

HOUSE JOURNAL

EIGHTY-THIRD LEGISLATURE, SECOND CALLED SESSION

PROCEEDINGS

SIXTH DAY — THURSDAY, JULY 18, 2013

The house met at 2 p.m. and was called to order by the speaker.

The roll of the house was called and a quorum was announced present (Record 39).

Present — Mr. Speaker; Allen; Alonzo; Alvarado; Anchia; Anderson; Ashby; Aycock; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Burnam; Button; Callegari; Canales; Capriglione; Carter; Clardy; Coleman; Collier; Cook; Cortez; Craddick; Creighton; Crownover; Dale; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Elkins; Fallon; Farias; Farney; Farrar; Fletcher; Flynn; Frullo; Geren; Giddings; Goldman; Gonzales; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harless; Harper-Brown; Hernandez Luna; Herrero; Howard; Huberty; Hughes; Hunter; Isaac; Johnson; Kacal; Keffer; King, K.; King, P.; King, S.; King, T.; Kleinschmidt; Klick; Kolkhorst; Krause; Kuempel; Larson; Laubenberg; Lavender; Leach; Lewis; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Naishtat; Nevárez; Oliveira; Orr; Paddie; Parker; Patrick; Perez; Perry; Phillips; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sanford; Schaefer; Sheets; Sheffield, J.; Sheffield, R.; Simmons; Simpson; Smith; Smithee; Springer; Stephenson; Stickland; Taylor; Thompson, E.; Thompson, S.; Toth; Turner, C.; Turner, E.S.; Turner, S.; Villalba; Villarreal; Vo; Walle; White; Workman; Wu; Zedler; Zerwas.

Absent, Excused — Frank; Hilderbran; Otto.

The speaker recognized Representative S. King who offered the invocation.

The speaker recognized Representative Perry who led the house in the pledges of allegiance to the United States and Texas flags.

LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence for today because of important business in the district:

Frank on motion of Geren.

The following member was granted leave of absence for today because of important business:

Hilderbran on motion of Geren.

The following member was granted leave of absence for today because of a death in the family:

Otto on motion of Orr.

CAPITOL PHYSICIAN

The speaker recognized Representative R. Miller who presented Dr. Elise Sadoun of Sugar Land as the "Doctor for the Day."

The house welcomed Dr. Sadoun and thanked her for her participation in the Physician of the Day Program sponsored by the Texas Academy of Family Physicians.

(Márquez in the chair)

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 1).

BILLS AND RESOLUTIONS SIGNED BY THE SPEAKER

Notice was given at this time that the speaker had signed bills and resolutions in the presence of the house (see the addendum to the daily journal, Signed by the Speaker, House List No. 2).

HCR 14 - ADOPTED

(by Walle)

Representative Walle moved to suspend all necessary rules to take up and consider at this time **HCR 14**.

The motion prevailed.

The following resolution was laid before the house:

HCR 14, Recognizing Nancy Blackwell on her retirement from the Aldine Independent School District.

HCR 14 was adopted.

On motion of Representative Walle, the names of all the members of the house were added to **HCR 14** as signers thereof.

HR 115 - ADOPTED

(by S. Thompson)

Representative S. Thompson moved to suspend all necessary rules to take up and consider at this time **HR 115**.

The motion prevailed.

The following resolution was laid before the house:

HR 115, Congratulating Floyd Hopson Joseph of Houston on his 80th birthday.

HR 115 was adopted.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business:

Fallon on motion of Parker.

**HR 101 - ADOPTED
(by Crownover)**

Representative Crownover moved to suspend all necessary rules to take up and consider at this time **HR 101**.

The motion prevailed.

The following resolution was laid before the house:

HR 101, In memory of Casey Lee Whitley Damen.

HR 101 was unanimously adopted by a rising vote.

On motion of Representative McClendon, the names of all the members of the house were added to **HR 101** as signers thereof.

**HR 114 - ADOPTED
(by Aycock)**

Representative Aycock moved to suspend all necessary rules to take up and consider at this time **HR 114**.

The motion prevailed.

The following resolution was laid before the house:

HR 114, In memory of Robert Layden Hornsby of Killeen.

HR 114 was read and was unanimously adopted by a rising vote.

On motion of Representative Aycock, the names of all the members of the house were added to **HR 114** as signers thereof.

**HR 116 - ADOPTED
(by Reynolds)**

Representative Reynolds moved to suspend all necessary rules to take up and consider at this time **HR 116**.

The motion prevailed.

The following resolution was laid before the house:

HR 116, In memory of the Fort Bend/Southwest Star publisher Beverly Karen Carter.

HR 116 was unanimously adopted by a rising vote.

On motion of Representative R. Miller, the names of all the members of the house were added to **HR 116** as signers thereof.

HCR 5 - ADOPTED**(by Menéndez)**

Representative Menéndez moved to suspend all necessary rules to take up and consider at this time **HCR 5**.

The motion prevailed.

The following resolution was laid before the house:

HCR 5, In memory of U.S. Air Force Captain Mark Tyler Voss of Boerne.

HCR 5 was unanimously adopted by a rising vote.

On motion of Representative Menéndez, the names of all the members of the house were added to **HCR 5** as signers thereof.

RESOLUTIONS ADOPTED

Representative Lavender moved to suspend all necessary rules to take up and consider at this time the following memorial resolutions:

HCR 9 (by Lavender), In memory of Paul Gene Roden of Paris.

HCR 10 (by Lavender), In memory of Gerald Glen Bawcum of Paris, Texas.

HCR 12 (by Lavender), In memory of Franklin Joseph Homer, Sr., of Paris.

The motion to suspend all necessary rules prevailed, and the resolutions were unanimously adopted by a rising vote.

On motion of Representative S. Thompson, the names of all the members of the house were added to **HCR 9**, **HCR 10**, and **HCR 12** as signers thereof.

MAJOR STATE CALENDAR**HOUSE BILLS****THIRD READING**

The following bills were laid before the house and read third time:

HB 16 ON THIRD READING**(by Pickett, Harper-Brown, and Phillips)**

HB 16, A bill to be entitled An Act relating to the allocation of certain fuel-related tax revenue and certain motor vehicle sales, use, and rental tax revenue to the state highway fund and to the uses of that revenue.

Representative Pickett moved to postpone consideration of **HB 16** until 3:15 p.m. today.

The motion prevailed.

(Speaker in the chair)

CONSTITUTIONAL AMENDMENTS CALENDAR**HOUSE JOINT RESOLUTIONS****THIRD READING**

The following resolutions were laid before the house and read third time:

HJR 2 ON THIRD READING**(by Pickett, Phillips, Harper-Brown, Darby, et al.)**

HJR 2, A joint resolution proposing a constitutional amendment to provide for certain revenue from motor fuel taxes to be used solely for constructing, maintaining, and acquiring rights-of-way for certain public roadways and to provide for the transfer of certain general revenue to the economic stabilization fund and the available school fund.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business in the district:

Canales on motion of Longoria.

HJR 2 - (consideration continued)**HJR 2 - REMARKS**

REPRESENTATIVE PICKETT: First off, I want to thank you all for being here today. We are a big family, we've got lots of things going on. Our family has got funerals to go to. Our family has to go to weddings. Our family has vacations. Some of our family are sick. Some of our family are ill and here today. So, to everybody that's here, regardless of what happens, thank you for taking this serious and being here today. Just let me lay out a synopsis of where we are from Monday and I'll be more than happy to take questions.

Members, I was asked over the weekend by a reporter, who is picking up for another reporter who was out on the weekend, and they say get me up to speed, so let me ask you some simple questions. Just in plain English, what does this bill do? And as simple as I could explain it is this bill puts more money into transportation. I also said this models what we have been talking about—transparency and truth in taxation. They immediately asked me if you're putting more money into transportation, are you raising fees and are you raising taxes? Absolutely not. Not in this proposal. Does it take money out, because I hear all this about rainy day fund, ESF—it's one and the same. Does this take money out of that fund that's there today, the balance that's there? It does not. Then, where does this money come from?

Texas is blessed currently with having the oil and production, the oil and gas production taxes, what they are. Because we've been able to track this and see this, all of the proposals that are out there are looking at that revenue stream. Not just this proposal; the one we heard in the special, another proposal that's been vetted out over the last couple of days—they all have the same revenue source. Now, how do you say that this has anything to do with transparency and truth in taxation? When we go to the gas pump, not all of the taxes we pay for motor fuels goes to roads. A part of it goes to public education. What we're proposing is that all the gas tax you pay at the pump goes to roads. Where did that money go that's being diverted from gas tax? It goes to public education.

So, this proposal changes one thing from the original. The original proposal said put money directly from oil and gas production into transportation, put money into the ESF. This one says put money directly into the available school

fund and put money into the ESF, the rainy day fund. This proposal raises more revenue for the ESF. Those of us who want to see a healthy balance in the future, this puts more money into that than the first proposal. Not huge differences, but it starts out as being 60, \$70 million a year and it grows, and so it builds faster over the next few years. That is what this proposal is.

We've had the discussion about this floor. What is the floor? We want to put a number on our savings account and basically tell us—because even though we've been saying appropriators, the appropriators get their authority from us, the legislature—that we won't spend below a certain amount. Well that savings account, that rainy day fund, cannot be spent without our approval. Nobody can do that. There's no budget execution where the balance goes down while we're not here. It can't be done without us. And I'm not saying that in the future, maybe a floor is a good thing, but we want to put in the constitution a number that we're not sure is the correct number today. We have got plenty of time before any of this goes into effect to come back and actually talk to experts, talk amongst ourselves, put policy involved, because we are policy makers and decide what that number is. I'm not naive and think that it's over today. A lot of you have had discussions with your senators and different people. It's going to come back to us in some other form. I would like to move this down the road, get it to the senate, let them tell us what their views and opinions are—get it worked out, and take this second and final special session and finish off with infrastructure.

REPRESENTATIVE KOLKHORST: Thank you, Chairman Pickett, again for your hard work on this, and I know that you're flanked by two very good members of the Transportation Committee, and all of you work—and I know Chairman Phillips works very hard on these issues—and we thank you for continuing to work to perfect the ideas of how we fund highways moving forward. I want to go back to something that we talked about earlier this week and get another confirmation and clear up some of the thoughts. None of this money can be used for tolling authority, that's correct?

PICKETT: That is correct, and again, to be clear again, Lois, it's the additional revenue that we're talking about. We don't want to change anything that's already there, but yes, ma'am, any additional revenue that this raises cannot be used for toll roads.

KOLKHORST: And just a point of clarification. I know my good friend Linda Harper-Brown, and we work on a lot of things together, she proposed **HB 3650** during the session, which did not pass, and it was about availability payments for private equity. It's kind of a private equity pass-through toll. I would not, while I like my friend, I would not support that. And I know that Chairman Nichols has written, Senator Nichols has written a letter to the commission, as well as I have, questioning the proposed rule that they have recently, through minute order, proposed. And now the comment section period is over, but none of this money can be used for, if that rule were to move forward—which I want to stress, I hope the commission doesn't move forward with a rule that would circumvent what's

in statute by doing it by rule. I want to encourage them that that is not a good and proper thing to do, and obviously we'll be looking at those kinds of practices during sunset, as they come up for sunset again.

PICKETT: Not just in sunset, but while we're still here.

KOLKHORST: Correct, but these monies cannot be used for, say, that proposed rule if they moved forward for it?

PICKETT: That is correct. That is my understanding of the way we drafted it. Yes, ma'am.

KOLKHORST: And then finally, you made the point—and I want to make it again—is that currently we do not have a floor in this, although it does take a two-thirds vote to tap the rainy day fund, the economic stabilization fund, correct?

PICKETT: That is correct.

KOLKHORST: And then we don't know, this bill will move to the senate and there's a possibility the senate would put a floor in it. Is that correct?

PICKETT: That is also correct.

KOLKHORST: And I don't know if we're going to have another amendment. I personally support the floor. I know that you and I have had those discussions, and I think that it gives some stability to our constituents, knowing that there is some safety level to our savings account. I look forward to working with you in the future.

PICKETT: And I hope, your comment to me earlier was whether it has the floor or not, you still support moving forward with the initiative we have today.

KOLKHORST: Yeah, I do, I do, but I'd like to see that floor in there.

PICKETT: Thank you.

REPRESENTATIVE HUBERTY: Thank you for the work on this. Last week we had an amendment that was offered by Representative Simmons, and I went and got the journal record on it and you moved to table that amendment, and the vote total was 70 to 49, three present, not voting. I went back and looked and saw that 15 people changed their votes from a yes to a no. The original amendment, as I read it and I understood it—and we discussed this certainly in our Republican Caucus meeting, and myself and the chairman of Public Education and also the chairman of Article III, John Otto, noted to the people in the room that if we had adopted that amendment, we would have undone basically everything that we had tried to do in fixing the public education system because we were taking the dedicated funds that are going to public education today, putting that into roads, but leaving it vulnerable if that amendment had gone on. Is that your understanding of how that amendment would have worked, as well?

PICKETT: No, to be frank, I don't think that would have undone the public education portion at all. And besides, Dan, the number we're talking about—I think we need to get it down, too—the total dollar amount about public education

in this argument is 5 percent of their budget. We've been arguing about a portion that goes to the available school fund, but we're talking about actually 4.9 or 4.8 percent. So, we're not even talking public education in big numbers.

HUBERTY: I understand that, but my point was, the way that, in talking with certainly Chairman Otto about it, the concern was is that the money that's being supplanted from the public education that's going from the gas tax today would be coming out of those additional royalties. That's correct, right?

PICKETT: That is correct.

HUBERTY: And if the royalties went down, that money would not exist then, right?

PICKETT: Not with the amendment that was put on that we were going to clarify in Appropriations, but what Chairman Phillips did on Monday was to clarify that public education portion is held whole by the comptroller transferring from general revenue the amount that was necessary, and that amount, again, is 4.7 percent of the total public education budget. So, that has been maintained. Public education is held whole and, frankly, that's been kind of a hard message to get across that it's not in jeopardy whatsoever, and actually gives it even a better standing than it has today.

HUBERTY: Good. Okay. I just wanted to make sure that when we discuss, because that was the concern that many of us had on Monday related to the one amendment that we had discussed, because we were very concerned that that would be an impact and potentially open up the lawsuit again. You know, obviously, the judge is going back and hearing floor arguments again. I mean, basically starting over again and so, I want to make sure that we're very clear, that we are making sure that that protects that as we go forward.

PICKETT: We are very clear.

REPRESENTATIVE PERRY: I'm going to kind of go back and just rehash a little bit, we've gotten so many versions and bills going through. **SJR 1** was passed out of this house with 105 votes that contained a floor—

PICKETT: And I was one of them.

PERRY: —that contained a floor in it, and it's sitting over in the senate today. It was brought back to Appropriations but not heard, and then **HJR 2** surfaced. Which really the big difference was, I mean, same principles, but no floor. So, I mean—and the diversion—the diversion's huge.

PICKETT: We end the diversion. Right.

PERRY: So, can you tell me why you think the floor became the political football, if you will, and there's discussion that if we pass and it goes back to the senate, that the floor is more likely to be put on. My question to you—and you may not can answer this, I'm not going to put you on the spot—are you so adamantly opposed to the floor through the conference process that we could need to say the bill needs to die today to fight a battle for the floor next week?

PICKETT: Charles, you had two questions. Let me answer the first one, and this is what I believe, just like on a lot of bills around here, you get the feel of the house, timing, what's going on. Since the first version passed, I was one of those who said I want to do something for transportation this session. It's not my favorite, but I can support it. Since it did pass, and since we've had time to look at it, more people, and we kind of proved that with the vote the other day, more people have decided that a floor may not be the way to go, and there was not enough to move it out of the Appropriations Committee at that point with that.

Now to answer your second question, about do I think that if we pass this out today without a floor, that the senate might not want to put one in, they may send it back. I think that's extremely possible. I think it's highly likely. I also believe that we will have time to really look at what that might be. If we put a floor in today, in haste, and it just was to pass like that, go to the voters in November, we would be setting something in the constitution without really looking at how much it should be. So far, the floor has just been numbers pulled out of the air, and all the other mechanisms of this are very much tied to every single dollar, penny, cent, but that's the one thing that no one has been able to nail down. Personally, if it was only me, Charles, I would keep these separate. If we didn't pass anything today at all, we wouldn't have a floor in the rainy day fund, and we should look at that in the future. I look at this as this is transportation, we can end diversions, we can put \$800 million-plus a year into transportation, and before all this went into effect, there would time for the legislature to meet, having the time to find out what the best thing is to do by next session.

PERRY: And where I would see, what makes this difference, is we're talking about amending the constitution anyway.

PICKETT: That's correct.

PERRY: And this is the time that if you're going to amend the constitution, i.e., diversion of the gas tax to the education fund, i.e., diversion of the money going into the rainy day, then it would make all the sense in the world that if you need a cap or a floor in the rainy day, this would be the logical vehicle to do it.

PICKETT: And, Charles, I agree with you except for the latter, because we know what the diversion is and we can fix that by the constitution. We know what the revenue stream is, we can fix that. This is the one part that I would feel uncomfortable putting into the constitution.

PERRY: Let me ask you one other question. Is it not a better process to treat transportation as the priority that we say it is, i.e., education, safety net, public safety? And make it an appropriable item at the appropriate level, rather than coming down the end of the day. And you and I, I think we can all agree, every member on this floor, if you ask them what's good about this bill, they all have that we don't like it, we kind of live with it, we want to do it. So, I'm a little concerned that we're moving down this road to do something, when in reality we need to make transportation an appropriation issue and put it up there along with the other three or four big priorities of the day, and until we get that in the baseline budget as that number, we're going to consistently be back here debating

on how we're going to build roads and bridges in this state. So, we're here because we didn't do that, and we're leaving here because we're not doing that again.

PICKETT: I will tell you, if you vote for this, you just did a huge step to exactly what you want. I was asked the other day, who's your favorite child? They're all my favorite children. Transportation has not been a favorite child, it's been a stepchild. This is one way to put it at that level where we give it a dedicated source that we tell the public we're taking their taxes for and only goes for transportation, and it doesn't make transportation be the one that makes the hit if something else happens. It makes the appropriators treat them the same.

PERRY: One other question. I want to make sure, it's not this bill, but **HB 16**, the motor vehicle tax—I've heard numbers anywhere from \$40 million a year to \$500 million a year. Do you know what that motor vehicle carve-out is?

PICKETT: When we get to that one, I'm going to ask Chairman Harper-Brown if she's got any updated numbers, because it was amended by Mr. Otto.

PERRY: And I wouldn't ask it other than it affects the way I feel about **HJR 2**.

PICKETT: Okay.

PERRY: So, if we can have her disclose what that number is before I vote for an **HJR 2** not knowing that number—to me, it's relevant.

PICKETT: Okay, Charles. I'll see if I can get that from Chairman Harper-Brown.

PERRY: Because I've got numbers from \$40 million to a billion over a biennium. So, it's a little bit of a difference there that I need to reconcile in my mind.

PICKETT: Okay.

REPRESENTATIVE C. TURNER: First off, thank you for your incredibly hard work on getting this measure to this point, and I hope we're on the verge of passing something meaningful for transportation funding. Just for the purposes of both legislative intent and to perhaps reassure some members who may have some remaining questions. As it relates to education funding, since your measure will, if approved by the voters, would end the 25 percent allocation to public education, but then make that up through severance tax revenue into the available school fund.

PICKETT: With a caveat that if there's not that money available, in Mr. Phillips' amendment, that it will be filled with general revenue. So, yes, there's a guarantee.

C. TURNER: And then, thank you for that clarification, as well. So, with your measure, with the Phillips amendment, the funding to the available school fund will remain constant—there is no way that education funding could somehow decrease or be cut as a result of voting for this measure. Is that right?

PICKETT: Yes, Chris, and again, Mr. Phillips' amendment had taken care of that, and then I want to, one more time, tell everybody that that amount that we're talking about is less than 5 percent. Right now, people forget the lottery. The lottery actually puts more money into the available school fund than does the gasoline tax portion, but we're telling the public that's where it's going. When they buy a lottery ticket, if you turn it over on the back, it says this is going for public education. When you go to the gas pump and you pay the tax, it doesn't say it's going to roads because it's not all going to roads. So, yes, sir, Mr. Phillips' amendment did guarantee that that amount stays to public education.

C. TURNER: Great. Well, thank you for clarifying that, and thank you and Mr. Phillips for making sure that members are able to vote for a good measure for transportation, as well as cast the votes that protects public education funding.

REPRESENTATIVE ISAAC: Chairman, I appreciate your work on this, and I know there's been a lot of talk about floors and making sure that we protect the rainy day fund and the economic stabilization fund. Are there any measures in **HJR 2** or **HB 16** that have to deal with caps or ceilings on the amount of debt that TxDOT may incur?

PICKETT: No. However, I will tell you that in two of the three debt instruments that are out there, two of them have caps. So, the answer to your question is yes. The voters approved a \$5 billion cap on Prop 12 and \$6 billion on Prop 14. Both of those have been authorized to their limit and the debt service has been appropriated to pay those by the appropriators. There's one more source of debt that is a rolling number, and we're kind of getting off—I would like to see that go away, but that one is called the mobility fund. Now, the mobility fund has a revenue stream, and as that revenue stream grows, the Texas Department of Transportation has been able to ask permission to issue additional bonds up to whatever that stream will pay for. Currently, the Texas Department of Transportation could go out and sell \$600 million in bonds for the mobility fund as long as the comptroller certifies there's 110 percent of the revenue to pay those bonds. So, two of the programs are maxed out. One of them is a rolling number.

I'm not sure whether you're for or against, but I will also tell you that the debt ceiling today is a little over \$17 billion, and the payback is going to be \$32 billion. And this is one of the reasons I'm so interested in wanting to bring this, because this gets us—again, it doesn't fix it—it gets us another step back to the pay as you go.

Another important thing about this version—I know some said there's lots of versions out there. The first version allows for an immediate diversion to pay debt. This one does not allow debt to be paid for general obligation bonds; so it wouldn't encourage you to pass this just to pay more debt. So, thank you for the question. I hope that helps.

ISAAC: It does help. That's some great answers. That's more information than I had before I came up here, so I appreciate your answers. So, I want to reiterate what you just said. The money that we're talking about here in **HJR 2** and **HB 16** does not appropriate any money to be used to pay for debt or does not allow us to go into more debt?

PICKETT: **HB 16**, if I remember Ms. Harper-Brown's amendment, those monies, if they came in, are not what we're dedicating in **HJR 2**, and that money would be treated like all the other money. So, I believe there could be—debt could be paid with that money. Now, that's not necessarily a bad thing because if we don't allow any more debt, and that raises additional revenue that can be used to pay debt. We could conceivably pay down the debt earlier.

ISAAC: So, we're not allowing more debt with either of these bills.

PICKETT: That is correct. Neither one of these allows any additional debt.

ISAAC: Okay, because I show that we're, in this current biennium that we're in, having to worry about \$20 billion that's appropriated for TxDOT, and we have about \$29.6 billion in total debt service remaining for TxDOT. So, that's not a question, just a comment, but I'm glad we're not going to go into further debt if either of these passes. So, thank you very much. I appreciate that.

REMARKS ORDERED PRINTED

Representative Kolkhorst moved to print all remarks on **HJR 2**.

The motion prevailed.

KOLKHORST: Representative Pickett, one follow-up to that exchange, which is when you talked about how this money could be used for debt. One of the things that we had established through our exchanges is that we are not going to use any of this for tolling. But, I want to make sure that in a huge, very large budget we don't do what I call just displace money where you just move them around. Well, great. We'll move that out to there, and we'll pretend we're not using that money. We'll just displace this money, and so forth and so on. And so, don't you think that's going to take a lot of effort and watchdog efforts on us to make sure that doesn't happen?

PICKETT: Lois, everything that happens over at TxDOT is our responsibility. Not a lot of people felt it was until the last couple of years. So, to answer your question, yes. And, back onto the HJR, there's nothing in here that is debt or that can pay for debt.

KOLKHORST: Okay.

PICKETT: And your comment is well-taken because of the rule that, I'm aware of that you're talking about, that would say, well, yeah, we can't backstop this, but if we move some money over here—I know what you're talking about, and that does not allow it.

KOLKHORST: Right. And so, Representative Pickett, you and I have talked about toll roads in the past that were a method of finance. Now, we see them as becoming a method of revenue because we're never going to take the tolls off. So, it becomes a revenue source to build other highways with, and I have some great concerns for future generations as many of the deals that we've cut are half a century long. Now, they could potentially with our RNAs go on in perpetuity, and I'm not sure that is what was intended by our original legislation.

And, I'll ask this last question because going into Monday, I voted for this bill. And after I got more involved in the availability payments and saw that TxDOT was up to its old antics of just ignoring the legislature on some of these big issues, I hesitate on this. I know how hard you've worked on it, but I want to send a strong signal that all of us are working to put money in. Don't you believe putting more money into building free roadways because it's all tax money anyway, correct?

PICKETT: Yes, ma'am. Chairman Kolkhorst, this bill discourages toll projects. We are putting in cash. This is discouraging those projects and getting some seed money to do it the way we used to do it.

KOLKHORST: Right. We have to fund the system instead of playing games and just doing toll roads as a method of finance which eventually becomes a method of revenue.

PICKETT: Yes, ma'am.

REPRESENTATIVE DUTTON: Let me be sure I understand, Chairman Pickett. Right now, the 25 percent—and I'm talking about the public education part of this, okay? And there's 25 percent of it that's dedicated, of the motor fuels tax that's dedicated to public schools.

PICKETT: And, that doesn't change.

DUTTON: Sorry?

PICKETT: That does not change.

DUTTON: And that's not changed. Okay. Tell me how that's not changed, because as I understand it—

PICKETT: Harold, what happens is not just an oil and gas severance tax, but the occupation taxes are lumped into one number, one amount.

DUTTON: Okay.

PICKETT: Twenty-five percent of that comes off the top, and the comptroller puts that into the available school fund.

DUTTON: Correct.

PICKETT: And, none of the versions, no version changes that whatsoever. That doesn't change in any version.

DUTTON: So, that doesn't change in **HJR 2**?

PICKETT: No, sir.

DUTTON: And **HJR 2** doesn't contemplate that change?

PICKETT: No, sir.

DUTTON: Because as I understood it talking to Mr. Phillips is that there's kind of a flip-flop going on.

PICKETT: No, what he's talking about—now, once the 25 percent, Harold, comes off the top, then there's this number we've been hearing, 75 percent of the oil and gas severance tax is left. That's the amount of money now we're talking about putting some of it into the rainy day fund, putting some of it into the available school fund, instead of coming from the gas tax. So, that's the one that Mr. Phillips was talking to you about. And, the overall main, the bigger number, the 25 percent off the top, is not changed in any version.

DUTTON: So, tell me then so that I understand how Mr. Phillips amendment affects the 25 percent that's now going into the fund.

PICKETT: What Mr. Phillips' amendment does is because we would be collecting—and I'm going to use 20 cents because that's the current amount—20 cents on every gallon that's tax the State of Texas collects, a nickel goes to public education.

DUTTON: Correct.

PICKETT: So, instead of taking a nickel and sending it to public education, we're going to keep the whole 20 cents for transportation. So, that nickel is what we are replacing with the oil and gas severance tax out of that pot of 75 percent. And then, Mr. Phillips went further to say if for some reason that there's not enough to do that, it will have to be made up by the comptroller out of general revenue, which was a good thing.

DUTTON: Okay, so, as I understand then what you said and Mr. Phillips was kind enough to share with me, the dedicated portion that goes into public schools is now going to be undedicated and the whole 20 cents is going to stay over in Fund 6.

Amendment No. 1

Representative Simmons offered the following amendment to **HJR 2**:

Amend **HJR 2** on third reading as follows:

(1) In SECTION 1 of the resolution, as added by Floor Amendment No. 4 by Phillips on second reading, strike the recital and substitute the following: Section 49-g, Article III, Texas Constitution, is amended by amending Subsections (c), (d), (e), and (h) and adding Subsections (e-1) and (e-2) to read as follows:

(2) In SECTION 1 of the resolution, as added by Floor Amendment No. 4 by Phillips on second reading, strike amended Section 49-g(h), Article III, Texas Constitution, and substitute the following:

(e-1) If the balance of the economic stabilization fund immediately following any transfers made in a fiscal year in accordance with Subsections (b) and (c) of this section is less than five percent of the total amount of general revenue appropriations for the then-current fiscal biennium, as authorized by the General Appropriations Act that constitutes this state's biennial budget, not later than the 90th day of that fiscal year the comptroller shall transfer to the economic stabilization fund the lesser of:

(1) an amount necessary to achieve an economic stabilization fund balance that is equal to the balance specified by this subsection from the one-fourth of the net revenue from taxes imposed on motor fuels used to propel motor vehicles over public roadways that is otherwise dedicated for the sole purpose of acquiring rights-of-way, constructing, and maintaining such public roadways, other than toll roads, as provided by Section 7-a, Article VIII, of this constitution; or

(2) one-half of that one-fourth portion of the net revenue from taxes imposed on motor fuels.

(e-2) The dedication provided by Section 7-a, Article VIII, of this constitution, does not apply to revenue transferred to the economic stabilization fund under Subsection (c-1) of this section.

(h) In preparing an estimate of anticipated revenues for a succeeding biennium as required by Article III, Section 49a, of this constitution, the comptroller shall estimate the amount of the transfers that will be made under Subsections (b), (c), and (e-1) [~~(d)~~, and ~~(e)~~] of this section. The comptroller shall deduct that amount from the estimate of anticipated revenues as if the transfers were made on August 31 of that fiscal year.

(3) In the SECTION of the resolution adding the temporary provision to the Texas Constitution, in Subsection (a) of that temporary provision, strike "used solely for" and substitute "used for transfer to the economic stabilization fund or for".

(4) In the SECTION of the resolution providing for the ballot proposition, strike "used solely for" and substitute "used for transfer to the economic stabilization fund or for".

REPRESENTATIVE SIMMONS: Members, I won't take much of your time, but I wanted to visit on this amendment that I put some information on your desk about. When we spoke earlier in the week, I had offered an amendment in the second reading that would have allowed that if we got below a certain level in the rainy day fund that some of the oil and gas severance tax revenue would go and help replenish the rainy day fund. That met some resistance, I think some legitimate resistance. I went back and reworked an amendment, and what this amendment says is that this is going—what will happen then is that if we go below a certain level in the rainy day fund, which would be 5 percent of general revenue. So, Chairman Turner, we went back and took out the feds funds number that we were concerned about that was in the cap. Then, a portion of the transportation money that we were diverting, or ending the diversion on, would go to help fill up the rainy day fund.

And so, I think, folks, that we are making some fundamental changes here to what we are doing. We are changing three major areas of funding for this state. We're changing education funding. We're changing transportation funding, and we're changing funding for the ESF. Those are really big issues. And, I am very concerned that we're essentially doing away with a funding source for the rainy day fund. And so, that's a big concern for me. I know we do not have the votes today to pass this amendment. Those of you who spoke on the amendment and voted on it last time, I'm going to pull this amendment down because I've talked

to enough people and I know we don't have the votes. But, I will tell you that it will be very hard for me to vote for this bill given the fact that we're totally doing away with the funding source for the rainy day fund.

HUBERTY: Ron, we talked, I think, on Monday. I mentioned to you the concern I had about the amendment, and I think Chairman Aycock and Chairman Otto did the same thing. When I was talking to Chairman Pickett earlier today specifically about this, my concern was clearly on—I think we were trying to fix this three-tiered problem here. Number one, stop the diversion. Number two, stop the bond. Great. But then, we have this educational thing. And so, my concern the first time around was based on the fact that—the concern that I think many of us had was that there was no limitation, so to speak. We were taking dedicated money from the gasoline tax, and there was no guarantee that that money could be replaced. We'd have to come up with some mechanism. And, I think that you would agree with me that that's kind of what your amendment did the first time. So, that was one of the reasons that I was unable to support it.

SIMMONS: Yes.

HUBERTY: But, this amendment, as I read it though, fixes that problem, doesn't it?

SIMMONS: Yes, it does. Yes, it totally fixes that. It removes any—the education funding would be guaranteed. It wouldn't touch any of that. If it did have an issue, it would go back and recapture a portion of that transportation money.

HUBERTY: Right, so, the point of fact is that we would need 100 votes to put this on, but we need 100 votes to tap into the ESF anyway, correct?

SIMMONS: That is correct. Yes.

HUBERTY: But, this would provide the comfort level. I think, the way that you were trying to explain it to me is that you were trying to make sure that there was a mechanism that outside, maybe, investors or people that, you know, look at our bonds that would want to look and have that a part of that.

SIMMONS: That's right. We'd have a future funding source that would be available if the fund got down to a point where we would need to put money in there.

HUBERTY: Correct. Are you going to request a vote on this amendment today?

SIMMONS: No, I'm going to pull this amendment down because I've checked—our friends across the aisle are not in favor of this amendment. I'm not sure why. I've certainly spent a lot of time talking to them the past few days. But, we do not have a two-thirds vote here for this, so I'm going to pull this amendment down.

REPRESENTATIVE ZEDLER: Representative Simmons, let me ask you this. Don't we require school districts to have a reserve fund?

SIMMONS: I believe school districts have a reserve fund.

ZEDLER: Yes, they do. We require them to have a reserve fund, don't we?

SIMMONS: I believe so, but I'm not 100 percent.

ZEDLER: And why is that?

SIMMONS: A reserve fund is a good thing to have for anybody, whether it's your business, whether it's your state, and I believe that most people want to have a reserve fund.

ZEDLER: Right, and what we're doing now is with this HJR is we're diverting funds that would normally be going into the economic stabilization fund, and it is no longer going to be going in there, isn't that right?

SIMMONS: Well, it won't divert funds from that per say; it'll change the revenue source for the economic stabilization fund. Right now, 75 percent of the oil and gas severance tax above a certain level go into the economic stabilization fund every year, every biennium. What we're doing under this HJR is, because we're ending the diversion from a portion of the gas tax, a portion of the oil and gas severance money will first go to make sure that we make up that diversion we eliminated to go into the all schools funds. Now, if there's some left over, which there should be if the oil and gas stays like it is today, it will still go into the rainy day fund. In fact, under current deals, about \$1.6 billion goes in there. Eight hundred million of that's needed for all school funds, so \$800 million would go into rainy day fund. I'm just concerned that that oil and gas tax revenue could get down to where it's only enough to fund the schools and nothing left for the rainy day fund.

ZEDLER: Exactly, and so, therefore, in essence no more money would be going into the economic stabilization fund. And what is the purpose of the economic stabilization fund?

SIMMONS: Well, it's to provide economic stabilization.

ZEDLER: And that is because we set the budget now, but it's for two years, isn't it?

SIMMONS: Yes, sir.

ZEDLER: And what this will hopefully prevent is if we have an economic downturn in the second year, so that we don't have to go after the budget with a meat axe, is that true?

SIMMONS: Yes, it's just like we just experienced this past year.

ZEDLER: That's exactly right.

SIMMONS: You know, another reason is that—another reason that I'm pulling this down is that I've had multiple senators tell me, including the lieutenant governor himself today, saying they will not pass a bill out of the senate that doesn't have a mechanism similar to this. I know that we need to get a bill over to them so that they can get to conference and do something together, and so I want to make sure that I give the best opportunity for this provision to be in there. And the best opportunity is not this amendment today, though I wish it was. But, I believe that, in fact, might hurt the ability for us to actually get it done in the long run.

PERRY: Mr. Simmons, you had Representative Huberty speak to you about concerns that were in the predecessor amendment that you made, but he made the comment that he thought this fixed those concerns. I heard you're going to pull the bill down because some of the other members possibly on the other side of the aisle were not in favor of it. I would ask you to leave the amendment up for that vote. The will of this house was 105 votes on the last bill that left here left with a floor. I think if your purpose is to get the bill off the floor today, I think you still have that opportunity with this amendment on. Without it, you literally are probably—I don't know where the numbers are, but I would humbly say that if—I think that Dan raised some parts that were mission-critical, but we have addressed those and you should leave the amendment up for a vote today. Because this bill is dead even anyway, but I would ask that you not withdraw it and give us that vote. So, would you be willing to un-withdraw, whatever the process is, to refile it with the clerk and have that vote on that amendment on the floor?

Amendment No. 1 was withdrawn.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business in the district:

Harless on motion of Patrick.

HJR 2 - (consideration continued)

REPRESENTATIVE TAYLOR: I rise in opposition to this amendment, this constitutional amendment. I supported the constitutional amendment we passed in the first legislative session because I thought it was appropriate in the way we had structured it. My concern here is twofold. First, the revenue stream that we have identified, the way Chairman Pickett has put this together, the first billion-one of revenue that comes from severance tax goes to general revenue. And then the next billion-two, about, you know, \$800 million goes into all school funds, and then approximately \$250 million, some number like that, ends up going into general revenue. Then money will start to flow into ESF. The problem then is that you have to have at least \$2.2 billion in severance tax revenue before one penny can go into the economic stabilization fund.

When you look at the history of the state over the past 30 years, there's only been six years that revenue going into the economic stabilization, that severance tax revenue, has been over \$2.2 billion. In other words, we're taking a very volatile revenue stream that goes up and down and fluctuates a lot and typically has been under \$2.2 billion, and we're saying that anything over, we're going to start giving money to the ESF. So, I think that we're really jeopardizing the amount of money that would go into the economic stabilization fund. While today, we are in a real renaissance and Texas' oil and natural gas production, certainly within a decade that will calm back down, the numbers will come back down, our severance tax revenue stream will fall below \$2.2 billion, and we will no longer have a way of replenishing the economic stabilization fund.

The second reason that I'm concerned is that this is not truly, ultimately, a long-term solution for transportation funding. This may provide a solution for the next decade, but it really doesn't provide a solution beyond that. And I think that we've really got to come up with some real answers for transportation. I'm disappointed that we're not taking up the SJR that we passed in the last special session. I was proud to vote for that; I thought it was a good piece of responsible legislation. This is not. And, with that, members, I urge you to vote against this constitutional amendment.

PICKETT: Members, this is a good vote for everybody to take. It may not be everything that you want today, but there is not a single member in here that can't go home and defend that we're ending one of the biggest diversions that we've had for years, and years, and years, and years; that we do something for transportation. Your vote means we are going to continue this discussion, we're going to give it to the senate, and give it the ability to live during this current special session. Mr. Speaker, I move passage.

HJR 2 was adopted by (Record 40): 108 Yeas, 25 Nays, 1 Present, not voting.

Yeas — Allen; Alvarado; Anchia; Ashby; Aycock; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Burnam; Callegari; Capriglione; Clardy; Collier; Cook; Cortez; Crownover; Darby; Davis, J.; Davis, S.; Deshotel; Dukes; Dutton; Eiland; Elkins; Farias; Farney; Fletcher; Geren; Giddings; Gonzales; González, M.; Gonzalez, N.; Guerra; Guillen; Gutierrez; Harper-Brown; Hernandez Luna; Herrero; Howard; Huberty; Hunter; Isaac; Johnson; Kacal; King, K.; King, S.; King, T.; Kleinschmidt; Klick; Kolkhorst; Kuempel; Larson; Lavender; Leach; Lewis; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Moody; Morrison; Muñoz; Murphy; Naishtat; Oliveira; Orr; Paddie; Patrick; Perez; Phillips; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Rodriguez, E.; Rodriguez, J.; Rose; Sanford; Sheets; Sheffield, J.; Sheffield, R.; Simmons; Smith; Smithee; Stephenson; Thompson, E.; Thompson, S.; Turner, C.; Turner, S.; Villalba; Villarreal; Vo; Walle; Workman; Wu; Zerwas.

Nays — Anderson; Carter; Craddick; Creighton; Dale; Flynn; Frullo; Gooden; Hughes; King, P.; Krause; Laubenberg; Miller, R.; Parker; Perry; Riddle; Ritter; Schaefer; Simpson; Stickland; Taylor; Toth; Turner, E.S.; White; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Canales; Fallon; Frank; Harless; Hilderbran; Otto.

Absent — Alonzo; Button; Coleman; Davis, Y.; Farrar; Goldman; Keffer; Nevárez; Springer.

STATEMENT OF VOTE

I was shown voting yes on Record No. 40. I intended to vote no.

R. Sheffield

REASON FOR VOTE

During the first special session, I eagerly voted for a measure that ended diversions from transportation funding, thereby infusing money into transportation, ensuring the funding commitment to public education, and protecting our economic stabilization fund. This measure passed with overwhelming bipartisan support.

On the second reading of **HJR 2** during the second special session, I supported this bill because it also ended diversions, added money to transportation, and protected school funding. However, **HJR 2** did not have the safeguards contained in the earlier measure to protect the ESF even though it would slow the amount going into it. I had hoped that a compromise would be reached on **HJR 2** by the time of third reading to include a floor or minimum balance that would be required for the ESF to maintain prior to any diversions, and I have talked with my state senator, Robert Nichols, about including such a floor in this proposed constitutional amendment. He strongly supports this position because it is sound fiscal policy and believes that the senate generally does, as well. The house author of the bill is strongly against this provision even being discussed in a conference committee between the house and senate.

For these reasons, it is consistent with my vote in the first special session not to support **HJR 2** in its current fashion as it makes its way to the senate. Unfortunately, many have called the insistence of a floor as "unnecessary" and "just a political statement." They are absolutely misguided, as being able to respond to natural disasters and avoid sharp cuts in funding is essential and certainly not a political gimmick. Having an adequate ESF balance prevents the legislature from making drastic cuts to public education and other constitutionally mandated services in periods of sharp revenue declines. It also allows us to appropriately and timely respond to natural disasters such as wildfires and hurricanes, which are prevalent in deep East Texas, as well as incidents such as the explosion in West, Texas, in which case the federal government decided to abandon its promises made under the lights of the press cameras.

As my record indicates, I believe in funding transportation, but doing so in a responsible manner. We can do it all. We have done it before, and I am confident that the conference committee will produce a proposal that will achieve these goals.

White

POSTPONED BUSINESS

The following bills were laid before the house as postponed business:

HB 16 ON THIRD READING

(by Pickett, Harper-Brown, and Phillips)

HB 16, A bill to be entitled An Act relating to the allocation of certain fuel-related tax revenue and certain motor vehicle sales, use, and rental tax revenue to the state highway fund and to the uses of that revenue.

HB 16 was read third time earlier today and was postponed until this time.

LEAVES OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business:

Goldman on motion of Simmons.

The following member was granted leave of absence for the remainder of today because of important business in the district:

Nevárez on motion of Collier.

HB 16 - (consideration continued)

Amendment No. 1

Representative Pickett offered the following amendment to **HB 16**:

Amend **HB 16** on third reading as follows:

(1) In SECTION 1(a) of the bill, strike amended Section 43.001(b)(3), Education Code, and substitute the following:

(3) the amounts transferred to the fund under Section 5(h), Article VII, Texas Constitution [~~one fourth of revenue derived from state gasoline and special fuels excise taxes as provided by law~~]; and

(2) In SECTION 1(g) of the bill, strike "to provide for certain revenue from motor fuel taxes" and substitute "to provide for revenue from motor fuel taxes".

(3) Each place the phrase appears in the bill, strike "Section 7-a(b), Article VIII, Texas Constitution" and substitute "Section 7-a, Article VIII, Texas Constitution".

Amendment No. 1 was adopted.

Amendment No. 2

Representatives Lozano, Oliveira, and Deshotel offered the following amendment to **HB 16**:

Amend **HB 16** on third reading by adding the following SECTION, appropriately numbered, to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION ____ . Section 55.002, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) The commission may use money from the Texas Mobility Fund to provide funding, including through a loan, for a port security project, a port transportation project, or a project eligible for funding under Subsection (c).

Amendment No. 2 was adopted. (Aycock and Kolkhorst recorded voting no.)

Amendment No. 3

Representative Howard offered the following amendment to **HB 16**:

Amend **HB 16** on third reading by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. (a) Section 162.102, Tax Code, is amended to read as follows:

Sec. 162.102. TAX RATE. Except as provided by Section 162.1026, the [The] gasoline tax rate is 20 cents for each net gallon or fractional part on which the tax is imposed under Section 162.101.

(b) Subchapter B, Chapter 162, Tax Code, is amended by adding Section 162.1026 to read as follows:

Sec. 162.1026. ANNUAL RATE CHANGE ACCORDING TO CONSUMER PRICE INDEX. (a) In this section:

(1) "Consumer price index" means the consumer price index for all urban consumers for all items and for all regions of the United States combined, as determined by the United States Department of Labor, Bureau of Labor Statistics, or, if that index is discontinued or superseded, a similar index selected or calculated by the comptroller.

(2) "Consumer price index percentage change" means the percentage increase or decrease in the consumer price index of a given state fiscal year from the consumer price index of the preceding state fiscal year.

(b) On January 1 of each year, the rate of the gasoline tax imposed under this subchapter is increased or decreased by a percentage that is equal to the consumer price index percentage change for the preceding fiscal year.

(c) Not later than November 1 of each year, the comptroller shall:

(1) compute the new tax rate as provided by this section;

(2) give the new tax rate to the secretary of state for publication in the Texas Register; and

(3) notify each license holder under this subchapter of the applicable new tax rate.

(c) Section 162.103(a), Tax Code, is amended to read as follows:

(a) A backup tax is imposed at the rate prescribed by Sections ~~Section~~ 162.102 and 162.1026 on:

(1) a person who obtains a refund of tax on gasoline by claiming the gasoline was used for an off-highway purpose, but actually uses the gasoline to operate a motor vehicle on a public highway;

(2) a person who operates a motor vehicle on a public highway using gasoline on which tax has not been paid;

(3) a person who sells to the ultimate consumer gasoline on which tax has not been paid and who knew or had reason to know that the gasoline would be used for a taxable purpose; and

(4) a person, other than a person exempted under Section 162.104, who acquires gasoline on which tax has not been paid from any source in this state.

(d) Section 162.202, Tax Code, is amended to read as follows:

Sec. 162.202. TAX RATE. Except as provided by Section 162.2026, the [The] diesel fuel tax rate is 20 cents for each net gallon or fractional part on which the tax is imposed under Section 162.201.

(e) Subchapter C, Chapter 162, Tax Code, is amended by adding Section 162.2026 to read as follows:

Sec. 162.2026. ANNUAL RATE CHANGE ACCORDING TO CONSUMER PRICE INDEX. (a) In this section:

(1) "Consumer price index" means the consumer price index for all urban consumers for all items and for all regions of the United States combined, as determined by the United States Department of Labor, Bureau of Labor Statistics, or, if that index is discontinued or superseded, a similar index selected or calculated by the comptroller.

(2) "Consumer price index percentage change" means the percentage increase or decrease in the consumer price index of a given state fiscal year from the consumer price index of the preceding state fiscal year.

(b) On January 1 of each year, the rate of the diesel fuel tax imposed under this subchapter is increased or decreased by a percentage that is equal to the consumer price index percentage change for the preceding fiscal year.

(c) Not later than November 1 of each year, the comptroller shall:

(1) compute the new tax rate as provided by this section;

(2) give the new tax rate to the secretary of state for publication in the Texas Register; and

(3) notify each license holder under this subchapter of the applicable new tax rate.

(f) Section 162.203(a), Tax Code, is amended to read as follows:

(a) A backup tax is imposed at the rate prescribed by Sections [Section] 162.202 and 162.2026 on:

(1) a person who obtains a refund of tax on diesel fuel by claiming the diesel fuel was used for an off-highway purpose, but actually uses the diesel fuel to operate a motor vehicle on a public highway;

(2) a person who operates a motor vehicle on a public highway using diesel fuel on which tax has not been paid;

(3) a person who sells to the ultimate consumer diesel fuel on which a tax has not been paid and who knew or had reason to know that the diesel fuel would be used for a taxable purpose; and

(4) a person, other than a person exempted under Section 162.204, who acquires diesel fuel on which tax has not been paid from any source in this state.

(g) Section 162.301(b), Tax Code, is amended to read as follows:

(b) Except as provided by Section 162.3011, the [The] liquefied gas tax rate is 15 cents a gallon.

(h) Subchapter D, Chapter 162, Tax Code, is amended by adding Section 162.3011 to read as follows:

Sec. 162.3011. ANNUAL RATE CHANGE ACCORDING TO CONSUMER PRICE INDEX. (a) In this section:

(1) "Consumer price index" means the consumer price index for all urban consumers for all items and for all regions of the United States combined, as determined by the United States Department of Labor, Bureau of Labor Statistics, or, if that index is discontinued or superseded, a similar index selected or calculated by the comptroller.

(2) "Consumer price index percentage change" means the percentage increase or decrease in the consumer price index of a given state fiscal year from the consumer price index of the preceding state fiscal year.

(b) On January 1 of each year, the rate of the liquefied gas tax imposed under this subchapter and the liquefied gas tax decal rates specified in Section 162.305 are increased or decreased by a percentage that is equal to the consumer price index percentage change for the preceding fiscal year.

(c) Not later than November 1 of each year, the comptroller shall:

(1) compute the new tax rate and rates under Section 162.305 as provided by this section;

(2) give the new rates to the secretary of state for publication in the Texas Register; and

(3) notify each license holder under this subchapter of the applicable new rates.

(i) Section 162.305, Tax Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding the rates specified under Subsections (a) and (c), the comptroller shall adjust the liquefied gas tax decal rates as required by Section 162.3011, and a person required to prepay a tax under this section shall pay that tax according to the adjusted rates.

(j) Section 162.353(a), Tax Code, as effective September 1, 2013, is amended to read as follows:

(a) Except as provided by Section 162.3535, the ~~[The]~~ rate of the tax under Sections 162.351 and 162.352 is 15 cents for each:

(1) gasoline gallon equivalent or fractional part of compressed natural gas or liquefied natural gas; or

(2) diesel gallon equivalent or fractional part of compressed natural gas or liquefied natural gas.

(k) Subchapter D-1, Tax Code, as effective September 1, 2013, is amended by adding Section 162.3535 to read as follows:

Sec. 162.3535. ANNUAL RATE CHANGE ACCORDING TO CONSUMER PRICE INDEX. (a) In this section:

(1) "Consumer price index" means the consumer price index for all urban consumers for all items and for all regions of the United States combined, as determined by the United States Department of Labor, Bureau of Labor Statistics, or, if that index is discontinued or superseded, a similar index selected or calculated by the comptroller.

(2) "Consumer price index percentage change" means the percentage increase or decrease in the consumer price index of a given state fiscal year from the consumer price index of the preceding state fiscal year.

(b) On January 1 of each year, the rate of the tax imposed under Sections 162.351 and 162.352 is increased or decreased by a percentage that is equal to the consumer price index percentage change for the preceding fiscal year.

(c) Not later than November 1 of each year, the comptroller shall:

(1) compute the new tax rate as provided by this section;

(2) give the new tax rate to the secretary of state for publication in the Texas Register; and

(3) notify each license holder under this subchapter of the applicable new tax rate.

(1) Section 162.354(a), Tax Code, as effective September 1, 2013, is amended to read as follows:

(a) A backup tax is imposed at the rate prescribed by Sections ~~[Section]~~ 162.353 and 162.3535 on:

(1) a person who obtains a refund of tax on compressed natural gas or liquefied natural gas by claiming the fuel was used for an exempt purpose, but actually uses the fuel for a taxable purpose;

(2) a person who operates a motor vehicle on a public highway using compressed natural gas or liquefied natural gas on which tax has not been paid;

(3) a person who sells compressed natural gas or liquefied natural gas that is delivered into the fuel supply tank of a motor vehicle, on which tax was not paid, and who knew or had reason to know that the fuel would be used for a taxable purpose; and

(4) a person who delivers into the fuel supply tank of a motor vehicle compressed natural gas or liquefied natural gas on which tax was not paid and who knew or had reason to know that the fuel would be used for a taxable purpose.

(m) Notwithstanding Sections 162.1026(c), 162.2026(c), 162.3011(c), and 162.3535(c), Tax Code, as added by this section, the comptroller shall determine the initial new tax rates, give the rates to the secretary of state, and notify each license holder, as required by this section, not later than December 1, 2013. The comptroller may adopt rules and procedures in anticipation of this Act taking effect.

Amendment No. 3 was withdrawn.

HB 16, as amended, was passed by (Record 41): 124 Yeas, 11 Nays, 1 Present, not voting.

Yeas — Allen; Alvarado; Anchia; Anderson; Ashby; Aycok; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Callegari; Capriglione; Clardy; Collier; Cook; Cortez; Creighton; Crownover; Dale; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Elkins; Farias; Farney; Fletcher; Frullo; Geren; Giddings; Gonzales; González, M.; Gonzalez, N.; Gooden; Guerra; Guillen; Gutierrez; Harper-Brown; Hernandez Luna; Herrero; Howard; Huberty; Hunter; Isaac; Johnson; Kacal; Keffer; King, K.; King, P.; King, S.; King, T.; Kleinschmidt; Klick; Kolkhorst; Krause; Kuempel; Larson; Laubenberg; Lavender; Leach; Lewis; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Naishtat; Oliveira; Orr; Paddie; Parker; Patrick; Perez; Perry; Phillips; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Rodriguez, E.; Rodriguez, J.; Rose; Sanford; Schaefer; Sheets;

Sheffield, J.; Sheffield, R.; Simmons; Smith; Smithee; Stephenson; Thompson, E.; Thompson, S.; Turner, C.; Turner, E.S.; Turner, S.; Villalba; Villarreal; Vo; Walle; White; Workman; Wu; Zerwas.

Nays — Burnam; Carter; Craddick; Flynn; Hughes; Ritter; Simpson; Stickland; Taylor; Toth; Zedler.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Canales; Fallon; Frank; Goldman; Harless; Hilderbran; Nevárez; Otto.

Absent — Alonzo; Button; Coleman; Farrar; Springer.

STATEMENTS OF VOTE

I was shown voting no on Record No. 41. I intended to vote yes.

Flynn

I was shown voting no on Record No. 41. I intended to vote yes.

Hughes

I was shown voting yes on Record No. 41. I intended to vote no.

P. King

I was shown voting no on Record No. 41. I intended to vote yes.

Zedler

RESOLUTIONS CALENDAR

The chair laid before the house the following resolutions on committee report:

HCR 3

(by E. S. Turner, Flynn, Anderson, Lavender, R. Miller, et al.)

HCR 3, Directing the governor of the State of Texas to award the Texas Legislative Medal of Honor posthumously to Audie Murphy.

HCR 3 - REMARKS

REPRESENTATIVE E. S. TURNER: Today I want to rise to fulfill a promise our nation has made to our military men and women, as all of our members gather with us, and this is our oath to be grateful for the servicemen and women and never forget their sacrifice. And I ask you to stand with me today and reaffirm our commitment, although long overdue, to our most highly decorated World War II combat soldier, Mr. Audie L. Murphy, by posthumously awarding him the Texas Legislative Medal of Honor. Although he received 33 decorations, awards, and citations, including the Congressional Medal of Honor, the Distinguished Service Cross, two Silver Stars, the Legion of Merit, two Bronze Stars, and three Purple Hearts, the Texas Legislature has yet to award Major Murphy the Texas Legislative Medal of Honor. But today, with all of your help, we can change that. On May 28, 1971 we lost this great American hero to a tragic plane crash. Fortunately, with the efforts of people like Mr. David Phillips, the

Murphy family, the Audie Murphy Memorial, and the thousands of supporters all over the world, Audie Murphy's legacy lives on. Now it's time for the Texas Legislature to do our part in remembering and honoring this very brave man. Please vote in favor of directing the governor to posthumously award Audie L. Murphy the Texas Legislative Medal of Honor.

HCR 3 was adopted by (Record 42): 135 Yeas, 0 Nays, 1 Present, not voting.

Yeas — Allen; Alonzo; Alvarado; Anchia; Anderson; Ashby; Aycock; Bell; Bohac; Bonnen, D.; Bonnen, G.; Branch; Burkett; Burnam; Callegari; Capriglione; Carter; Clardy; Coleman; Collier; Cook; Cortez; Craddick; Creighton; Crownover; Dale; Darby; Davis, J.; Davis, S.; Davis, Y.; Deshotel; Dukes; Dutton; Eiland; Elkins; Farias; Farney; Farrar; Fletcher; Flynn; Frullo; Geren; Giddings; Gonzales; González, M.; Gonzales, N.; Gooden; Guerra; Guillen; Gutierrez; Harper-Brown; Hernandez Luna; Herrero; Howard; Huberty; Hughes; Hunter; Isaac; Johnson; Kacal; King, K.; King, P.; King, S.; King, T.; Kleinschmidt; Klick; Kolkhorst; Krause; Kuempel; Larson; Laubenberg; Lavender; Leach; Lewis; Longoria; Lozano; Lucio; Márquez; Martinez; Martinez Fischer; McClendon; Menéndez; Miles; Miller, D.; Miller, R.; Moody; Morrison; Muñoz; Murphy; Naishtat; Oliveira; Orr; Paddie; Parker; Patrick; Perez; Perry; Phillips; Pickett; Pitts; Price; Raney; Ratliff; Raymond; Reynolds; Riddle; Ritter; Rodriguez, E.; Rodriguez, J.; Rose; Sanford; Schaefer; Sheets; Sheffield, R.; Simpson; Smith; Smithee; Stephenson; Stickland; Taylor; Thompson, E.; Thompson, S.; Toth; Turner, C.; Turner, E.S.; Turner, S.; Villalba; Villarreal; Vo; Walle; White; Workman; Wu; Zedler; Zerwas.

Present, not voting — Mr. Speaker(C).

Absent, Excused — Canales; Fallon; Frank; Goldman; Harless; Hilderbran; Nevárez; Otto.

Absent — Button; Keffer; Sheffield, J.; Simmons; Springer.

STATEMENTS OF VOTE

When Record No. 42 was taken, I was in the house but away from my desk. I would have voted yes.

J. Sheffield

When Record No. 42 was taken, I was in the house but away from my desk. I would have voted yes.

Simmons

REMARKS ORDERED PRINTED

Representative Leach moved to print remarks by Representative E. S. Turner.

The motion prevailed.

(Anchia in the chair)

RESOLUTIONS ADOPTED

Representative Gutierrez moved to suspend all necessary rules to take up and consider at this time the following congratulatory resolutions:

HR 96 (by N. Gonzalez), Congratulating David Courreges on being named a 2013 Distinguished Law Graduate by the St. Mary's University School of Law and the Law Alumni Association.

HR 97 (by Sanford), Congratulating Walker Yates of Frisco on his first birthday.

HR 98 (by Raymond), Commending the work of the Kristine Elizabeth Meza Memorial Foundation.

HR 100 (by Gutierrez), Congratulating Petra Margarita Gonzales of Bexar County on her 90th birthday.

The motion to suspend all necessary rules prevailed, and the resolutions were adopted.

HR 120 - ADOPTED (by Naishtat)

Representative Naishtat moved to suspend all necessary rules to take up and consider at this time **HR 120**.

The motion prevailed.

The following resolution was laid before the house:

HR 120, In memory of activist Anne C. McAfee of Austin.

HR 120 was unanimously adopted by a rising vote.

On motion of Representative E. Rodriguez, the names of all the members of the house were added to **HR 120** as signers thereof.

COMMITTEES GRANTED PERMISSION TO MEET

Pursuant to Rule 4, Section 9 of the House Rules, Representative D. Bonnen requested permission for all committees and subcommittees to meet while the house is in session, during bill referral and other administrative duties, pursuant to their committee postings.

Permission to meet was granted.

HR 90 - ADOPTED (by Guerra)

Representative Guerra moved to suspend all necessary rules to take up and consider at this time **HR 90**.

The motion prevailed.

The following resolution was laid before the house:

HR 90, In memory of David Haddon Hockema of Edinburg.

HR 90 was unanimously adopted by a rising vote.

On motion of Representative E. S. Turner, the names of all the members of the house were added to **HR 90** as signers thereof.

LEAVE OF ABSENCE GRANTED

The following member was granted leave of absence for the remainder of today because of important business in the district:

Springer on motion of Isaac.

PROVIDING FOR RECESS

At 3:54 p.m., Representatives Crownover and D. Bonnen moved that, at the conclusion of the reading of bills and resolutions on first reading and referral to committees, the signing of bills and resolutions, and the receipt of messages from the senate, the house recess until 2 p.m. Thursday, July 25 in memory of Casey Whitley Damen of Hidalgo County and Sister Mary Antoinette Peltier of Victoria.

The motion prevailed.

(Gonzales in the chair)

MESSAGE FROM THE SENATE

A message from the senate was received at this time (see the addendum to the daily journal, Messages from the Senate, Message No. 2).

RECESS

In accordance with a previous motion, the house, at 1:59 p.m. Thursday, July 25, recessed until 2 p.m. today.

ADDENDUM

SIGNED BY THE SPEAKER

The following bills and resolutions were today signed in the presence of the house by the speaker:

House List No. 2

HCR 4, HCR 11

MESSAGES FROM THE SENATE

The following messages from the senate were today received by the house:

Message No. 1

MESSAGE FROM THE SENATE

SENATE CHAMBER

Austin, Texas

Thursday, July 18, 2013 - 1

The Honorable Speaker of the House

House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 16 Giddings SPONSOR: Ellis
Designating July 18, 2013, as Nelson Mandela International Day in Texas.

HCR 18 King, Susan SPONSOR: Fraser
Commemorating the delivery of the final C-130J Super Hercules to Dyess Air Force Base.

Respectfully,
Patsy Spaw
Secretary of the Senate

Message No. 2

MESSAGE FROM THE SENATE
SENATE CHAMBER
Austin, Texas
Wednesday, July 24, 2013

The Honorable Speaker of the House
House Chamber
Austin, Texas

Mr. Speaker:

I am directed by the senate to inform the house that the senate has taken the following action:

THE SENATE HAS PASSED THE FOLLOWING MEASURES:

HCR 7 Larson SPONSOR: Van de Putte
In memory of William Douglas Jefferson of San Antonio.

HCR 14 Walle SPONSOR: Garcia
Recognizing Nancy Blackwell on her retirement from the Aldine Independent School District.

HJR 2 Pickett SPONSOR: Nichols
Proposing a constitutional amendment to provide for revenue from motor fuel taxes to be used solely for constructing, maintaining, and acquiring rights-of-way for certain public roadways and to provide for the transfer of certain general revenue to the economic stabilization fund and the available school fund.
(Amended)

Respectfully,
Patsy Spaw
Secretary of the Senate

APPENDIX

ENGROSSED

July 16 - HCR 16, HCR 18

ENROLLED

July 15 - HB 2, HCR 4, HCR 11

SENT TO THE GOVERNOR

July 15 - HB 2

