

SENATE JOURNAL

EIGHTY-SIXTH LEGISLATURE — REGULAR SESSION

AUSTIN, TEXAS

PROCEEDINGS

THIRTY-EIGHTH DAY

(Monday, April 15, 2019)

The Senate met at 5:10 p.m. pursuant to adjournment and was called to order by Senator Perry.

The roll was called and the following Senators were present: Alvarado, Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Fallon, Flores, Hall, Hancock, Hinojosa, Huffman, Hughes, Johnson, Kolkhorst, Lucio, Menéndez, Miles, Nelson, Nichols, Paxton, Perry, Powell, Rodríguez, Schwertner, Seliger, Taylor, Watson, West, Whitmire, Zaffirini.

The Presiding Officer announced that a quorum of the Senate was present.

Senator Hancock offered the invocation as follows:

Dearest heavenly Father, we thank You for a new day and the miracle that it brings that we take for granted. The sun rising, the sun setting, and just the miracles that we forget to acknowledge You in. So, we do that now. We also pray for Your wisdom, for Your guidance, for Your direction, and for all those that we serve. In Your name I pray. Amen.

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

The motion prevailed without objection.

MESSAGE FROM THE HOUSE

HOUSE CHAMBER

Austin, Texas

Monday, April 15, 2019 - 2

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:

HCR 9

Moody

Granting the legislature permission to adjourn for more than three days during the period beginning on Wednesday, April 17, 2019, and ending on Tuesday, April 23, 2019.

Respectfully,

/s/Robert Haney, Chief Clerk
House of Representatives

**INTRODUCTION OF
BILLS AND RESOLUTIONS POSTPONED**

The Presiding Officer announced that the introduction of bills and resolutions on first reading would be postponed until the end of today's session.

There was no objection.

CONCLUSION OF MORNING CALL

The Presiding Officer at 5:11 p.m. announced the conclusion of morning call.

**COMMITTEE SUBSTITUTE
SENATE BILL 2 ON THIRD READING**

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

CSSB 2, Relating to ad valorem taxation.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Fallon, Flores, Hall, Hancock, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Taylor.

Nays: Alvarado, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, Rodríguez, Watson, West, Whitmire, Zaffirini.

The bill was read third time.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 1 on Third Reading

Amend Second Reading Floor Amendment No. 1 to **CSSB 2** as follows:

(1) In the recital to SECTION 25 of the bill (page 20, line 7), strike "Subdivision (19)" and substitute "Subdivisions (10-a), (10-b), and (19)".

(2) In SECTION 25 of the bill, in amended Section 26.012, Tax Code, between Subdivisions (10) and (19) of that section (page 20, between lines 12 and 13), insert the following:

(10-a) "Government consumption expenditures index" means the state and local government consumption expenditures index as calculated by the Bureau of Economic Analysis of the United States Department of Commerce.

(10-b) "Inflation rate" means the amount, expressed in decimal form rounded to the nearest hundredth, computed by determining the average annual percentage change in the government consumption expenditures index over the preceding four-year period. If the amount is a negative number, the amount is considered to be zero.

(3) In the recital to SECTION 27 of the bill (page 20, line 30), strike "Subsections (c-1)" and substitute "Subsections (b-1), (c-1)".

(4) In SECTION 27 of the bill, in amended Section 26.04, Tax Code, between Subsections (b) and (c) of that section (page 21, between lines 13 and 14), insert the following:

(b-1) By January 1 or as soon thereafter as practicable, the comptroller shall determine the inflation rate for the current year and publish the rate in the Texas Register.

(5) In SECTION 27 of the bill, strike added Section 26.04(c)(2)(B), Tax Code (page 22, lines 4-7), and substitute the following:

(B) for a taxing unit other than a small taxing unit:

VOTER-APPROVED TAX RATE = [NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE x (1.035 + INFLATION RATE)] + CURRENT DEBT RATE

(6) In SECTION 27 of the bill, in amended Section 26.041(a), Tax Code (page 14, lines 36-39), strike the formula for the voter-approved tax rate for a taxing unit other than a small taxing unit and substitute the following:

VOTER-APPROVED TAX RATE FOR TAXING UNIT OTHER THAN SMALL TAXING UNIT = [NO-NEW-REVENUE MAINTENANCE AND OPERATIONS RATE x (1.035 + INFLATION RATE)] + CURRENT DEBT RATE - SALES TAX GAIN RATE

(7) In SECTION 28 of the bill, in amended Section 26.041(b), Tax Code (page 31, lines 1-5), strike the formula for the voter-approved tax rate for a taxing unit other than a small taxing unit and substitute the following:

VOTER-APPROVED TAX RATE FOR TAXING UNIT OTHER THAN SMALL TAXING UNIT = [(LAST YEAR'S MAINTENANCE AND OPERATIONS EXPENSE x (1.035 + INFLATION RATE)) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)] + (CURRENT DEBT RATE - SALES TAX REVENUE RATE)

(8) In SECTION 28 of the bill, in amended Section 26.041(c), Tax Code (page 31, lines 29-31, page 32, line 1), strike the formula for the voter-approved tax rate for a taxing unit other than a small taxing unit and substitute the following:

VOTER-APPROVED TAX RATE FOR TAXING UNIT OTHER THAN SMALL TAXING UNIT = [(LAST YEAR'S MAINTENANCE AND OPERATIONS EXPENSE x (1.035 + INFLATION RATE)) / (CURRENT TOTAL VALUE - NEW PROPERTY VALUE)] + CURRENT DEBT RATE

(9) In SECTION 34 of the bill, in added Section 26.0446(a), Tax Code (page 37, line 20), strike "3.5 percent" and substitute "the sum of 3.5 percent and the inflation rate".

(10) In SECTION 42 of the bill, in added Section 26.08(b-1), Tax Code (page 59, line 29), strike "3.5 percent" and substitute "the sum of 3.5 percent and the inflation rate".

(11) In SECTION 42 of the bill, in amended Section 26.08(n), Tax Code (page 62, line 6), strike "1.025" and substitute "the sum of 1.035 and the inflation rate".

(12) In SECTION 79 of the bill, in amended Section 49.236(a)(3), Water Code (page 98, line 24), strike "3.5 [eight] percent" and substitute "the sum of 3.5 [eight] percent and the inflation rate".

(13) In SECTION 79 of the bill, in amended Section 49.236(d), Water Code (page 99, line 21), strike "1.035 [1.08] times" and substitute "[1.08 times]".

(14) In SECTION 79 of the bill, in amended Section 49.236(d), Water Code (page 99, line 26), between "older" and the period, insert ", multiplied by the sum of 1.035 and the inflation rate, as defined by Section 26.012, Tax Code".

The amendment to **CSSB 2** was read.

Senator Menéndez withdrew Floor Amendment No. 1 on Third Reading.

Senator Menéndez offered the following amendment to the bill:

Floor Amendment No. 2 on Third Reading

Amend Second Reading Floor Amendment No. 1 by Bettencourt to **CSSB 2** as follows:

(1) In SECTION 3 of the amendment, in added Section 5.01(b), Tax Code (page 2, lines 5 and 6), strike Subdivision (1) of the subsection and substitute the following:

(1) representatives of property tax payers, tax assessor collectors, school districts, and appraisal districts; and

(2) In SECTION 3 of the amendment, in added Section 5.01, Tax Code (page 2, lines 15 and 16), strike added Subsection (e).

The amendment to **CSSB 2** 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. 2 on Third Reading.

CSSB 2 as again amended was finally passed by the following vote: Yeas 18, Nays 12, Present-not voting 1.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Fallon, Flores, Hall, Hancock, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Paxton, Perry, Schwertner, Taylor.

Nays: Alvarado, Hinojosa, Johnson, Menéndez, Miles, Powell, Rodríguez, Seliger, Watson, West, Whitmire, Zaffirini.

Present-not voting: Lucio.

REASON FOR VOTE

Senator Rodríguez submitted the following reason for vote on **CSSB 2**:

I appreciate the effort to address rising property taxes, but S.B. 2 falls far short of the mark. However, there are a number of significant reasons that S.B. 2 is not the right approach for the state of Texas.

First, it does not account for the unfunded mandates the state places on local governments. From court costs to emergency rooms and prescriptions for prisoners, local governments spend millions to comply with these unfunded state mandates. For example, counties provide the lion's share of the financial support for courts and other critical components of the judicial system. While the state pays the base salaries of district court judges, counties pay for all personnel and other operating costs as well as providing the actual courtrooms and courthouses. Counties also fund county clerk offices and district clerk offices. Prosecutorial offices (i.e., county attorneys, district attorneys, and criminal district attorneys) receive a large part of their funding from counties, as do lawyers appointed to represent indigent defendants in criminal cases and those appointed to represent children and indigent parents in certain Child Protective Services cases.

All of these expenses add up. Extrapolating from the expenditures reported by 84 counties shows that statewide expenditures started out at over \$1.2 billion dollars, reaching almost \$1.6 billion for FY 2016. Total estimated expenditures for all 254 counties increased by 20.9 percent from FY 2011 to FY 2016. In El Paso, the heart of my Senate District, 60 percent, or \$206 million, of El Paso County's budget goes toward unfunded state mandates. I offered an amendment to exempt just one part of that, court costs, since that is a burden the state forces local communities to shoulder, but it was not accepted.

Second, without a doubt, people want local governments to provide basic services. While Texans may be split on the question of revenue caps, they are overwhelmingly in support of local government having the ability to meet basic needs. According to polling by Mike Baselice, a Republican pollster, *"47 percent of voters oppose a statewide law that limits local governments from increasing property taxes by more than 2.5 percent a year. Opposition increases to 57 percent in East and West Texas communities, 53 percent for rural males, and 52 percent for rural GOP voters and GOP voters 55 and over."* Further, when the question is accurately framed as a matter of local priority setting: *"78 percent of Texas voters (out of 400 respondents) believe local governments should have the ability to set local tax rates to support police, fire, and paramedics; for roads, parks and libraries 79 percent agreed; and for public schools, 75 percent agreed."* The opposition to hindering local governments the ability to meet these needs is widespread and across the diverse communities of Texas.

Third, it is not the appropriate role for the state to set these revenue caps. If there is a great desire by communities to limit themselves, then let's give them the authority to make that decision. Local voters should be given the opportunity to opt in. As stated by the Center for Public Policy Priorities, *"When we vote locally for city, county, and other local officials, we are choosing by extension how much we want to pay for schools, public safety and other services we value. If we disagree with the decisions of our local elected officials, we can choose to vote them out in the next election. This legislation suggests that state leaders don't trust Texans to make the best decisions for our own communities."*

Fourth, the bill makes no provisions for circumstances that are unique to communities, with the exception of a natural disaster. As we have seen recently, there are other events outside of a community's control that have a great impact on a local economy. For example, El Paso's economy is heavily dependent on border trade and

commerce. El Paso and other border communities came close to the brink of disaster with the President's threat to close the borders. The daily average of pedestrian crossings into El Paso in 2018 was 19,787. The daily average for vehicle crossings was 35,819. The daily average of cargo crossing was 2,594. The value of estimated trade coming into El Paso from the ports of entry is \$212 million per day. The estimated loss in sales tax revenue from a shutdown, specifically for El Paso, is \$600,000 a week or \$2.4 million a month. Retail jobs are the third largest employment sector and an extended closure of the bridge could result in the closure of businesses and the loss of jobs. Even without a full closure, we already are seeing long bridge lines due to reassignment of bridge inspectors. This in spite of the fact that the City pays the federal government for some of the inspectors' hours. These delays negatively impact not only the local and regional economy, it hurts the state and national economy as well. My office already has heard stories about companies reconsidering their supply lines because of the uncertainty over border policy. This hurts everyone, and specifically to S.B. 2, has potential to hurt the City's finances. That should be taken into consideration.

Fifth, the term used to describe this new rollback rate, "voter-approved," is misleading. Voters have not approved this rate. In fact, it is a state-mandated rate until an actual election is held. Once an election is held, whatever rate the voters approve would fairly be called "voter-approved." It is important to label things accurately; words matter.

Finally, this approach lacks equity and is regressive, hurting low-income Texans and low-property wealth communities the most. Studies show that revenue caps result in higher fees, fines, and other revenue generators that impact middle- and low-income the most. Fitch, the bond rating company, notes that once capped by the state on property taxes, local units of government will look for other ways to raise revenues. Fitch states, "~~the~~ *most local governments retain the ability to increase non-tax revenues (e.g. fines, service charges and fees), which could offset the impact of a lower rollback rate as it relates to revenue-raising ability.*"

As happens with unfunded mandates, the state is passing costs down to local governments, not truly containing them. Numerous case studies, from places like Massachusetts and even here in Texas, indicate this is the future. A University of Houston Hobby Center report from February, 2019, cites various studies that state: "*The nature of property tax caps in most localities tends to make the collected revenue fall well short of the necessary amount to cover existing costs and the ever-rising price of delivering services (i.e., wage increases, inflation, etc.) (Lyons and Lav 2007). In this case, policymakers usually look for alternative approaches of revenue generation, such as increasing the prices for services in the form of significantly higher fees, higher fines, and raising sales tax (Lav and Leachman 2018). . . . The increased fees are particularly onerous for lower-income communities, which see little benefit from the reduction of property taxes but are impacted by more expensive or less generous services (Newman and O'Rourke 2011).*

Unfortunately, Texas, with its reliance on sales and property taxes, is a high tax state for people with low incomes. According to the Institute for Taxation and Economic Policy, "*the lowest-income 20 percent of Texans contribute 13 percent of their income*

in state and local taxes – considerably more than any other income group in the state. For low-income families, Texas is far from being a low tax state; in fact, it is tied with Arizona as the sixth highest-tax state in the country for low-income families."

I agree that we need property tax reform, but we need to make sure the reform reaches property taxpayers without also imposing new burdens on working Texans. Shifting the burden and tying the hands of local communities while failing to provide real relief is simply not good public policy. S.B. 2 will not provide true property tax relief, which can only be achieved when the state fulfills its obligations to adequately fund public schools. Consequently, I cast my vote against S.B. 2.

RODRÍGUEZ

REMARKS ORDERED PRINTED

On motion of Senator Fallon and by unanimous consent, the remarks regarding **CSSB 2** on third reading were ordered reduced to writing and printed in the *Senate Journal*.

The remarks will be printed in an addendum to this day's Journal.

COMMITTEE SUBSTITUTE SENATE BILL 9 ON THIRD READING

Senator Hughes moved to suspend the regular order of business to take up for consideration **CSSB 9** at this time on its third reading and final passage:

CSSB 9, Relating to election integrity; increasing criminal penalties; creating a criminal offense; creating civil penalties.

The motion prevailed by the following vote: Yeas 19, Nays 12.

Yeas: Bettencourt, Birdwell, Buckingham, Campbell, Creighton, Fallon, Flores, Hall, Hancock, Huffman, Hughes, Kolkhorst, Nelson, Nichols, Paxton, Perry, Schwertner, Seliger, Taylor.

Nays: Alvarado, Hinojosa, Johnson, Lucio, Menéndez, Miles, Powell, Rodríguez, Watson, West, Whitmire, Zaffirini.

The bill was read third time and was passed by the following vote: Yeas 19, Nays 12. (Same as previous roll call)

REMARKS ORDERED PRINTED

On motion of Senator Rodríguez and by unanimous consent, the remarks regarding **CSSB 9** on third reading were ordered reduced to writing and printed in the *Senate Journal*.

The remarks will be printed in an addendum to this day's Journal.

SENATE RULE 11.13 SUSPENDED (Consideration of Bills in Committees)

On motion of Senator Hancock and by unanimous consent, Senate Rule 11.13 was suspended to grant the Committee on Business and Commerce permission to meet while the Senate was meeting tomorrow.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Hancock and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Business and Commerce might meet and consider **SB 455** tomorrow.

SENATE RULE 11.13 SUSPENDED
(Consideration of Bills in Committees)

On motion of Senator Taylor and by unanimous consent, Senate Rule 11.13 was suspended to grant the Committee on Education permission to meet while the Senate was meeting tomorrow.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Taylor and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Education might meet and consider **SB 2266** tomorrow.

SENATE RULES SUSPENDED
(Posting Rules)

On motion of Senator Bettencourt and by unanimous consent, Senate Rule 11.10(a) and Senate Rule 11.18(a) were suspended in order that the Committee on Property Tax might meet and consider the following bills tomorrow:

SB 1876, SB 2544, SB 1395.

MOTION TO ADJOURN

On motion of Senator Whitmire and by unanimous consent, the Senate at 6:27 p.m. agreed to adjourn, upon completion of the introduction of bills and resolutions on first reading, until 11:00 a.m. tomorrow.

SENATE BILLS ON FIRST READING

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

SB 2541 by Fallon

Relating to the powers and duties of the Rolling V Ranch Water Control and Improvement District No. 1 of Wise County.

To Committee on Intergovernmental Relations.

SB 2543 by Watson

Relating to the powers and duties of the Ranch at Cypress Creek Municipal Utility District No. 1.

To Committee on Intergovernmental Relations.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read first time and referred to the committees indicated:

HB 26 to Committee on Water and Rural Affairs.

HB 65 to Committee on Education.
HB 71 to Committee on Transportation.
HB 93 to Committee on State Affairs.
HB 102 to Committee on Education.
HB 114 to Committee on Veteran Affairs and Border Security.
HB 121 to Committee on State Affairs.
HB 226 to Committee on Criminal Justice.
HB 260 to Committee on Transportation.
HB 302 to Committee on State Affairs.
HB 304 to Committee on Intergovernmental Relations.
HB 359 to Committee on Business and Commerce.
HB 360 to Committee on Natural Resources and Economic Development.
HB 444 to Committee on State Affairs.
HB 446 to Committee on Criminal Justice.
HB 463 to Committee on Health and Human Services.
HB 476 to Committee on Higher Education.
HB 477 to Committee on Property Tax.
HB 507 to Committee on Health and Human Services.
HB 559 to Committee on State Affairs.
HB 596 to Committee on State Affairs.
HB 598 to Committee on State Affairs.
HB 601 to Committee on Criminal Justice.
HB 613 to Committee on State Affairs.
HB 650 to Committee on State Affairs.
HB 651 to Committee on Health and Human Services.
HB 692 to Committee on Administration.
HB 723 to Committee on Water and Rural Affairs.
HB 793 to Committee on Business and Commerce.
HB 809 to Committee on Higher Education.
HB 811 to Committee on Administration.
HB 812 to Committee on Criminal Justice.
HB 869 to Committee on Criminal Justice.
HB 917 to Committee on Transportation.
HB 996 to Committee on Business and Commerce.
HB 1048 to Committee on State Affairs.
HB 1053 to Committee on Transportation.
HB 1136 to Committee on Intergovernmental Relations.
HB 1180 to Committee on Veteran Affairs and Border Security.
HB 1188 to Committee on Property Tax.
HB 1256 to Committee on Health and Human Services.
HB 1286 to Committee on State Affairs.
HB 1386 to Committee on Health and Human Services.
HB 1388 to Committee on Education.
HB 1409 to Committee on Property Tax.
HB 1483 to Committee on Finance.
HB 1501 to Committee on Health and Human Services.

HB 1506 to Committee on Water and Rural Affairs.
HB 1523 to Committee on Business and Commerce.
HB 1525 to Committee on Finance.
HB 1556 to Committee on Education.
HB 1592 to Committee on Higher Education.
HB 1612 to Committee on Administration.
HB 1651 to Committee on Criminal Justice.
HB 1689 to Committee on State Affairs.
HB 1709 to Committee on Health and Human Services.
HB 1820 to Committee on Intergovernmental Relations.
HB 1962 to Committee on Business and Commerce.
HB 1964 to Committee on Water and Rural Affairs.
HB 2016 to Committee on Business and Commerce.
HB 2129 to Committee on Natural Resources and Economic Development.
HB 2153 to Committee on Finance.
HB 2196 to Committee on Business and Commerce.
HB 2255 to Committee on Health and Human Services.
HB 2261 to Committee on Higher Education.
HB 2263 to Committee on Business and Commerce.
HB 2310 to Committee on Transportation.
HB 2326 to Committee on Administration.
HB 2338 to Committee on Finance.
HB 2594 to Committee on Health and Human Services.
HB 2714 to Committee on Natural Resources and Economic Development.
HB 2820 to Committee on State Affairs.
HB 3086 to Committee on Finance.
HB 3162 to Committee on Business and Commerce.
HB 3226 to Committee on Natural Resources and Economic Development.
HB 3348 to Committee on Property Tax.

ADJOURNMENT

Pursuant to a previously adopted motion, the Senate at 6:31 p.m. adjourned until 11:00 a.m. tomorrow.