

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Gonzalez Toureilles

H.B. No. 3144

A BILL TO BE ENTITLED

AN ACT

relating to an exemption from the sales and use tax for parts for certain machinery and equipment used in agricultural operations and for aircraft used in connection with agriculture.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 151.316(a), Tax Code, is amended to read as follows:

(a) The following items are exempted from the taxes imposed by this chapter:

(1) horses, mules, and work animals;

(2) animal life the products of which ordinarily constitute food for human consumption;

(3) feed for farm and ranch animals;

(4) feed for animals that are held for sale in the regular course of business;

(5) seeds and annual plants the products of which:

(A) ordinarily constitute food for human consumption;

(B) are to be sold in the regular course of business; or

(C) are used to produce feed for animals exempted by this section;

(6) fertilizers, fungicides, insecticides, herbicides, defoliants, and desiccants exclusively used or

1 employed on a farm or ranch in the production of:

2 (A) food for human consumption;

3 (B) feed for animal life; or

4 (C) other agricultural products to be sold in the  
5 regular course of business;

6 (7) machinery and equipment exclusively used or  
7 employed on a farm or ranch in the building or maintaining of roads  
8 or water facilities or in the production of:

9 (A) food for human consumption;

10 (B) grass;

11 (C) feed for animal life; or

12 (D) other agricultural products to be sold in the  
13 regular course of business;

14 (8) machinery and equipment exclusively used in, and  
15 pollution control equipment required as a result of, the  
16 processing, packing, or marketing of agricultural products by an  
17 original producer at a location operated by the original producer  
18 for processing, packing, or marketing the producer's own products  
19 if:

20 (A) 50 percent or more of the products processed,  
21 packed, or marketed at or from the location are produced by the  
22 original producer and not purchased or acquired from others; and

23 (B) the producer does not process, pack, or  
24 market for consideration any agricultural products that belong to  
25 other persons in an amount greater than five percent of the total  
26 agricultural products processed, packed, or marketed by the  
27 producer; ~~and~~

1           (9) ice exclusively used by commercial fishing boats  
2 in the storing of aquatic species including but not limited to  
3 shrimp, other crustaceans, finfish, mollusks, and other similar  
4 creatures;

5           (10) tangible personal property, including a tire,  
6 sold or used to be installed as a component part of a motor vehicle,  
7 machinery, or other equipment exclusively used or employed on a  
8 farm or ranch in the building or maintaining of roads or water  
9 facilities or in the production of:

10                   (A) food for human consumption;

11                   (B) grass;

12                   (C) feed for animal life; or

13                   (D) other agricultural products to be sold in the  
14 regular course of business; and

15           (11) machinery and equipment exclusively used in an  
16 agricultural aircraft operation, as defined by 14 C.F.R. Section  
17 137.3.

18           SECTION 2. Section 151.328, Tax Code, is amended by  
19 amending Subsections (a) and (b) and adding Subsection (h) to read  
20 as follows:

21           (a) Aircraft are exempted from the taxes imposed by this  
22 chapter if:

23                   (1) sold to a person using the aircraft as a  
24 certificated or licensed carrier of persons or property;

25                   (2) sold to a person who:

26                           (A) has a sales tax permit issued under this  
27 chapter; and

1 (B) uses the aircraft for the purpose of  
2 providing flight instruction that is:

3 (i) recognized by the Federal Aviation  
4 Administration;

5 (ii) under the direct or general  
6 supervision of a flight instructor certified by the Federal  
7 Aviation Administration; and

8 (iii) designed to lead to a pilot  
9 certificate or rating issued by the Federal Aviation Administration  
10 or otherwise required by a rule or regulation of the Federal  
11 Aviation Administration;

12 (3) sold to a foreign government; [~~or~~]

13 (4) sold in this state to a person for use and  
14 registration in another state or nation before any use in this state  
15 other than flight training in the aircraft and the transportation  
16 of the aircraft out of this state; or

17 (5) sold in this state to a person for use exclusively  
18 in connection with an agricultural use, as defined by Section  
19 23.51, and used for:

20 (A) predator control;

21 (B) wildlife or livestock capture;

22 (C) wildlife or livestock surveys;

23 (D) census counts of wildlife or livestock;

24 (E) animal or plant health inspection services;

25 or

26 (F) crop dusting, pollination, or seeding.

27 (b) Repair, remodeling, and maintenance services to

1 aircraft, including an engine or other component part of aircraft,  
2 operated by a person described by Subsection (a)(1), ~~(a)(2)~~,  
3 or (a)(5) are exempted from the taxes imposed by this chapter.

4 (h) For purposes of the exemption under Subsection (a)(5),  
5 an aircraft is considered to be for use exclusively in connection  
6 with an agricultural use if 95 percent of the use of the aircraft is  
7 for a purpose described by Subsections (a)(5)(A) through (F).  
8 Travel of less than 30 miles each way to a location to perform a  
9 service described by Subsections (a)(5)(A) through (F) does not  
10 disqualify an aircraft from the exemption under Subsection (a)(5).  
11 A person who claims an exemption under Subsection (a)(5) must  
12 maintain and make available to the comptroller flight records for  
13 all uses of the aircraft.

14 SECTION 3. The change in law made by this Act by the  
15 amendment of Section 151.316(a), Tax Code, does not affect tax  
16 liability accruing before the effective date of this Act. That  
17 liability continues in effect as if this Act had not been enacted,  
18 and the former law is continued in effect for the collection of  
19 taxes due and for civil and criminal enforcement of the liability  
20 for those taxes.

21 SECTION 4. The changes in law made by this Act to Section  
22 151.328, Tax Code, are a clarification of existing law and do not  
23 imply that the former law may be construed as inconsistent with the  
24 law as amended by this Act.

25 SECTION 5. This Act takes effect September 1, 2009.

# ADOPTED

MAY 27 2009

*Atty. Gen. Paul*  
Secretary of the Senate

By: *Sliger*

H.B. No. 3144

Substitute the following for H.B. No. 3144:

By: *Sliger*

C.S. H.B. No. 3144

## A BILL TO BE ENTITLED

1 AN ACT

2 relating to an exemption from the sales and use tax for property  
3 used in agricultural operations and for aircraft used in  
4 connection with agriculture.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 151.316(a), Tax Code, is amended  
7 to read as follows:

8 (a) The following items are exempted from the taxes  
9 imposed by this chapter:

10 (1) horses, mules, and work animals;

11 (2) animal life the products of which ordinarily  
12 constitute food for human consumption;

13 (3) feed for farm and ranch animals;

14 (4) feed for animals that are held for sale in the  
15 regular course of business;

16 (5) seeds and annual plants the products of which:

17 (A) ordinarily constitute food for human  
18 consumption;

19 (B) are to be sold in the regular course of

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1 business; or

2 (C) are used to produce feed for animals  
3 exempted by this section;

4 (6) fertilizers, fungicides, insecticides,  
5 herbicides, defoliants, and desiccants exclusively used or  
6 employed on a farm or ranch in the production of:

7 (A) food for human consumption;

8 (B) feed for animal life; or

9 (C) other agricultural products to be sold in  
10 the regular course of business;

11 (7) machinery and equipment exclusively used or  
12 employed on a farm or ranch in the building or maintaining of  
13 roads or water facilities or in the production of:

14 (A) food for human consumption;

15 (B) grass;

16 (C) feed for animal life; or

17 (D) other agricultural products to be sold in  
18 the regular course of business;

19 (8) machinery and equipment exclusively used in, and  
20 pollution control equipment required as a result of, the  
21 processing, packing, or marketing of agricultural products by an  
22 original producer at a location operated by the original  
23 producer for processing, packing, or marketing the producer's  
24 own products if:

1 (A) 50 percent or more of the products  
2 processed, packed, or marketed at or from the location are  
3 produced by the original producer and not purchased or acquired  
4 from others; and

5 (B) the producer does not process, pack, or  
6 market for consideration any agricultural products that belong  
7 to other persons in an amount greater than five percent of the  
8 total agricultural products processed, packed, or marketed by  
9 the producer; ~~and~~

10 (9) ice exclusively used by commercial fishing boats  
11 in the storing of aquatic species including but not limited to  
12 shrimp, other crustaceans, finfish, mollusks, and other similar  
13 creatures;

14 (10) tangible personal property, including a tire,  
15 sold or used to be installed as a component part of a motor  
16 vehicle, machinery, or other equipment exclusively used or  
17 employed on a farm or ranch in the building or maintaining of  
18 roads or water facilities or in the production of:

19 (A) food for human consumption;

20 (B) grass;

21 (C) feed for animal life; or

22 (D) other agricultural products to be sold in  
23 the regular course of business;

24 (11) machinery and equipment exclusively used in an



1 agricultural aircraft operation, as defined by 14 C.F.R. Section  
2 137.3; and

3 (12) tangible personal property used for or  
4 incorporated into a structure that is used for the disposal of  
5 poultry carcasses in accordance with Section 26.303, Water Code.

6 SECTION 2. The change in law made by this Act by the  
7 amendment of Section 151.316(a), Tax Code, does not affect tax  
8 liability accruing before the effective date of this Act. That  
9 liability continues in effect as if this Act had not been  
10 enacted, and the former law is continued in effect for the  
11 collection of taxes due and for civil and criminal enforcement  
12 of the liability for those taxes.

13 SECTION 3. The changes in law made by this Act to Section  
14 151.328, Tax Code, are a clarification of existing law and do  
15 not imply that the former law may be construed as inconsistent  
16 with the law as amended by this Act.

17 SECTION 4. This Act takes effect September 1, 2009.

# ADOPTED

MAY 27 2009

FLOOR AMENDMENT NO. 1

*Atay Spaw* BY: *Seliger*  
Secretary of the Senate

- 1 Amend C.S.H.B. No. 3144 (Senate committee printing), on
- 2 page 2 line 14, by striking "used for or".

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 27, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3144** by Gonzalez Toureilles (Relating to an exemption from the sales and use tax for property used in agricultural operations and for aircraft used in connection with agriculture. ),  
**As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Chapter 151.316 of the Tax Code, regarding sales tax exemptions for agricultural items.

The bill would add three exemptions to current law: (1) The bill would expand the list of agricultural items that are exempt from the sales tax to include tangible personal property, including a tire, sold or used as a component part of a motor vehicle, machinery, or other equipment exclusively used on a farm or ranch in the building or maintaining of roads or water facilities, or in the production of food for human consumption, grass, feed for animal life, or other agricultural products to be sold in the regular course of business. (2) The exemption would also include certain machinery and equipment exclusively used in an agricultural aircraft operation. (3) Finally, the exemption would include tangible personal property used for or incorporated into a structure that is used for the disposal of poultry carcasses.

The comptroller has indicated that the first two exemptions are clarification of their existing policy with regards to these items and thus would have no fiscal impact. The exemption for property used for the disposal of poultry carcasses is an expansion of the current exemption, however the comptroller has estimated there would be no significant fiscal implications to the state from broadening the exemption.

The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, SD, MN, KK

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 26, 2009**

**TO:** Honorable Steve Ogden, Chair, Senate Committee on Finance

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3144** by Gonzalez Toureilles (Relating to an exemption from the sales and use tax for property used in agricultural operations and for aircraft used in connection with agriculture.), **Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend Chapter 151.316 of the Tax Code, regarding sales tax exemptions for agricultural items.

The bill would add three exemptions to current law: (1) The bill would expand the list of agricultural items that are exempt from the sales tax to include tangible personal property, including a tire, sold or used as a component part of a motor vehicle, machinery, or other equipment exclusively used on a farm or ranch in the building or maintaining of roads or water facilities, or in the production of food for human consumption, grass, feed for animal life, or other agricultural products to be sold in the regular course of business. (2) The exemption would also include certain machinery and equipment exclusively used in an agricultural aircraft operation. (3) Finally, the exemption would include tangible personal property used for or incorporated into a structure that is used for the disposal of poultry carcasses.

The comptroller has indicated that the first two exemptions are clarification of their existing policy with regards to these items and thus would have no fiscal impact. The exemption for property used for the disposal of poultry carcasses is an expansion of the current exemption, however the comptroller has estimated there would be no significant fiscal implications to the state from broadening the exemption.

The bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, MN, SD, KK

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 21, 2009**

**TO:** Honorable Steve Ogden, Chair, Senate Committee on Finance

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3144** by Gonzalez Toureilles (Relating to an exemption from the sales and use tax for parts for certain machinery and equipment used in agricultural operations and for aircraft used in connection with agriculture.), **As Engrossed**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB3144, As Engrossed: a negative impact of (\$1,000,000) through the biennium ending August 31, 2011.

**General Revenue-Related Funds, Five-Year Impact:**

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$500,000)
2011	(\$500,000)
2012	(\$500,000)
2013	(\$500,000)
2014	(\$500,000)

**All Funds, Five-Year Impact:**

Fiscal Year	Probable Revenue (Loss) from <i>General Revenue Fund</i> 1	Probable Revenue (Loss) from <i>Cities</i>	Probable Revenue (Loss) from <i>Transit Authorities</i>	Probable Revenue (Loss) from <i>Counties</i>
2010	(\$500,000)	(\$93,000)	(\$32,000)	(\$13,000)
2011	(\$500,000)	(\$93,000)	(\$32,000)	(\$13,000)
2012	(\$500,000)	(\$93,000)	(\$32,000)	(\$13,000)
2013	(\$500,000)	(\$93,000)	(\$32,000)	(\$13,000)
2014	(\$500,000)	(\$93,000)	(\$32,000)	(\$13,000)

**Fiscal Analysis**

The bill would amend Chapter 151 of the Tax Code, regarding the sales tax.

The bill would expand the list of agricultural items that are exempt from the sales tax to include tangible personal property, including a tire, sold or used as a component part of a motor vehicle or other equipment exclusively used on a farm or ranch in the building or maintaining of roads or water facilities, or in the production of food for human consumption, grass, animal feed or other agricultural products. The exemption would also include certain machinery and equipment exclusively used in an agricultural aircraft operation.

The bill would create a sales tax exemption for aircraft sold for use primarily in connection with an agricultural use including predator control; wildlife or livestock capture; wildlife or livestock surveys; census counts of livestock or wildlife; animal or plant health inspection services; or crop dusting,

pollination, or seeding.

The bill would take effect September 1, 2009.

### **Methodology**

Sales of aircraft sold primarily for use in relation to certain agricultural or wildlife activities were estimated based on data gathered from Comptroller tax files. Sales were multiplied by the state sales tax rate and extrapolated through fiscal 2014. The fiscal impacts on units of local government were estimated proportionally.

**Note:** Section 4 of the bill states that changes to Sec. 151.328 of the Tax Code (Section 2 of the bill) are clarification of existing law. While the Comptroller has indicated that changes to Sec. 151.316 of the Tax Code (Section 1 of the bill) are clarification of existing law, they have stated that Section 2 of the bill is NOT clarification of existing law and would broaden the sales tax exemption for aircraft. The revenue loss shown in the table above represents the broadening of this exemption.

### **Local Government Impact**

There would be a proportionalsal loss of sales tax revenue to units of local government.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, MN, SD, KK

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 5, 2009**

**TO:** Honorable Rene Oliveira, Chair, House Committee on Ways & Means

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3144** by Gonzalez Toureilles (Relating to an exemption from the sales and use tax for parts for certain machinery and equipment used in agricultural operations.), **As Introduced**

**No fiscal implication to the State is anticipated.**

This bill would amend Chapter 151 of the Tax Code, regarding the sales tax.

The bill would expand the list of agricultural items that are exempt from the sales tax to include tangible personal property, including a tire, sold or used as a component part of a motor vehicle or other equipment exclusively used on a farm or ranch in the building or maintaining of roads or water facilities, or in the production of food for human consumption, grass, animal feed or other agricultural products.

The bill would codify current Comptroller policy regarding agricultural motor vehicles and equipment, therefore the proposed change would have no fiscal impact.

This bill would take effect September 1, 2009.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts

**LBB Staff:** JOB, MN, SD, KK

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**TAX/FEE EQUITY NOTE**

**81ST LEGISLATIVE REGULAR SESSION**

**April 5, 2009**

**TO:** Honorable Rene Oliveira, Chair, House Committee on Ways & Means

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB3144** by Gonzalez Toureilles (Relating to an exemption from the sales and use tax for parts for certain machinery and equipment used in agricultural operations.), **As Introduced**

Because the bill would not create or impact a state tax or fee, no comment from this office is required by the rules of the House as to the general effects of the proposal on the distribution of tax and fee burdens among individuals and businesses.

**Source Agencies:**

**LBB Staff:** JOB, MN