

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE — SECOND CALLED SESSION

AUSTIN, TEXAS

PROCEEDINGS

THIRD DAY

(Continued)

(Monday, July 29, 2013)

AFTER RECESS

The Senate met at 2:54 p.m. and was called to order by the President.

LEAVES OF ABSENCE

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

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

RESOLUTIONS SIGNED

The President announced the signing of the following enrolled resolutions in the presence of the Senate:

HCR 3, HCR 5, HCR 6, HCR 9, HCR 10, HCR 12, HCR 19.

PHYSICIAN OF THE DAY

Senator Nichols was recognized and presented Dr. Larry Brown of Jasper as the Physician of the Day.

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

SENATE RESOLUTION 108

Senator Nichols offered the following resolution:

BE IT RESOLVED by the Senate of the State of Texas, 83rd Legislature, 2nd Called Session, 2013, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on House Bill 16 (the creation and functions of legislative select committees on transportation funding, expenditures, and finance and to the preservation of a sufficient balance in the economic stabilization fund) to consider and take action on the following matters:

(1) Senate Rules 12.03(1) and (2) are suspended to permit the committee to change, alter, amend, and omit text which is not in disagreement in Section 1 of the bill to read as follows:

SECTION 1. (a) The speaker of the house of representatives shall appoint nine members to a House Select Committee on Transportation Funding, Expenditures, and Finance and designate one member as chair. The lieutenant governor shall appoint nine members to a Senate Select Committee on Transportation Funding, Expenditures, and Finance and designate one member as chair. The speaker and lieutenant governor shall make the appointments not later than November 30, 2013.

(b) The committees established under this section may meet separately at the call of the chair of the committee or jointly at the call of both chairs. In joint meetings, the chairs shall act as joint chairs.

(c) The committees established under this section, meeting separately or jointly, shall review, study, and evaluate:

(1) the future reliability of all current state transportation funding sources;

(2) alternatives that may increase available state funding for surface transportation, including an examination of increases to current surface-transportation-related funding streams and possible diversions of non-surface-transportation-related funding streams toward surface transportation funding;

(3) the use of debt financing in state transportation funding, including the uses of the Texas Mobility Fund, and the effects on long-term transportation planning of using debt financing;

(4) alternative transportation funding options in use nationally and internationally;

(5) current and historic appropriations to the Texas Department of Transportation, including:

(A) whether that agency's budget structure best maximizes the application of limited public funds toward highway maintenance and construction;

(B) whether there are opportunities to reduce the use of money from the state highway fund by that agency for activities not related to highway maintenance and construction, including such uses as employee salaries and benefits; and

(C) possible benefits of developing a budget for that agency for the 2016-2017 state fiscal biennium using zero-based budgeting principles;

(6) the uses of the state highway fund for agencies other than the Texas Department of Transportation, including and emphasizing the use of that fund for the Department of Public Safety of the State of Texas; and

(7) the original purpose of the economic stabilization fund established by Section 49-g, Article III, Texas Constitution, whether that purpose remains relevant, and whether it remains appropriate to continue using the net amount of oil and gas production taxes received in the 1987 state fiscal year as the basis for making general revenue transfers to the economic stabilization fund.

(d) Following consideration of the factors described by Subsection (c) of this section, the committees established under this section shall jointly adopt recommendations related to the reviewed subjects and shall provide a written report of the committees' recommendations on the reviewed subjects to the legislature not later than November 1, 2014.

(e) The committees established under this section may exercise any power of a committee of their respective chambers and any powers of a joint committee. For the purposes of this Act, the committees established under this section are considered a joint committee and the cost of operation of each committee may be borne in the same manner as the cost of a joint committee. The Texas Legislative Council may provide funding for the operations of the committees. To the extent not inconsistent with this resolution, the joint rules adopted by the 83rd Legislature for the administration of joint interim legislative study committees apply to the committees established under this section.

(f) This section expires January 13, 2015.

Explanation: The change is necessary to replace the joint committee and study regarding the economic stabilization fund included as provided by each chamber's version of the bill with select committees to study the matters described by Section 1 of the bill and to provide for the expiration of the select committees.

(2) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the House or Senate version of the bill to read as follows:

SECTION 2. (a) Chapter 316, Government Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. PRESERVATION OF SUFFICIENT BALANCE IN ECONOMIC STABILIZATION FUND

Sec. 316.091. DEFINITION. In this subchapter:

- (1) "Board" means the Legislative Budget Board.
- (2) "Fund" means the economic stabilization fund.

Sec. 316.092. DETERMINATION OF SUFFICIENT BALANCE. (a) For the purposes of Section 49-g(c-2), Article III, Texas Constitution, before the board submits the budget as prescribed by Section 322.008(c), the board shall determine and adopt for the next state fiscal biennium a sufficient balance of the fund in an amount that the board estimates will ensure an appropriate amount of revenue available in the fund. In determining the sufficient balance for each that fiscal biennium, the board shall consider:

- (1) the history of fund balances;
- (2) the history of transfers to the fund;
- (3) estimated fund balances during that fiscal biennium;
- (4) estimated transfers to the fund to occur during that fiscal biennium;
- (5) information available to the board regarding state highway congestion and funding demands; and
- (6) any other information requested by the board regarding the state's financial condition.

(b) On or before October 1 of each even-numbered year, the comptroller shall provide to the board the comptroller's projection of the amounts to be transferred to the fund during the next state fiscal biennium.

Sec. 316.093. ADJUSTMENT OF CONSTITUTIONAL ALLOCATIONS TO FUND AND STATE HIGHWAY FUND. (a) Before the comptroller makes transfers for a state fiscal year in accordance with Section 49-g(c), Article III, Texas Constitution, the comptroller shall determine whether the sum of the balance of the fund on the preceding August 31, any projected transfer to the fund under Sections 49-g(b) of that article, and any projected transfer to the fund under Section 49-g(c) of that article in accordance with the allocations for the transfer as provided by Section 49-g(c-1) of that article is less than the sufficient balance adopted under Section 316.092.

(b) If the sum described by Subsection (a) is less than the sufficient balance adopted under Section 316.092, the comptroller shall adjust the allocation of amounts to be transferred to the fund and to the state highway fund as provided by Section 49-g(c), Article III, Texas Constitution, so that:

(1) the amount allocated for transfer to the fund is increased by an additional amount equal to the lesser of the remaining one-half of the sum of the amounts allocated for transfer under Sections 49-g (d) and (e) of that article or the amount necessary for the sufficient balance to be reached when considered together with other estimated transfers to the fund during the then-current fiscal year; and

(2) the amount allocated for transfer to the state highway fund is reduced by the amount of the increased allocation to the fund under Subdivision (1).

(c) If the board has not adopted under Section 316.092 a sufficient balance for the comptroller to consider under this section, the comptroller shall adjust the allocation of amounts to be transferred to the fund and to the state highway fund as provided by Section 49-g(c), Article III, Texas Constitution, so that the total of those amounts are transferred to the economic stabilization fund, except that the comptroller shall reduce a transfer made under this subsection as necessary to prevent the amount in the fund from exceeding the limit in effect for that biennium under Section 49-g(g) of that article.

(d) As soon as practicable after the effective date of this section, the board shall determine and adopt a sufficient balance of the fund applicable to the transfers to be made under Section 49-g(c), Article III, Texas Constitution, for the state fiscal year beginning September 1, 2014, and a sufficient balance of the fund applicable to the transfers to be made under that section for the next fiscal biennium. The comptroller may not make the transfers required under that section for the state fiscal year beginning September 1, 2014, until the board has adopted a sufficient balance under this subsection. However, if the board has not adopted the balance before the 30th day after the effective date of this section, the comptroller shall make that transfer on the 30th day after the effective date of this section in accordance with Subsection (c) of this section. This subsection expires September 1, 2015.

(b) This section takes effect immediately on the final canvass of the election on the constitutional amendment proposed by the 83rd Legislature, 2nd Called Session, 2013, to provide for the transfer of certain general revenue to the economic

stabilization fund and the state highway fund and for the dedication of the revenue transferred to the state highway fund, but only if that amendment is approved by the voters. If that amendment is not approved by the voters, this Act has no effect.

Explanation: The change is necessary to provide a general law procedure for allocation of certain amounts to be transferred under Section 49-g, Article III, Texas Constitution, as would be required if the constitutional amendment proposed by House Joint Resolution No. 2 is approved by the voters.

(3) Senate Rules 12.03(1) and (3) are suspended to permit the committee to change, alter, amend, and add text on a matter which is not in disagreement to read as follows:

SECTION 3. Except as otherwise provided by this Act:

(1) this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution; and

(2) if this Act does not receive the vote necessary for immediate effect, this Act takes effect on the 91st day after the last day of the legislative session.

Explanation: The change is necessary to allow for the select committees provided for to begin functioning earlier and to provide for a contingent effective date for the general law procedure, as provided by the bill, for allocation of certain amounts to be transferred under Section 49-g, Article III, Texas Constitution, as would be required if the constitutional amendment proposed by House Joint Resolution No. 2 is approved by the voters.

SR 108 was read and was adopted by the following vote: Yeas 21, Nays 2.

Yeas: Birdwell, Campbell, Deuell, Duncan, Estes, Fraser, Garcia, Hancock, Hegar, Hinojosa, Lucio, Nelson, Nichols, Rodríguez, Schwertner, Seliger, Taylor, Van de Putte, Watson, Williams, Zaffirini.

Nays: Patrick, Paxton.

Absent: Ellis, Eltife, Whitmire.

Absent-excused: Carona, Davis, Huffman, Uresti, West.

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 16 ADOPTED

Senator Nichols called from the President's table the Conference Committee Report on **HB 16**. The Conference Committee Report was filed with the Senate on Sunday, July 28, 2013.

On motion of Senator Nichols, the Conference Committee Report was adopted by the following vote: Yeas 19, Nays 4.

Yeas: Birdwell, Campbell, Deuell, Duncan, Estes, Fraser, Garcia, Hegar, Hinojosa, Lucio, Nelson, Nichols, Rodríguez, Seliger, Taylor, Van de Putte, Watson, Williams, Zaffirini.

Nays: Hancock, Patrick, Paxton, Schwertner.

Absent: Ellis, Eltife, Whitmire.

Absent-excused: Carona, Davis, Huffman, Uresti, West.

REASON FOR VOTE

Senator Schwertner submitted the following reason for vote on the Conference Committee Report on **HB 16**:

Thank you, Mr. President. Respectfully, I rise today in opposition to the adoption of the Conference Committee Report for House Bill 16.

Members, we all understand the critical need to secure a predictable new source of funding for our state highways. And like most of you, I agree that our state's record-setting oil and gas revenue has now placed this Legislature in a position to dedicate some portion of these funds to satisfy some portion of our transportation needs.

But without a real and constitutionally-guaranteed hard trigger to replenish our Rainy Day Fund back to a known and agreed-upon level, this legislation has the potential to negatively impact our state's financial well-being over the decades to come. Over the past two decades, the State of Texas has stood as a beacon of freedom and economic prosperity through some of the most difficult times our nation has ever faced. But what's allowed us to do that, Members, is the fiscal discipline practiced by the Texas Legislature over that same period and the foresight provided by the 70th Legislature when they first established our state's Economic Stabilization Fund in 1987.

Our state's credit rating depends on certainty, the certainty that comes from prudent financial management and keeping a healthy and predictable balance in our state's Economic Stabilization Fund. A high credit rating means Texas continues to enjoy lower interest rates on debt, saving millions in taxpayer dollars every year.

Thomas Jefferson once said that when it comes to matters of style one should be flexible and swim with the current, but when it comes to matters of principle, one should stand firm like a rock.

Is highway funding an important priority for the state? Of course it is. But that funding shouldn't come at the expense of our principles, specifically our principles of fiscal responsibility and accountability to our constituents.

Members, the voters deserve the assurance that we are thinking long-term. A constitutional trigger would provide the state with the kind of long-term stability that has been the hallmark of Texas' economic success for the past quarter century.

Texans should be able to live secure in the knowledge that their state government has a certain amount of money in the bank. And if it should become necessary to change the amount of money that we feel is prudent to keep in reserve, then Texans deserve the right to decide that as well.

I believe that the citizens of my district sent me here to fight for their best interests, use my best judgment in setting the larger priorities of the state, and when necessary, to make tough decisions on their behalf. With that in mind, I cannot willingly abdicate my responsibility to the members of the Legislative Budget Board.

With the exception of the Lieutenant Governor, the appointed members of the LBB are directly accountable to only about 16 percent of the state's voters, yet the impact of the authority we're preparing to grant them would be felt by 100 percent of the state's population.

In making this decision, we must also think beyond the individuals that currently comprise the LBB, members we all know, trust, and respect. The question is, Members, whether we're willing to blindly trust anyone who may hold the reins of power in the decades to come.

There may come a time when we, or some future Legislature, may determine that a constitutionally-set trigger is too low or even unreasonably high. But that doesn't change the fact that the initial decision should remain in the hands of all of the people's representatives and, ultimately, with the people themselves.

In the years ahead, the Members serving in this body and those who will serve after them will undoubtedly face a number of new financial questions and challenges. But without some form of an established and constitutionally-protected trigger to replenish our Rainy Day Fund, how will we go back to our districts and say we did everything we could to be financially prudent with taxpayers' dollars, protect our credit rating, and leave our state in the healthiest possible condition, prepared to weather the next school funding crunch, the next hurricane, the next wildfire season, or the next financial crisis?

We each want to do something to improve the infrastructure of our state highways. But the larger tragedy would be to pass something in haste which we do not fully support. The voters sent us here to do a job; let's not abdicate that sacred responsibility.

With all due respect to Chairman Nichols, the Members of the conference committee, and the other Members who have worked tirelessly on this legislation, I would ask that you join me in voting "No" on HJR 2 and HB 16. Thank you, Mr. President.

SCHWERTNER

REMARKS ORDERED PRINTED

On motion of Senator Campbell and by unanimous consent, the exchange between Senators Nichols and Campbell regarding the Conference Committee Report on **HB 16** was ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Campbell: Chairman Nichols, I just wanted to double check. I thought we were also going to have a conversation about SJR 1, but since we are having this conversation, in just summarizing it, nothing in this bill changes the two-thirds vote, as many have said, regarding spending of the Rainy Day Fund. Correct?

Senator Nichols: Correct.

Senator Campbell: This only gets us, this funding stream only gets us about one-fourth of what we need annually. Is that correct?

Senator Nichols: That's correct.

Senator Campbell: SJR 1 starts us, if you will, on a funding path or stream. Even though it is not enough, for more of a pay as you go concept.

Senator Nichols: That's correct.

Senator Campbell: And this funding would actually, even though, again, it doesn't provide everything we need, the funding actually would help us be that much less dependent on toll roads.

Senator Nichols: This money goes to non-toll roads.

Senator Campbell: Correct. And the more money we have for transportation, the less dependent we are on toll roads.

Senator Nichols: That's correct.

Senator Campbell: You know I would have preferred, as I think a lot of us would have preferred, a six billion dollar floor or the one-third of the ESF balance to be used as a trigger. And it is not really comforting for me to have the LBB set that value, but I am at least reassured some by the conversation we have had. But, you know, our urban areas are choked down because of congestion, and it is these urban areas that are the economic drivers of our state. And we risk, wouldn't you agree, danger to this big economic engine of our state if we don't fund transportation?

Senator Nichols: It's hurting already.

Senator Campbell: So, transportation then becomes a priority for our state, and it's hard sometimes to be between a rock and a hard place. You know, risking speculation about what would happen with our Economic Stabilization Fund in the future being drained down versus where we are at the present day, which is almost a crisis with our transportation. Right?

Senator Nichols: Yes.

Senator Campbell: So, with transportation as a priority, I do feel that if we don't fund transportation, our economy, our great economy of the State of Texas will be impeded. So, while I would have liked to have seen—and we talked about this in Regular Session—a sustainable revenue stream coming from general revenue, actually even part of the motor vehicle sales tax and getting diversions out of Fund 6. That didn't happen. So, we are looking at another sustainable, or maybe less predictable, but at least a revenue stream for transportation. Right?

Senator Nichols: That's right.

Senator Campbell: So, even though there are flaws, and I would quote Senator Taylor when he says, let's don't let perfect be the enemy of good. I think we've made some headway here, and I think that while, yes, we may have to address some questions about control of the Rainy Day Fund, I think we are going to have to address more questions to the people of Texas, most certainly San Antonio and my district—after sitting on a highway and they are stopped, it's barely a moving parking lot—why we can't come together and find some funding for transportation. So, I am supporting this bill, and I'm probably going to take some heat, but I do support it. I think it was a brilliant idea, the way you chose to take it out of the Rainy Day Fund prior to it getting there. And I do hope that we can come back next session, maybe do a cleanup bill and put some protections in there if we feel that the LBB is going to put us at risk. Thank you, Sir. Members, I encourage you to vote for this bill. Thank you. Thank you, Mr. President.

AT EASE

The President at 3:37 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

The President at 6:06 p.m. called the Senate to order as In Legislative Session.

SENATE CONCURRENT RESOLUTION 1

The President laid before the Senate the following resolution:

WHEREAS, House Bill No. 16 has been adopted by the house of representatives and the senate and is being prepared for enrollment; and

WHEREAS, The bill contains technical errors that should be corrected; now, therefore, be it

RESOLVED by the 83rd Legislature of the State of Texas, 2nd Called Session, That the enrolling clerk of the house of representatives be instructed to make the following corrections:

(1) In the heading to Section 316.091, Government Code, as added by Section 2(a) of the bill, strike "DEFINITION" and substitute "DEFINITIONS".

(2) In the last sentence of Section 316.092(a), Government Code, as added by Section 2(a) of the bill, strike "balance for each that fiscal biennium" and substitute "balance for that fiscal biennium".

(3) In the last sentence of Section 2(b) of the bill, strike "Act" and substitute "section".

NICHOLS

SCR 1 was read.

On motion of Senator Nichols, the resolution was considered immediately and was adopted by the following vote: Yeas 22, Nays 1.

Nays: Patrick.

Absent: Ellis, Eltife, Whitmire.

Absent-excused: Carona, Davis, Huffman, Uresti, West.

**CONFERENCE COMMITTEE REPORT ON
HOUSE JOINT RESOLUTION 2**

Senator Nichols submitted the following Conference Committee Report:

Austin, Texas

July 28, 2013

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HJR 2** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NICHOLS
WHITMIRE
HINOJOSA
ELTIFE
WILLIAMS

On the part of the Senate

PICKETT
DARBY
GEREN
PHILLIPS

On the part of the House

The Conference Committee Report on **HJR 2** was filed with the Secretary of the Senate on Sunday, July 28, 2013.

**CONFERENCE COMMITTEE REPORT ON
HOUSE BILL 16**

Senator Nichols submitted the following Conference Committee Report:

Austin, Texas
July 28, 2013

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **HB 16** have had the same under consideration, and beg to report it back with the recommendation that it do pass.

NICHOLS
WHITMIRE
HINOJOSA
ELTIFE
WILLIAMS

On the part of the Senate

HARPER-BROWN
LARSON
OTTO
PICKETT

On the part of the House

The Conference Committee Report on **HB 16** was filed with the Secretary of the Senate on Sunday, July 28, 2013.

RECESS

On motion of Senator Zaffirini, the Senate at 6:09 p.m. recessed until 2:00 p.m. tomorrow.

APPENDIX

RESOLUTIONS ENROLLED

July 26, 2013

SR 98, SR 106

