

# Senate Journal

## First Extraordinary Session of the Fifty-fourth Legislature of the State of Oklahoma

First Legislative Day, Tuesday, September 3, 2013

Pursuant to Executive Order 2013-30, issued by the Governor of the State of Oklahoma, the Honorable Mary Fallin, on the 12<sup>th</sup> day of August, 2013, the Senate was called to order by President Lamb.

Roll Call:

Present: Aldridge, Allen, Anderson, Ballenger, Barrington, Bass, Bingman, Boggs, Branan, Brecheen, Brinkley, Brooks, Brown, Burrage, Coates, Crain, Dahm, David, Ellis, Fields, Garrison, Griffin, Halligan, Holt, Ivester, Johnson (C), Johnson (R), Jolley, Justice, Loveless, Marlatt, McAffrey, Newberry, Paddack, Schulz, Sharp, Shaw, Simpson, Sparks, Standridge, Stanislawski, Sykes, Treat and Wyrick.—44.

Excused: Ford, Mazzei, Shortey and Shumate.—4.

President Lamb declared a quorum present.

The prayer was offered by Pastor Joe Grizzle, Norman, the guest of Senator Standridge.

### COMMUNICATION

The Executive Order issued and amended by the Governor was read at length as follows:

#### EXECUTIVE DEPARTMENT EXECUTIVE ORDER 2013-30

To the Honorable Members of the House of Representatives and the Honorable Members of the State Senate of Oklahoma:

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the authority vested in me by the provisions of Section 7 of Article VI of the Oklahoma Constitution, hereby convoke the First Extraordinary Session of the Fifty-fourth Legislature to convene at the

State Capitol on Tuesday, September 3, 2013 at 1:00 p.m. I recommend the following subject for consideration:

Legislation related exclusively to House Bill 1603 which was enacted by the Legislature in 2009. Any legislation should be drafted in such a way to ensure that Article 5, Section 57 of the Oklahoma Constitution, or any other Constitutional provision, is not violated.

Copies of this Executive Order shall be distributed to every member of the Oklahoma House of Representatives, every member of the Oklahoma State Senate, the Clerk of the House of Representatives, the Secretary of State, and the Director of the Office of Management and Enterprise Services.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 12<sup>th</sup> day of August, 2013.

By the Governor of the State of Oklahoma  
/s/ Mary Fallin

Attest:  
/s/ Chris Morriss

### **MILEAGE ALLOWANCE**

Senator Schulz moved adoption of the following report on mileage allowance prepared by the Office of the Senate Administrator, which motion was declared adopted.

<b>Senator</b>	<b>Hometown</b>	<b>Total Miles Round Trip</b>	<b>Amount Round Trip</b>
Aldridge, Cliff	Choctaw	38	21.47
Allen, Mark	Spiro	360	203.40
Anderson, Patrick	Enid	198	111.87
Ballenger, Roger	Okmulgee	234	132.21
Barrington, Don	Lawton	182	102.83
Bass, Randy	Lawton	190	107.35
Bingman, Brian	Sapulpa	188	106.22
Boggs, Larry	Red Oak	352	198.88
Branan, Cliff	Oklahoma City	0	None Requested
Brecheen, Josh	Coalgate	234	132.21
Brinkley, Rick	Owasso	240	135.60
Brooks, Corey	Washington	70	39.55
Brown, Bill	Broken Arrow	244	137.86
Burrage, Sean	Claremore	264	149.16

Coates, Harry	Seminole	120	67.80
Crain, Brian	Tulsa	212	119.78
Dahm, Nathan	Broken Arrow	224	126.56
David, Kim	Porter	292	164.98
Ellis, Jerry	Valliant	448	253.12
Fields, Eddie	Wynona	260	146.90
Ford, John	Bartlesville	292	164.98
Garrison, Earl	Muskogee	316	178.54
Griffin, A.J.	Guthrie	64	36.16
Halligan, Jim	Stillwater	120	67.80
Holt, David	Oklahoma City	0	None Requested
Ivester, Tom	Elk City	224	126.56
Johnson, Constance	Oklahoma City	8	4.52
Johnson, Rob	Edmond	26	14.69
Jolley, Clark	Edmond	0	None Requested
Justice, Ron	Chickasha	98	55.37
Loveless, Kyle	Oklahoma City	0	None Requested
Marlatt, Bryce	Woodward	284	160.46
Mazzei, Mike	Bixby	212	119.78
McAffrey, Al	Oklahoma City	0	None Requested
Newberry, Dan	Tulsa	200	113.00
Paddack, Susan	Ada	180	101.70
Schulz, Mike	Altus	286	161.59
Sharp, Ron	Shawnee	92	51.98
Shaw, Wayne	Grove	392	221.48
Shortey, Ralph	Oklahoma City	0	None Requested
Shumate, Jabar	Tulsa	218	123.17
Simpson, Frank	Ardmore	188	106.22
Sparks, John	Norman	46	25.99
Standridge, Rob	Norman	0	None Requested
Stanislawski, Gary	Tulsa	212	119.78
Sykes, Anthony	Moore	28	15.82
Treat, Greg	Oklahoma City	0	None Requested
Wyrick, Charles	Fairland	374	211.31

Senator Schulz moved that the selection of Officers, the membership of the Standing Committees and the Rules of the First Regular Session of the Fifty-fourth Legislature continue for the First Extraordinary Session, which motion was declared adopted.

**UNANIMOUS CONSENT REQUEST  
SUSPEND SENATE RULE 12-4**

Senator Schulz asked unanimous consent, which was granted, to suspend paragraphs 1 and 2 of subsection A of Senate Rule 12-4, relating to the time for filing floor amendments

and secondary floor amendments, and instead require all floor amendments or secondary floor amendments to be filed no later than 3:00 p.m. on the date a bill is read for the second time, for the duration of the First Extraordinary Session of the Fifty-fourth Legislature.

## **INTRODUCTION**

President Lamb introduced Governor Mary Fallin to the Senate.

Senator Schulz moved that when the clerk's desk is clear, the Senate stand adjourned to convene Wednesday, September 4, 2013, at 9:30 a.m., which motion prevailed.

## **FIRST READING**

The following were introduced and read the first time:

**SB 1X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to affidavits of merit; repealing 12 O.S. 2011, Section 19, which relates to affidavits of consultation with qualified expert; requiring filing of certain affidavit with petition in negligence actions; specifying required contents of certain affidavit; providing for time extensions for filing certain affidavit; requiring plaintiff to provide certain information; providing for dismissal under certain circumstances; establishing certain exemption; repealing 12 O.S. 2011, Section 192, which relates to indigency exemption; authorizing plaintiff to request indigency exemption from certain filing requirement; establishing procedures for certain request; establishing application fee; authorizing waiver of certain fee under certain circumstances; directing deposit of certain fee; requiring certain report; requiring promulgation of rules governing determination of indigency for certain purposes; repealing 20 O.S. 2011, Section 56, which relates to qualification rules for determination of indigency in professional negligence cases; repealing Section 5, Chapter 390, O.S.L. 2003 (63 O.S. Supp. 2008, Section 1-1708.1E), which relates to affidavit attesting consultation with qualified expert in medical liability actions; providing for codification; and declaring an emergency.

**SB 2X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to dismissal; repealing Section 5, Chapter 228, O.S.L. 2009; amending 12 O.S. 2011, Section 683, which relates to dismissal of action; modifying statutory reference; amending 12 O.S. 2011, Section 683, as amended by Section 2 of this act, which relates to dismissal of action; updating statutory reference; repealing Section 6, Chapter 228, O.S.L. 2009; amending 12 O.S. 2011, Section 684, which relates to dismissal of case; modifying procedure for dismissals; amending 12 O.S. 2011, Section 684, as amended by Section 5 of this act, which relates to dismissal of case; modifying procedure for dismissals; authorizing court to order payment of certain costs; repealing Section 11, Chapter 228, O.S.L. 2009; amending 12 O.S. 2011, Section 2004, as amended by Section 2, Chapter 101, O.S.L. 2012 (12 O.S. Supp. 2013, Section 2004), which relates to process; modifying

requirements for dismissal of certain actions; amending 12 O.S. 2011, Section 2004, as last amended by Section 8 of this act, which relates to process; making language gender neutral; requiring dismissal of action under certain circumstances; and declaring an emergency.

**SB 3X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to appeal bonds; repealing Section 8, Chapter 228, O.S.L 2009; amending 12 O.S. 2011, Section 990.4, which relates to stay of enforcement of judgments; modifying ground for obtaining certain stay; removing certain limitation; modifying requirements for certain orders; removing certain exemption; amending 12 O.S. 2011, Section 990.4, as amended by Section 2 of this act; which relates to stay of enforcement of judgments; modifying grounds for obtaining certain stay; limiting amount of appeal bond; authorizing court to enter certain orders; removing requirement for certain appeal bonds after certain date; and declaring an emergency.

**SB 4X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to recovery of payments; repealing 12 O.S. 2011, Section 994.1, which relates to Medicaid recovery; providing for recovery of certain payments; establishing procedures for certain recovery; providing computations; directing determination of recovery amounts; granting certain authority to the Oklahoma Health Care Authority; providing for codification; and declaring an emergency.

**SB 5X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to summary judgment; repealing 12 O.S. 2011, Section 2056, as amended by Section 2, Chapter 13, O.S.L. 2011 (12 O.S. Supp. 2012, Section 2056), which relates to motions for summary judgment; establishing procedures for summary judgment; providing for codification; and declaring an emergency.

**SB 6X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to expert testimony; repealing Section 18, Chapter 228, O.S.L. 2009; amending 12 O.S. 2011, Section 2702, which relates to testimony by experts; removing certain requirements for expert testimony; amending 12 O.S. 2011, Section 2702, as amended by Section 2 of this act, which relates to testimony by experts; establishing requirements for expert testimony; repealing Section 19, Chapter 228, O.S.L. 2009; amending 12 O.S. 2703, which relates to bases of opinion testimony by experts; removing certain prohibition; amending 12 O.S. 2011, Section 2703, as amended by Section 5 of this act, which relates to bases of opinion testimony by experts; prohibiting disclosure of certain information to jury; providing exception; and declaring an emergency.

**SB 7X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to the Uniform Commercial Code; repealing Section 21, Chapter 228, O.S.L. 2009; amending 12A O.S. 2011, Section 1-304, which relates to obligation of good faith; deleting certain prohibition; amending 12A O.S. 2011, Section 1-304, as amended by Section 2 of this act, which relates to obligation of good faith; prohibiting breach of certain obligation from giving rise to certain cause of action; and declaring an emergency.

**SB 8X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to joint and several liability; repealing Section 23, Chapter 228, O.S.L. 2009; amending 23 O.S. 2011, Section 15, which relates to joint tortfeasor liability; modifying certain exemption; modifying applicability of provisions; amending 23 O.S. 2011, Section 15, as amended by Section 2 of this act, which relates to joint tortfeasor liability; modifying certain exemption; and declaring an emergency.

**SB 9X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to damages; repealing 23 O.S. 2011, Section 61.2, which relates to compensation for economic and noneconomic loss; prohibiting limitation for economic damages in certain actions; establishing limitation on certain noneconomic damages; establishing exceptions for certain damage limitations; specifying procedures for court or jury upon verdict for plaintiff; directing entry of certain judgments; prohibiting certain instructions to jury; stating applicability of act and providing exceptions; defining terms; providing for codification; and declaring an emergency.

**SB 10X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to emergency management; repealing Section 29, Chapter 228, O.S.L. 2009; amending 63 O.S. 2011, Section 683.9, which relates to emergency powers of governor; modifying definition; amending 63 O.S. 2011, Section 683.9, as amended by Section 2 of this act, which relates to emergency powers of governor; modifying definition; repealing Section 30, Chapter 228, O.S.L. 2009; amending 63 O.S. 2011, Section 683.13, which relates to emergency management activities as governmental functions; removing certain exclusion; amending 63 O.S. 2011, Section 683.13, as amended by Section 5 of this act; providing certain exclusion; and declaring an emergency.

**SB 11X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to volunteer liability; repealing Section 42, Chapter 228, O.S.L. 2009; amending 76 O.S. 2011, Section 31, which relates to volunteer, charitable organizations, and not-for-profit corporations; modifying definition; construing provisions; modifying applicability of act; amending 76 O.S. 2011, Section 31, as amended by Section 2 of this act, which relates to volunteer, charitable organizations, and not-for-profit corporations; modifying definition; construing provisions; and declaring an emergency.

**SB 12X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to liability for food products; repealing 76 O.S. 2011, Sections 34, 35, 36 and 37, which relate to the Common Sense Consumption Act; creating the Common Sense Consumption Act; providing short title; stating legislative intent; defining terms; providing immunity from civil liability for certain claims; providing exception; establishing pleading requirements; providing for stay of discovery and other proceedings in certain circumstances; stating applicability of act; providing for codification; and declaring an emergency.

**SB 13X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to products liability; repealing 76 O.S. 2011, Sections 57 and 58, which relate to product liability and subsequent measures; prohibiting certain liability for

manufacturer or seller of certain products; establishing affirmative defense; establishing requirements for applicability of affirmative defense; defining term; prohibiting admissibility of certain evidence; stating exception; providing for codification; and declaring an emergency.

**SB 14X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to asbestos and silica claims; repealing 76 O.S. 2011, Sections 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70 and 71, which relate to the Asbestos and Silica Claims Priorities Act; creating the Asbestos and Silica Claims Priorities Act; providing legislative findings; stating purposes; defining terms; providing elements of proof and proceedings for asbestos or silica claims; providing that certain evidence does not create a presumption; providing that certain evidence is inadmissible; providing for discovery; providing for consolidation of claims; authorizing the court to decline to exercise jurisdiction in certain circumstances; providing for venue; providing a statute of limitations; establishing two-disease rule; clarifying applicability of act; providing for codification; and declaring an emergency.

**SB 15X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to innocent successor asbestos-related liability; repealing 76 O.S. 2011, Sections 72, 73, 74, 75, 76, 77, 78 and 79, which relate to the Innocent Successor Asbestos-Related Liability Fairness Act; creating the Innocent Successor Asbestos-Related Liability Fairness Act; providing short title; defining terms; establishing limitations on successor asbestos-related liabilities; providing method for establishing fair market value of gross assets for certain purposes; providing for adjustment of fair market value of certain assets; construing provisions; stating applicability of act; providing for codification; and declaring an emergency.

**SB 16X** – By Bingman and Sykes of the Senate and Shannon of the House.

An Act relating to school suspensions; repealing Section 84, Chapter 228, O.S.L. 2009; amending 70 O.S. 2011, Section 24-101.3, as amended by Section 26 of Enrolled Senate Bill No. 679 of the 1st Session of the 54th Oklahoma Legislature, which relates to out-of-school suspensions; modifying certain suspension requirements; amending 70 O.S. 2011, Section 24-101.3, as last amended by Section 2 of this act, which relates to out-of-school suspensions; requiring out-of-school suspension for certain acts; and declaring an emergency.

Pursuant to the Schulz motion, the Senate adjourned at 1:30 p.m. to meet Wednesday, September 4, 2013, at 9:30 a.m.