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HOUSE RESEARCH ORGANIZATION

daily floor report

Tuesday, January 11, 2011
82nd Legislature, Number 1
The House convenes at noon

Today, the second Tuesday in January in an odd-numbered year, is the day specified by law for convening of the regular session of the 82nd Texas Legislature. A tentative schedule of the day's events in the House is found on page 1.

After taking their oath of office today (page 2), the members of the House will elect a speaker. A background report on procedures for electing the speaker begins on page 3. The pending election contest in District 48 is discussed on page 6.



Bill Callegari
Acting Chairman
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HOUSE OPENING-DAY SCHEDULE

- Call to order by Secretary of State Hope Andrade
- Invocation
- National anthem and pledges of allegiance to U.S. and Texas flags
- Address by Secretary of State Andrade
- Appointment of temporary officers and employees of the House
- Roll call of the members-elect by district number
- Oath of office administered
- Departure of guests from the House floor
- Adoption of House Rules for the 81st Legislature as temporary rules for the 82nd Legislature
- Adoption of resolution setting the procedures for election of the speaker
- Nominating and seconding speeches for speaker candidates
- Election of the speaker
- Appointment of committee to escort the newly elected speaker to rostrum
- Oath of office and address by the speaker
- Appointment of committees to notify the Senate and the governor that the House is organized and ready to do business

Oath of Office

The constitutional oath of office taken by the members-elect is as follows:

I, (name), do solemnly swear (or affirm) that I will faithfully execute the duties of the office of a member of the House of Representatives of the 82nd Legislature 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.

A constitutional amendment adopted in 1989 eliminated the requirement that legislators and all other elected and appointed officials swear orally that they did not bribe anyone to obtain their office. They must, however, submit a signed oath making that declaration, and state officials must file it with the Secretary of State's Office before taking their spoken oath of office (Texas Constitution, Art. 16, sec. 1).

ELECTION OF THE SPEAKER

Art. 3, sec. 9(b) of the Constitution requires the House of Representatives, when it first assembles, to organize temporarily and elect a speaker from its own members. Under Government Code, sec. 301.003, until the new speaker is elected, the secretary of state presides over the House.

Under Government Code, sec. 302.001, when the House first convenes in regular session and a quorum is present and has been qualified (taken the oath of office), the House is to elect a speaker unless a majority of the members present decides to defer the election. Neither the Government Code nor the House Rules set procedures for election of the speaker.

Government Code, secs. 302.011-302.022 regulate contributions, loans, and expenditures for the speaker's race. A candidate for speaker is defined (sec. 302.011) as a House member or candidate who has announced a candidacy for speaker or who by "actions, words, or deeds seeks election" to the office of speaker. Speaker candidates are required to file campaign finance statements with the secretary of state.

The Texas House speaker, as other state officials, may be elected to an unlimited number of terms. The former tradition was for speakers to be elected to a single two-year term, but most recent speakers have served multiple terms.

Speaker Nomination and Election Procedures

Pending election of the speaker, the House floor usually is cleared of guests and others not authorized to be on the floor when the House is in session. One reason for this tradition may be an incident in 1911 in which more votes were cast in the speaker's race than the number of members present. After the floor was cleared, a new vote was taken, and Sam Rayburn was elected speaker.

The secretary of state then lays before the House a resolution specifying the procedures for election of a speaker. The House will operate under temporary procedures until it adopts permanent rules for the 82nd Legislature.

Since 1983, the House has adopted essentially the same speaker-election resolution. The resolution has allowed every member desiring to nominate a candidate to be recognized for a nominating speech of up to five minutes. To qualify, nominees must have their nominations seconded by at least one member. After all nominations are made, seconding speeches are allowed, one for each nominee, in the order of the nominations.

The number and duration of seconding speeches usually are limited. Recent resolutions have limited the number of seconding speeches to five, each no more than three minutes duration.

After the vote, the secretary of state announces the election results. A nominee receiving a majority of the votes cast is declared elected. Most resolutions have specified that if no candidate received a majority vote, a runoff would be held between the top two vote getters. After the election, the secretary of state administers the oath of office to the speaker-elect, who then takes the chair and addresses the House.

Method of Election

The usual practice in speaker elections before 1972 was to use a secret ballot. Since 1972, all speaker elections have been by recorded vote or acclamation, either as specified in the speaker-election resolution or by motion or request made at the conclusion of nominating and seconding speeches. Attempts in 1979, 1991, and 2007 to amend the speaker-election resolution to require a secret ballot were defeated.

The Texas Supreme Court ruled in a 2000 decision, *In re The Texas Senate and The Honorable Rodney Ellis*, 36 S.W.3d 119, that Art. 3, sec. 41 of the Texas Constitution allows each chamber to decide the method for electing legislative officers, including the House speaker, Senate president pro tempore, and acting lieutenant governor, and that a public vote specifically is not required. The court did not address how to reconcile the non-public vote allowed by Art. 3, sec. 41 with the requirement of Art. 3, sec. 12(c) for a record vote on any “question” if requested by any three members.

Secretary of State Roger Williams overruled a point of order against a proposed secret-ballot procedure for election of the speaker on the opening day of the 2007 regular session. He said the specific provision for a non-record vote in Art. 3, sec. 41 for electing legislative officers overrides the general record-vote requirement in Art. 3, sec. 12(c). He noted the House’s long-standing practice of electing the speaker by secret ballot before 1972. Williams also cited the Texas Supreme Court’s *In re The Texas Senate* decision as establishing that the method for electing the speaker is up to the House. Nevertheless, the House decided to use a record-vote procedure to elect the speaker in 2007.

Since abandoning the secret ballot, the House has had only two speaker elections involving more than one nominee, in 1972 and 1975. Two candidates were nominated in 1981, but one withdrew before the vote was taken. When only one candidate has been nominated for speaker, the practice of recording votes in the House Journal has varied. In more recent elections, when a recorded vote was requested, members have used the House

voting machine to record their vote for the sole nominee as aye, nay, or present, not voting. In other cases, a motion has been made to cast the vote of all members for the sole nominee, but members could register with the journal clerk as voting nay or present, not voting. In elections by acclamation, the votes of individual members sometimes have been recorded and sometimes not, with the assumption that all members voted yea unless they registered otherwise.

In 2009, HR 70 by Geren and Eiland, the resolution adopted by the House setting the procedures for election of the speaker, required the secretary of state to recognize a motion to elect a sole nominee as speaker by acclamation. Such a motion was made and adopted, and the individual votes of members were not recorded in the journal.

ELECTION CONTEST - DISTRICT 48

Under Art. 3, sec. 8 of the Texas Constitution, the House of Representatives judges any challenge to the election or qualifications of its members, under procedures set by law. Under the provisions of Election Code, chap. 241, a contest was filed concerning the results of the November 2, 2010, election. In District 48 in Travis County, Republican Dan Neil has contested the election of the certified winner, Democratic incumbent Donna Howard.

Under Election Code, sec. 221.015(a), the certified winner is entitled to occupy the office pending the resolution of the election contest, so Rep. Howard will take the oath of office today. Under Election Code 241.018(d), members whose election is being contested may not vote on any matter concerning the contest. Also, under Rule 4, sec. 2(b) of the current House Rules, if an election contest is not resolved before the speaker makes committee appointments, the member whose election is being contested may not select a committee on the basis of seniority. A committee appointment for that member will be designated by the member's district number rather than the member's name, meaning that whoever ultimately represents the district will serve on the committee designated for that district's representative.

On December 28, Speaker Straus, in compliance with Election Code, sec. 241.009, appointed Rep. Will Hartnett as master of discovery to supervise the gathering of evidence and to determine whether the contest is frivolous or otherwise groundless. Under Election Code, sec. 241.011, the speaker also is required to appoint or designate a committee to investigate the allegations, hear the evidence, make fact findings and legal conclusions, and make recommendations to the House.

After the committee makes its recommendations, the House will consider the contest and decide whether to uphold the election of the certified winner or seat the challenger contesting the election, depending on whether it can ascertain who won the election, or to invalidate the election and direct the governor to call a special election, with the previous incumbent occupying the seat until a successor qualifies. In the pending contest, if the House voted to invalidate the election, Rep. Howard as the previous incumbent would continue to hold the seat unless and until someone else were elected in the special election. A contest may be withdrawn at any time before the committee files its recommendation with the House.