

# HOUSE JOURNAL

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EIGHTY-THIRD LEGISLATURE, FIRST CALLED SESSION

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## PROCEEDINGS

FOURTH DAY (CONTINUED) — SUNDAY, JUNE 23, 2013

The house met at 2 p.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 22).

Present — Mr. Speaker; Allen; Alonzo; Alvarado; Anchia; Anderson; Ashby; Aycok; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Burnam; Button; Callegari; Canales; Capriglione; Carter; Clardy; Coleman; Collier; Cook; Cortez; Craddick; Creighton; Crownover; Dale; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Elkins; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frank; Frullo; Geren; Giddings; Goldman; Gonzales; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harless; Harper-Brown; Hernandez Luna; Herrero; Hilderbran; Howard; Huberty; Hughes; Hunter; Isaac; Johnson; Kacal; Keffer; King, K.; King, P.; King, S.; King, T.; Kleinschmidt; Klick; Kolkhorst; Krause; Kuempel; Larson; Laubenberg; Lavender; Leach; Lewis; Longoria; Lozano; Lucio; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Orr; Otto; Paddie; Parker; Patrick; Perez; Perry; Phillips; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sanford; Schaefer; Sheets; Sheffield, J.; Sheffield, R.; Simmons; Simpson; Smith; Smithee; Springer; Stephenson; Stickland; Taylor; Thompson, E.; Thompson, S.; Toth; Turner, C.; Turner, E.S.; Turner, S.; Villalba; Villarreal; Walle; White; Workman; Wu; Zedler; Zerwas.

Absent, Excused — Márquez; Vo.

Absent — Strama.

The speaker recognized Representative Murphy who introduced Don Garner, pastor, Capitol Commission, Austin, who offered the invocation.

The speaker recognized Representative Murphy who led the house in the pledges of allegiance to the United States and Texas flags.

### LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence for today because of important business:

Vo on motion of Howard.

The following member was granted leave of absence for today because of important business in the district:

Márquez on motion of N. Gonzalez.

### **REGULAR ORDER OF BUSINESS SUSPENDED**

On motion of Representative Workman and by unanimous consent, the reading and referral of bills was postponed until just prior to adjournment.

### **MESSAGE FROM THE SENATE**

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

(Strama now present)

### **MAJOR STATE CALENDAR SENATE BILLS THIRD READING**

The following bills were laid before the house and read third time:

#### **SB 23 ON THIRD READING**

**(Kolkhorst, Moody, Carter, and P. King - House Sponsors)**

**SB 23**, A bill to be entitled An Act relating to the punishment for a capital felony committed by an individual younger than 18 years of age.

### **PARLIAMENTARY INQUIRY**

REPRESENTATIVE C. TURNER: Mr. Speaker, when the house convened today, did we come back from a recess or did we begin a new legislative day?

SPEAKER STRAUS: Mr. Turner, we came back from recess.

C. TURNER: Does Article III, Section 32 of the Texas Constitution, as well as Rule 8, Section 15 of the House Rules, state that "no bill may have the force of law unless it has been read on three several days"?

SPEAKER: That's correct, yes.

C. TURNER: And does that not mean three separate legislative days?

SPEAKER: No, Mr. Turner, we do not believe it does.

C. TURNER: Okay, so it is the chair's contention, then, that that simply means three calendar days, and that there does not have to be a new legislative day in order to have a third reading of the bill without a suspension of the rules.

SPEAKER: That's correct.

C. TURNER: Okay. Why then—on occasion, the house has been known to suspend the constitutional rule requiring bills to be read on three several days, which, if my memory serves, requires a four-fifths vote of the body—why is it necessary for us to do that suspension, if you're saying it's not really required?

SPEAKER: Because sometimes that occurs on the same calendar day.

C. TURNER: Okay.

REPRESENTATIVE HERRERO: Mr. Speaker, are we on the same legislative day where we took up **SB 23** on second reading?

SPEAKER: Mr. Herrero, we're on a different calendar day. Same legislative day, different calendar day.

HERRERO: And so, we're taking up then, on third reading, **SB 23** on the same legislative day as we had previously taken up **SB 23** on second reading? Is that correct?

SPEAKER: We're taking it up on the same legislative day, but a different calendar day.

HERRERO: Right, and that would not require a suspension of the rules?

SPEAKER: No, Mr. Herrero, we don't believe it does.

HERRERO: Is it not a constitutional requirement that we read bills on three separate legislative days?

SPEAKER: No, Mr. Herrero, the constitution does not say three legislative days.

HERRERO: I'm trying to understand, Mr. Speaker, in those times that we have—like local and consent, for example, Mr. Speaker, that we've taken up bills on second reading on local and consent and then a motion is made to suspend—I thought it was to suspend the rules so that we could bring up those same bills on third reading in that same legislative day, and I'm trying to figure out, one, if that's what we have done in local and consent, and how that would be different from taking up **SB 23** today.

SPEAKER: Mr. Herrero, on the local and consent calendar, we consider two legislative days on the same calendar day.

HERRERO: But that's because we adjourn though, correct?

SPEAKER: That is correct.

HERRERO: But in this case we have not adjourned from our—since we last considered **SB 23** on second reading, we have not since then adjourned now to take it up on third reading. Am I correct? In other words, we haven't adjourned, I guess—

SPEAKER: Mr. Herrero, this is the practice that the house has done before.

HERRERO: Mr. Speaker, would the speaker recognize me to make a motion to adjourn so that we're clear that this is in fact third reading in a separate legislative day?

SPEAKER: Mr. Herrero, if you'd like to make that motion, would you come down and visit with us for a moment?

HERRERO: I would like to, Mr. Speaker, thank you.

HERRERO: At this time, Mr. Speaker, I'd like to make a motion that we adjourn until a time certain, 5 p.m. today, and the rationale for that is that, to the extent that a new calendar should be printed—it gives the two-hour notice; my

understanding is that it's not necessary, but I'd like to take that into consideration, and for that motion, I come before the body asking for a motion to adjourn until 5 p.m. today.

REPRESENTATIVE EILAND: You're chairman of what committee?

HERRERO: Criminal Jurisprudence.

EILAND: And did this bill come through your committee?

HERRERO: **SB 23** did come before the Criminal Jurisprudence Committee.

EILAND: Okay, and so, this is a very important bill for a lot of people, especially because we have a situation currently where there may not be an option for certain youthful offenders except for life in prison, right?

HERRERO: That's correct. The fact that the Supreme Court, in *Miller v. Alabama*, has struck down the sentencing provision for the State of Texas that you cannot sentence a 17-year-old convicted of capital murder to life without parole has required the state now to take up what sentencing scheme would be the punishment for a 17-year-old who is convicted of capital murder and what sentence would be rendered for that individual convicted of such crimes.

SPEAKER: Members, this motion is not a debatable motion.

EILAND: Mr. Speaker, parliamentary inquiry. So, if—the rules of the constitution and the house rules, at least the one I'm reading—Rule 8, Section 15 says, "A bill shall not have the force of law until it has been read on three several legislative days," and my parliamentary inquiry, my concern is that we are, as I understand it, still on the second legislative day for this bill, because we voted on the bill on Friday. We did not adjourn, so we are still on Friday's legislative day, and somebody could bring a constitutional challenge when this bill goes into effect. So, my parliamentary inquiry is, are we on this bill's second legislative day on third reading, or are we currently on this bill's third legislative day on third reading?

SPEAKER: Mr. Eiland, the constitution says three several days, and we are on this bill's third several legislative day—third several day.

EILAND: Correct, the third several days, but the house rule says no bill shall have the force of law until it's been read on three several legislative days. And so my question, Mr. Speaker, is—are we on this bill's second legislative day on third reading?

SPEAKER: Mr. Eiland, we believe this bill is properly before us at this current time.

EILAND: I understand, Mr. Speaker, but, parliamentary inquiry, that's not my question. My question is simply, are we on **SB 23**'s second legislative day on third reading or third legislative day on third reading?

SPEAKER: Mr. Eiland, we are on the same legislative day, but we are on a different calendar day.

REPRESENTATIVE SIMPSON: Parliamentary inquiry—the motion to adjourn, we can vote on this, can we not?

SPEAKER: Yes.

SIMPSON: We can vote it up or vote it down, the body, is that correct?

SPEAKER: That's correct.

SIMPSON: All right, parliamentary inquiry—can Representative Kolkhorst, if we vote not to adjourn, may she postpone her bill until the next legislative day so we can proceed with other business?

SPEAKER: Yes, she may postpone her bill.

SIMPSON: To the next legislative day? Or to a time that she's pleased with?

SPEAKER: It would be up to Ms. Kolkhorst.

REPRESENTATIVE FARRAR: Earlier today, I had a conversation with the parliamentarian about this issue, and he explained to me that this was done all the time, that this was under the duties of the clerk. Could you cite a time that we have done this before, where we read a bill on the same—on third reading—where we had also read it on second reading without a vote suspension?

SPEAKER: Ms. Farrar, the clerk will look for that information for you.

FARRAR: Could I have that clarification before we move forward, or an indication of how long that might take?

SPEAKER: We'll have to look at calendars and the journal for the same action. I can't give you a specific time that will take.

FARRAR: Okay, I'm not clear why we're going to move forward with this legislation if we can't cite that incident.

SPEAKER: Ms. Farrar, because we believe it complies with the constitution and the rules of the house.

FARRAR: Could I have your assurance that as soon as that is made available, that we have that clarification, please?

SPEAKER: Yes.

REPRESENTATIVE DUKES: Mr. Speaker, parliamentary inquiry—could you explain to me the difference between a legislative day and a calendar day?

SPEAKER: Ms. Dukes, a calendar day is a day of the week.

DUKES: This I'm aware of. How is it different than a legislative day? I'm just asking, because in the 20-some years I've been here, we've always suspended the rules to take up a bill on third reading.

SPEAKER: Ms. Dukes, a legislative day is the time we go into session and the time we adjourn.

DUKES: Excuse me?

SPEAKER: A legislative day is the day that we go into session until the time that we adjourn.

DUKES: Until the time that we adjourn, so—

SPEAKER: A calendar day is a day of the week.

DUKES: All right, so if the constitution requires the bill to be read on three several legislative days, and we're still on the same legislative day, how are we not out of order to take up and consider this bill on third reading without a suspension of the rules?

SPEAKER: Ms. Dukes, the constitution does not state three several legislative days.

DUKES: Well, our house rules state it.

SPEAKER: And the house rules have to comply with the constitution.

DUKES: I guess it would be helpful to have the citations of the precedent where this has occurred before. I mean, granted, many of us can be off the floor at times, but I'm certain that in Ms. Thompson's 40 years and in my short 20, we've not seen this. If we could just have some record of it?

SPEAKER: Ms. Dukes, I would invite you to visit with the chief clerk.

#### MOTION TO ADJOURN

Representative Herrero moved that the house adjourn until 5 p.m. today.

The motion was lost by (Record 23): 50 Yeas, 92 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Burnam; Canales; Coleman; Collier; Cortez; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Farias; Farrar; Giddings; González, M.; Gonzalez, N.; Guerra; Gutierrez; Hernandez Luna; Herrero; Howard; Johnson; Lucio; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Moody; Muñoz; Naishtat; Nevárez; Oliveira; Perez; Pickett; Raymond; Reynolds; Rodriguez, E.; Rodriguez, J.; Rose; Strama; Thompson, S.; Turner, C.; Turner, S.; Villarreal; Walle; Wu.

Nays — Anderson; Ashby; Aycoc; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Button; Callegari; Carter; Clardy; Cook; Craddick; Creighton; Crownover; Dale; Darby; Davis, J.; Elkins; Fallon; Farney; Fletcher; Flynn; Frank; Frullo; Geren; Goldman; Gonzales; Gooden; Harless; Harper-Brown; Hilderbran; Huberty; Hughes; Hunter; Isaac; Kacal; Keffer; King, K.; King, P.; King, S.; Kleinschmidt; Klick; Kolkhorst; Krause; Kuempel; Larson; Laubenberg; Lavender; Leach; Lewis; Lozano; Miller, D.; Miller, R.; Morrison; Murphy; Orr; Otto; Paddie; Parker; Patrick; Perry; Phillips; Pitts; Price; Raney; Ratliff; Riddle; Ritter; Sanford; Schaefer; Sheets; Sheffield, J.; Sheffield, R.; Simmons; Simpson; Smith; Smithee; Springer; Stephenson; Stickland; Taylor; Thompson, E.; Toth; Turner, E.S.; Villalba; White; Workman; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Márquez; Vo.

Absent — Anchia; Capriglione; Guillen; King, T.; Longoria.

**STATEMENTS OF VOTE**

When Record No. 23 was taken, I was in the house but away from my desk. I would have voted yes.

Capriglione

When Record No. 23 was taken, I was temporarily out of the house chamber. I would have voted yes.

Guillen

**REMARKS ORDERED PRINTED**

Representative C. Turner moved to print all remarks regarding the motion to adjourn.

The motion prevailed.

**POINT OF ORDER**

Representative S. Turner raised a point of order against further consideration of the calendar under Rule 8, Section 15 of the House Rules on the grounds that **SB 23** was not eligible for consideration.

The point of order was withdrawn.

**ADJOURNMENT**

Representative Hunter moved that the house adjourn until 6:20 p.m. today.

The motion prevailed.

The house accordingly, at 4:03 p.m., adjourned until 6:20 p.m. today.

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**ADDENDUM**

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**MESSAGES FROM THE SENATE**

The following messages from the senate were today received by the house:

**Message No. 1**

**MESSAGE FROM THE SENATE**

**SENATE CHAMBER**

Austin, Texas

Sunday, June 23, 2013 - 1

The Honorable Speaker of the House  
House Chamber  
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

**SCR 3**

Uresti

In memory of John Byron Strait, Sr.

THE SENATE HAS CONCURRED IN THE HOUSE AMENDMENTS TO  
THE FOLLOWING MEASURES:

**SB 3**

(18 Yeas, 11 Nays)

Respectfully,

Patsy Spaw

Secretary of the Senate