

FOURTH DAY

MONDAY, MAY 1, 2006

PROCEEDINGS

The Senate met at 4:08 p.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Averitt, Barrientos, Brimer, Carona, Deuell, Duncan, Ellis, Eltife, Estes, Fraser, Gallegos, Harris, Hinojosa, Jackson, Janek, Lindsay, Lucio, Madla, Nelson, Ogden, Seliger, Shapiro, Shapleigh, Staples, Van de Putte, Wentworth, West, Whitmire, Williams, Zaffirini.

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

Senator Estes offered the invocation as follows:

Heavenly Father, as we begin this new legislative day, we look to You, our true and only source of wisdom and enlightenment. May our actions here today bless Your people of Texas with not only temporal blessings but with the blessings that come from above: righteousness, peace, and joy. Thank You for putting us in this place at this time to do the right thing for Texas. In Your holy name. Amen.

Senator Whitmire moved that the reading of the Journal of the proceedings of the Third Day Continued be dispensed with and the Journal be approved as printed.

The motion prevailed without objection.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

May 1, 2006

The Honorable President of the Senate
Senate Chamber
Austin, Texas

Mr. President:

I am directed by the House to inform the Senate that the House has taken the following action:

THE HOUSE HAS PASSED THE FOLLOWING MEASURES:

SCR 1, Honoring the University of Texas Longhorn football team.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

SENATE BILLS ON FIRST READING

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

SB 33 by Williams, Armbrister, Hinojosa, Jackson, Janek, Lucio
Relating to the authority of the governor to issue evacuation orders during disasters.
To Committee on Transportation and Homeland Security.

SB 34 by Van de Putte
Relating to the establishment of a pilot program to provide a ballot by electronic mail to military personnel serving overseas.
To Committee on State Affairs.

SB 35 by Shapleigh, Ellis, Gallegos
Relating to a temporary reduction in the tax rate imposed on the sale of gasoline.
To Committee on Finance.

SB 36 by Nelson
Relating to the disaster-related responsibilities of certain state agencies in health care.
To Committee on Health and Human Services.

CONCLUSION OF MORNING CALL

The President at 4:13 p.m. announced the conclusion of morning call.

COMMITTEE SUBSTITUTE HOUSE BILL 2 ON SECOND READING

Senator Williams moved to suspend the regular order of business to take up for consideration **CSHB 2** at this time on its second reading:

CSHB 2, Relating to the allocation of certain revenue from franchise taxes, motor vehicle sales and use taxes, and taxes on cigarettes and other tobacco products to school district property tax relief and public education.

The motion prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

The bill was read second time.

POINT OF ORDER

Senator Barrientos raised a point of order that **CSHB 2** does not meet the requirement in Senate Rule 7.12(b)(10) which states that every committee report printing on a bill or resolution shall include a bill analysis, including any updated analysis to reflect any change made by amendment or substitute.

POINT OF ORDER RULING

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

Senator Williams offered the following amendment to the bill:

Floor Amendment No. 1

Amend **CSHB 2** (Senate committee printing) in SECTION 3(a) of the bill, in proposed Section 152.1222(a), Tax Code (page 2, line 40), between "motor vehicles" and the underlined period by inserting "or on percentages of those values as provided by Section 152.0412".

The amendment to **CSHB 2** was read and was adopted by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Senator Barrientos offered the following amendment to the bill:

Floor Amendment No. 2

Amend **CSHB 2** (Senate committee printing) as follows:

- (1) On page 1, line 34, strike "two-thirds" and substitute "one-third";
- (2) On page 1, line 38, strike "two-thirds" and substitute "one-third"; and
- (3) On page 1, line 43, strike "one-third" and substitute "two-thirds".

The amendment to **CSHB 2** was read and failed of adoption by the following vote: Yeas 10, Nays 21.

Yeas: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

Nays: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Senator Whitmire offered the following amendment to the bill:

Floor Amendment No. 3

Amend **CSHB 2** (Senate committee report) as follows:

- (1) In SECTION 1(a) of the bill, at the end of proposed Section 403.109, Government Code (page 2, between lines 5 and 6), insert the following:

(g) This section expires September 1, 2012.

(2) In SECTION 2(a) of the bill, at the end of proposed Section 171.4011, Tax Code (page 2, between lines 26 and 27), insert the following:

(c) This section expires September 1, 2012.

(3) In SECTION 3(a) of the bill, at the end of proposed Section 152.1222, Tax Code (page 2, between lines 46 and 47), insert the following:

(c) This section expires September 1, 2012.

(4) In SECTION 4(a) of the bill, in proposed Section 154.6035, Tax Code (page 2, line 55), between "TAX RELIEF FUND." and "Notwithstanding", insert "(a)".

(5) In SECTION 4(a) of the bill, at the end of proposed Section 154.6035, Tax Code (page 2, between lines 60 and 61), insert the following:

(b) This section expires September 1, 2012.

(6) In SECTION 4(b) of the bill, in proposed Section 155.2415, Tax Code (page 2, line 64), between "TAX RELIEF FUND." and "Notwithstanding", insert "(a)".

(7) In SECTION 4(b) of the bill, at the end of proposed Section 155.2415, Tax Code (page 3, between lines 1 and 2), insert the following:

(b) This section expires September 1, 2012.

The amendment was read.

On motion of Senator Williams, Floor Amendment No. 3 to **CSHB 2** was tabled by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

On motion of Senator Williams and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

CSHB 2 as amended was passed to third reading by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

GUESTS PRESENTED

Senator Gallegos was recognized and introduced to the Senate sixth-grade students from Port Houston Elementary School in Houston, accompanied by their sponsors.

The Senate welcomed its guests.

HOUSE BILL 3 ON SECOND READING

Senator Ogden moved to suspend the regular order of business to take up for consideration **HB 3** at this time on its second reading:

HB 3, Relating to certain taxes affecting businesses; making an appropriation; providing penalties.

The motion prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

The bill was read second time.

(Senator Armbrister in Chair)

POINT OF ORDER

Senator Shapleigh raised a point of order against further consideration of **HB 3**.

Senator Shapleigh withdrew the point of order.

(President in Chair)

Senator Barrientos moved to recommit **HB 3** to the Committee on Finance.

On motion of Senator Ogden, the motion to recommit **HB 3** to the Committee on Finance was tabled by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

HB 3 was passed to third reading by the following vote: Yeas 18, Nays 13.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Estes, Fraser, Harris, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Eltife, Gallegos, Hinojosa, Jackson, Janek, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

STATEMENT OF LEGISLATIVE INTENT

Senator Ogden requested that the following remarks be reduced to writing for the purpose of establishing legislative intent on **HB 3**:

Senator Averitt: Senator Ogden, isn't it true that we are trying not to amend this bill so we can be sure to get our work done in this brief special session?

Senator Ogden: Yes.

Senator Averitt: So there may be some technical corrections that should be made but we're not doing that in this bill due to time constraints?

Senator Ogden: Yes, and I have **SB 6** that could be passed to make these changes.

Senator Averitt: Just in case **SB 6** doesn't pass, I want to call your attention to pages 10 and 11 of **HB 3** and ask you some questions to establish legislative intent. On page 10, line 28, Subsection (g), it says "only the following flow-through funds

mandated by contract" shall be excluded from gross revenue. But isn't it true that under Subsection (g-3) on line 53, the bill also says that flow-through funds based on contracts for services are to be excluded?

Senator Ogden: Yes.

Senator Averitt: And on page 11, line 7, Subsection (i) says that services provided by contract in the regular course of business may only be excluded if they are listed in Subsection (g). But isn't it true that under Subsection (g-3)(1)(d) fees that are paid by a law firm on behalf of a client to an attorney outside the firm under a contract for services are also expressly excluded from gross revenue?

Senator Ogden: Yes.

REMARKS ORDERED PRINTED

On motion of Senator Williams and by unanimous consent, the remarks by Senators Ogden and Williams regarding **HB 3** were ordered reduced to writing and printed in the *Senate Journal* as follows:

Senator Williams: I, too, have some questions about legislative intent. Senator Ogden, you know that I've asked a number of questions as we have considered this bill in committee about apportionment, and there is a whole body of law that has been developed, or rules, I should say, over at the Comptroller's office that is fairly complex about how we deal with apportionment. I just want to be clear that with the exceptions that are expressly delineated in this bill that it is not your intent that we are going to change any of those apportionment rules with this legislation, except where it is expressly spelled out.

Senator Ogden: That is my intent with this legislation.

Senator Williams: OK. Thank you. And then, specifically, we want to preserve and not change the existing comparison of gross receipts of a taxpayer in Texas to gross receipts of the taxpayer enterprise-wide for purposes of apportioning margin to Texas? That's your intent as we do it now?

Senator Ogden: I don't know that. I don't know that. I do think that apportionment issue will come up in **SB 6**. But with respect to this bill, I'm saying that my intent in this bill is to treat apportionment with the new business tax with the exception of the specific inclusions and exclusions just like the way we're doing it now with the franchise tax. But I want to say to you, that issue, which is a significant dollar amount, is fair game in **SB 6**.

Senator Williams: There are a number of businesses including airlines and financial institutions that have very complex apportionment rules and are very concerned about how this would affect their businesses and the way income is apportioned, and there is possibly some ambiguity in the bill. I think there is various opinions, so unless you are expressly changing it, it is not your intent to change anything else, that's the point I want to make, to clear up.

Senator Ogden: Yes, Sir.

Senator Williams: OK, and then I have one last question. In the legislation that we have before us, I believe that in the cost of goods sold, we're going to allow certain financial institutions to deduct interest expense as part of their cost of goods sold, like banks where they're lending. Now there are other lending institutions, and the bill is silent on some of those, and there's been a lot of debate, and this may be one of the things that comes up in **SB 6**. But, for instance, securities dealers often make margin loans where they are holding securities as collateral for a loan that they're making. Is it your intent that they wouldn't be able to deduct that interest expense just like a bank would when they made a loan?

Senator Ogden: I think if this bill is the only bill we pass, I think that's what the bill says. But I do think that that issue needs to be addressed in **SB 6** or subsequent legislation.

Senator Williams: So let me be sure I understand you. You believe that the bill as it stands right now would allow those dealers to deduct that interest expense on margin loans as part of their cost of goods sold?

Senator Ogden: No, I don't believe that.

Senator Williams: You don't think it does, is it your intent that it would do that?

Senator Ogden: No, it's not my intent in this bill. It is my intent to address that issue in **SB 6**.

Senator Williams: OK. Thank you very much.

COMMITTEE SUBSTITUTE HOUSE BILL 4 ON SECOND READING

Senator Janek moved to suspend the regular order of business to take up for consideration **CSHB 4** at this time on its second reading:

CSHB 4, Relating to motor vehicle sales and use taxes.

The motion prevailed by the following vote: Yeas 21, Nays 10.

Yeas: Armbrister, Averitt, Brimer, Carona, Deuell, Duncan, Eltife, Estes, Fraser, Harris, Jackson, Janek, Lindsay, Madla, Nelson, Ogden, Seliger, Shapiro, Staples, Wentworth, Williams.

Nays: Barrientos, Ellis, Gallegos, Hinojosa, Lucio, Shapleigh, Van de Putte, West, Whitmire, Zaffirini.

The bill was read second time and was passed to third reading by the following vote: Yeas 21, Nays 10. (Same as previous roll call)

ADJOURNMENT

On motion of Senator Whitmire, the Senate at 6:54 p.m. adjourned until 11:00 a.m. tomorrow.

