

FIFTH DAY

TUESDAY, MAY 2, 2006

PROCEEDINGS

The Senate met at 11:32 a.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.

The Reverend Scott Warner, Westover Hills Church of Christ, Austin, offered the invocation as follows:

Heavenly Father, who watches over and waits for us, we come before You this morning to thank You for the blessings that You have showered down on this country and this state. We thank You for the freedoms we often take so much for granted. Lord, I thank You for the servants in this room, who through Your grace have been entrusted with protecting those liberties. I ask Your richest blessings on every one of them in this room; and not just them but also on their spouses and children who sacrifice to allow them to serve. Lord, You have placed each one of them where they are to be a shepherd, of sorts, for those in this state. So please bless them with hearts full of service and self-sacrifice for those You have entrusted to their care. Help them to be peaceable and considerate and to show true humility towards each other for the good of those in their flock. Please restore to them the fire and optimism that first brought the desire to their hearts to be servants of this state. I ask all of this through the name of Jesus.

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

The motion prevailed without objection.

(Senator Armbrister in Chair)

GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate students from First Baptist School in Brownsville, accompanied by their sponsors, teachers, and parents.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Brimer was recognized and introduced to the Senate a group of seventh-grade students from Fort Worth Academy in Fort Worth.

The Senate welcomed its guests.

PHYSICIAN OF THE DAY

Senator Ellis was recognized and presented Dr. Stephen Spann of Houston as the Physician of the Day.

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

(President in Chair)

SENATE BILL ON FIRST READING

The following bill was introduced, read first time, and referred to the committee indicated:

SB 37 by Wentworth, Armbrister, Lucio, Madla, Seliger, Van de Putte, Zaffirini Relating to disclosure and use of sales price information for ad valorem tax purposes. To Committee on Finance.

RESOLUTION SIGNED

The President announced the signing of the following enrolled resolution in the presence of the Senate: **SCR 1**.

(Senator Armbrister in Chair)

HOUSE CONCURRENT RESOLUTION 12

On motion of Senator Gallegos and by unanimous consent, Senate Rule 8.02 was suspended to take up for consideration **HCR 12** at this time.

The Presiding Officer laid before the Senate the following resolution:

WHEREAS, Tejanos past and present have enriched the cultural heritage of the State of Texas and contribute significantly to its strength; and

WHEREAS, The Capitol grounds display statues, memorials, and commemorations of people, ideals, and events that compose Texan identity; these displays document the struggles and the successes that Texans have experienced in the past and serve to inspire us as we face the challenges of today; and

WHEREAS, A statue, monument, or exhibit on the Texas Capitol grounds paying tribute to Tejanos would permanently acknowledge the influences and achievements of the prominent and diverse community it portrays; and

WHEREAS, Chapter 443 of the Government Code authorizes the State Preservation Board to preserve, maintain, and restore the Capitol grounds, which include the Capitol, the General Land Office Building, their contents, their grounds, and monuments and exhibits on the grounds; and

WHEREAS, In 2001, the 77th Texas Legislature passed House Concurrent Resolution 38 approving the construction of a privately funded statue or monument on the Capitol grounds, subject to the rules of the State Preservation Board, and providing that the Tejano Statue-Capitol, Inc., assist the State Preservation Board in the planning and completion of the statue or monument; and

WHEREAS, All types of public funding should be allowed to supplement private donations in order to complete this worthy project; now, therefore, be it

RESOLVED, That the 79th Legislature of the State of Texas, 3rd Called Session, hereby approve the use of all types of public funding to complete the construction of the statue, monument, or exhibit on the Texas Capitol grounds to pay tribute to past and present Tejanos who have enriched the cultural heritage of the Lone Star State.

GALLEGOS

The resolution was read.

On motion of Senator Gallegos and by unanimous consent, **HCR 12** was considered immediately and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of the resolution.

AT EASE

The Presiding Officer at 12:04 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

The President at 1:14 p.m. called the Senate to order as In Legislative Session.

CONCLUSION OF MORNING CALL

The President at 1:14 p.m. announced the conclusion of morning call.

**COMMITTEE SUBSTITUTE
HOUSE BILL 4 ON THIRD READING**

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

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

The motion prevailed.

Senators Ellis, Lucio, Shapleigh, West, and Zaffirini asked to be recorded as voting "Nay" on suspension of the regular order of business.

The bill was read third time.

Senator Janek offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend **CSHB 4** (Senate committee printing) on third reading as follows:

(1) In SECTION 3 of the bill, in added Subsection (a), Section 152.0412, Tax Code (page 1, lines 28-31), strike "fair local market value of a motor vehicle in a private party transaction, as determined by the Texas Department of Transportation based on a nationally recognized motor vehicle industry reporting service." and

substitute "private-party transaction value of a motor vehicle, as determined by the Texas Department of Transportation based on an appropriate regional guidebook of a nationally recognized motor vehicle value guide service, or based on another motor vehicle guide publication that the department determines is appropriate if a private-party transaction value for the motor vehicle is not available from a regional guidebook described by this subsection."

(2) In SECTION 3 of the bill, in added Subsection (d-1), Section 152.0412, Tax Code (page 1, line 60), strike "20th day after the date of purchase." and substitute "20th working day after the date the motor vehicle is delivered to the purchaser or is brought into this state, as applicable."

(3) In SECTION 3 of the bill, in added Subsection (f), Section 152.0412, Tax Code (page 2, lines 11-12), strike "The department may charge a person a reasonable fee for access to the publication."

(4) Between SECTION 3 and SECTION 4 of the bill (page 2, between lines 24 and 25), insert the following new appropriately numbered SECTION of the bill and renumber subsequent existing SECTIONS of the bill accordingly:

SECTION _____. (a) Subchapter A, Chapter 5, Insurance Code, is amended by adding Article 5.07-2 to read as follows:

Art. 5.07-2. VALUATION OF TOTALED MOTOR VEHICLE. (a) For purposes of this article, "standard presumptive value" has the meaning assigned by Section 152.0412(a), Tax Code.

(b) If an insurer determines that a motor vehicle covered under an automobile insurance policy issued by the insurer is a total loss, the insurer shall assign the motor vehicle a value that is equal to or greater than:

(1) the standard presumptive value of that vehicle or a value that is equal to the value assigned to the vehicle by an electronic database that complies with the standards promulgated by the National Association of Insurance Commissioners in the Unfair Property/Casualty Claims Settlement Practices Model Regulation; or

(2) the value of the vehicle as evidenced by documentation described by Section 152.0412(d)(1) or (2), Tax Code.

(c) In settling a liability claim by a third party against an insured for property damage claimed by the third party, if the insurer determines that the third party's motor vehicle is a total loss, the insurer shall assign the third party's motor vehicle a value that is equal to or greater than:

(1) the standard presumptive value of that vehicle or a value that is equal to the value assigned to the vehicle by an electronic database that complies with the standards promulgated by the National Association of Insurance Commissioners in the Unfair Property/Casualty Claims Settlement Practices Model Regulation; or

(2) the value of the vehicle as evidenced by documentation described by Section 152.0412(d)(1) or (2), Tax Code.

(d) Documentation provided under Subsection (b)(2) or (c)(2) of this article is not subject to the requirements of Section 152.0412(d-1), Tax Code.

(e) This article does not affect any right granted by statute, common law, or contract to seek a determination of proportionate responsibility. To the extent of any conflict between this article and a right granted by statute, common law, or contract to seek a determination of proportionate responsibility, the right to seek a determination of proportionate responsibility prevails over this article.

(f) This article expires April 1, 2007.

(b) Chapter 1952, Insurance Code, as effective April 1, 2007, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. VALUATION OF TOTALED MOTOR VEHICLE

Sec. 1952.351. DEFINITION. In this subchapter, "standard presumptive value" has the meaning assigned by Section 152.0412(a), Tax Code.

Sec. 1952.352. VALUATION OF TOTALED MOTOR VEHICLE. (a) If an insurer determines that a motor vehicle covered under an automobile insurance policy issued by the insurer is a total loss, the insurer shall assign the motor vehicle a value that is equal to or greater than:

(1) the standard presumptive value of that vehicle or a value that is equal to the value assigned to the vehicle by an electronic database that complies with the standards promulgated by the National Association of Insurance Commissioners in the Unfair Property/Casualty Claims Settlement Practices Model Regulation; or

(2) the value of the vehicle as evidenced by documentation described by Section 152.0412(d)(1) or (2), Tax Code.

(b) In settling a liability claim by a third party against an insured for property damage claimed by the third party, if the insurer determines that the third party's motor vehicle is a total loss, the insurer shall assign the third party's motor vehicle a value that is equal to or greater than:

(1) the standard presumptive value of that vehicle or a value that is equal to the value assigned to the vehicle by an electronic database that complies with the standards promulgated by the National Association of Insurance Commissioners in the Unfair Property/Casualty Claims Settlement Practices Model Regulation; or

(2) the value of the vehicle as evidenced by documentation described by Section 152.0412(d)(1) or (2), Tax Code.

(c) Documentation provided under Subsection (a)(2) or (b)(2) is not subject to the requirements of Section 152.0412(d-1), Tax Code.

Sec. 1952.353. PROPORTIONATE RESPONSIBILITY. This subchapter does not affect any right granted by statute, common law, or contract to seek a determination of proportionate responsibility. To the extent of any conflict between this subchapter and a right granted by statute, common law, or contract to seek a determination of proportionate responsibility, the right to seek a determination of proportionate responsibility prevails over this subchapter.

(5) Strike SECTION 6(b) of the bill (page 2, lines 51 and 52) and substitute the following:

(b) Section 152.0412, Tax Code, and Article 5.07-2, Insurance Code, as added by this Act, take effect October 1, 2006. Subchapter H, Chapter 1952, Insurance Code, as added by this Act, takes effect April 1, 2007.

The amendment to **CSHB 4** was read and was adopted by a viva voce vote.

All Members are deemed to have voted "Yea" on the adoption of Floor Amendment No. 1 on Third Reading.

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

CSHB 4 as amended was finally passed 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.

STATEMENT OF LEGISLATIVE INTENT

Senator Wentworth requested that the following remarks be reduced to writing for the purpose of establishing legislative intent for **CSHB 4**:

Senator Wentworth: Part of the language in this amendment requires insurers to use certain presumptive values in settling third-party liability claims. Liability insurers are required to defend their insured and indemnify their insured for negligence proved by a third party. Is it the intent of this amendment that the comparative fault of the third party cannot be used in settling property damage claims to the third party's vehicle?

Senator Janek: No. Comparative fault and other defenses allowed by common law or by the Civil Practice and Remedies Code would still apply.

Senator Wentworth: Is it the intent of this amendment to create a cause of action directly against a liability insurer by a third-party claimant?

Senator Janek: No. This amendment is placed in the Insurance Code and would be enforced by the Texas Department of Insurance. Insurance companies use various data to establish the actual cash value of a particular vehicle for settlement purposes. This amendment simply requires the data to be used will be based on standards similar to what is being established to establish value of a vehicle for tax purposes.

Senator Wentworth: In a third-party liability case, the third party has the burden to establish and prove their damages which may include the value of their vehicle and that such damages were caused by someone other than the third party seeking recovery. Is this amendment intended to shift that burden of proof in any way?

Senator Janek: No. There is no intended change in the burden of proof required for civil cases. The amendment for third-party liability cases only applies to data an insurer will use for settlement purposes.

REASON FOR VOTES

Senator Zaffirini submitted the following reason for votes on **CSHB 4**:

I cast a "No" vote on the motions related to the committee substitute to **HB 4**, relating to motor vehicle sales and use taxes. I did so because the bill would place an undue burden on appraisal districts, as well as on anyone attempting honestly to pay the taxes due on his or her purchase. What's more, **CSHB 4** does not guarantee that an appraisal accurately would reflect the sale price.

ZAFFIRINI

GUESTS PRESENTED

Senator Lucio, joined by Senator Hinojosa, was recognized and introduced to the Senate fourth-grade students from the Idea Academy in Donna, accompanied by their teachers and sponsors.

The Senate welcomed its guests.

COMMITTEE SUBSTITUTE HOUSE BILL 2 ON THIRD READING

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

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 third time and was passed by the following vote: Yeas 21, Nays 10. (Same as previous roll call)

STATEMENT OF LEGISLATIVE INTENT

Senator Ogden submitted the following statement of legislative intent for **CSHB 2**:

CSHB 2 creates the Property Tax Relief Fund for the purpose of reducing school district maintenance and operations tax rates. To this fund are deposited revenues generated by changes (made by this Legislature) to the franchise tax, motor vehicle sales tax, cigarette tax, and certain tobacco products taxes in excess of current law estimates of those taxes. It is the intent of the Legislature that deposits to the Property Tax Relief Fund be made in the same fiscal year that these revenues are collected by the state. **CSHB 2** provides that all proceeds from cigarette taxes "attributable to the portion of the tax rate in excess of \$20.50 per thousand" be deposited in the Property Tax Relief Fund. Raising the cigarette tax rate is expected to reduce the number of cigarette packs sold. It is the intent of the Legislature that the Comptroller and the Legislative Budget Board hold General Revenue harmless from any drop-off in consumption in calculating revenue from the cigarette tax rate increase.

OGDEN

REASON FOR VOTES

Senator Zaffirini submitted the following reason for votes on **CSHB 2**:

I cast a "No" vote on motions related to the committee substitute to **HB 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. I did so because the bill restricts funds generated from the increased taxes without providing adequate flexibility to fund other budget priorities. Instead of earmarking the revenue for property tax reduction, the additional funds should be placed in general revenue to allow the legislature to more fairly evaluate spending priorities in the future.

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**MOTION TO PLACE
HOUSE BILL 3 ON THIRD READING**

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

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

The motion was lost by the following vote: Yeas 20, Nays 11. (Not receiving two-thirds vote of Members present)

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

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

GUESTS PRESENTED

Senator Lucio was recognized and introduced to the Senate representatives from Valley Interfaith in the Rio Grande Valley.

The Senate welcomed its guests.

GUESTS PRESENTED

Senator Van de Putte was recognized and introduced to the Senate a delegation representing Communities Organized for Public Service and the Metro Alliance in San Antonio.

The Senate welcomed its guests.

AT EASE

The President at 1:54 p.m. announced the Senate would stand At Ease subject to the call of the Chair.

IN LEGISLATIVE SESSION

The President at 5:49 p.m. called the Senate to order as In Legislative Session.

HOUSE BILL 3 ON THIRD READING

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

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

The motion prevailed by the following vote: Yeas 20, Nays 10.

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

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

Absent: Lindsay.

The bill was read third time and was passed by the following vote: Yeas 16, Nays 14.

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

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

Absent: Lindsay.

REASON FOR VOTES

Senator Zaffirini submitted the following reason for votes on **HB 3**:

I cast a "No" vote on motions related to **HB 3**, relating to certain taxes affecting businesses; making an appropriation; providing penalties. I did so because this revised tax structure will be dedicated so narrowly that it will force increases in sales and other taxes and fails to support excellence in our public schools. While I support creating a broad-based business tax that allows us to reduce property taxes, we also must provide our students, teachers, and administrators with the resources necessary to meet the high standards set by our accountability system.

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BIRTHDAY GREETINGS EXTENDED

Senator Nelson was recognized and, on behalf of the Senate, extended birthday greetings to Senator Shapiro.

SENATE RULE 11.13 SUSPENDED (Consideration of Bills in Committees)

On motion of Senator Ogden and by unanimous consent, Senate Rule 11.13 was suspended to grant the Committee on Finance permission to meet while the Senate was in session today.

RESOLUTIONS OF RECOGNITION

The following resolutions were adopted by the Senate:

Memorial Resolutions

SR 116 by Lindsay, In memory of Arthur Tom Cobb of Harris County.

SR 117 by Shapiro, In memory of Jacqueline May Schnittker of Plano.

SR 125 by Ellis, In memory of Juan Morales "John" Solar of Houston.

SR 128 by Van de Putte, In memory of Rudy Casarez Ortiz of San Antonio.

Congratulatory Resolutions

SR 115 by Carona, Honoring the City of Dallas on the occasion of the 150th anniversary of its charter.

SR 118 by Zaffirini, Recognizing the citizens of Live Oak County on the occasion of the county's 150th anniversary.

SR 119 by Nelson, Recognizing Michael G. Killian on the occasion of his retirement.

SR 121 by Zaffirini, Honoring Samuel Alexander Meyer on the occasion of his posthumous induction into the 2006 Laredo Business Hall of Fame.

SR 122 by Zaffirini, Recognizing Adolfo E. Gutierrez on the occasion of his induction into the 2006 Laredo Business Hall of Fame.

SR 123 by Zaffirini, Recognizing Leo Greenblum on the occasion of his induction into the 2006 Laredo Business Hall of Fame.

SR 124 by Zaffirini, Recognizing Irving Greenblum on the occasion of his induction into the 2006 Laredo Business Hall of Fame.

SR 127 by Van de Putte, Commending Theodore Hansford for his service to Bexar County.

SR 129 by Ogden, Recognizing Herbert H. Richardson on the occasion of his retirement.

Official Designation Resolution

SR 120 by Nelson, Declaring May 10, 2006, Prevention Day at the State Capitol.

RECESS

On motion of Senator Whitmire and by unanimous consent, the Senate at 6:11 p.m. recessed, in memory of Arthur Tom Cobb of Harris County and Jacqueline May Schnittker of Plano, until 2:00 p.m. Thursday, May 4, 2006.

APPENDIX

SENT TO GOVERNOR

May 3, 2006

SCR 1

SIGNED BY GOVERNOR

May 3, 2006

SCR 2