate, our leaders are turning us into Washington.

RODRÍGUEZ
GARCIA

REMARKS ORDERED PRINTED

On motion of Senator Taylor of Collin and by unanimous consent, the remarks by Senator Hancock regarding Senate Rule 11.19 were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Hancock: Yes, thank you, Mr. President. Members, in regards to Rule 11.19, it was not on my intent, in fact it was not originally part of the suspension that we were going to ask. However, coming to the floor, these sunset bills, which Senator Lucio, I think, so accurately conveyed, that will be voted on 100 percent of the Senate understands the importance of them and will be voting to continue the agencies. It was not our intent to suspend 11.19. However, those bills were tagged and would have prevented the Business and Commerce Committee moving swiftly, moving forward on hearing that legislation. And so, we did add that to the call. And while many statements were made on the floor, let me be clear, we did look in historical record, there has been a practice of suspension of 11.19, although rare. This is not a precedent regardless of what was said today, and while some people's memory may not recall or they may have not looked at the historical record, we're not setting precedent today in asking you to suspend 11.19. We're asking you to participate in the rules as they have been practiced historically in suspension of the Rule 11.19, the tag rule.

RECESS

On motion of Senator Whitmire, the Senate at 11:12 a.m. recessed until 12:00 p.m. today.

AFTER RECESS

The Senate met at 12:41 p.m. and was called to order by the President.

PHYSICIAN OF THE DAY

Senator Huffman was recognized and presented Dr. Joshua Splinter of Houston as the Physician of the Day.

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

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 2 by Hughes, In memory of John L. Carwile Jr.

SR 3 by Hughes, In memory of Kenneth Ponder.

SR 5 by Hughes, In memory of James W. Vaughan.

SR 7 by Hughes, In memory of David Clark Craig.

SR 8 by Hughes, In memory of Jimmie McCormack.

SR 9 by Hughes, In memory of Kay L. Wieland.

SR 10 by Hughes, In memory of Arthur Jim Green Jr.

SR 11 by Hughes, In memory of Jimmie Clayton Harrison.

SR 13 by Hughes, In memory of James Edward Garner.

SR 17 by Hughes, In memory of Jana Graves Kennedy.

Congratulatory Resolutions

SR 1 by Rodríguez, Recognizing Roy Ortega on the occasion of his retirement.

SR 4 by Hughes, Recognizing Gerald Stagg for receiving a Lifetime Achievement in Healthcare Award.

SR 6 by Hughes, Recognizing members of the Marshall Fire Department for receiving the 2017 Crew of the Year Award.

SR 12 by Hughes, Recognizing the Lindale High School academic team for winning a state championship.

SR 14 by Hughes, Recognizing Billy Dean and Carolyn Risinger on the occasion of their 50th wedding anniversary.

SR 15 by Hughes, Recognizing Virginia Elizabeth Toole Reed on the occasion of her 100th birthday.

SR 16 by Hughes, Recognizing Jimmy and Nita Rushing on the occasion of their 60th wedding anniversary.

SR 18 by Hughes, Recognizing Roy and Peggy Hunt on the occasion of their 60th wedding anniversary.

SR 19 by Hughes, Recognizing J. T. and Yvonne McNabb on the occasion of their 70th wedding anniversary.

SR 20 by Hughes, Recognizing Travis and Margie Stuart on the occasion of their 50th wedding anniversary.

SR 21 by Hughes, Recognizing Burgie and Sher Thompson on the occasion of their 50th wedding anniversary.

SR 22 by Watson, Recognizing Lew and Pat Simmonds on the occasion of their 50th wedding anniversary.

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 12:49 p.m. adjourned, in memory of Jaime P. Martinez and Noe Hernandez, until 1:00 p.m. tomorrow.

APPENDIX

COMMITTEE REPORTS

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

July 18, 2017

BUSINESS AND COMMERCE — **SB 20, SB 60**