

Amend **CSHB 3540** (Senate committee printing) as follows:

(1) In ARTICLE 6 of the bill, in the heading of PART B of the article (page 10, line 53), strike "BENEFITS FOR" and substitute "RETIREMENT SYSTEM CONTRIBUTIONS AND BENEFITS FOR".

(2) In PART B of ARTICLE 6 of the bill, insert the following new SECTION, appropriately numbered, and renumber subsequent SECTIONS of the PART appropriately:

SECTION 6B.\_\_\_. Section 825.404(a), Government Code, is amended to read as follows:

(a) During each fiscal year, the state shall contribute to the retirement system an amount equal to at least six and not more than eight percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

(3) Strike ARTICLE 10 of the bill (page 14, line 5, through page 15, line 19) and renumber subsequent ARTICLES accordingly.

(4) Strike PART A of ARTICLE 11 of the bill (page 15, line 21, through page 16, line 27), and substitute the following:

PART A. STATE SALES TAX EXEMPTIONS

SECTION 11A.01. Section 151.326(a), Tax Code, is amended to read as follows:

(a) The sale of an article of clothing or footwear designed to be worn on or about the human body is exempted from the taxes imposed by this chapter if:

(1) the sales price of the article is less than \$100; and

(2) the sale takes place during a period:

(A) beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight on the following Sunday; or

(B) beginning at 12:01 a.m. on the first Friday in December and ending at 12 midnight on the following Sunday.

SECTION 11A.02. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3211 to read as follows:

Sec. 151.3211. BOOKS PURCHASED BY UNIVERSITY AND COLLEGE STUDENTS FOR LIMITED PERIOD. (a) The sale of a book is exempted from the taxes imposed by this chapter if:

(1) the book is bought by a full-time or part-time student enrolled at an institution of higher education as defined by Section 61.003, Education Code, or a private or independent college or university that is located in this state and that is accredited by a recognized accrediting agency under Section 61.003, Education Code; and

(2) the sale takes place during a period:

(A) beginning at 12:01 a.m. on the second Friday in August and ending at 12 midnight on the second following Sunday;  
or

(B) beginning at 12:01 a.m. on the second Friday in January and ending at 12 midnight on the second following Sunday.

(b) A person may establish that the person is a full-time or part-time student by presenting a valid student identification card.

SECTION 11A.03. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.327 to read as follows:

Sec. 151.327. SCHOOL SUPPLIES BEFORE START OF SCHOOL. (a) The sale or storage, use, or other consumption of a school supply, including a backpack, is exempted from the taxes imposed by this chapter if the school supply is purchased:

(1) for use by a student in a class in a public or private elementary or secondary school;

(2) during the period described by Section 151.326(a)(2); and

(3) for a sales price of less than \$100 per item.

(b) The comptroller shall adopt rules specifying the school supplies that are exempt from taxation under this section.

(c) The exemption provided by this section does not apply to the purchase of a textbook.

SECTION 11A.04. The change in law made by this part does not affect tax liability accruing before the effective date of this part. That liability continues in effect as if this part had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability of those taxes.

SECTION 11A.05. Except as otherwise provided by this part, this part takes effect July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for effect on that date, this part takes effect October 1, 2005.

(5) Strike the heading to PART E of ARTICLE 11 of the bill

(page 19, line 11) and substitute the following:

ARTICLE 12. FRANCHISE TAX

(6) Strike existing SECTION 11E.01 of Article 11 of the bill (page 19, lines 12-25), and substitute the following:

PART A. CORPORATE OWNERSHIP IN PARTNERSHIPS

SECTION 12A.01. Section 113.001, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) Any tax, interest, or penalties due to the state under Chapter 171 by a person who is subject to that tax by application of Section 171.001(d) are additionally secured by a lien on the person's interest in the partnership doing business in this state whose activities cause the person to be subject to that tax, including a general or limited partnership interest that the person is considered to own under Sections 171.001(e) and (f).

SECTION 12A.02. Section 171.001(b), Tax Code, is amended by adding Subdivisions (6-a) and (6-b) to read as follows:

(6-a) "Partner" includes a beneficiary in a trust.

(6-b) "Partnership" includes a partnership, a joint venture, and a trust.

SECTION 12A.03. Section 171.001, Tax Code, is amended by adding Subsections (d), (e), (f), (g), and (h) to read as follows:

(d) For purposes of Subsection (a), a corporation does business in this state if the corporation is a foreign corporation and:

(1) holds a partnership interest, including an interest as an assignee, as a general partner in a general partnership that is doing business in this state;

(2) holds a partnership interest, including an interest as an assignee, as a general partner in a limited partnership that is doing business in this state; or

(3) holds a controlling interest in a partnership, including an interest as an assignee, as a limited partner in a limited partnership that is doing business in this state.

(e) For purposes of Subsection (d), a partner who owns an interest in an upper tier partnership is considered to be both a partner in the upper tier partnership and a partner in each lower tier partnership.

(f) For purposes of Subsection (d)(3), a limited partner is considered to hold a controlling interest if any related party owns a controlling interest, directly or indirectly, in the partnership. In this subsection, "controlling interest" and "related party" have the meanings assigned those terms by Section 171.1001.

(g) If a corporate partner asserts that the tax imposed under this chapter violates the United States Constitution or federal law because of the application of Subsection (d), the franchise tax is imposed on the partnership doing business in this state and the franchise tax liability of the partnership shall be calculated as provided by Subsection (h).

(h) For purposes of Subsection (g), reportable federal taxable income for a partnership is the partnership's income as an entity, to the extent that the partnership is owned directly or indirectly by a corporation, as determined under rules adopted by the comptroller using principles similar to the standards applied to a corporation.

SECTION 12A.04. Section 171.1032(c), Tax Code, is amended to read as follows:

(c) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture in which the corporation directly or indirectly owns an interest [of which the corporation is a part] apportioned to this state as though the corporation directly earned the receipts[, including receipts from business done with the corporation]. A corporation that owns an interest in an upper tier partnership is considered to be a partner in both the upper tier partnership and each lower tier partnership, and the corporation's share of the gross receipts of each partnership of which it is a partner is computed and apportioned to this state as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 12A.05. Section 171.1051(d), Tax Code, is amended to read as follows:

(d) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross

receipts of each partnership and joint venture in which the corporation directly or indirectly owns an interest [of which the corporation is a part]. A corporation that owns an interest in an upper tier partnership is considered to be a partner in both the upper tier partnership and each lower tier partnership, and the corporation's share of the gross receipts of each partnership of which it is a partner is computed as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 12A.06. Section 171.110, Tax Code, is amended by adding Subsection (d-1) to read as follows:

(d-1) In computing net taxable earned surplus, a corporation shall include the corporation's share of a partnership's items of income or loss, without regard to whether the partnership is taxed as a corporation for federal income tax purposes.

SECTION 12A.07. Section 171.1121, Tax Code, is amended by adding Subsection (f) to read as follows:

(f) A corporation that owns an interest in an upper tier partnership is considered to be a partner in both the upper tier partnership and each lower tier partnership, and the corporation's share of the gross receipts of each partnership of which it is a partner is computed and apportioned to this state as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 12A.08. This part takes effect September 1, 2005, and applies to reports originally due on or after that date.

#### PART B. APPLICATION TO PARTNERSHIPS

SECTION 12B.01. (a) This part takes effect only if a court enters a final judgment that the tax imposed under Chapter 171, Tax Code, violates the United States Constitution because of the application of Section 171.001(d), Tax Code.

(b) This part takes effect on the earlier of the date that the final judgment under Subsection (a) of this section is upheld on appeal without any possibility of further appeal or is not appealed and is no longer subject to appeal, and applies to a report originally due on or after that date.

SECTION 12B.02. Section 113.001, Tax Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) Any tax, interest, or penalties due to the state under Chapter 171 by a person who is subject to that tax by application of Section 171.001(a)(3) are additionally secured by a lien on the person's interest in the partnership doing business in this state whose activities cause the person to be subject to that tax.

SECTION 12B.03. Section 171.001(a), Tax Code, is amended to read as follows:

(a) A franchise tax is imposed on:

(1) each corporation that does business in this state or that is chartered in this state; ~~[and]~~

(2) each limited liability company that does business in this state or that is organized under the laws of this state; and

(3) each partnership that does business in this state and that is owned directly or indirectly by a corporation, to the extent the partnership is not owned by a natural person.

SECTION 12B.04. Section 171.001(b)(3), Tax Code, is amended to read as follows:

(3) "Corporation" includes:

(A) a limited liability company, as defined under the Texas Limited Liability Company Act;

(B) a savings and loan association; ~~[and]~~

(C) a banking corporation; and

(D) a partnership, to the extent appropriate for purposes of the administration, collection, and enforcement of the tax under this chapter as it is imposed on partnerships.

SECTION 12B.05. Section 171.1032(c), Tax Code, is amended to read as follows:

(c) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture of which the corporation is a part apportioned to this state as though the corporation directly earned the receipts, including receipts from business done with the corporation.

SECTION 12B.06. Section 171.1051(d), Tax Code, is amended to read as follows:

(d) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture of which the corporation is a part.

SECTION 12B.07. Section 171.110, Tax Code, is amended by adding Subsection (d-2) to read as follows:

(d-2) Reportable federal taxable income for a partnership is the partnership's income as an entity, to the extent that the partnership is not owned by a natural person, as determined under rules adopted by the comptroller using principles similar to the standards applied to a corporation.

SECTION 12B.08. Subchapter F, Chapter 171, Tax Code, is amended by adding Section 171.2515 to read as follows:

Sec. 171.2515. FORFEITURE OF RIGHT OF PARTNERSHIP TO TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the same reasons and using the same procedures the comptroller uses in relation to the forfeiture of the corporate privileges of a corporation, forfeit the right of a partnership subject to a tax imposed by this chapter to transact business in this state.

(b) The provisions of this subchapter, including Section 171.255, that apply to the forfeiture of corporate privileges apply to the forfeiture of a partnership's right to transact business in this state.

SECTION 12B.09. The following provisions of the Tax Code are repealed:

- (1) Section 113.001(c);
- (2) Sections 171.001(d), (e), (f), (g), and (h);
- (3) Section 171.110(d-1); and
- (4) Section 171.1121(f).

SECTION 12B.10. (a) For a partnership becoming subject to the franchise tax under this part, income or losses and related gross receipts occurring before one year before the effective date of this part may not be considered for purposes of the earned surplus component or for apportionment purposes for the taxable capital component.

(b) The comptroller shall adopt rules relating to establishing the applicable reporting periods for partnerships



becoming subject to the franchise tax under this part.

(7) Before existing SECTION 11E.02 (page 19, between lines 25 and 26), insert the following:

PART C. ADD-BACK OF CERTAIN PAYMENTS

(8) Renumber existing SECTIONS 11E.02 and 11E.03 as SECTIONS 12C.01 and 12C.02.

(9) Between existing SECTIONS 11E.03 and 11E.04 of the bill (page 20, between lines 67 and 68), insert the following:

PART D. TRANSITIONAL PROVISIONS

(10) Renumber existing SECTION 11E.04 as SECTION 12D.01.

(11) Renumber subsequent ARTICLES accordingly.

(12) Add the following appropriately lettered PARTS to existing Article 13 of the bill and reletter subsequent PARTS accordingly:

PART \_\_. USE OF MONEY IN COASTAL PROTECTION FUND

SECTION \_\_.01. Section 40.152, Natural Resources Code, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Subsection (a)(9) and the other provisions of this subchapter, the legislature may appropriate to the General Land Office for implementation of the coastal management program under Subchapter F, Chapter 33, and for erosion response projects under Subchapter H, Chapter 33, money from the fund in an amount that exceeds the amount of interest accruing to the fund annually.

PART \_\_. SYSTEM BENEFIT FUND

SECTION \_\_.01. Section 39.903(h), Utilities Code, is amended to read as follows:

(h) The commission shall adopt rules for a retail electric provider to determine a reduced rate for eligible customers to be discounted off the standard retail service package as approved by the commission under Section 39.106, or the price to beat established by Section 39.202, whichever is lower. Municipally owned utilities and electric cooperatives shall establish a reduced rate for eligible customers to be discounted off the standard retail service package established under Section 40.053 or 41.053, as appropriate. The reduced rate for a retail electric provider shall result in a total charge that is at least 10 percent and, if

sufficient money in the system benefit fund is available, up to 20 percent, lower than the amount the customer would otherwise be charged. To the extent the system benefit fund is insufficient to fund the initial 10 percent rate reduction, the commission may increase the fee to an amount not more than 65 cents per megawatt hour, as provided by Subsection (b). If the fee is set at 65 cents per megawatt hour or if the commission determines that appropriations are insufficient to fund the 10 percent rate reduction, the commission may reduce the rate reduction to less than 10 percent. For a municipally owned utility or electric cooperative, the reduced rate shall be equal to an amount that can be fully funded by that portion of the nonbypassable fee proceeds paid by the municipally owned utility or electric cooperative that is allocated to the utility or cooperative by the commission under Subsection (e) for programs for low-income customers of the utility or cooperative. The reduced rate for municipally owned utilities and electric cooperatives under this section is in addition to any rate reduction that may result from local programs for low-income customers of the municipally owned utilities or electric cooperatives.

(13) Strike existing Article 15 of the bill (page 29, line 66, through page 30, line 49) and renumber subsequent ARTICLES accordingly.