Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

STONE, Chairman.

Minutes of Committee Meetings.

Minutes of Committee on State Affairs, Held November 7, 1935.

Called Meeting.

Present: Pace, Blackert, Collie, Cotten, DeBerry, Holbrook, Hopkins, Hornsby, Isbell, Martin, Moore, Oneal, Rawlings, Regan, Shivers, Stone, Sulak, Redditt.

Absent -- Excused: Fellbaum, Small.

S. C. R. No. 10 was reported with the recommendation that it do not pass, by a viva voce vote.

H. C. R. No. 3 was reported favorably with the recommendation that it do pass and be not printed, by a viva voce vote.

S. B. No. 19 was reported with the recommendation that it do not pass, but that the committee substitute in lieu thereof do pass, and that the committee substitute only be mimeographed, by a viva voce vote.

ELIZABETH SUITER,
Secretary.

ELEVENTH DAY—Continued.

Senate Chamber,
Austin, Texas,
November 11, 1935.

The Senate met at 10 o'clock a. m., pursuant to recess, and was called to order by Lieutenant Governor Walter F. Woodul.

House Bill No. 46.

Pending business was H. B. No. 46 with pending Small amendment to the Davis substitute for Committee Amendment No. 17.

Senator Small had the floor.

Senator Small yielded to Senator Nelson.

S. C. R. No. 16.

Senator Nelson received unanimous consent to suspend the regular order of business and send up the following resolution:

Whereas, Seventeen (17) years ago, after four (4) years stupendous and bloody spectacular struggle of the major nations of the world in an effort to stamp out militarism and the theory that "might makes right," the order was given at the eleventh hour of the eleventh day of the eleventh month of the year to "cease firing!" and

Whereas, The people of the nations so disillusioned by the madness and destruction of war hailed with wild acclaim this hour which gave them respite, and have each succeeding year upon the anniversary of that day shown an increasing distaste for that method of settling difficulties, to the extent that this day finds our entire nation, led by our illustrious President, in one solid phalanx demanding every precaution to prevent war, and

Whereas, We delight to renew our expression of gratitude to those who gave their lives and to those who in any way sacrificed their comfort and happiness that our ideals of freedom and democracy might remain intact; now, therefore, be it

Resolved, That the Senate and House of Representatives invite the senior member of the Senate, Honorable T. J. Holbrook, who is an orator capable of expressing our sentiments on this subject in a fitting manner, to address the Legislature of the State of Texas in joint session at 11 a. m. today.

NELSON.

Read.

Senator Nelson asked unanimous consent to suspend the rule requiring resolutions to be referred to a committee, as to S. C. R. No. 16.

Unanimous consent was granted.

S. C. R. No. 16 was adopted unanimously.

Message From the House.

The Chair recognized the Doorkeeper, who introduced a messenger from the House with the following message:

Hall of the House of Representatives,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolutions:

S. C. R. No. 14, Authorizing the State Board of Control to transfer, sell or store any of the office furni-

ture, fixtures, machines and other property used in connection with the administration in Texas of Federal and State relief.

S. C. R. No. 15, Authorizing the State Board of Control to designate some site on state-owned land for the purpose of accepting a building erected in Texas by the Federal Government for the housing and preservation of State and Federal Relief Administration records, reports and files; and further authorizing the Board of Control to negotiate and conclude necessary arrangements to secure said building.

The House has refused to concur in Senate amendments to House Bill No. 77 and requests the appointment of a conference committee to adjust the differences between the two Houses. The following are appointed on the part of the House:

Messrs. Bradbury, Petsch, Moffett, Morse and Young.

The House has passed the following bills:

H. B. No. 88, A bill to be entitled "An Act to amend Article 2968 of the 1925 Civil Statutes of Texas, as amended by the First Called Session of the Forty-first Legislature, providing that the exemption certificates for the poll tax shall be secured before the first day of February, and declaring an emergency."

H. B. No. 94, A bill to be entitled "An Act providing for the compensation of criminal district attorneys or county attorneys who perform the duties of district attorneys in those counties in which the commissioners' courts elect to compensate such officers on a salary basis; fixing the compensation of criminal district attorneys or county attorneys who perform the duties of a district attorney and whose district is composed of one county only; providing the method of payment; providing for the disposition of fees, commissions and perquisites earned and collected by such criminal district attorney or county attorney; providing that this Act shall be cumulative of prior acts, except where in direct conflict, especially with reference to assistants, and special investigators; providing for the payment of expenses of criminal district attorneys and county attorneys performing the duties of district attorneys when engaged in the actual discharge of their duties; reappropriating money to pay salaries and expenses authorized and incurred in this Act; providing for the validity of the remainder of this Act in the event any portion hereof is declared to be unconstitutional; and declaring an emergency."

H. B. No. 97, A bill to be entitled "An Act giving L. B. Hammett and wife, Mrs. L. B. Hammett, consent of the Legislature to sue the State of Texas and State Highway Commission for damages resulting from the construction of State Highway No. 6, in and through Grayson County, Texas, fixing the venue of said suit, providing that limitation shall not be pleaded, and declaring an emergency."

H. B. No. 99, A bill to be entitled "An Act increasing the amount that may be allowed by county boards of trustees to the county superintendents of public instruction for expenditures for office and traveling expenses in counties with a population of not less than sixty thousand (60,000), nor more than sixty-one thousand (61,000), according to the last preceding Federal census; repealing all laws or parts of laws, general or special, in conflict therewith, and declaring an emergency."

H. B. No. 103, A bill to be entitled "An Act validating the acts of cities, towns and villages in attempting to adopt the provisions of cities and towns under authority of Article 961, Revised Civil Statutes of 1925, and validating acts thereafter taken by such cities, towns and villages, with provision that this Act shall not apply in instances wherein the validity of the adoption of such powers is in litigation at the time this Act becomes effective, repealing all laws in conflict herewith, and declaring an emergency."

H. B. No. 104, A bill to be entitled "An Act to create the Sulphur River Conservation and Reclamation District under the authority of Section 59 of Article 16, of the Constitution of Texas authorizing subordinate districts and for the creation and government thereof; defining the powers and duties of said districts; providing for directors and organization and operation of the districts and the authority and duties of said directors; defining the area of the parent and subordinate districts; providing certain duties for the State Board of Water Engineers, State Reclamation Engineer and the Gov-

ernor of the State; etc., and declaring an emergency."

H. B. No. 105, A bill to be entitled "An Act validating all elections, election orders, election proceedings, affidavits and city ordinances annexing adjacent territory or extending and prescribing the corporate limits of any incorporated city incorporated and functioning under the General Laws of Texas under commission form of government, and declaring an emergency."

H. B. No. 106, A bill to be entitled "An Act to amend the law controlling fresh water supply districts as embraced in Chapter 4, Title 128 of the Revised Civil Statutes of Texas, (1925), and contained in Chapter 48, page 107 of the General Laws of Texas, enacted by the Thirty-sixth Legislature at its Second Called Session, as amended so as to provide for a new Article to said Chapter 4, of said Title 128, to be known as 'Article 7959-a' and providing that where any such fresh water supply districts shall have issued bonds and where there shall not be a sufficient number of qualified voters and resident property owners in said district to constitute its governing body, etc., and declaring an emergency."

H. B. No. 107, A bill to be entitled "An Act to amend Section 7 of House Bill No. 131, Chapter 247, enacted by the Forty-third Legislature at the Regular Session, page 867 of the Session Acts of said term which is also Article 52, Section 161 of the Code of Criminal Procedure 1935, Supplement to Vernons Revised Statutes, changing the terms of court of the Criminal District Court of Bexar County, Texas."

H. B. No. 109, A bill to be entitled "An Act empowering cities of two hundred thirty thousand (230,000) or more inhabitants to purchase and own, build, maintain, operate, mortgage and encumber health and recreational establishments, parks, playgrounds, hotels, bathhouses, bathing pools or facilities, and any and all other installations or establishments necessary or desirable as a part of health and recreational resorts, parks or playgrounds, or any of them, and the income therefrom, and to evidence the obligations therefor by bonds, notes or warrants and to secure the payment of funds to purchase or build same or to remodel, renovate, maintain or repair same; etc., and declaring an emergency."

H. B. No. 110, A bill to be entitled "An Act authorizing and empowering all cities and towns, including home rule cities, to build and purchase, to mortgage and encumber certain projects to-wit: parks and/or swimming pools, golf courses, golf course clubhouses, ball parks, fair grounds, exposition buildings, airports, and the land upon which the same are situated, and to evidence the obligation therefor by the issuance of bonds, notes or warrants, etc., and declaring an emergency."

H. B. No. 111, A bill to be entitled "An Act authorizing the selection and the summoning of a general jury panel for jury service in the district and county courts in counties of Texas wherein two (2) or more district courts are situated and maintained; defining district courts within the meaning of the Act; authorizing the judges of the district and county courts in any such county to meet together at stated intervals and determine the number of jurors necessary for jury service for all district and county courts during a period of two months (2) or as many weeks in advance as they decide upon; etc., and declaring an emergency."

H. B. No 112, A bill to be entitled "An Act providing that wherever a person has died or may die, testate, owning property in Texas, and such person's will has been or may be admitted to probate by the county court, and such probated will names an independent executor, or executors, and/or trustees to execute the terms and provisions of the will, or provides that no other action shall be had in the courts of Texas in reference to the settlement of the estate than the probating and recording of the will and the return of an inventory, appraisement and list of claims of the estate dealt with in the will, or contains language of similar import, and such independent executor, or executors, and/or trustees have died or shall die leaving unexecuted parts or portions of the will of the testator, and an administrator de bonis non, with the will annexed etc., and declaring an emergency."

H. B. No. 115, A bill to be entitled "An Act to validate the bonds of water improvement districts and of water control and improvement districts where such bonds have been

issued by the district and approved by the Attorney General of the State of Texas, notwithstanding the fact that such bonds were not validated by a suit in the district court as required by law; etc., and declaring an emergency."

H. B. No. 116, A bill to be entitled "An Act making certain emergency and supplemental appropriations out of the General Fund of the State of Texas for the Texas Prison System for the fiscal years ending August 31, 1936, and August 31, 1937, respectively, and declaring an emergency."

H. B. No. 118, A bill to be entitled "An Act reappropriating an appropriation of Seventy-five Thousand ($75,000.00) Dollars made by Acts of the Regular Session, Forty-fourth Legislature, Chapter 352, page 868, for the purpose of remodeling and re-equipping hospital building at the State Hospital for Crippled and Deformed Children at Galveston, Texas; providing that said appropriation shall be used for the purpose of erecting a new hospital building; appropriating an additional Thirty-five Thousand ($35,000.00) Dollars for such purpose; and declaring an emergency."

H. B. No. 124, A bill to be entitled "An Act to prohibit the selling, taking on possession for barter or sale of wild fox, or the pelt thereof in Newton and Jasper Counties; to prohibit the killing of wild fox in said counties; providing penalties, and declaring an emergency."

H. B. No. 126, A bill to be entitled "An Act to prohibit the trapping or hunting with guns of wild foxes, or having possession the pelts thereof in Camp County; providing a penalty; providing that farmers or poultry raisers may kill such foxes in the act of actually destroying chickens or other poultry or farm animals; etc., and declaring an emergency."

H. B. No. 128, A bill to be entitled "An Act to amend Section 1, Chapter 88 page 172, Acts Second Called Session, Forty-first Legislature, 1929 as amended by Section 1, Chapter 23, page 151, Fifth Called Session Acts Forty-first Legislature, 1930, by adding sub-section (r), defining 'implements of Husbandry' as used in said Act; etc., and declaring an emergency."

H. B. No. 130, A bill to be entitled "An Act providing a method for the exclusion of lands from fresh water supply districts in counties having a population of not more than 20,000 or not less than 3,000 according to the last preceding Federal census and embracing not less than 100,000 acres, which districts have no outstanding bonded indebtedness; providing for the alteration of the boundaries of such districts so as to exclude the lands; and declaring an emergency."

H. C. R. No. 19, Granting Mrs. Julia Martin and others permission to sue the State for personal inquries.

Respectfully submitted.

LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Bills and Resolution Referred.

H. B. No. 112 was referred to the Committee on Civil Jurisprudence.

H. B. No. 88 was referred to the Committee on Privileges and Elections.

H. B. No. 94 was referred to the Committee on State Affairs.

H. B. No. 97 was referred to the Committee on State Affairs.

H. B. No. 99 was referred to the Committee on Education.

H. B. No. 103 was referred to the Committee on Civil Jurisprudence.

H. B. No. 104 was referred to the Committee on Mining, Irrigation and Drainage.

H. B. No. 105 was referred to the Committee on Cities, Towns and Villages.

H. B. No. 106 was referred to the Committee on Mining, Irrigation and Drainage.

H. B. No. 107 was referred to the Committee on Judicial Districts.

H. B. No. 109 was referred to the Committee on Civil Jurisprudence.

H. B. No. 110 was referred to the Committee on State Affairs.

H. B. No. 111 was referred to the Committee on Civil Jurisprudence.

H. B. No. 115 was referred to the Committee on Civil Jurisprudence.

H. B. No. 116 was referred to the Committee on Finance.

H. B. No. 118 was referred to the Committee on Finance.

H. B. No. 124 was referred to the Committee on Game and Fish.

H. B. No. 126 was referred to the Committee on Game and Fish.

H. B. No. 128 was referred to the Committee on Highways and Motor Traffic.

H. B. No. 130 was referred to the

Committee on Mining, Irrigation and Drainage.

H. C. R. No. 19 was referred to the Committee on State Affairs.

House Bill No. 77.

Senator Small moved that the Senate grant the request of the House for the appointment of a conference committee to adjust the differences between the House and Senate on H. B. No. 77.

The motion prevailed by viva voce vote.

Vote Recorded.

Senator Moore asked to be recorded as voting "nay" on the motion.

Conference Committee Appointed.

The Chair appointed the following conference committee on the part of the Senate on H. B. N. 77:

Senators Small, Oneal, Pace, Moore, and Shivers.

Senator Small yielded to Senator Burns.

S. C. R. No. 17.

Senator Burns received unanimous consent to suspend the regular order of business and sent up the following resolution:

By Burns. S. C. R. No. 17.

Resolution memoralizing Congress and the President for legislation to relieve hardships suffered by counties and districts on account of the reforestation program.

Whereas, The Forty-third Legislature of the State of Texas, in Regular Session, adopted Senate Concurrent Resolution No. 73, giving the consent of the State that the Federal Government purchase lands in Texas for retorestation and other purposes; and

Whereas, Pursuant to such consent on the part of the State, the United States has purchased and is purchasing large tracts of land, particularly for watershed protection and forest preservation purposes; and

Whereas, In the Eastern part of the State the tracts have been purchased in such large contiguous areas that in several counties more than fifty per cent of the area of said counties is being purchased, thus removing said lands from taxation for State, county, district, and municipal purposes; and

Whereas, In some of said counties more than twenty-five per cent of the assessed valuation of property is being thus removed from the tax rolls; and

Whereas, In many instances the entire area of school districts and the entire area of road districts is being removed from taxation; and

Whereas, The State of Texas has already granted its consent to such program because of the beneficial results which will accrue to the section of the State involved, and which will accrue to the State generally; and

Whereas, The State likewise is affected by the removal of such large areas from taxation in the following particulars:

(a) In the future the State will not receive from said lands the taxes it has been receiving in the past for State ad valorem, State pension, and State available school purposes;

(b) The State owns in its Permanent School Fund, and in other funds, bonds of counties, cities, road district and school districts situated within the affected area, which cannot be paid according to their tenor and effect because of the removal from taxation of a substantial part of the property originally securing said indebtedness;

(c) The State is interested in the condition of the citizens of said communities upon whom the burden of paying taxes will rest after said lands have been released from taxation, which burdens in the instance of bonds which are supported by unlimited taxing power must be materially increased, and in instances wherein said bonds are supported by limited taxing power must be increased to the maximum; and

Whereas, The counties most seriously affected by said condition have heretofore employed counsel to seek some relief at the hands of the Congress of the United States, and

Whereas, The State Board of Education, the Governor, and the Attorney General have been cooperating with the counties and their counsel in such undertaking; and

Whereas, At the recent session of the Seventy-fourth Congress, Senator Morris Sheppard of Texas, introduced and supported an amendment

to a pending bill (H. R. 6776) which, if enacted into law, would have permitted the Reconstruction Finance Corporation to make refinancing loans to the various governmental agencies in the affected area, on a basis which would have prevented a default in the payment of said obligations without increasing the burden of taxation on the taxpayers in said affected area, at the same time assuring to the Reconstruction Finance Corporation the payment of said obligation made to it; and

Whereas, Said refinancing plan was based on the theory that the Reconstruction Finance Corporation should make such loans available at interest rates sufficiently low that funds could be furnished for refinancing in amounts which would prevent losses to the creditors, and at the same time would not increase the tax burdens, even though a substantial part of the property in the respective communities were removed from taxation; and

Whereas, The Sheppard amendment received favorable consideration and support by the board of directors of the Reconstruction Finance Corporation, including the approval of the Honorable Jesse H. Jones of the Reconstruction Finance Corporation; and

Whereas, The amendment introduced by Senator Sheppard was unanimously approved after hearing by the Banking and Currency Committee of the United States Senate; and

Whereas, Said bill (H. R. 6776) was thereafter passed finally with said amendment by unanimous vote of the Senate and of the House of Representatives of Congress; and

Whereas, Said bill was thereafter vetoed by the President of the United States for reasons assigned by him as follows:

"The second provision of this bill extends Government lending into a new field which might be construed to commit the Federal Government to a policy entirely too far reaching—that of lending to counties, districts or municipalities to enable them to take care of already existing bonded indebtedness."

Whereas, The Legislature is hopeful that after a reconsideration, the President will conclude that the extension of the lending powers of the Reconstruction Finance Corporation for the proposed purpose will not be unwarranted, taking into consideration the benefits which have accrued from the use of the powers heretofore granted to the Reconstruction Finance Corporation, under which loans have been made and are now being made to drainage, levee and irrigation districts for refinancing their existing indebtedness, and having due consideration for the benefits which likely will accrue to the people from the use of the power granted by the Seventy-fourth Congress to the Reconstruction Finance Corporation to make loans to distressed school districts, whereby the existing indebtedness of such districts can now be refinanced through loans made by the Corporation; and

Whereas, it is the belief of the Legislature that the additional lending power proposed for the Reconstruction Finance Corporation might be justified on the theory that it can be used only in instances wherein the borrowing county or district has been seriously affected by the removal of lands from taxtion purchased by the United States; and

Whereas, the Legislature is hopeful that the President will conclude that if such additional power to be granted to the Reconstruction Finance Corporation constitutes an extension of the policy of the Government lending, taking into consideration the power it is already exercising in reference to drainage, levee and irrigation districts, and in reference to school districts, in which borrowing agencies the Government has made no purchases of land, that such extension of powers will be considered justified by reason of the fact that the condition necessitating the refinancing operation would not have arisen if the Government had not purchased the lands underlying the indebtedness of such counties and districts; and

Whereas, The State of Texas appreciates the cooperation of the Government and the benefits which will accrue from the reforestation program but desires the further cooperation of the Government in relieving the attendant hardships insofar as consistent, and insofar as the act of relieving said hardships will not cause a financial loss to the United States:

Be It Resolved by the Senate, the

House of Representatives concurring:

1. That the action of the counties seriously affected and the actions of the State Board of Education, the Governor, and the Attorney General, in seeking legislation by Congress to relieve said condition are approved;

2. That the cooperation heretofore rendered by the Senators and by the Congressmen from the State of Texas in reference to said matter is appreciated and is approved;

3. That the efforts in this behalf made by the Congressmen whose districts are seriously affected, viz., Congressmen Nat H. Patton and Martin Dies are appreciated and approved;

4. That the special efforts made in behalf of said legislation by the Honorable Morris Sheppard, United States Senator from Texas, and by the Honorable Jesse H. Jones, Chairman, Reconstruction Finance Corporation, are appreciated and approved;

5. That the Senators and Members of the House from the State of Texas in the National Congress are requested to renew and continue their efforts in behalf of said legislation, or some other legislation which will accomplish the purposes;

6. That the Congress of the United States be, and it is hereby requested to repass the legislation herein described, or some similar legislation which will accomplish its purpose;

7. That the President of the United States be, and he is hereby requested to give careful reconsideration to said subject to the end that, if he can consistently do so, he may cooperate in and approve such legislation;

8. That the Secretary of the Senate be, and he is hereby directed to forward a copy of this resolution to each of the following:

The President of the United States;

The Secretary of the Senate of the United States;

The Chief Clerk of the House of Representatives of the United States and

To each United States Senator and each Congressman from the State of Texas.

Read.

Senator Burns asked unanimous consent to suspend the rule requiring resolutions to be referred to a committee.

Unanimous consent was granted.

S. C. R. No. 17 was adopted by viva voce vote.

Message From the House.

The Chair recognized the Doorkeeper, who introduced a messenger from the House with the following message:

Hall of the House of Representatives,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following resolution:

S. C. R. No. 16, Providing for a joint session of the Senate and House of Representatives Monday, November 11, 1935, at 11:00 o'clock a. m.

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

House Bill No. 46.

The question recurred on the adoption of the Small amendment.

Motion to Table.

Senator Oneal moved to table the amendment by Senator Small to the Davis substitute for Committee Amendment No. 17.

The motion lost by the following vote:

Yeas—11.

Cotten.	Pace.
DeBerry.	Poage.
Hill.	Sulak.
Hornsby.	Westerfeld.
Isbell.	Woodruff.
Oneal.	

Nays—17.

Beck.	Rawlings.
Blackert.	Redditt.
Collie.	Regan.
Davis.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Martin.	Stone.
Moore.	Van Zandt.
Neal.	

Absent.

Burns. Nelson.

Absent—Excused.

Fellbaum.

The amendment by Senator Small was adopted by the following vote:

Yeas—16.

Beck.	Neal.
Blackert.	Rawlings.
Collie.	Redditt.
Davis.	Regan.
Holbrook.	Sanderford.
Hopkins.	Shivers.
Martin.	Small.
Moore.	Stone.

Nays—11.

Cotten.	Pace.
DeBerry.	Poage.
Hill.	Sulak.
Hornsby.	Van Zandt.
Isbell.	Westerfeld.
Oneal.	

Absent.

Burns.	Woodruff.
Nelson.	

Absent—Excused.

Fellbaum.

Amend Davis substitute for Committee Amendment No. 17 to H. B. No. 46 as amended by the Small amendment as follows:

An annual occupation tax of one-tenth of one cent per one thousand cubic feet on all natural gas produced within the State or sold, if imported into this State, as and when produced within this State or as and when the first sale is made within this State when imported into the State; and in addition thereto, when the value of such gas exceeds two cents per thousand cubic feet at the well where produced in this State, or at the place or first sale, when imported into this State and sold, and additional annual occupation tax equivalent to two per cent of the value of such natural gas produced within the State or sold, if imported into the State, as and when produced within the State or as and when the first sale is made within the State in excess of the value of two cents per each one thousand cubic feet.

ONEAL.

Read and pending.

Bill and Resolution Signed.

The Chair, Lieutenant Governor Walter F. Woodul, gave notice of signing, and did sign, in the presence of the Senate, after their captions had been read, the following bill and resolution:

H. B No. 26. S. C. R. No. 16.

Joint Session.

At 11:00 o'clock a. m. the Chair announced that the hour had arrived for the joint session of the House and Senate, as provided for in S. C. R. No. 16.

The Senate formed in a body and adjourned to the House.

Senate Called to Order.

The Chair, Lieutenant Governor Walter F. Woodul, called the Senate to order at 11:30 o'clock a. m.

Motion to Print.

On motion of Senator Hornsby the address of Senator Holbrook delivered in joint session was ordered printed in the Journal.

House Bill No. 46.

The question recurred on the adoption of the pending amendment by Senator Oneal.

Senator Oneal had the floor.

Senator Oneal yielded to Senator Pace.

Motion to Recess.

Senator Pace at 11:58 o'clock a. m. moved that the Senate recess until 2:00 o'clock p. m.

Motion pending.

Senator Pace yielded to Senator Cotten.

Senate Bill No. 31.

Senator Cotten received unanimous consent to suspend the regular order of business and sent up the following bill:

By Senator Cotten:

S. B. No. 31, A bill to be entitled "An Act applying only to independent school district in counties having a population of not less than thirty-two thousand five hundred (32,500) and not more than thirty-seven thousand five hundred (37,500) according to the last preceding Federal census; authorizing said school districts to fund into time warrants all outstanding obligations of said

school districts which existed on November 12, 1935; prescribing the terms and conditions of issuance of said time warrants; authorizing said school districts to borrow money in a sum not to exceed fifteen thousand dollars ($15,000.00) with which to pay current expenses for the school year 1935-36; providing for the levying of a tax to pay the same and fixing the rate of interest thereon; prescribing the terms and conditions of said time warrants; and declaring an emergency."

Read and referred to the Committee on Education.

Senator Pace yielded to Senator Westerfeld.

S. C. R. No. 18.

Senator Westerfeld received unanimous consent to suspend the regular order of business and sent up the following resolution:

Whereas, All Texas will celebrate its Centennial Year with an outstanding Exposition at Dallas at which all Texans will be in attendance; and;

Whereas, It is befitting that a great many relics now stored away in the Capitol and other places under the control of the Library and Historical Commission of the State of Texas should be dressed up and put on exhibition at the Central Exposition in Dallas, and that historical documents and other matter be placed on exhibition; Now, Therefore, be it

Resolved by the Senate, the House concurring, that the Library and Historical Commission of the State of Texas be requested to cooperate with the officials of the Texas Centennial Central Exposition to the end that an appropriate historical display may be had at Dallas, and we request the said Commission to loan to the Texas Centennial Central Exposition available historical documents, relics, et cetera, upon such reasonable assurance to said Commission as may be proper for the safeguarding and safe return of such material loaned to the Texas Centennial Central Exposition; Be it further

Resolved, That true copies hereof be mailed to each of the members of the said Library and Historical Commission of the State of Texas.

WESTERFELD.

Read.

Senator Westerfeld asked unanimous consent to suspend the rule requiring resolutions be referred to a committee.

Unanimous consent was granted.

S. C. R. No. 18 was adopted.

S. C. R. No. 19.

Senator Pace yielded to Senator Davis who received unanimous consent to suspend the regular order of business and sent up the following resolution:

Whereas, Col. William S. Pickett of San Angelo, Texas, is the owner of one of the few paintings of President Jas. K. Polk, he being the descendant of the said Jas. K. Polk; and

Whereas, He has expressed a willingness to donate said painting to the State of Texas; and

Whereas, The campaign slogan during the Polk and Clay campaign was "Polk and Texas" or "Clay and no Texas," and Polk's election brought about the acquisition of Texas and various other Southwestern States, adding more than one million square miles to our territory; and

Whereas, The State of Texas does not possess any painting or likeness of President Polk and it would be most appropriate for the State to possess such a painting during the Centennial year; therefore, be it

Resolved by the Senate of Texas, the House of Representatives concurring, That the gracious offer of Col. Pickett be accepted, and that $135.00 or so much thereof as may be necessary, be appropriated out of the contingent funds of the Legislature for reframing and retouching said painting, and that the same be loaned to the Centennial Commission during 1936, after which said painting shall be placed in the Capitol of Texas at such place as may be designated by the Board of Control.

DAVIS.

Read.

Senator Davis asked unanimous consent to suspend the rule requiring resolutions to be referred to a committee.

Unanimous consent was granted.

S. C. R. No. 19 was adopted.

H. C. R. No. 20.

Senator Pace yielded to Senator Regan who received unanimous con-

sent to suspend the regular order of business and take up H. C. R. No. 20.

The Chair laid before the Senate on its second reading the following resolution:

H. C. R. No. 20, Requesting the members of Congress from Texas to take such action as may be necessary to bring about the appropriation of funds to complete the Army Construction Program in the State of Texas.

The rule requiring committee reports to lie over one day was suspended by unanimous consent.

The committee report recommending that the bill be not printed was adopted by unanimous consent.

H. C. R. No. 20 was adopted by viva voce vote.

Senator Pace yielded to Senator Small.

House Bill No. 112.

Senator Small received unanimous consent to suspend the regular order of business to take up H. B. No. 112.

By Mr. Worley:

H. B. No. 112, A bill to be entitled "An Act providing that wherever a person has died or may die, testate, owning property in Texas, and such person's will has been or may be admitted to probate by the county court, and such probated will names an independent executor, or executors, and/or trustees to execute the terms and provisions of the will, or provides that no other action shall be had in the courts of Texas in reference to the settlement of the estate than the probating and recording of the will and the return of an inventory, appraisement and list of claims of the estate dealt with in the will, or contains language of similar import, and such independent executor, or executors, and/or trustees have died or shall die leaving unexecuted parts of portions of the will of the testator, and an administrator de bonis non, with the will annexed, etc., and declaring an emergency."

On motion of Senator Small, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 112 was put on its second reading by the following vote:

Yeas—30.

Beck.	Nelson.
Blackert.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Rawlings.
Davis.	Redditt.
DeBerry.	Regan.
Hill.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Hornsby.	Stone.
Isbell.	Sulak.
Martin.	Van Zandt.
Moore.	Westerfeld.
Neal.	Woodruff.

Absent—Excused.

Fellbaum.

The rule requiring committee reports to lie over one day was suspended by unanimous consent.

The committee report recommending that the bill be not printed was adopted by unanimous consent.

The bill was read second time and passed to third reading.

On motion of Senator Small, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 112 was put on its third reading and final passage by the following vote:

Yeas—30.

Beck.	Nelson.
Blackert.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Rawlings.
Davis.	Redditt.
DeBerry.	Regan.
Hill.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Hornsby.	Stone.
Isbell.	Sulak.
Martin.	Van Zandt.
Moore.	Westerfeld.
Neal.	Woodruff.

Absent—Excused.

Fellbaum.

Read third time and finally passed by the following vote:

Yeas—30.

Beck.	Collie.
Blackert.	Cotten.
Burns.	Davis.

DeBerry.	Poage.
Hill.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Sanderford.
Isbell.	Shivers.
Martin.	Small.
Moore.	Stone.
Neal.	Sulak.
Nelson.	Van Zandt.
Oneal.	Westerfeld.
Pace.	Woodruff.

Absent—Excused.

Fellbaum.

Recess.

The motion to recess prevailed by viva voce vote at 12:10 o'clock p. m.

After Recess.

The Senate met at 2:00 o'clock p. m., pursuant to recess, and was called to order by Lieutenant Governor Walter F. Woodul.

Point of Order.

Senator Woodruff raised the point of no quorum.

A roll call was ordered.

The roll call disclosed a quorum present.

House Bill No. 46.

Pending business was H. B. No. 46.

Senator Oneal was recognized to discuss his pending amendment.

Previous Question.

Senator Davis moved that the Senate order the previous question on the pending Oneal amendment and the substitute as amended.

The motion was duly seconded.

The previous question was ordered by viva voce vote.

Votes Recorded.

Senators Poage, Hill, Sulak, Moore, Oneal and Westerfeld asked to be recorded as voting "no" on the motion to order the previous question.

The amendment by Senator Oneal was lost by the following vote:

Yeas—12.

Cotten.	Oneal.
DeBerry.	Pace.
Hill.	Poage.
Hornsby.	Sulak.
Isbell.	Westerfeld.
Nelson.	Woodruff.

Nays—17.

Blackert.	Rawlings.
Burns.	Redditt.
Collie.	Regan.
Davis.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Martin.	Stone.
Moore.	Van Zandt.
Neal.	

Absent.

Beck.

Absent—Excused.

Fellbaum.

The question recurred on the adoption of the Davis substitute as amended by the Small amendment.

The substitute as amended was adopted by the following vote:

Yeas—16.

Blackert.	Rawlings.
Collie.	Redditt.
Davis.	Regan.
Holbrook.	Sanderford.
Hopkins.	Shivers.
Martin.	Small.
Moore.	Stone.
Neal.	Van Zandt.

Nays—13.

Burns.	Oneal.
Cotten.	Pace.
DeBerry.	Poage.
Hill.	Sulak.
Hornsby.	Westerfeld.
Isbell.	Woodruff.
Nelson.	

Absent.

Beck.

Absent—Excused.

Fellbaum.

Committee Amendment No. 17 as substituted was adopted by the following vote:

Yeas—17.

Beck.	Rawlings.
Blackert.	Redditt.
Collie.	Regan.
Davis.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Martin.	Stone.
Moore.	Van Zandt.
Neal.	

Nays—13.

Burns.	Oneal.
Cotten.	Pace.
DeBerry.	Poage.
Hill.	Sulak.
Hornsby.	Westerfeld.
Isbell.	Woodruff.
Nelson.	

Absent—Excused.

Fellbaum.

Committee Amendment No. 18.

Amend H. B. No. 46, after the word "Producer" in the third line on page 16, by adding the following:

"And provided, there shall be exempted from taxation under this section the gas produced from wells which do not produce in excess of (2,000,000) two million cubic feet daily production through open flow."

"Amend H. B. No. 46, Section 17 as amended by adding the following:

"The tax hereby levied is an occupation tax on the occupation of producing gas, and shall be borne by the producer of such gas, and no part thereof shall be deducted from any royalty payments otherwise due by any producer within this State, but any purchaser of the minerals hereinafter named is hereby authorized to withhold, from any payment due said producer, any unpaid tax."

POAGE.

Read and adopted.

Senator Collie moved to lay on the table subject to call Committee Amendment No. 18 as amended.

The motion prevailed by viva voce vote.

Senator Hill was recognized to send up the following amendments to H. B. No. 46:

Amendment No. 1.

Amend H. B. No. 46 by adding a new section to be numbered 6(b) and to read as follows:

"There shall be levied as inspection and supervision charge to insure the safety of all pipe lines in this State and to lessen the hazard of fire and/or explosion incident to their operation and to minimize the hazard to public health and safety, in addition to any and all other taxes and fees levied on each individual, company, association, or corporation engaged in the business of operating a gas and/or oil pipe line in this State, the sum of one cent (1 cent) per barrel on each barrel of petroleum oil or any of its by-products and on natural gas the sum of one-eighth of one cent per thousand cubic feet of all gas and/or oil received, transported, or handled through said line or lines. Such individuals, companies, associations, or corporations shall make a report to the Comptroller under oath of the individual or of the president, treasurer, or superintendent of such company, association, or corporation, showing the gross amount of crude petroleum oil and/or any of its by-products transported through any lines within this State, and natural gas through the pipe line operated by such individual, company, association, or corporation received or handled during the quarter next preceding the date of the report, such report shall be made on the first day of January, April, July, and October of each year. Said individuals, companies, associations, or corporations at the time of making said report shall pay to the State Treasurer an occupation tax for the quarter beginning on said date, equal to the sum of one cent per barrel on crude petroleum oil and/or its by-products and the sum of one-eighth of one cent per thousand of natural gas received, transported, or handled; provided, however, any individual, company, association, or corporation paying under the provisions under Sections 6(a) and 2, above, shall be allowed to deduct the amount paid under that provision when computing the amount due and payable under this Section.

HILL.

Read.

Pending.

Point of Order.

Senator Van Zandt raised the point of order that the amendment was out of order as it violates the Federal Constitution.

The Chair withheld his ruling so as to allow the Senate to vote on the amendment.

Senator Hill sent up the following amendment to the pending amendment.

The Railroad Commission of Texas shall cause the lines covered by this

amendment to be inspected and examined at regular and stated intervals, and the Legislature shall appropriate a sufficient amount out of the funds thus desired for this purpose.

HILL

Read and adopted.

Motion to Table.

Senator Shivers moved to table the Hill amendment as amended.

The motion to table prevailed by the following vote.

Yeas—14.

Burns.	Pace.
Davis.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Sanderford.
Moore.	Shivers.
Neal.	Small.
Oneal.	Van Zandt.

Nays—13.

Collie.	Nelson.
Cotten.	Poage.
DeBerry.	Stone.
Hill.	Sulak.
Hornsby.	Westerfeld.
Isbell.	Woodruff.
Martin.	

Absent.

Beck.	Regan.
Blackert.	

Absent—Excused.

Fellbaum.

Amendment No. 2.

Amend H. B. No. 46, Section 14, by adding a new paragraph to read as follows:

"Provided further, however, that no suit may be maintained in any court in this State to collect any note or mortgage upon which the registration fee, as provided for in this Section, has been paid unless the holder thereof in addition to the other conditions herein set out shall first show that said note, or the amount due thereon on the January 1 next preceding the date of the filing of said suit and on each January 1 prior thereto during the life of the obligation evidenced by the note and/or mortgage, was rendered for taxes in the county of the residence of the mortgagor and that the taxes thereon were paid."

HILL

Read.

The amendment was adopted by the following vote.

Yeas—16.

Burns.	Nelson.
Collie.	Oneal.
Cotten.	Pace.
DeBerry.	Poage.
Hill.	Redditt.
Hornsby.	Van Zandt.
Isbell.	Westerfeld.
Martin.	Woodruff.

Nays—11.

Beck.	Rawlings.
Davis.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Moore.	Stone.
Neal.	

Present—Not Voting.

Blackert.

Absent.

Regan.	Sulak.

Absent—Excused.

Fellbaum.

Amendment No. 3.

Amend Section 14, H. B. 46, by adding a new paragraph between lines 26 and 27 and to read as follows:

"It is further provided that no suit may be maintained in any court within this State to collect any note or to enforce the provisions of any mortgage in this Section unless and until it is shown that the registration fee, as provided herein, was paid and the report required herein made in accordance with the provisions of this Section."

HILL

Read and pending.

Amend Hill amendment by striking out the words "this section."

POAGE.

Point of Order.

Senator Hopkins raised the point of order that the amendment by Senator Poage is not germane to the pending amendment.

The Chair sustained the point of order.

The pending amendment by Senator Hill was adopted by the following vote.

Yeas—21.

Blackert.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Redditt.
Davis.	Sanderford.
DeBerry.	Stone.
Hill.	Sulak.
Hornsby.	Van Zandt.
Isbell.	Westerfeld.
Neal.	Woodruff.
Nelson.	

Nays—8.

Holbrook.	Rawlings.
Hopkins.	Regan.
Martin.	Shivers.
Moore.	Small.

Absent.

Beck.

Absent—Excused.

Fellbaum.

Amend H. B. 46, Section 14 as amended by adding in line 2 after the words "loaning money" the following "real property."

POAGE

Read.

The amendment by Senator Poage was adopted by the following vote.

Yeas—21.

Blackert.	Pace.
Burns.	Poage.
Collie.	Redditt.
Cotten.	Regan.
DeBerry.	Sanderford.
Hill.	Stone.
Hornsby.	Sulak.
Isbell.	Van Zandt.
Martin.	Westerfeld.
Nelson.	Woodruff.
Oneal.	

Nays—9.

Beck.	Neal.
Davis.	Rawlings.
Holbrook.	Shivers.
Hopkins.	Small.
Moore.	

Absent—Excused.

Fellbaum.

Motion to Reconsider.

Senator Martin moved to reconsider the vote by which the amendment by Senator Poage was adopted.

Motion to Table.

Senator Poage moved to table the motion to reconsider.

The motion to table prevailed by the following vote.

Yeas—17.

Blackert.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Redditt.
DeBerry.	Sulak.
Hill.	Van Zandt.
Hornsby.	Westerfeld.
Isbell.	Woodruff.
Nelson.	

Nays—13.

Beck.	Rawlings.
Davis.	Regan.
Holbrook.	Sanderford.
Hopkins.	Shivers.
Martin.	Small.
Moore.	Stone.
Neal.	

Absent—Excused.

Fellbaum.

Motion to Reconsider.

Senator Martin moved to reconsider the vote by which amendment No. 2 by Senator Hill was adopted.

Senator Hill moved to table the motion to reconsider.

The motion to table prevailed by the following vote.

Yeas—16.

Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
DeBerry.	Redditt.
Hill.	Sulak.
Hornsby.	Van Zandt.
Isbell.	Westerfeld.
Nelson.	Woodruff.

Nays—14.

Beck.	Neal.
Blackert.	Rawlings.
Davis.	Regan.
Holbrook.	Sanderford.
Hopkins.	Shivers.
Martin.	Small.
Moore.	Stone.

Absent—Excused.

Fellbaum.

Amend H. B. No. 46, Section 9, page 5, line 47, by striking out the number "15th" and inserting in lieu thereof the number "25th."

POAGE

Read and adopted.

Amend H. B. No. 46 by striking out everything below the enacting clause and inserting in lieu thereof the following:

Section 1. That on and after January 1st, 1936, no state ad valorem tax shall be levied or collected for the benefit of the general revenue fund or for the benefit of the available free school fund, and on and after such date no ad valorem tax shall be levied or collected for state purposes, save and except a tax of seven cents ($.07) on the one hundred dollars for the payment of Confederate pensions as heretofore provided by law; provided, however, that nothing herein shall be construed so as to prohibit the collection of any taxes that may have accrued prior to the first day of January, 1936, but all such taxes shall be and remain valid obligations collectible as now provided by law.

Sec. 2. Section 1 of Chapter 212, Acts of the 42nd Legislature, page 355, and Chapter 162, page 409 of the Acts of the 43rd Legislature, as amended by Chapter 12, page 43 of the Acts of the First Called Session of the 43rd Legislature, and Chapter 73, page 111, of the Acts of the 42nd Legislature be and the same are all hereby amended so as to read as follows:

That on and after the first day of January, 1936, every person or persons corporation, partnership, individual, trustee, receiver, trust estate, executor, and/or administrator owning, controlling, managing, leasing, and/or operating any mine, well, shaft, or other device whereby oil, and/or sulphur and/or gas is produced in any manner from the earth or waters in this State shall make monthly, on the 25th day of each and every calendar month of each year, a report to the State Comptroller of Public Accounts on such forms as the Comptroller shall prescribe, and sworn by such person before an officer authorized to administer oaths in the State, or if such person be other than a natural person, sworn to by its president, secretary or other duly authorized officer, which report shall show the total amount of oil, sulphur and gas produced within this State by said person during the calendar month next preceding, and at the time of making such report shall pay to the Treasurer of this State as an occupation tax for the month covered by said report, an amount equal to the highest total tax, levied by Section 3 of this Act.

Sec. 3. There is hereby levied an occupation tax on all producers, as such term is hereinafter defined, of five cents ($.05) per barrel for each barrel of forty-two (42) standard gallons of oil produced from any marginal well, as said term is defined in Chap. 58, page 92 of the Acts of the 42nd Legislature, as amended by Chap. 97, page 215, Acts of the 43rd Legislature, and a tax of ten cents ($.10) per barrel for each barrel of forty-two (42) standard gallons of oil produced from any well in this State other than marginal well, from which oil is produced by any method of pumping, and a tax of ten cents ($.10) per barrel for each barrel of forty-two (42) standard gallons of oil produced from any flowing oil well in this State producing less than one hundred (100) barrels of oil per day; and a tax of fifteen cents ($.15) per barrel for each barrel of forty-two (42) standard gallons of oil produced from any flowing oil well within this State producing more than one hundred (100) barrels of oil per day; and a tax of ten cents ($.10) per barrel for each barrel of forty-two (42) standard gallons of oil imported into this State and thereafter sold in intrastate commerce in this State, and in case of such sale, the party making the first sale in intrastate commerce in this State shall be deemed to be the producer of such oil; and a tax of two dollars ($2.00) per ton for each long ton of twenty-two hundred (2200) pounds of sulphur produced within this State, and a tax of two-tenths of one cent ($.002) per thousand cubic feet of sour gas produced within this State; and a tax of one-half of one cent ($.005) per thousand cubic feet for each thousand cubic feet of sweet gas produced within this State; and a tax of one-half of one cent ($.005)

per thousand cubic feet for each thousand cubic feet of gas of any kind imported into this State and thereafter sold in intrastate commerce in this State; and in case of such sale, the party making the first sale in intrastate commerce within this State shall be deemed to be the producer of such gas.

Said tax shall be computed upon the total barrels of oil and/or tons of sulphur, and/or cubic feet of gas produced and/or salvaged from the earth and/or waters of this State and/or imported into and sold in intrastate commerce in this State, without any deductions, and all such weights and measures shall be based on the standards established by the United States Bureau of Standards, and shall be corrected both for temperature and atmospheric pressure. It is provided, however, that the occupation tax herein levied on oil and/or sulphur and/or gas shall be an amount equal to ten per cent (10%) of the market value of all oil except oil produced from a marginal well whenever the market value thereof is in excess of one dollar ($1.00) per barrel, and shall be an amount equal to ten per cent (10%) of the market value of all sulphur whenever the market value thereof is in excess of twenty dollars ($20.00) per ton, and shall be an amount equal to ten per cent (10%) of the market value of all gas whenever the market value thereof is in excess of five cents ($.05) per thousand cubic feet. Save and except, however, that in no event shall the occupation tax herein levied on oil produced from a flowing oil well within this State producing more than one hundred (100) barrels of oil per day ever be less than fifteen cents ($.15) per barrel.

Sec. 4. The market value of oil, sulphur and gas, as that term is herein sued, shall be the actual market value thereof, plus any bonus or premium, or other thing of value paid therefor, or which oil and/or sulphur and/or gas does or will reasonably bring, if produced in accordance with the laws, rules and regulations of the State of Texas.

Sec. 5. It shall be the duty of such producers to keep accurate records of all of such minerals produced, making monthly reports under oath, as hereinbefore provided. The purchaser of such minerals shall pay the taxes aforedescribed on all such minerals purchased and deduct the tax so paid from the payment due the producer or other interest holder, remitting such payments so deducted to the Comptroller of Public Accounts in legal tender or cashier's check payable to the Treasurer of this State, and when such purchaser shall have made such remittance and payment, the producer of such minerals shall be relieved of paying the tax set out in Section 2 hereof and in this section levied to the extent of such payments, but no further, and it shall be the duty of such producer to secure from such purchaser a receipt from the Comptroller of Public Accounts for all of such payments and to attach same to the monthly report required in Section 2 hereof, and such purchaser shall be entitled to no greater deduction in said tax than the amount evidenced by such receipts so attached. Provided further that if any sulphur and/or oil and/or gas produced is not sold within the calendar month in which it may be produced, then the producer thereof shall pay the entire tax thereon at the same rate and in the same manner as if such minerals had been sold; provided further that unless such payment of tax on all of the aforementioned minerals produced during any month or fractional part thereof shall have been made on or before the 25th day of the month immediately following such payment, shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added, and such tax and penalty shall bear interest at the rate of six per cent (6%) per annum form the date due until paid.

Sec. 6. The tax hereby levied is an occupation tax on the occupation of producing oil and/or sulphur and/or gas, and shall be borne by the producer of such minerals, and no part thereof shall be deducted from any royalty payments otherwise due by any producer within this State, but any purchaser of the minerals hereinafter named is hereby authorized to withhold, from any payment due said producer any unpaid tax.

Sec. 7. Producers and/or pur-

chasers of the aforementioned minerals shall keep in Texas, upon forms furnished by the Comptroller, a complete record of all such minerals produced and a record of all such minerals sold; reports shall be filed with the Comptroller monthly by producers and purchasers, not later than the 25th of each calendar month, showing the amount of minerals produced and the amount of minerals sold during the month preceding.

Sec. 8. All railroads, barges, trucks and/or pipe lines, carrying or transporting such minerals for hire, for themselves or their owners, shall keep in Texas a complete and accurate record of all minerals so handled by months, showing date received, number of tons, barrels, and cubic feet, by whom received, point of delivery, to whom delivered and manner of transportation and such records shall be open to the inspection of the duly authorized agents of the Comptroller or the Attorney General at all times, and if so requested by the Comptroller, shall furnish information and reports of movements as often as required by the Comptroller.

Sec. 9. Purchasers buying any such minerals from properties in litigation or in receivership, bankruptcy, or any other legal proceedings, or covered by assignments, are required to deduct the amount of the taxes levied by this Act, before payment is made to the producers, trustees, assignees or to any person who claims ownership of said funds, or before the proceeds of said purchase of any such minerals is impounded or escrowed by said purchaser pending such litigation or tenure of assignments, and shall remit said tax deducted in the same manner as if said minerals had been purchased from any other source; and providing that said purchaser shall not be liable to any claimant of said funds on account of payment of said tax.

Sec. 10. Monthly reports by producers shall be filed with the Comptroller upon such forms as may be designated by that offical, showing the total number of tons, barrels and cubic feet of any such minerals produced monthly, the name of the county from which produced, the name of the lease from which produced, the disposition made of such minerals if sold, the name and correct address of the purchaser, and if not sold, the location of storage, if owned by such operator, or if stored with a pipeline or refinery, the correct name and address of such pipeline or refinery. All reports so made shall be duly sworn to by the producer or his authorized agent.

Sec. 11. Purchasers of any such minerals shall accompany the remittance for taxes deducted from settlements as provided herein, with a statement or report in a form to be prescribed by the Comptroller, showing complete information requested in such form, including name and address of producer from whom such minerals were purchased; name of the county from which such minerals were produced; name of the lease and the total amount purchased.

Sec. 12. For the occupation tax, penalties and interest herein provided for, the State shall have a prior and preferred lien on any leasehold interest, ownership of the mineral rights, or interest, including minerals produced and/or run, owned by the person owing any tax thereon; and in addition thereto such lien shall include equipment, tools, tanks, and all other implements used on said lease and/or premises from which such minerals are produced.

Sec. 13. It shall be the duty of the Attorney General to bring legal action for the collection of delinquent taxes herein levied, and any suit instituted for such purpose shall attach to any such minerals in storage, in transit, or being produced by such operator, and venue for such suits herein provided shall be in the District Court of Travis County, Texas.

Sec. 14. It shall be the duty of the Comptroller to promulgate rules and regulations governing the detail administration of the terms and requirements of this Act not specifically mentioned herein; to employ auditors or tax supervisors for the purpose of verifying reports and investigating the affairs of producers and/or purchasers to determine whether the tax is being properly reported and paid; to provide the necessary office help and equipment for the proper execution of the pro-

visions of this Act, and for the purpose of defraying the necessary expense of said administration, including salaries of supervisors, auditors, office help, filing equipment, typewriters and supplies, printing of forms, publication of regulations, postage, telephone and telegraph, traveling expenses of employees, and traveling expenses of witnesses not otherwise paid; and all of the sums heretofore appropriated for the fiscal years beginning on September 1, 1935, and September 1, 1936, for the enforcement of the present occupation tax on the production of sulphur, and the present occupation tax on the production of oil, and the present occupation tax on the production of natural gas, are hereby re-appropriated for the purpose of enforcing the provisions of this Act, provided that no salaries shall be paid out of said re-appropriated funds in excess of the amount of the salaries heretofore provided:

Sec. 15. For the purposes of this Act the term

(1) "Producer" shall mean any person or persons, corporation, partnership, individual, trustee, receiver, trust estate, executor or administrator owning, controlling, managing, leasing or operating any mine and/or well in this state from which is produced oil and/or gas, and/or sulphur, and shall also mean and include any person who produces in any manner any oil, sulphur or gas by taking it from the earth or waters in this state, and shall likewise include any person who first sells in intrastate commerce any oil, sulphur or gas theretofore imported into this state.

(2) "Carrier" shall mean the operator or owner of any means of transporting any oil, sulphur or gas or any instrumentality that may now be used or come into use for the purpose of effecting such transportation.

(3) "Purchaser" shall mean any individual, person or partnership, corporation, refinery, pipe line, or agent purchasing any crude oil and/or sulphur and/or gas for any purpose or use within this State.

(4) "Oil" as used herein shall mean petroleum oil, mineral oil, or other oil taken from the earth.

(5) "Sulphur" as used herein shall mean any sulphur, whether in liquid, molten or solid state, produced or taken from the earth or waters of the earth.

(6) "Gas" and "Natural Gas" as such terms are used herein shall mean and include any and all inflammable gases produced or taken from the earth or from any strata under the earth.

(7) "Reports" shall mean any reports required to be furnished in this Act or that may be required by the Comptroller in the administration of this Act.

(8) "Person" shall mean and include any person, firm, concern, receiver, trustee, executor, administrator, agent, institution, association, partnership, company, corporation, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

(9) "Comptroller" shall mean Comptroller of Public Accounts of the State of Texas.

(10) "Minerals" shall mean and include oil, sulphur and natural gas.

(11) "Marginal well" shall mean any oil well defined as a "marginal well" under the laws of this State.

(12) "Sour gas" shall mean any natural gas defined as "sour gas" under the laws of this State.

(13) "Sweet gas" shall mean any natural gas other than "sour gas".

Sec. 16. The taxes herein imposed and provided, when paid, shall be and are hereby allocated as follows, to-wit:

All of the receipts from such tax shall be divided equally as same are collected, between the general revenue fund of this state and the available free school fund of this state until the sum of Fifteen Million Dollars has been paid to each of such funds in any one fiscal year; and after such sum of fifteen million dollars shall have been paid to each of such funds from the proceeds of such tax within any one fiscal year, all remaining proceeds of such tax shall be paid into a special fund in the State Treasury to be used for the payment of old age pensions; provided further that should the taxes herein imposed ever exceed in any one year the sum of sixty million dollars, then in that event one-fourth of all such sums in excess of sixty million dollars shall be paid into the available free school fund of the State.

Sec. 17. It is expressly declared

to be the legislative intent that the several sections and sub-sections of this Act are severable and should any section or sub-section of this Act be declared to be unconstitutional, it shall not effect the remaining provisions of this Act and the Legislature would have enacted such remaining provisions nevertheless, and all remaining sections and sub-sections shall remain in full force and effect, save that it is further expressly provided that in event any of the tax hereby levied should for any reason be declared to be unconstitutional or void, then and in that event, it is the legislative intent that none of the statutes mentioned in Section 2 hereof would have been repealed, and the Legislature enacts this bill with the intention that, should any tax hereby levied be hereafter declared unconstitutional or void for any reason, the repeal provisions of Section 2 of this Act shall likewise be null and void.

Sec. 18. The fact that the present ad valorem tax system is unfair and unduly burdensome, and the further fact that the State is in pressing need of new revenues for the support of the general functions of State government, for the maintenance of schools, and particularly for the payment of Old Age Pensions, create an emergency and an imperative public necessity requiring that the Constitutional rules requiring bills to be read on three several days in each house be suspended, and that this bill take effect from and after its passage, and said rules are hereby suspended, and it is so declared.

POAGE.

Pending.

Senator Hill called for a reading of the amendment offered by Senator Poage.

Senator Woodruff moved to suspend the rule requiring amendments to be read.

The motion prevailed by the following vote:

Yeas—18.

Collie.	Redditt.
Cotten.	Regan.
Holbrook.	Sanderford.
Hopkins.	Shivers.
Hornsby.	Small.
Moore.	Stone.
Neal.	Sulak.
Pace.	Van Zandt.
Rawlings.	Woodruff.

Nays—9.

Beck.	Isbell.
Blackert.	Martin.
Burns.	Nelson.
Davis.	Westerfeld.
Hill.	

Present—Not Voting.

DeBerry.	Poage.
Oneal.	

Absent—Excused.

Fellbaum.

Point of Order.

Senator Martin raised the point of order that it would take a two-thirds vote to suspend the rule requiring amendments to be read.

The Chair overruled the point of order, citing Rule 54.

S. C. R. No. 20.

Senator Woodruff received unanimous consent to suspend the regular order of business and sent up the following resolution:

Be It Resolved by the Senate, the House of Representatives concurring, That Joint Rules of the two Houses, Nos. 11, 22, and 23, be and they are hereby suspended pending the final passage of S. B. No. 18.

WOODRUFF.

Read.

Senator Woodruff asked unanimous consent to suspend the rule requiring resolutions to be referred to a committee.

Unanimous consent was granted.

S. C. R. No. 20 was adopted unanimously.

House Bill No. 46.

The question recurred on the pending amendment by Senator Poage.

Point of Order.

I raise the following point of order on the pending amendment offered by Senator Poage:

Such provision is unconstitutional in that:

First, it contravenes Section 2, of Article VIII, of the Constitution of the State of Texas which provides that "All occupation taxes shall be equal and uniform upon the same class of subjects";

Second, it contravenes the Fourteenth Amendment to the Constitution of the United States of America which guarantees to all persons the equal protection of the law.

MOORE.

The Chair withheld his ruling so as to allow the Senate to vote on the amendment.

Senator Poage had the floor and yielded to Senator Cotten to send up the following resolution:

S. C. R. No. 21.

Senator Cotten received unanimous consent to suspend the regular order of business and sent up the following resolution:

Be It Resolved by the Senate, the House of Representatives concurring, That Joint Rules of the two Houses, Nos. 11, 22, and 23 be, and they are hereby suspended pending the final passage of S. B. No. 31.

COTTEN.

Read.

Senator Cotten asked unanimous consent to suspend the rule requiring resolutions to be referred to a committee.

Unanimous consent was granted.

S. C. R. No. 21 was adopted unanimously.

House Bill No. 46.

Recurring business was the amendment by Senator Poage to H. B. No. 46.

Message From the House.

The Chair recognized the Doorkeeper, who introduced a messenger from the House with the following message:

Hall of the House of Representatives,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bill:

S. B. No. 15, A bill to be entitled "An Act defining certain terms; providing for licensing of operators and chauffeurs; providing for certain exemptions; prohibiting issuance of licenses to certain persons; providing for instruction permits; making provision for non-resident drivers; providing what persons shall be licensed; providing for application for operators and chauffeurs license; providing for signing of application of minors; providing for examination of applicants; providing for designation of local officers; providing for registering of operators and chauffeurs; providing for the issuance of duplicate licenses and badges; providing for the signing and carrying of licenses; providing for time of expiration of licenses; providing for fees and disposition of same; providing for the transfer of all balances now in the State Treasury which were collected under Article 6687, Revised Civil Statutes, 1925, to the Operators and Chauffeurs License Fund; providing for forms for accident statistics and reports; providing for failure to make such reports a misdemeanor; providing for the suspension or revocation of licenses; making it unlawful for certain persons to act as chauffeurs or operators and to drive school buses; providing for courts to report record of convictions; providing for mandatory suspension or revocation of licenses and fixing the period of same; providing for hearing for persons denied the right to drive a motor vehicle; providing for surrender and return of license or badge; making it unlawful to commit certain acts with reference to securing and/or using licenses or to violate certain provisions; providing a penalty for violation of the Act; imposing a fine and jail sentence for driving while suspended; repealing all laws and parts of laws in conflict herewith and particularly Article 6687, Revised Civil Statutes, 1925; providing a saving clause; providing for the effective date of this Act, and declaring an emergency."

(With amendments.)

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Senate Bill No. 15.

Senator Poage moved that the Senate do not concur in House amendments to S. B. No. 15, and that a conference committee be appointed to adjust the differences between the two Houses.

The motion prevailed by viva voce vote.

House Bill No. 46.

Senator Poage had the floor.

Previous Question.

Senator Hopkins moved that the Senate order the previous question on the Poage amendment.

The motion was seconded.

The previous question was ordered by viva voce vote.

The amendment by Senator Poage was lost by the following vote.

Yeas—11.

Collie.	Pace.
DeBerry.	Poage.
Hill.	Sulak.
Hornsby.	Westerfeld.
Isbell.	Woodruff.
Nelson.	

Nays—19.

Beck.	Oneal.
Blackert.	Rawlings.
Burns.	Redditt.
Cotten.	Regan.
Davis.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Martin.	Stone.
Moore.	Van Zandt.
Neal.	

Absent—Excused.

Fellbaum.

Recess.

On motion of Senator Stone, the Senate recessed until 8:15 o'clock p. m.

After Recess.

The Senate met at 8:15 o'clock p. m. and was called to order by Lieutenant Governor Walter Woodul.

Senator Redditt was recognized.

Senate Resolution No. 17.

Whereas, The Honorable Elliott Roosevelt of Fort Worth Texas, son of President Franklin D. Roosevelt is in the Capitol City; and

Whereas, Elliott Roosevelt is one of the leading Young Democrats of today; now

Therefore, be it resolved by the Senate of Texas that the said Elliott Roosevelt be extended the privileges of the floor, and that he be invited to address the Senate.

REDDITT.

Read and adopted unanimously.

Lieutenant Governor Walter F. Woodul introduced the distinguished visitor, who briefly addressed the Senate.

House Bill No. 46.

Amend H. B. No. 46 as amended, by striking all below the enacting clause and insert in lieu thereof the following:

Section 1. Imposition of the Tax.—For the purpose of creating an Old Age Assistance Fund in the State of Texas, and for paying the benefits provided for in this Act, there is hereby levied upon and there shall be collected from all persons making sales at retail, as herein defined, an annual tax equal to two per cent (2%) of the gross retail sales thereof, less deductions allowed in Section 38 of this Act.

Sec. 2. Any person engaged in the business of making sales at retail who is at the same time engaged in some other kind of business, occupation or profession not taxable under this Act shall keep books to show separately the transactions used in determining the tax herein levied. In the event such person fails to keep such separate books, there shall be levied upon him a tax based upon the entire retail sales of both, or all of his business.

Sec. 36. The tax hereby imposed shall be payable from and after January 1, 1936, as herein provided.

Sec. 3. Licenses required for tax purposes. If any person, after the first day of January, 1936, shall engage in or conduct any business for which a tax is imposed by this Act, he shall under such rules and regulations as the Comptroller of Public Accounts shall prescribe apply for and obtain from such Comptroller, upon the payment of a registration fee of One Dollar ($1.00), a license to engage in and to conduct such business for the current tax year, and he shall thereby be duly licensed to engage in and to conduct such business. Said license shall expire on the last day of the tax year next succeeding the date of its issuance, and shall be renewed annually upon the condition that the taxpayer shall pay the aforesaid registration fee and the tax accrued to the fund under the provisions of this Act. No person shall engage in, or continue any business taxable hereunder without securing a license. Said license fees so collected shall be

a part of the "Old Age Assistance Fund" herein created.

Sec. 4. Deductions.—(a). In computing the amount of tax levied under the provisions of this Act for any year, the taxpayer may deduct from the gross receipts taxable under this Act the sum of Five Hundred Dollars ($500.00). Every person exercising any privilege taxable hereunder for any fractional part of the tax year shall be entitled to a deduction of that part of the sum of Five Hundred Dollars ($500.00) which bears the same proportion to the total sum of Five Hundred Dollars ($500.00) that the period of time during which such person is engaged in such business bears to the entire year. Upon filing monthly returns provided for in this Act, a twelfth part of the deduction granted in this Section may be claimed and deducted on such returns.

(b). No person subject to a tax under this Act need include in the amount of his gross receipts used for the computation of the tax any proceeds of his business derived from sales to the United States, the State of Texas, its departments of institutions, or any of its subdivisions, or any proceeds of his business which are exempt from taxation by reason of the provisions of the Constitution of the United States, or the Constitution of Texas.

Sec. 5. Additional Tax.—The tax imposed by this Act shall be in addition to all other license fees and levied by law as a condition precedent to engaging in or conducting any business taxable hereunder, except as is in this Act otherwise specifically provided, and this Act shall not be construed as repealing any existing tax law.

Sec. 6. The tax hereby imposed shall be collected by the retailer from the consumer in so far as same can be done.

Sec. 7. It shall be unlawful for any retailer to advertise or hold out or state to the public or any consumer, directly or indirectly, that the tax or any part thereof imposed by this Act will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it or any part thereof will be refunded. Any person violating any of the provisions of this Section shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed Two Hundred Dollars ($200.00).

Sec. 8. Any retailer convicted of violating the provisions of Section 7 of this Act shall forfeit has license procured under the terms hereof.

Sec. 9. Monthly return; computation of tax; payment.—The taxes levied hereunder shall be a personal obligation of the retail taxpayer and shall be due and payable in monthly installments, on or before the fifteenth day of the month next succeeding the month in which the tax accrued. The taxpayer shall, on or before the fifteenth day of each month, make out a return for the preceding month in the form required by the Comptroller of Public Accounts of the tax for which he is liable, and he shall mail the return, together with a remittance for the amount of the tax, to the office of the Comptroller. Such monthly return shall be signed by the taxpayer or his duly authorized agent.

Sec. 10. Any person taxable under this Act, doing business wholly or partly on a credit basis, may make application to the Comptroller for permission to prepare his returns on the basis of cash actually received. Such application shall be granted by the Comptroller under such rules and regulations as the Comptroller may prescribe. When such application is granted, the taxpayer shall thereafter until further order of the Comptroller include in each return all cash received during the month preceding, and shall pay taxes on the basis of such cash receipts at the time of filing such return.

Sec. 11. Annual return; payment of tax after end of tax year.—On or before thirty days after the end of the tax year each person liable for the payment of a tax under this Act shall make an annual return in the form required by the Comptroller, showing the total gross proceeds of his business for the preceding tax year, and showing the amount of tax payable by him under this Act, and, after deducting the amount of the monthly payments made during such tax year, he shall transmit the return to the Comptroller, with his remittance covering the residue, if any, of the tax payable by him for the preceding tax year. Such return shall be verified by the oath of the taxpayer, or his duly authorized agent. The Comptroller, for good cause shown, may extend the time for making the annual

return on the application of any taxpayer. The Comptroller shall, on application of any taxpayer, permit him to use as the tax year for the purposes of this Act the fiscal year used in the ordinary course of his business instead of the fiscal year of the State of Texas.

Sec. 12. Consolidated returns.—Any person engaging in two or more places in the same business or business of like character taxable under this Act, shall file a consolidated return covering all such business activities engaged in within this State and shall be entitled to deduct one exemption only in the amount of Five Hundred Dollars ($500.00), as allowed in Section 39.

Sec. 13. Examination of returns; Determination of tax; Deficiency assessments.—As soon as practicable after each return is filed the Comptroller shall examine it. If it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed and the correct tax determined. If the amount paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid with interest at four per centum per annum shall be credited against a subsequent tax or shall be refunded if requested by the taxpayer.

Sec. 14. If the amount paid is less than the amount which should have been paid, the deficiency, together with interest thereon at the rate of one-half of one per cent per month from the time the tax was due, shall become due and payable after notice and hearing as herein provided.

Sec. 15. If any part of the deficiency is due to negligent or intentional disregard of this Act, or of authorized rules and regulations of the Comptroller, but without intent to defraud, there shall be added as a penalty ten per cent of the total amount of the deficiency in the tax, and interest shall be collected at the rate of one per cent per month on the amount of such deficiency in the tax from the time it was due, which interest and penalty shall become due and payable after notice and hearing as hereinafter provided.

Sec. 16. If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty one hundred per cent of such deficiency and, in such a case, the whole amount of tax unpaid, together with the penalty, shall become due and payable after notice and hearing as hereinafter provided, and an additional one per cent per month on the tax shall be added from the date such tax was due until paid.

Sec. 17. Whenever notice is required under the provisions of this Act, such notice shall be given either by personal service or by registered mail addressed to the last known address of the taxpayer.

Sec. 18. No deficiency, interest or penalty shall be assessed for any year after the expiration of three years from the date set for the filing of the annual return for such year.

Sec. 19. Remittances.—All remittances of taxes imposed by this Act shall be made to the Comptroller by bank draft, check, cashier's check, money order, certificate of deposit or money. The Comptroller shall issue his receipt, and shall forthwith deposit all moneys received in the State Treasury, where it shall be credited as in this Act provided; provided that no remittance other than cash shall be a final discharge of liability for the tax herein assessed and levied unless and until it has been paid in cash.

Sec. 20. Failure to make return.—If any person fail or refuse to file a return, the Comptroller shall proceed to assess the tax against such person and shall notify him of the amount thereof. Such tax shall become due and payable after notice and hearing as hereinafter provided.

Sec. 21. As soon as possible after procuring such information, the Comptroller shall proceed to assess the tax against such person, and shall notify him of the amount thereof. Such tax shall become due and payable after notice and hearing as hereinafter provided.

Sec. 22. In case of failure to file any return required by this Act, within the time prescribed by this Act, or prescribed by the Comptroller in pursuance of the provisions of this Act, twenty-five per cent of the tax shall be added as a penalty; Provided, That when a return is filed after such time and it is shown that the failure to file was due to reasonable cause, and not due to wilful neglect, no such addition shall be made to the tax. The amount so added shall be collected as a part of the tax.

Sec. 23. Tax debt due State; Collection.—(a). If the tax imposed by

this Act is not paid on the date the same is required to be paid under the provisions of this Act, the Comptroller, or some person designated by him, may cause a demand to be made on the taxpayer for the payment thereof. If such tax remains unpaid for ten days after such demand has been made and no proceedings have been taken to review the same, the Comptroller may issue a warrant under the official seal of his office, directed to the sheriff of any county of the State, or to any state officer authorized to serve process, commanding said sheriff or other officer to levy upon and sell the property of the taxpayer, used in connection with the business for the privilege of doing which the tax is levied, found within his jurisdiction, for the payment of the amount thereof with the added penalties, interest and the cost of executing the warrant. Such warrant shall be returned to the Comptroller, together with the money collected by virtue thereof within the time therein specified, which shall not be less than twenty (20) nor more than ninety (90) days from the date of the warrant. The sheriff or other officer to whom such warrant shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to execution issued against property upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. The State of Texas, through the Comptroller, or some officer or agent designated by him, is hereby authorized to bid for and purchase any property sold under the provisions hereof.

Sec. 24. In addition to the mode of collection provided herein, the Comptroller and/or the Attorney General may bring an action at law in the county in which the business or any part thereof is carried on, to collect and recover the amount of taxes, interest and/or penalties due from any taxpayer.

Sec. 25. Tax lien; Sale of Business. —The tax and any interest or penalties imposed by this Act shall be a lien upon the property of the taxpayer used in connection with the business for the privilege of doing which the tax is imposed. If any person liable for a tax levied hereunder shall sell out his business or stock of goods, or shall quit the business, such person shall make a final return within fifteen (15) days after the date of selling or quitting business. His successor, if any, shall be required to withhold sufficient of the purchase money to cover the amount of such taxes and interest or penalties due and unpaid until such time as the former owner shall produce a receipt from the Comptroller showing that they have been paid, or a certificate stating that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, he shall be personally liable for the payment of the taxes, interest and penalties accrued and unpaid on account of the operation of the business by the former owner.

Sec. 26. Jeopardy assessment.—If the Comptroller finds that a person liable for tax under any provisions of this Act designs quickly to depart from the State, or to remove his property therefrom, or to conceal himself or his property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect such tax unless such proceedings be brought without delay, the Comptroller shall cause notice of such findings to be given such person, together with a demand for an immediate return and immediate payment of such tax. Thereupon such tax shall become immediately due and payable. If such person (1) is not in default in making any return or paying any tax prescribed by this Act, and (2) furnishes evidence satisfactory to the Comptroller under regulations to be prescribed by the Comptroller, that he will duly return and pay the tax to which the Comptroller's finding relates, then such tax shall not be payable prior to the time otherwise fixed for payment.

Sec. 27. Corporation; Dissolution; Withdrawal.—The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this State, or organized under the laws of another state, and admitted to do business in this State, until the receipt of a notice from the Comptroller to the effect that all taxes levied under this Act against any such corporation have been paid, or until he shall be notified by the Comptroller that the applicant is not indebted for any taxes levied hereunder.

Sec. 28. Failure to obtain license

or pay tax; Injunction.—Any person against whom a tax shall be assessed as herein provided may be restrained and enjoined by proper proceedings instituted in the name of the State of Texas, brought by the Attorney General at the request of the Comptroller, from engaging and/or continuing a business for which a privilege tax is required by the provisions of this Act, until such tax shall have been paid, and/or license secured, and until such person shall have complied with the provisions of this Act. Venue for such suits shall be fixed in Travis County, or in the county in which the taxpayer resides.

Sec. 29. Records and special returns.—Every person liable to any tax imposed by this Act, shall keep such records, render oath to such statements, make such returns, and comply with such rules and regulations as the Comptroller may from time to time prescribe. Whenever in the judgment of the Comptroller it is necessary, he may require any person by notice served upon him, to make a return, render under oath such statements, or keep such records, as the Comptroller deems sufficient to show whether or not such person is liable to tax under this Act.

Sec. 30. Comptroller, deputies or employees may subpoena witnesses.—The Comptroller may himself, or by his duly appointed deputies and agents, examine the books, records and papers of any person subject to taxation under this Act. The Comptroller, or any of his deputies or agents, may issue a subpoena requiring any person to appear before him to be examined with reference to any matter within the scope of the inquiry or investigation being conducted by such Comptroller, or his deputy, and to produce any books, records or papers pertaining thereto. The Comptroller, or any deputy, may administer an oath to any witness concerning any matter before the Comptroller. In case of disobedience of a subpoena the Comptroller, or his deputy, may invoke the aid of any district court in the State of Texas in requiring the attendance and testimony of witnesses, and the production of books, papers and documents. Any of the district courts of this State, in case of refusal to obey a subpoena, may issue an order requiring such person to appear before said Comptroller, or deputy, and produce books and papers, if so ordered, and any evidence touching the matter in question, and any failure to obey such order of the court may be punished by said court as in contempt thereof.

Sec. 31. Testimony; Immunity.—No person shall be excused from testifying or from producing any books, papers, records or memoranda in any investigation, or upon any hearing, when ordered to do so by the Comptroller upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him, or subject him to a criminal penalty; but no person shall be prosecuted or subjected to any criminal penalty for, or on account of, any transaction made or thing concerning which he may testify or produce evidence, documentary or otherwise, before the Comptroller, or his agent. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 32. The Comptroller shall publish annually a report containing his rulings and orders, and said report shall include such statistical information of a general character as may be deemed of general interest. Unless, in accordance with a judicial order, the Comptroller, his agents or employees, or former Comptroller, his agents or employees, shall not divulge any facts or information obtained in connection with the administration of that portion of this Act pertaining to the tax herein levied, and all reports filed by the taxpayer shall be considered and deemed privileged and confidential information.

Sec. 33. Appeal; Correction of Assessment; Injunction.—If the Comptroller, after examining the return of any taxpayer, determines that the taxpayer is indebted to the State by reason of a deficiency accompanying such writ, the Comptroller shall give such taxpayer notice of the intention to levy such deficiency. Such taxpayer may, if he so desires, and serves notice thereof upon the Comptroller within twenty (20) days, demand a hearing on the question of the levy of such deficiency. Thereupon, the Comptroller shall set a time and place for hearing and shall give the taxpayer reasonable notice thereof.

Sec. 34. The taxpayer shall be entitled to appear before the Comptroller and be represented by counsel, and present testimony and argument. After the hearing, the Comptroller shall

render his decision in writing and by order levy any deficiency found by him to be due and payable.

Sec. 35. If any taxpayer is aggrieved by any decision of the Comptroller, he shall be required to pay the amount of the taxes, interest and penalties found to be due by the Comptroller, and shall be permitted to bring an action in the district court in the county in which the business for the privilege of doing which the tax is levied is carried on, to recover the amount of the taxes alleged to have been unlawfully levied upon him. Such action shall be conducted in accordance with the statutes and rules of procedure now applicable to civil suits in the State of Texas. The taxes paid by such aggrieved taxpayer on such deficiency shall be deposited with the State Treasurer in the "Suspense Account" and shall be so held by the Treasurer pending the final determination of said suit.

Sec. 36. Any action brought under the preceding Section shall be against the State of Texas, and citation shall issue thereon to the Comptroller, and to the County Attorney of the County in which said suit is brought.

Sec. 37. In the event any taxpayer is found entitled to recover any sums paid pursuant to the orders of the Comptroller, as hereinbefore provided, such sums shall be paid from the Suspense Account upon the warrant of the Comptroller.

Sec. 38. No injunction shall issue to stay proceedings for assessment or collection of any taxes levied under this Act.

Sec. 39. Offenses: Penalties. — It shall be unlawful for any person to refuse to make the return required by this Act, or to make any false or fraudulent return, or any false statement in any return, with intent to defraud the State, or to avoid the payment of the tax, or any part thereof, imposed by this Act, or for any person to aid or abet another in any act to evade payment of the tax, or any part thereof, imposed by this Act, or for the president, vice-president, secretary, treasurer, or any officer or employee of any company to make or permit to be made for any company, corporation or association any false return, or any false statement in any return required in this Act, with the intention to evade the payment of any tax hereunder.

Persons violating any of the provisions of this Act shall be guilty of a felony and on conviction thereof shall be imprisoned in the State Penitentiary for a period of not less than one nor more than five years. In addition to the foregoing penalty, any person who shall knowingly swear to or verify any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of false swearing, and on conviction thereof shall be punished in the manner provided by law.

Sec. 40. Any person who shall engage in any business in this State which is taxable under this Act, and who fails to secure from the Comptroller a license to engage in such business after a license to do so shall have expired, or shall have been suspended by the Comptroller with the intent to defraud the State, shall be guilty of a misdemeanor, and shall be punished by a fine of not more than one year, or by both fine and imprisonment.

Sec. 41. The Comptroller shall have the power, after a hearing, to suspend the license of any person who shall violate or fail to comply with any provisions of this Act, or any rule or regulation promulgated by the Comptroller pursuant to the provisions of this Act. The Comptroller shall have power to restore licenses after suspension. If any person shall engage in business taxable under this Act while his license is in suspense, the tax imposed with respect thereto shall nevertheless be imposed and be payable with respect to such business. Any person whose license has been revoked as herein provided shall have the right to appeal from the ruling of the Comptroller by an appeal to the District Court. Venue for such appeals shall be fixed in Travis County, Texas.

Sec. 42. The sums of money received and collected under the provisions of this Act shall be deposited by the Comptroller in the State Treasury to the credit of the Old Age Assistance Fund hereby authorized to be set up for said purposes.

The following amounts are hereby appropriated from said fund for the specific uses and purposes set forth, as follows:

1. To the Director of Division of Public Welfare for the fiscal years ending August 31, 1936, and August 31, 1937, the amount necessary to defray the expenses of administering

this Act, not to exceed one per cent of the total revenues derived under the provisions of this Act.

2. A sufficient sum of money to pay the Old Age Assistance Compensation as provided for under the terms of this Act for the fiscal years ending August 31, 1936, and August 31, 1937.

3. Any sums remaining after payment of the above appropriation shall remain to the credit of said fund.

Sec. 43. There is hereby appropriated from the General Fund of the State of Texas the sum of Fifty Thousand Dollars ($50,000.00), same to be used by the Director of Division of Public Welfare in setting up machinery necessary to the installation and operation of said Division and pay salaries of the said Director and his empolyees under the restrictions set out in this Act. As such time as said Fifty Thousand Dollars ($50,000.00) becomes available from the one per centum of the tax herein appropriated, same shall be repaid to the General Fund from the Old Age Assistance Fund hereby created.

Sec. 44. Definitions. That when used in the tax sections of this Act, the following definitions shall be applied:

(a) The term "person" includes any individual, firm, co-partnership, joint adventure, association, corporation, company, estate, trust, or any other group or combination acting as a unit; and the plural, as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) The term "sale at retail" means any transaction by which is transferred for a consideration the ownership of tangible personal property when such transfer is made in the ordinary course of the transferor's business and is made to the transferee for consumption or use, or for any other purpose than for resale in the form of tangible personal property. The term "sale at retail" includes conditional sales, installment lease sales, and any other transfer of such property when the title is retained as security for the purchase price but is intended to be transferred later.

(c) The term "sale at retail" shall not include an isolated transaction in which any tangible property is sold, transferred, offered for sale, or delivered by the owner thereof, or by his representative for the owner's account, such sale, transfer or offer for sale, or delivery, not being made in the ordinary course of repeated and successive transactions of a like character by such owner, or on his account by such representative.

(d) The term "sale at retail" includes the sale of electricity for light, heat and power, the sale of tickets or the right of admission to any place operated and maintained for amusement purposes, tolls and rentals charged by telegraph and telephone companies, and the sale of natural and artificial gas when made to the consumer or user for the consumption of use, rather than for resale.

(e) The term "gross receipts" means the amount received in money, credits, property or other thing of value in consideration of sale at retail within this State, without any deduction on account of the cost of the property sold, the cost of materials used, the cost of labor or services purchased, amounts paid for interest or discounts, or any other expense whatsoever, nor shall any deduction be allowed for losses, credits or refunds. The sale price of returned goods may be deducted.

(f) The term "business" includes all activities engaged in by any person, or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.

(g) The term "tax year" or "taxable year" means the fiscal year of the State of Texas, or the taxpayers' fiscal year, when permission is obtained by him from the Comptroller to use his fiscal year as the tax period in lieu thereof.

(h) The word "taxpayer" means any person liable for any tax hereunder.

(i) The word "tax" shall include all taxes, interest or penalties levied under this Act.

(j) The term "Comptroller" when used in this Act means "The Comptroller of Public Accounts of the State of Texas."

(k) The term "Director" when used in this Act means "Director of Division of Public Welfare."

Sec. 45. The Director and Comptroller shall have the authority to prepare such forms as may be necessary for the administration of this

Act, and to promulgate rules and regulations, not inconsistent with the provisions thereof for the purpose of placing same into effect.

Sec. 46. Each Section of this Act, and each sub-section, sentence, clause and phrase is hereby declared to be independently operative, and if any section, sub-section, sentence, clause or phrase of this Act shall be declared invalid by any court of competent jurisdiction, it shall not affect or invalidate the remainder of this Act.

Sec. 47. The fact that the citizens of Texas by their recent overwhelming vote have expressed their desire to give the citizens of this State past the age of 65 years the assistance herein granted, and the further fact that there are many citizens who are over the age of 65 years and who are unemployed and do not have sufficient funds to buy the actual necessities of life, and they are in actual need at this time, creates an emergency and an imperative public necessity, demanding the suspension of the constitutional rule requiring bills to be read on three separate days in each house, and said rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

SANDERFORD.

Read.

Previous Question.

Senator Small moved that the Senate order the previous question on the amendment by Senator Sanderford.

The motion was duly seconded.

The motion prevailed by the following vote:

Yeas—15.

Beck.	Rawlings.
Collie.	Redditt.
Davis.	Regan.
Holbrook.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Neal.	Van Zandt.
Pace.	

Nays—7.

Blackert.	Nelson.
DeBerry.	Oneal.
Hill.	Poage.
Isbell.	

Absent.

Burns.	Shivers.
Cotten.	Sulak.
Hopkins.	Westerfeld.
Moore.	Woodruff.

Absent—Excused.

Fellbaum.

The amendment by Senator Sanderford was lost by the following vote:

Yeas—6.

Holbrook.	Sanderford.
Hopkins.	Small.
Martin.	Stone.

Nays—24.

Beck.	Nelson.
Blackert.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Rawlings.
Davis.	Redditt.
DeBerry.	Regan.
Hill.	Shivers.
Hornsby.	Sulak.
Isbell.	Van Zandt.
Moore.	Westerfeld.
Neal.	Woodruff.

Absent—Excused.

Fellbaum.

Amend H. B. No. 46 by striking out all below the enacting clause and inserting in lieu thereof the following:

Article 1.

Section 1. The following words, terms and phrases as used in this Act are hereby defined as follows:

(1) "Person" shall mean and include every individual, firm, association, joint stock company, syndicate, co-partnership, corporation, trustee, agency and receiver and every other legal entity, natural or artificial.

(2) "Comptroller" shall mean the Comptroller of Public Accounts of the State of Texas.

(3) The term "tax year" or "taxable year" shall mean either the calendar year of the taxpayers' fiscal year when permission is obtained from the Comptroller to use the same as the tax period in lieu of the calendar year.

(4) The term "gross proceeds" shall mean the amount received in money, credits, property, or any other

thing of value in consideration of sales at retail in this State, without any deduction on account of the cost of the property sold, the cost of materials used, labor costs, interest, discount or any other expenses whatsoever,and without any deduction for losses. Credits or refunds for returned goods may be deducted. Such term shall not include, however, the amount received from the resale of second-hand or used articles, taken in part payment in the sale of new articles, or the resale of articles re-possessed by the vendor, if and when a separate record is kept of all such transactions in such manner as may be prescribed by the Comptroller, it being the purpose herein that the used article accepted as part payment for a new article be excluded from the gross sales taxable and that articles re-possessed by the vendor and resold be excluded. in such cases, however, the sale of the new article shall be reported as hereinafter provided at full gross sales price, including the value of the used or second-hand article taken in part payment. The term "gross income" shall be anonymous with the term "gross proceeds."

(5) The term "business" when used in this Act shall include all activities or acts engaged in or caused to be engaged in with the object of gain, benefit or advantage, either direct or indirect, including sub-activities producing marketable commodities used or consumed in the main business activity, each such sub-activity to be considered business engaged in.

(6) The term "sale at retail" or "retail sale" shall mean any transaction, transfer, exchange or barter by which is transferred for a consideration the ownership of any personal property, or commodity, and shall include the furnishing or selling for a consideration any of the things or services or amusements hereinafter specifically designated, when such transfer, exchange or barter is made, or when such service is furnished in the ordinary course of the transferer's business and is made to the transferee for consumption or use or for any other purpose than for resale. The term "sale at retail" or "retail sale" shall not include the isolated or occasional sale of tangible personal property, substance or thing by a person not engaged in such business. The test of a sale at retail is whether the sale is to the consumer for use and not for resale. Sales of goods which, as ingredients or constituents go into or form a part of the tangible personal property for resale by the buyer, are not included within the meaning of said terms. Said terms shall not include exchanges or transfers of commodities, articles or substances sold for manufacturing or industrial purposes. Conditional sales are included within this definition.

(7) The term "jobbing" and the term "wholesale" shall mean the sale of commodities, articles, or substances to persons for the sole purpose of being resold to other jobbers, or wholesalers or to consumers or users for manufacturing purposes; and such term shall include sales of commodities, articles or substances to be used in industry and not to become a part of the fixed capital investment of the industry purchasing same.

(8) Retail business means the business of making sales at retail and furnishing the services hereinafter enumerated. For the purposes of that Act any person or persons who conduct a retail business shall be designated a retailer or retailers.

Sec. 2. Within ninety days after the effective date of this Act every person desiring to engage in or continue in any business, trade or calling, taxable under this Act, unless hereinafter specifically exempted from the provisions hereof, shall register with the Comptroller; and persons having chain or branch establishments or branch offices shall register each such branch, establishment or branch office separately.

Sec. 3. Any person required under this Act to register shall report to the Comptroller at the time of registration the approximate amount of his gross sales or gross income or gross receipts for the twelve months period next preceding, and shall furnish under oath such other information as may be required under the rules established by the Comptroller. The Comptroller shall not make public or use the information so filed with him except in the course of some judicial proceeding in which the State is a party. However, the Comptroller may divulge such information to any officer of this State charged with the enforcement of this Act or any part

of the same, but each officer to whom the Comptroller divulges such information shall not make the same public or use the same except in the course of some judicial proceeding to which the State is a party.

Upon receipt of the above information the Comptroller shall index the person so registering as a taxpayer and shall classify him on a monthly, quarterly or annual basis in accordance with the provisions of this Act. On request the Comptroller may furnish registration blanks to persons desiring to register, for failure on the part of the Comptroller to furnish such blanks shall not constitute an excess for failure to register.

Sec. 4. When any applicant for registration shall have complied with the provisions of the preceding section, the Comptroller shall issue to the applicant a certificate which shall state that the holder thereof is registered and is entitled to engage in or continue in the business designated by such applicant at the time of registration. The Comptroller shall collect for each certificate so issued the sum of One Dollar ($1.00), which shall be deposited in the same fund and handled in like manner as the taxes collected under this Act as hereinafter provided. All such certificates so issued shall expire on the 31st day of August following the issuance thereof, and before the first day of July of each year the Comtroller shall furnish on request uniform application blanks and certificates to be used for the succeeding year, and all persons required to register hereunder shall make a sworn application to the Comptroller on the form furnished for that purpose and pay to the Comptroller the sum of One Dollar ($1.00)) thereupon the Comptroller shall issue a new certificate effective until the 31st day of August of the following year.

Such certificate issued by the Comtroller shall be prominently displayed by the holder thereof in his place of business during the duration of the term for which the certificate was issued. In the case of a person owning or operating more than one place of business within this State, such person must procure and publicly display a certificate for each and every location where his business is transacted.

Sec. 5. No person shall be permitted to engage in any business, pursuit, calling or trade such as is taxable hereunder without having first procured from the Comptroller the certificate above provided for. Any person failing to procure or display such certificate shall be deemed to be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than Five Dollars ($5.00), nor more than One Thousand Dollars ($1,000.00), each day for such failure to constitute a separate offense. When it is brought to the attention of the Comptroller that any such person has failed to procure or display the prescribed certificate, the Comptroller shall certify such fact to the Attorney General, who may file a suit in a district court of Travis County, Texas, to enjoin the person or persons so offending from continuing in business until such certificate has been procured and displayed.

Sec. 6. Within sixty days (60) after the effective date of this Act, the Comptroller shall make and prepare a list enumerating the certificate holders in alphabetical order, together with a number for index purposes, giving the address of the place of business and the name of the person owning, or conducting the business authorized by each certificate and stating whether the tax collection will be on a monthly, quarterly or annual basis. A copy of such list shall be furnished forthwith to the State Treasurer.

Sec. 7. Beginning on the first day of the month immediately following the expiration of 90 days after the date of the passage of this Act, there is hereby levied and there shall be collected an annual gross proceeds tax, measured by the value of business done, against the person or persons conducting the folowing named businesses, on account of the business activities and in the amounts or gross proceeds of sale, as the case may be, as follows:

(1) Upon every person engaging or continuing within this State in the business of mining and producing for sale, profit or commercial use, any building stone, coal, helium, shell sand or gravel there is hereby levied and shall be collected a tax of one per cent on the gross proceeds of sales of such persons where such products are sold at retail, provided, however, the provisions of this Act

shall not apply, however, to the sales or any mineral upon which a severance or gross production tax is now levied by the laws of this State.

(2) Upon every person engaged in the business of conducting athletic contests, theatres, both motion picture and state performances, circuses, carnivals,r dance halls and other places of amusement where an admission fee in excess of fifty ($.50) cents per person is charged.

(3) Upon every person engaging or continuing within this State in the business of preparing and selling abstracts of title or certificates of title, title guaranties and title insurances, for whatever purpose such abstracts of title, certificate of title, title guaranty or title insurance may be used, there is hereby levied and shall be collected a tax of one per cent upon the gross proceeds received by such persons or person in the aforesaid business.

(4) Upon every peron engaging or continuing within this State in the business of inn-keeping, which shall include the operation of hotels and restaurants, either separately or in conjunction with each other, there is hereby levied and shall be collected a tax of one per cent of the gross proceeds received by such person in such business.

(5) Upon every person engaging or continuing within this State in a retail business of any character selling any article or commodity except those hereinafter expressly excepted, there is hereby levied and shall be collected a tax of one per cent of the gross proceeds of all such retail sales. Any person selling both at wholesale and at retail shall pay the tax only on the gross proceeds of sales made at retail if his books are kept so as to show separately the gross proceeds of sales of each business; otherwise he shall pay the tax as if all of his sales were made at retail. Provided, however, that no tax is levied by this Act on any sale of any article, commodity or merchandise selling for Fifty Cents (50c) or less.

(6) No tax shall be paid to the State by reason of any sales made on instalment payments prior to the effective date of this Act.

(7) The tax levied herein shall be paid by the purchaser on all sales made to him at retail, where the consideration paid or promised is of a value in excess of Fifty ($0.50) Cents, and in no such event shall the tax be less than One (1) Cent.

(8) In all cases the tax shall be computed as if no odd cents were involved in the consideration, and shall be based upon an even amount in Dollars nearest to the actual consideration paid or promised. All retailers shall add the tax imposed under this Act to the sales price or charge for the article sold, and when added such tax shall constitute a part of such price or charge and shall be a debt from the purchaser to the seller until paid and shall be recoverable at law in the same manner as other debts.

(9) Any retailer, as defined in this Act, who wilfully or intentionally fails, neglects or refuses to collect the full amount of the tax imposed by this Act, or wilfully or intentionally fails, neglects or refuses to comply with the provisions of this section, or remits or rebates to a purchaser, either directly or indirectly, and by whatsoever means, all or any part of the tax levied by this Act, or make in any form of advertising, verbally or otherwise, any statement which infers that he is absorbing the tax, or paying the tax for the purchaser by an adjustment of prices or at a price including the tax, or in any manner whatsoever, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine of not less than Fifty ($50.00) Dollars nor more than Two Hundred ($200.00) Dollars.

Sec. 8. There shall be excepted and exempted from the gross income or gross proceeds taxed by this Act, so much thereof as shall be derived from the following transactions:

(1) Articles, commodities and things sold to the government of the United States and its agencies.

(2) Articles, commodities and things sold to the State of Texas and its agencies and to the various counties, districts and municipalities of this State and their agencies.

(3) Sales at retail in interstate and foreign commerce only to the extent that the same are free from taxation under the Constitution of the United States of America.

(4) The gross proceeds inuring to labor, agriculture and horticulture societies and organizations not operated for profit.

(5) Sales, made in the original state or condition of preparation for sale, of livestock, poultry and other products of the farm, ranch, grove and garden, where such sales are made by the producer, or by members of his immediate family, or by bona fide employees of the producer. This exemption and exception, however, shall not obtain in favor or commission agents or brokers selling such products upon commission or upon a contingent interest therein.

(6) The gross proceeds inuring to cemetery associations and companies which are organized and operated exclusively for the benefit of their members, and in no other case.

(7) The gross incomes of associations or societies organized and operated exclusively for religious, charitable, or educational purposes.

(8) The gross income of civil leagues and organizations operated exclusively for the benefit of the community in which the same operate and for the promotion of social welfare. Provided, however, that this exemption shall obtain only where such corporations, associations or societies are not organized or operated for profit and no part of whose income inures to the benefit of any private stockholder or individual.

(10) The gross proceeds of all policies of life insurance paid by reason of the death of the insured.

(11) All industries and occupations included in the provisions of Article 2 of this Act shall be exempt from the provisions of Article 1 hereof.

(12) Amounts derived from the sale of products and commodities for consumption by human beings such as groceries, vegetables, fruits and other edible products; provided that this exemption shall not apply to sales of foods which are sold for consumption on the premises of the vendor.

(13) Amounts derived from the sale of boots, shoes, hats and articles of clothing when the price does not exceed Five ($5.00) Dollars.

(14) Amounts derived from the sale of drugs and medicines.

Sec. 9. It is expressly provided that the existing laws fixing occupation, excise or gross receipts taxes on the sale of cigarettes, gasoline and alcoholic beverages and liquors shall remain in full force and effect and said products are not intended to be included within the provisions of Article 1 of this Act.

Sec. 10. The taxes levied hereunder shall be due and payable in monthly installments on or before the 15th. day of the month next succeeding the month in which the tax accrues. The taxpayer shall, on or before the 15th of each month, make out a return showing the amount of tax for which he is liable for the preceding month and shall mail such return, together with a remittance for the amount of tax due by him, in the form hereinafter provided, to the office of the Comptroller. Such monthly return shall be signed by the taxpayer or his duly authorized agent but need not be verified by oath. Any person taxable under this Act who has made cash and credit or instalment sales shall report all sales made by him and shall monthly pay the tax on cash sales, but may pay the tax accruing on credit or installment sales in the month next succeeding the date when such credit accounts are paid. However, in any event the tax must be paid on such credit sales within twelve months after the date of such sale, whether such accounts are then paid or not. In the case of installment sales the taxpayer shall report the same and pay the tax thereon at the taxpaying date in the month next succeeding the date when any installment is paid, but in any event the tax shall be paid on all such installments within sixty days after the same shall have become due, whether the instalment has been paid or not.

Sec. 11. Persons liable for taxes under this Act shall report all sales at retail, whether such sales are taxable or not, and in computing the tax due and owing by them, they shall be allowed to deduct from their total gross proceeds or gross incomes the gross proceeds of sales of commodities, or services exempted from taxation by this Act as a credit and shall pay the taxes prescribed on the balance of such total gross proceeds or incomes remaining after the deduction of the gross proceeds of untaxed articles or service.

Sec. 12. Whenever the total tax for which any person is liable under

this Act does not exceed the sum of Ten ($10.00) Dollars for any month he shall so inform the Comptroller and in lieu of the monthly return and remittance required herein, he may make a quarterly return and remittance which shall be made on or before the 15th day of the month succeeding the end of the quarter for which the tax is due. When the total tax for which any person is liable under this Act does not exceed the sum of Ten ($10.00) Dollars in each quarter year, he shall inform the Comptroller of such fact but shall not be required to make either a monthly or quarterly return and remittance, but in lieu thereof shall make an annual return and remittance, under such rules and regulations as the Comptroller may prescribe, such annual return and remittance to be made on or before the 30th day of the tax year for which the tax is due.

Sec. 13. The Comptroller shall prescribe forms for the making of the monthly, quarterly and annual returns and remittances required by this Act.

Sec. 14. On or before thirty (30) days after the end of the tax year, each person liable for the payment of the tax under this Act shall make a return showing gross proceeds of sales or gross income of business and shall compute the amount of tax chargeable against him in accordance with the provisions of this Act, and shall deduct the amount of monthly or quarterly payment theretofore made during such taxable year, if any. Such return shall be verified by the oath of the taxpayer, if made by an individual, or by the oath of the president, vice-president, secretary or treasurer if made on behalf of a corporation. If made on behalf of a partnership, trust estate or any group or combination, acting as a unit, or by any other entity, the same shall be made by any individual delegated by such taxpayer. If, for any reason, it is not practicable for the individual taxpayer to make the oath, the same may be made by any duly authorized agent.

Sec. 15. The Comptroller shall daily pay into the State Treasury all moneys collected under this Act. The State Treasurer shall place the same to the credit of the various funds in the manner and proportion hereinafter provided.

Sec. 16. As soon as practicable after return required by this Act is filed, the Comptroller shall examine it. If it then appears that the correct amount of tax is greater or less than that shown in the return, the tax shall be recomputed. If the amount already paid exceeds that which should have been paid as recomputed, the excess so paid shall be immediately returned to the taxpayer in accordance with the provisions of this Act. If the amount already paid is less than the amount which should have been paid, the difference, to the extent not covered by any credits under this Act, together with interest thereon at the rate of one-half of one per cent per month from the time the tax was due, shall be paid upon notice and demand by the Comptroller. If any part of the deficit, due to neglect or intentional disregard of authorized rules and regulations with knowledge thereof but without intent to defray, there shall be added as damages ten per cent of the total amount of the deficit, and the tax and interest in such cases shall be collected at the rate of ten per cent per annum on the amount of such deficit from the time the same was due, which interest and damages shall become due and payable on notice and demand by the Comptroller. If it be found that any part of the deficit occurred by reason of fraud with intent to evade the tax, then there shall be added as damages not more than 100% of the total amount of the deficit and in such cases the whole amount of the tax unpaid, including charges so added, shall become due and payable upon notice and demand by the Comptroller and an additional ten per cent per annum on the tax shall be added from the date such tax was due and unpaid.

Sec. 17. It shall be the duty of every person engaging or continuing in this State in any business subject to the provisions of this Act to keep and preserve suitable records of the gross income or gross proceeds of sales of such business, and such other books of account and records as may be necessary to determine the amount of tax for which he is liable under the provisions of this Act. It

shall be the duty of every such person to keep and preserve for a period of two years all invoices of goods and merchandise purchased for resale and all such books, invoices and other records shall be open for examination at all times to the Comptroller or his duly authorized agents.

Sec. 18. If no return is made when due by the taxpayer required to make returns as provided herein, the Comptroller shall give written notice by registered mail to such taxpayer to make such return within thirty days from the date of such notice, and if such taxpayer shall fail or refuse to make such returns as he may be required to make in such notice, then such returns shall be made by the Comptroller from such information available, and such returns shall be prima facie correct for the purposes of this Act and the amount of tax shown due thereby shall be a lien against all of the property of the taxpayer subject to execution until discharged by payment. If payment be not made with thirty days after demand therefor by the Comptroller there shall be added not more than 100% thereof as damages, together with interest at the rate of one-half of one per cent per month on the tax from the time such tax was due. However, if such tax be paid within thirty days after notice by the Comptroller, there shall be added only ten per cent as damages, together with interest at the rate of one-half of one per cent per month from the time such tax was due until paid. It shall be within the discretion of the Comptroller to remit any penalties for the first offense upon payment of the tax due.

Sec. 19. The tax imposed by this Act shall be a lien upon the property of any person subject to the provisions hereof, who shall sell out his business or stock of goods, or shall quit business, and such person shall be required to make out a return upon such form as may be prescribed by the Comptroller within ten days after the date of the sale of his business or stock of goods, or the date of his cessation of business, and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of taxes due and unpaid until such time as the former owner shall produce a receipt from the Comptroller showing that the taxes have been paid or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, and the taxes shall be due and paid after thirty days, he shall be personally liable for the payment of the taxes accrued and unpaid on account of the operation of the business by the former owner.

Sec. 20. Any person improperly charged with any tax and required to pay the same may recover the amount paid, together with legal interest, in a suit against the Comptroller in any court of competent jurisdiction in Travis County, and permission is hereby granted any such taxpayer to file such a suit. It shall not be necessary for the taxpayer to protest the payment of the tax or to make demand for a refund thereof in order to maintain such suit. In any suit to recover taxes paid or to collect taxes the court shall adjudge costs to such extent and in such manner as may be deemed equitable. Either party to such suit shall have the right of appeal in accordance with the laws governing appeals in other civil cases. In the event a final judgment is rendered in favor of the taxpayer in a suit to recover illegal taxes, then it shall be the duty of the Comptroller, upon receipt of a certified copy of such final judgment to pay such judgment, interest and costs. It shall be the duty of the State Treasurer to honor the Comptroller's warrant therefor and to pay the same out of the special fund hereinafter created and provided for.

Sec. 21. No injunction shall be awarded by any court or judge to restrain the collection of the taxes imposed by this Act or to restrain the enforcement of the same, unless the application be filed in the district court of Travis County accompanied by a bond, approved by the judge in double the amount of the tax.

Sec. 22. It shall be the duty of the Attorney General to represent the Comptroller and other officers charged with the enforcement of this tax and the execution of the provisions of this entire Act in any litigation arising hereunder.

Sec. 23. Any tax due and unpaid shall constitute a debt to the State of Texas and may be collected by a

suit in any court of competent jurisdiction in Travis County, Texas, or in the County of the taxpayer's residence, at the option of the Comptroller, which remedy shall be in addition to all other existing remedies. Any such unpaid tax shall constitute a lien upon all of the property of the taxpayer subject to execution. All unpaid taxes shall bear interest at the rate of one-half of one per cent per month if paid not later than thirty days after due date. Taxes past due more than thirty days shall bear interest at the rate of ten per cent per annum. The lien herein provided for taxes shall also secure all penalties and interest due by any taxpayer.

Sec. 24. Whenever any person shall fail and refuse to make the returns and pay the taxes as herein provided, it shall be the duty of the Comptroller to certify such fact to the Attorney General who shall bring suit in a district court of Travis County, Texas for an injunction to restrain the person so delinquent from further engaging in the business for which he has been granted a certificate until he shall have paid such taxes as he may be found to owe. The assessment of taxes herein made, and the returns thereof herein required, shall be for the calendar year beginning January first and ending December 31st. However, if any taxpayer in transacting his business keeps the books reflecting the same on a basis other than the calendar year, he may, with the consent of the Comptroller, make his annual returns and pay taxes for the year covering his accounting period as shown by the method of keeping the books of his business.

Sec. 25. No city, county or other tax-levying unit of government within this State shall levy any tax by virtue of the provisions of Article 1 of this Act.

Sec. 26. All remittances of taxes imposed by this Act shall be made to the Comptroller by bank draft, check, cashier's check, money order or in cash. The Comptroller shall issue his receipt for all remittances when requested. However, no remittance other than cash shall be a final discharge of liability for the tax herein assessed and levied unless and until it has actually been paid in cash to the Comptroller or State Treasurer.

Sec. 27. At the end of each month the State Auditor shall carefully check the books and records of the Comptroller relating to the taxes herein levied and collected and shall verify the amounts paid or to be paid into the State Treasury.

Sec. 28. The Comptroller shall keep full and accurate record of all money received by him and how disbursed. He shall preserve for a period of three years all returns filed with him.

Sec. 29. Neither the Comptroller nor any of his office assistants or agents shall divulge the gross income or gross proceeds of any person or the amount of tax paid by any person as shown by the returns filed under this Act, except in some judicial proceeding to which the State is a party. The Comptroller, however, may impart such information as may be necessary to the Governor or to the Attorney General or to any other officer of the State charged with the enforcement of the provisions of this Act.

Sec. 30. The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal of any corporation until a receipt of a notice from the Comptroller to the effect that all taxes levied under this Act have been paid, if any such corporation is a taxpayer under the terms of this Act, or until he shall be notified by the Comptroller that the applicant for such certificate is not subject to pay a tax hereunder.

Sec. 31. It shall be unlawful for any person to fail or refuse to make any return provided for in this Act, or to make any false or fraudulent return or false statement in any return with the intent to defraud the State, or to avoid the payment of the tax or any part thereof; and it shall be unlawful for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, or for any officer or agent of a corporation to make or permit to be made any false return or false statement with intent to evade the payment of any tax. It shall likewise be unlawful for any person to fail or refuse to permit the examination of any book, paper or any other data by the Comptroller or his duly authorized agents as required by this Act; or to refuse or fail to permit the inspection or appraisal of any

property by the Comptroller or any duly authorized agent. It shall likewise be unlawful for any person to refuse to offer testimony or produce any record as required in this Act.

Sec. 32. Any person violating any of the provisions of the foregoing sections shall be guilty of a felony and upon conviction shall be punished by confinement in the penitentiary not less than one nor more than five years.

Sec. 33. It shall be the duty of the Comptroller to enforce and administer all of the provisions of this Act relating to tax returns and the ascertainment, assessment and collection of the taxes imposed hereunder, and it shall be the duty of the Attorney General and of every county and district attorney in this State to assist the Comptroller in the enforcement of this Act when called upon so to do.

Sec. 34. The Comptroller shall appoint, as needed, such assistants, clerks and stenographers as may be required to administer the provisions of this Act. The such assistant or clerk shall execute a bond in the sum of Five Thousand ($5,000.00) Dollars for the faithful performance of his duties. The salaries of such assistants, clerks and stenographers shall be paid out of the special fund hereinafter created. All such assistants, stenographers and clerks shall serve at the pleasure of the Comptroller.

Sec. 35. The Comptroller shall, from time to time, promulgate such rules and regulations not inconsistent with this Act for the making of returns and for the ascertainment, assessment and collection of the tax imposed hereunder as he may deem necessary; and upon request the Comptroller shall furnish any taxpayer with a copy of such rules and regulations. The Comptroller shall likewise cause forms to be printed for the making of returns and remittances and shall furnish the same to taxpayers upon request.

Sec. 36. The Comptroller or his authorized representative may examine any books, papers, records, or any other data belonging to or in the possession of any taxpayer, bearing upon any return made by such taxpayer, or for the purposes of making a return where none has been made, and may require the attendance of any person as a witness and may take his testimony with respect thereto, with power to administer oaths to such person or persons. If any person summoned as a witness shall fail to obey any summons to appear before the Comptroller or his authorized assistant, or shall refuse to testify or answer any material question or to produce any book, record, paper or other data when required to do so, such failure or refusal shall be reported to the Attorney General or to the county or district attorney of the county in which such person is summoned to testify, who shall thereupon apply to the judge of the district court of such county upon proof by affidavit of the fact, for a rule or order returnable in not less than two nor more than five days directing such witness to show cause before the judge who made the order, or any other district judge of said county, why he should not be punished for contempt. Upon the return of such order the judge before whom the matter shall come on for hearing shall examine under oath such witness or person, and such person shall be given an opportunity to be heard. If the judge shall determine that such person has refused, without reasonable cause or legal excuse to answer such summons, or to be examined or answer a legal and pertinent question, or to produce a book, record or paper or any other data which he has been ordered to bring or produce, he may forthwith punish the offender as for contempt of court. Subpoenas shall be served and witness fees and mileage paid as in civil cases in the district court in the county to which such witness shall be called. Witnesses subpoenaed at the instance of the Comptroller and his representatives shall be paid their fees and mileage by the Comptroller out of the special fund hereinafter created.

Sec. 37. There is hereby created a special fund known as the "Gross Proceeds Tax Enforcement Fund." One-tenth of one per cent of all moneys collected under the provisions of this Act, or so much thereof as may be necessary, shall be applied by the Comptroller to such Enforcement Fund and shall be used to carry out the enforcement of this Act. All assistants, clerks and stenographers hired in connection with the enforcement hereof shall be paid out of said fund and all expenses, witness fees and officers fees shall be paid out of said fund.

Sec. 38. "Old Age Assistance Fund."

All taxes collected under the provisions of Article 1 of this Act shall be credited by the State Treasurer to and placed in the State Treasury after the deduction of the expense of collection in the following proportions: To the Available free school fund, twenty five (25) per cent; and the remainder of such fund is herewith appropriated to the exclusive use of the payment of old age assistance.

Sec. 39. If any clause, sentence, paragraph or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Sec. 40. Article 1 of this Act shall be cited and referred to as the Old Age Fund Act of the State of Texas.

Article II. Occupation Taxes.

Section 1. Section 3 of Chapter 73, Acts of 42nd Legislature shall be amended to hereafter read as follows:

Section 3. A tax shall be paid quarterly by each such producer on the amount of gas produced and saved within this State, and on gas imported into the State, upon the first sale thereof in intrastate commerce upon the following basis:

A tax equivalent to three and one-half per cent (3½%) of the market value of the total amount of gas produced and saved within this State, or sold, if imported into this State, at the average market value thereof, as and when produced.

The tax hereby levied shall be a liability of the producer of gas and it shall be the duty of such producer to keep accurate records of all gas produced, making monthly reports under oath as hereinafter provided.

The purchaser of gas shall pay the tax on all gas purchased and deduct tax so paid from payment due producer or other interest holder, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasury.

Provided, that if gas produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate and in the manner as if said gas were sold.

The tax herein levied shall be paid monthly on the 25th day of each month on all gas produced during the month next preceding by the purchaser or the producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid; and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein, the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments and shall be entitled to reasonable attorney fees and court costs incurred by such legal action.

Sec. 2. That Article 7064, Revised Civil Statutes of 1925, be amended so as to hereafter read as follows:

Article 7064. Insurance Companies. Every insurance company transacting the business of fire, marine, marine inland, accident, credit, title, live stock, fidelity, guaranty, surety, casualty, or any other kind or character of insurance business other than the business of life insurance, within this State and other than fraternal benefit associations, at the time of filing its annual statement, shall report to the Commissioner of Insurance the gross amount of premiums received in the State upon property, and from persons residing in this State during the preceding year, and each of such companies shall pay an annual tax upon such gross premium receipts as follows: Shall pay a tax of three and two tenths per cent (3 2-10%), provided, that any company doing two or more kinds of insurance business herein referred to, shall pay the tax herein levied upon its gross premiums received from each of said kinds of business; and the gross premium receipts where referred to in this law are understood to be the premium receipts reported to the Commissioner of Insurance by the insurance companies upon the sworn statement of two principal officers of such companies, less return premiums paid policy holders, and the premiums paid for re-insurance in companies authorized to do business in this State. Upon receipt by him of sworn statements, showing the gross premium receipts by such companies, the Com-

missioner shall certify to the State Treasurer the amount of taxes due by each company, which tax shall be paid to the State Treasurer on or before the first of March following, and the receipt of the Treasurer shall be evidence of the payment of such taxes. No such insurance company shall receive a permit to do business in this State until such taxes are paid. If any such insurance company shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities: Real estate in the State, bonds of this State or of any county, incorporated city or town of this State, or other property in this State in which by law such companies may invest their funds, then the annual tax of any such companies shall be one and one-fourth per cent (1 1-4%) of its said gross premium receipts; and if any such company shall invest as aforesaid as much as one-half of its assets, then the annual tax of such company shall be sixty-two one hundredths of one per cent (0.62%) of its gross premium receipts, as above defined. No occupation tax shall be levied on insurance companies herein subjected to a gross premium receipt tax by any county, city or town. All mutual fraternal benevolent associations, now or hereafter doing business in this State under the lodge system and on the assessment plan, whether organized under the laws of this State or a foreign State or country, are exempt from the provisions of this Article. The taxes aforesaid shall constitute all taxes and license fees collectable under the laws of this State against any such insurance companies, and no other occupation or other taxes shall be levied on or collected from any insurance company by any county, city or town, but this law shall not be construed to prohibit the levy and collection of State, county and municipal taxes upon the real and personal property of such companies. Purely cooperative or mutual fire insurance companies carried on by the members thereof solely for the protection of this own property, and not for profit, shall be exempt from the provisions of this law.

Sec. 3. That Article 7063, Revised Civil Statutes of 1925, be amended to hereafter read as follows:

Article 7063. Sleeping, Palace or Dining Car Companies. Every sleeping car company, palace car company, or dining car company doing business in this State, and each individual company, corporation or association leasing or renting, owning, controlling or managing any palace cars, dining cars, or sleeping cars within this State for the use of the public, for which any fare is charged, shall on the first days of January, April, July and October of each year, report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts earned from any and all sources whatever within this State, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to six and one-fourth per cent (6 1-4%) of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies, except the tax of twenty-five cents (25c) on the one hundred dollars ($100) of capital stock of such car companies as provided by law.

Sec. 4. Section 1 of Chapter 212, Acts of the 42nd Legislature shall be amended to hereafter read as follows:

Section 1. Sulphur producers. Each person who owns, controls, manages, leases or operates, any sulphur mine, or mines, wells or shafts or who produces sulphur by any method, system, or manner within this State shall make quarterly on the first day of January, April, July, and October of each year a report to the Comtroller, sworn to by such person before an officer authorized to administer oaths in this State, or if such person be other than an individual, sworn to by its president, secretary, or other duly authorized officer, on such forms as the Comptroller shall prescribe showing the total amount of sulphur produced within this State by said person during the quarter next preceding; and at the time of making said report shall pay to the Treasury of this State an occupation tax for the quarter ending on said date an amount equal to Ninety Cents per long ton, or fraction thereof, of all

sulphur produced by said person within the State of Texas during said quarter. Should any person subject to the occupation tax herein levied begin business after the beginning of a quarter, the amount of tax which such person or concern shall pay for the first quarter immediately succeeding the quarter in which the business was begun shall be ascertained by taking the total number of tons produced within the last quarter, dividing the same by the number of days such person or concern was engaged in the business during said preceding quarter and multiply the quotient by ninety and multiplying the product by Ninety Cents. Said tax shall be in lieu of the tax imposed by House Bill No. 2, Chapter 74, Acts of the 5th Called Session of the Forty-first Legislature, but said tax shall be paid in the same manner subject to the same penalties and under the same conditions as provided in said Act.

Sec. 5. That Article 7070 of the Revised Civil Statutes of Texas, 1925, shall be amended to hereafter read as follows:

Article 7070. Telephone Companies. Each individual company, corporation or association owning, operating, managing, or controlling, any telephone line, or lines, or any telephones within this State, and charging for the use of the same, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the State Treasurer an occupation tax, for the quarter beginning on said date, equal to one and eight-tenths per cent (1.8%) of said gross receipts as shown by said report.

Sec. 6. That Section 1 of Chapter 34, Acts of the 5th Called Session of the 41st Legislature shall be amended to hereafter read as follows:

Article 7060. Gas, Electric Light, Power or Water Works. Each individual company, corporation, or association owning, operating or managing or controlling any gas, electric light, electric power, or water works, or water and light plant, located within any incorporated town or city in this State, and used for local sale or distribution in said town or city, and charging for such gas, electric light, electric power or water, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller under oath of the individual, or of the president, treasurer, or superintendent of such company, corporation or association showing the gross amount received from such business done in each such incorporated city or town within this State in the payment of charges for such gas, electric light, electric power or water for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report for any such incorporated town or city of twenty-five hundred inhabitants and less than ten thousand inhabitants, according to the last United States census next preceding the filing of said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to five-eighths of one per cent (5/8%) of said gross receipts as shown by said report, and for any incorporated town or city of ten thousand (10,000) inhabitants or more, according to the last United States census next preceding the filing of said report, the said individual, company, corporation or association at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to one and one-fourth per cent (1-1/4%) of said gross receipts as shown by said report. Nothing herein shall apply to any such gas, electric light, power or water works or water and light plant within this State owned and operated by any city or town now to any county or water improvement or conservation district Nothing herein shall be construed to require payment of the tax on gross receipts herein levied more than once on the same commodity, and where the commodity is produced by one individual, company, corporation or association, and

distributed by another, the tax shall be paid by the distributor alone.

Sec. 7. Section 1, Chapter 12, Acts 1st Called Session of the 43rd Legislature, shall be amended to hereafter read as follows:

Section 1. (1) There is hereby levied an occupation tax on oil produced within this State of two and one-half cents (2-1/2c) per barrel of forty-two (42) standard gallons. Said tax shall be computed upon the total barrels of oil produced or salvaged from the earth or waters of this State without any deductions, and shall be based upon tank tables showing one hundred per cent (100%) of production and exact measurements of contents. Provided, however, that the occupation tax herein levied on oil shall be two and one-half per cent (2-1/2c) of the market value of said oil whenever the market value thereof is in excess of One ($1.00) Dollar per barrel of forty two (42) standard gallons. The market value of oil, as that term is herein used, shall be the actual market value thereof, plus any bonus or premiums, or other thing of value paid therefor or which such oil does or will reasonably bring, if produced in accordance with the laws, rules and regulations of the State of Texas.

(2) The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making monthly reports under oath as hereinafter provided.

(3) The purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer or other interest holder, making such payments so deducted to the Comptroller of Public Accounts by legal tender or cashier's check payable to the State Treasurer. Provided, that if oil produced is not sold during the month in which produced, then said producer shall pay the tax at the same rate and in the manner as if said oil were sold.

(4) The tax herein levied shall be paid monthly on the 25th day of each month on all oil produced during the month next preceding by the purchaser or the producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and said purchaser fails to make payment of the tax to the State as provided herein the producer may bring legal action against such purchaser to recover the amount of tax so withheld, together with penalties and interest which may have accrued by failure to make payments and shall be entitled to reasonable attorney fees and court costs incurred by such legal action.

(5) Provided, that unless such payment of tax on all oil produced during any month or fractional part thereof shall be made on or before the 25th of the month immediately following, such payment shall become delinquent and a penalty of ten per cent (10%) of the amount of the tax shall be added; such tax and penalty shall bear interest at the rate of six per cent (6%) per annum from date due until date paid.

(6) The tax herein levied shall be borne ratably by all interested parties, including royalty interests, and producers and/or purchaser of oil are hereby authorized and required to withhold from any payment due interested parties, the proportionate tax due.

Sec. 8. Section 1, Chapter 222, Acts 42nd Legislature, shall be amended to hereafter read as follows:

Article 7058. Express Companies. Each individual, company, or corporation doing an express business by steam railroad or by water in this State shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, association or corporation, showing the gross amount received from intrastate business done within this State in the payment of charges from express and freight, or from other sources of revenue received from intrastate business during the quarter next preceding. Said individuals, companies, associations, or corporations, at the time of making said report, shall pay to the State Treasurer an occupation tax for the quarter beginning on said date equal to three per cent (3%) of said gross receipts, as shown by said report.

Provided, that those individuals, companies, associations, or corporations, now doing an express business in this State, for which an annual gross receipts tax is now authorized by Article 7058 shall continue to pay the said annual tax for the year 1935, and shall make their first quarterly report on the first day of April, 1936, showing the gross receipts from the preceding months of January, February and March, and pay a tax equal to three per cent (3%) of said gross receipts, and said individual, company, association and corporations thereafter shall make their quarterly report and pay the quarterly tax in the form and manner herein authorized; provided, however, no penalties shall accrue for the failure to make said report or to pay said taxes if said reports are made and said taxes are paid within thirty (30) days after the first day of January, April, July and October of each year as herein provided.

Sec. 8a. That Section 1, Chapter 37, Acts of the 5th Called Session of the 41st Legislature, shall be amended to hereafter read as follows:

Section 1. Textbook Publishers. Each individual, company corporation or association, whether incorporated under the laws of this State or in any other State or Nation, engaged in publishing, printing and selling such textbooks as are used, or will be used in the schools of this State, or owning, controlling or managing any such business within the State or out of it, and having state agencies within this State for the purpose of selling any such books, to be used in any of the schools of this State, shall make quarterly, on the first day of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president or treasurer or superintendent of such company, corporation or association, or of the person owning, controlling or managing such business showing the gross amount received from such business done within this State from any and all sources during the quarter next preceding. Said individuals, companies, corporations and associations at the time of making said report, shall pay to the State Treasurer an occupation tax for the quarter beginning on said date equal to one and one-fourth per cent (1-1/4%) of said gross receipts as shown by said report. The provisions of this Article shall not apply to any corporation organized by the students and faculties of any State-supported institution of learning and which has no capital stock and pays no dividends and is organized for the purpose of supplying books and other school supplies to the students of such institutions and whose assets on the dissolution of the corporation pass to the governing board of the institution as a trust fund to be used for the benefit of the institution.

Sec. 9. That Article 4769 of the Revised Civil Statutes of 1925 is amended so as to hereafter read as follows:

Article 4769. Reports Showing Gross Receipts. Each life insurance company not organized under the laws of this State transacting business in this State shall annually on or before the first day of March make a report to the Commission, which report shall be sworn to by either the president or vice president and secretary and treasurer of such company which shall show the gross amount of premiums collected during the year ending on December 31, preceding, from citizens of this State, upon policies of insurance. Each such company shall pay annually an occupation tax equal to three and three-fourths per cent (3-¾%) of such gross premiums receipts. When the report of the investment, in Texas securities, as defined by law, of any such companies as of December 31st of any year shall show that it has invested on said date as much as thirty per cent (30%) of its total Texas reserves, as defined by law, in promissory notes or other obligations secured by mortgage, deed of trust, or other lien on Texas real estate, the rate of occupation tax shall be reduced to three and two-tenths per cent (3-2/10%); and, when such report shall show that such company has so invested on said date as much as sixty per cent (60%) of its total Texas reserves, the rate of such occupation tax shall be reduced from two and nine-tenths per cent (2-9/10%), and when such report shall show that such company has

so invested on said date as much as seventy-five per cent (75%) of its total Texas reserve, the rate of such occupation tax shall be reduced to two and one-fourth per cent (2-1/4%). All such companies shall in any event make the investments in Texas securities in proportion to the amount of Texas reserves as required by law. Such occupation taxes shall be for and on account of the business transacted within this State during the calendar year in which said premiums were collected, or for that portion thereof during which the company shall have transacted within this State.

Sec. 10. That Sub-Section 5 of Section 1, Chapter 10, Acts of the 1st Called Session of the 43rd Legislature, be and the same is hereby so amended and re-enacted as to hereafter read as follows:

Sub-section 5. Any person or persons, association or incorporation desiring to conduct racing of horses in Texas and to use in connection therewith the said certificate system, as in this Act authorized, shall make application in writing to the Racing Commission for license so to do. On the filing of such application, the Commission shall promptly cause to be published in a newspaper of general circulation in the county where the license to conduct racing is sought, and if there be no such newspaper in such county, then in a newspaper of general criculation in the nearest county, a brief notice of the contents of the application. If the newspaper used shall be a daily paper, then there shall be three (3) insertions of such notice four (4) days apart. If the newspaper used be a weekly paper, then in two (2) successive issue thereof. The expense of such publication shall be paid by the applicant, and the Commission shall have the right to require from the applicant a deposit with it of the estimated amount prior to the making of such publications.

On the completion of such publication, and if there shall be opposition to the granting of such application, the Commission shall set a hearing on the application and give written notice to all interested parties of the time and place of the hearing allowing reasonable time and opportunity for interested parties to be so heard.

The application shall be acted on by the Commission within not exceeding twenty (20) days from the completion of the giving of such notice unless for good cause the Commission shall postpone action thereon. The application shall be finally acted on by the Commission within not exceeding sixty (60) days from the date of the filing of the application.

The application shall state the days on which such racing is desired to be conducted; it shall describe the place and race track or course at which the races are to be conducted; it shall be in such form and supply such facts as the Commission shall prescribe, and such application shall be verified. If the applicant is eligible to receive a license under the provisions of this law, it shall be the duty of the Racing Commission to fix the racing days as it determines shall be allotted to such applicant, and the Commission shall issue a license for the holding of the meeting or meetings so sought to be held. The license issued shall describe the place and track or race course at which the licensee is authorized to hold such meeting or meetings, and the authority conferred in any one license shall be limited to a twelve (12) months period from the date of the license; provided, however, the Commission may in its discretion for good cause, to be shown in writing by the applicant, issue such license for a three (3) year period from the date thereof. The rights granted by the license shall not be assignable, except on application to the Commission for authority so to do, and the permission of the Commission obtained.

The licensee shall pay to the Commission in advance, as a condition of granting of the license, a license fee for each race meeting authorized to be held, the amounts, respectively, thus stated, to-wit:

If a race meet is to be conducted in a city or town of a population not exceeding three thousand (3,000) inhabitants, or within fifteen (15) miles thereof, such license fee shall be One Hundred Dollars ($100); if in a city of more than three thousand (3,000) and not exceeding ten thousand (10,000) inhabitants, or within fifteen (15) miles thereof,

such license fee shall be the sum of Two Hundred Dollars ($200); if in a city of more than ten thousand (10,000) and not exceeding twenty thousand (20,000) inhabitants, or within fifteen (15) miles thereof, such license fee shall be the sum of Five Hundred Dollars ($500); if in a city of more than twenty thousand (20,000) and not exceeding fifty thousand (50,000) inhabitants, or within fifteen (15) miles thereof, such license fee shall be the sum of One Thousand Dollars ($1,000); if in a city of more than fifty thousand (50,000) and not exceeding one hundred thousand (100,000) inhabitants, or within fifteen (15) miles thereof, such license fee shall be the sum of Fifteen Hundred Dollars ($1,500); and if in a city of more than one hundred thousand (100,000) inhabitants, or within twenty-five (25) miles thereof, such license fee shall be the sum of Two Thousand Dollars ($2,000); such population to be determined by the last preceding census of the United States.

The license fees so received by the Racing Commission shall be promptly remitted to the Treasurer of the State of Texas through the State Comptroller of Public Accounts, and shall become and be a part of the Special Racing Fund hereinafter mentioned.

Cancellation, for any cause authorized under this Act, shall not entitle the licensee to a refund of the fee or any part thereof paid for such license.

The Commission may, within its discretion, limit the issuance of licenses to one per county in any one calendar year.

The license issued shall expressly provide that the licensee shall, in addition to license fees paid, remit to the Treasurer of the State of Texas, through the State Comptroller, at the end of each race meeting such amounts as may be hereinafter provided received as commission or compensation by the licensee, as authorized by this Act. This Fund, when received by the Treasurer, shall be held by him and credited as a Special Racing Fund.

The expenses incurred and authorized by virtue of this Act shall be payable out of the Special Racing Fund, not otherwise, and so much thereof as may be necessary is hereby appropriated and all amounts shall be paid upon accounts approved by The Chaiman of the Racing Commission and warrants drawn against said Fund by the Comptroller on the State Treasurer.

The Treasurer of the State of Texas, in December of each year, shall make a complete statement of the amount he has received within the calendar year under the provisions of this Act. After there shall have been charged against this Fund the theretofore paid out operating expenses of the Racing Commission in that year as herein authorized, and the additional amount which the Racing Commission shall estimate as being required to be paid out in that year, and, in addition thereto, such amount as the said Racing Commission shall estimate as the expenses for the operating of the Commission for the next succeeding calendar year, the amount then remaining in this Fund shall be held for and disbursed thus, viz:

After providing for the operating expenses of the Racing Commission as aforesaid, an amount equal to twenty-five per cent (25%) of the funds remaining in the Special Racing Fund shall by the Treasurer of the State of Texas be paid into and credited to the available Public Free School Fund of the State, as provided by the Constitution of the State of Texas. An amount equal to twenty per cent (20%) of the funds then remaining in the Special Racing Fund shall be used by the Board of Control of the State of Texas to purchase, transport, and deliver for distribution wellbred and approved stallions and jacks throughout the State of Texas, and, in connection therewith, defray the actual reasonable expense incident to the purchase, transportation and maintenance of such animals, in order thereby to promote the breeding of better live stock in the State of Texas. After deducting from said Special Racing Fund the operating expenses of the Racing Commission as aforesaid, and after deducting from said Special Racing Fund the said twenty-five per cent (25%) going to the available Public Free School Fund, and after deducting the said twenty per cent (20%) to be so used by the Board of Control of the State of Texas as aforesaid, the balance remaining in said Special Racing Fund, so far as

it may be required, shall be used for the payment of the appropriations by the Legislature for the support and maintenance of the State Department of Agriculture as said appropriations for that Department shall be fixed and allowed by the Legislature of the State of Texas from time to time. It is further provided that any excess left in the Special Racing Fund shall be by the State Treasurer transferred to and become a part of the "Texas Old Age Assistance Fund," as created by law.

Sub-section 5a. The licensee shall keep an accurate record of all receipts and disbursements during any racing meet authorized by the Texas Racing Commission to be conducted by said licensee, which books and records shall at all reasonable times be open to inspection of the Comptroller of Public Accounts of the State of Texas, and to the Texas Racing Commission or its duly qualified agents; and at the close of each racing meet held by such licensee, he shall remit to the Treasurer of the State of Texas through the Texas Racing Commisseion as follows: Where the pari mutuel turnover is not more than One Hundred Thousand Dollars ($100,000), one-fourth (¼) of the ten (10) per cent deducted by such licensee from the contributions of purchasers of certificates on horses to run first, second, and/or third in any given race; and where the pari mutuel turnover is more than One Hundred Thousand Dollars ($100,000) for any such meet, thirty (30) per cent of the ten (10) per cent deducted by such licensee from the contributions of purchasers of certificates on horses to run first, second, and/or third in any given race. The licensee is hereby constituted trustee for the State of Texas to collect and remit the sums provided herein, and such sums shall constitute and be a trust fund belonging to the State of Texas. Failure of any person to collect and remit any sums prescribed herein in accordance herewith shall constitute the offense of embezzlement, and upon conviction thereof, such person shall be punishable therefor as the law prescribed.

All laws or parts of laws in conflict herewith are expressly repealed.

Sec. 6. There is hereby created a fund to be kept by the State Treasury to be known as "Texas Old Age Assistance Fund."

Three-fourths (¾) of all taxes of every nature, including permits and license fees, derived from the manufacture, sale and transportation of spirituous, vinous and malt liquors shall be placed in said Texas Old Age Assistance Fund. In like manner three-fourths (¾) of all taxes and revenue derived from the gross proceeds tax levied and collected under Article One (1) of this Act shall be placed in said Texas Old Age Assistance Fund. Unless otherwise specially provided, One-fourth (¼) of all other taxes levied herein shall be placed in the available School Fund, and the balance thereof in general revenue.

Sec. 7. All laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. If any section, sub-section, paragraph, clause or sentence of this Act is declared to be unconstitutional, the same shall not affect the remaining portions of this Act.

Sec. 8. If any clause, sentence, paragraph or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder of this Act, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Sec. 9. The fact that revenue is needed to pay old age assistance authorized by the Constitution of this State and the fact that a large deficit exists in the general revenue of this State creates an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended and the same is hereby suspended and this Act shall take effect and be in force from and after its passage, and it is so enacted.

SMALL.

Senator Hornsby moved that the reading of the amendment be dispensed with.

The motion prevailed by viva voce vote.

Previous Question.

Senator Hopkins moved that the Senate order the previous question on the pending amendment and the

passage to third reading of the bill.

The motion was seconded.

Senator DeBerry called for a division of the vote on the motion.

The previous question was not ordered on the amendment, as shown by the following vote:

Yeas—13.

Beck.	Pace.
Davis.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Sanderford.
Martin.	Stone.
Neal.	

Nays—16.

Blackert.	Oneal.
Burns.	Poage.
Collie.	Shivers.
DeBerry.	Small.
Hill.	Sulak.
Isbell.	Van Zandt.
Moore.	Westerfeld.
Nelson.	Woodruff.

Absent.

Cotten.

Absent—Excused.

Fellbaum.

Previous Question.

Senator Rawlings moved that the Senate order the previous question on the pending amendment.

The motion was seconded.

The previous question was ordered by the following vote:

Yeas—16.

Beck.	Pace.
Cotten.	Rawlings.
Davis.	Redditt.
Holbrook.	Regan.
Hopkins.	Sanderford.
Martin.	Small.
Moore.	Stone.
Neal.	Van Zandt.

Nays—14.

Blackert.	Nelson.
Burns.	Oneal.
Collie.	Poage.
DeBerry.	Shivers.
Hill.	Sulak.
Hornsby.	Westerfeld.
Isbell.	Woodruff.

Absent—Excused.

Fellbaum.

Point of Order.

Senator Rawlings raised the point of order that the debate was not germane to the amendment.

The Chair overruled the point of order.

The Small amendment was adopted by the following vote:

Yeas—14.

Davis.	Redditt.
Holbrook.	Regan.
Hopkins.	Sanderford.
Martin.	Small.
Neal.	Stone.
Pace.	Van Zandt.
Rawlings.	Woodruff.

Nays—14.

Beck.	Isbell.
Blackert.	Nelson.
Burns.	Oneal.
Cotten.	Poage.
DeBerry.	Shivers.
Hill.	Sulak.
Hornsby.	Westerfeld.

Present—Not Voting.

Collie.

(Pair Recorded.)

Senator Moore (present) who would vote nay, with Senator Fellbaum (absent) who would vote yea.

Verification Called For.

Senator Stone called for a verification of the vote.

Verification showed the roll call to be correct.

The Chair voted "yea" on adoption.

Amend H. B. No. 46, as amended, by adding a new section to read as follows:

"A tax is hereby levied on the issuing and recording of all marriage licenses in the sum of One Dollar ($1.00), said sum to be placed in the Texas Old Assistance Fund. This tax is to be in addition to the present fee levied under Article 3930 of the Revised Civil Statutes of Texas, 1925."

SHIVERS.

Read.

Motion to Table.

Senator Van Zandt moved to table the amendment by Senator Shivers.

The motion to table prevailed by viva voce vote.

Senator Burns sent up the following amendment:

Amend H. B. No. 46 as amended by adding thereto the following provisions:

(To be placed in proper position in bill.)

It is declared to be the legislative intent of this Act that the tax levied hereinafter shall be used directly to pay for such Old Age Pensions as may be created or provided for by the Legislature of the State of Texas.

Section 1. Short Title:

This amendment shall be known and may be cited as the "Income Tax Act of 1935."

Sec. 2. Definitions:

As used herein:

a. The term "Act" whenever used in this Amendment shall refer to provisions of this Amendment.

b. The term "taxpayer" shall mean and include any person or corporation subject to the tax herein levied.

c. The term "individual" shall mean a natural person.

d. The term "person" shall mean and include individuals, fiduciaries, partnerships and corporations.

e. The term "fiduciary" shall mean and include guardians, trustees, executors, administrators, receivers, conservators, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, estate or trust.

f. The term "corporation" shall mean and include corporations, joint stock companies, associations or common law trusts, or business trusts, organized or conducted for profits, unless otherwise specifically provided.

g. The term "taxable year" shall mean the calendar year, or the fiscal year ending in such calendar year, upon the basis of which net income is computed under this Act.

h. The term "fiscal year" means an accounting period of twelve months ending on the last day of any month other than December 31.

i. The word "paid" for the purpose of deductions and credits under this Act shall mean "paid or accrued" or "paid or incurred," and the term "paid or accrued" and "paid or incurred" shall be construed according to the method of accounting upon the basis of which the net income under this Act is computed. The word "received" for the purpose of computation of net income under this Act shall mean "received or accrued" and the words "received or accrued" shall be construed according to the method of accounting upon the basis of which net income is computed under this Act.

j. The word "resident" shall mean any natural person domiciled in the State of Texas, and every other person who maintains a place of abode within the State and spends an aggregate of seven months or more of the income year within the State.

k. The word "dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property, or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means a new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

l. The words "military or naval forces of the United States" includes the marine corps, the coast guard, the army nurse corps, female, and the navy nurse corps, female, but this shall not be deemed to exclude other units otherwise included within such words.

m. For the purposes of this Act, a period of more than fifteen days shall be counted as a month and a period of fifteen days or less shall not be counted, except as otherwise herein experssly provided.

n. The term "Commission" or "Tax Commissioner" as used herein means the State Tax Board, as now constituted, but which shall hereafter be known as the State Tax Commissioner.

o. The word "and" shall be construed to mean and include the word "or" and the word "or" shall be construed to mean and include the word "and," and singular nouns or pronouns shall be construed to include the plural form.

p. The words "include" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

Sec. 3. Persons and Subject Taxable; Rates:

a. There shall be assessed, levied, collected, and paid, a tax on all net incomes, by every resident person within the State, or his personal rep-

resentative in case of death; and by every non-resident of the State upon such net income as is derived from property located or business transacted within the State, except as hereinafter expressly exempted. The tax herein imposed shall first be assessed, levied, collected, and paid in the calendar year 1936 with respect to the taxable net income for the period from the effective date of this Act to December 31, 1935, if effective before December 31, 1935 or the tax herein imposed shall first be assessed, levied, collected, and paid in the calendar year 1937 with respect to the taxable net income for the period from the effective date of this Act to December 31, 1936 if effective after December 31, 1935, in case the taxable year is on a calendar year basis. If the taxable year is on a fiscal year basis, the tax herein imposed shall first be assessed, levied, collected and paid on or before the fifteenth day of the third month after the close of the fiscal year immediately after the effective date of this Act and shall be based upon the taxable net income for the period from the effective date of this Act to the end of the fiscal year. In computing the first tax due under this Act, the taxable net income, if for a period of less than one full year, shall be placed on an annual basis and the tax computed thereon for a full year, and the amount of tax shall be that proportion of the tax for a full year as the period for which the tax is due is to one full year. After the first assessment, levying, collection, and payment of the tax as outlined above, the tax shall be assessed, levied, collected, and paid annually thereafter, as provided by this Act.

b. Rates: (1) Individuals: The tax to be assessed, levied, collected and paid upon the taxable net income as herein defined of all persons, other than corporations, shall be computed at the following rates:

On the first One Thousand Dollars ($1,000) or any portion thereof, one per cent (1%).

On the second One Thousand Dollars ($1,000) or any portion thereof one and one-quarter per cent (1¼%).

On the Third One Thousand Dollars ($1,000) or any portion thereof, one and one-half per cent (1½%);

On the Fourth One Thousand Dollars ($1,000) or any portion thereof, two per cent (2%);

On the Fifth One Thousand Dollars ($1,000) or any portion thereof, two and one-half per cent (2½%);

On the sixth One Thousand Dollars ($1,000) or any portion thereof, three per cent (3%);

On the seventh One Thousand Dollars ($1,000); or any portion thereof, three and one-half per cent (3½%);

On the eighth One Thousand Dollars ($1,000) or any portion thereof, four per cent (4%);

On the ninth One Thousand Dollars ($1,000) or any portion thereof, four and one-half per cent (4½%);

On the tenth One Thousand Dollars ($1,000) or any portion thereof, five per cent (5%);

On the eleventh One Thousand Dollars ($1,000) or any portion thereof, six per cent (6%);

On all net income in excess of Eleven Thousand Dollars ($11,000) seven per cent (7%);

(2) Corporations: The tax to be assessed, levied, collected and paid on the taxable net income as herein defined of corporations shall be computed at the following rates:

On the first One Thousand Dollars ($1,000) or any portion thereof, two per cent (2%);

On the second One Thousand Dollars ($1,000) or any portion thereof, two and one-half per cent (2½%);

On the third One Thousand Dollars ($1,000) or any portion thereof, three per cent (3%);

On the fourth One Thousand Dollars ($1,000) or any portion thereof, three and one-half per cent (3½%)

On the fifth One Thousand Dollars ($1,000) or any portion thereof, four per cent (4%);

On the sixth One Thousand Dollars ($1,000) or any portion thereof, five per cent (5%);

On all net income in excess of Six Thousand Dollars ($6,000), Six per cent (6%);

Sec. 4. Estates and Fiduciaries:

a. The tax imposed by this Act shall apply to estates and trusts, which tax shall be levied, collected and paid annually upon and with respect to the income of estates or of any kind of property held in trust, including:

(1) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(2) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests;

(3) Income held for future distribution under the terms of the will or trust;

(4) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct; and

(5) Income of an estate during the period of administration or settlement permitted by subdivision c of this section to be deducted from the net income upon which the tax is to be paid by the fiduciary.

b. The fiduciary shall be responsible for making the return of income for the estate on trust for which he acts, whether such income be taxable to the estate or trust or to the beneficiaries thereof.

The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this Act for individual taxpayers, except that there shall be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States, any state, territory or political subdivision thereof, or the district of Columbia, or any corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder of individual; and in cases under paragraphs (4) and (5) of subdivision a. of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

c. In cases under paragraph (1), (2), and (3) of subdivision a. of this section the tax shall be imposed upon the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except in determining the net income of the estate of any deceased person during the period of administration or settlement there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases, the estate or trust shall be allowed the same exemptions as are allowed to single persons under Section 19 of this Act, and in such cases an estate or trust created by a person not a resident and an estate of a person not a resident shall be subject to tax only to the extent to which individuals other than residents are liable under this Act.

d. In cases under paragraphs (4) and (5) of subdivision a. of this section, if the distribution of income is in the discretion of the fiduciary, either as to the beneficiaries to whom payable or as to the amounts to which any beneficiary is entitled, the tax shall be imposed upon the estate or trust in the manner provided in subdivision c. of this section, but without the deduction of any amounts of income paid or credited to any such beneficiary. In all other cases under paragraphs (4) and (5) of subdivision a. of this section, the tax shall not be paid by the fiduciary, but there shall be included in computing the net income of each beneficiary his distributive share whether distributed or not, of the net income of the estate or trust for the taxable year, or if his net income for such taxable year is computed upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year upon the basis of which such beneficiary's net income is computed. In such cases the income of a beneficiary not a resident, derived through such estate or trust, shall be taxable only to the extent provided in this Act for persons other than residents.

e. A trust, created by an employer as a part of a stock bonus, pension or profit-sharing plan for the exclusive benefit of some or all of his employes, or both, for the purpose of distributing to such employee the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but

any amount actually distributed or made available to any distributee shall be taxable to him in the year in which so distributed or made available to the extent that it exceeds the amounts paid in by him.

Sec. 5. Organizations Exempted:

The following organizations shall be exempted from taxation under this Act:

a. Labor, agricultural, or horicultural organizations.

b. Fraternal beneficiary societies, orders, or associations (1) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and (2) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, association, or their dependents.

c. Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

d. Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

e. Business leagues, chambers of commerce, or boards of trade not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

f. Civic leagues, or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular community, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

g. Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net earnings of which inures to the benefit of any private shareholders.

h. Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations, provided that eighty-five (85) per cent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

i. Farmers' or other mutual hail, cyclone, casualty, or fire insurance companies or associations (including interinsurance and reciprocal underwriters) the income of which is used or held for the purpose of paying losses or expenses.

j. Farmers', fruit growers', or like organizations, organized and operated as sales agents for the purpose of marketing the products of members and turning back to them the proceeds of sales, less necessary selling expenses, on the basis of the quantity of products furnished by them.

k. Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this Act.

l. Federal Land Banks, national farm-loan associations and federal intermediate credit banks.

m. Corporations whose sole business consists of holding the stocks of other corporations for the purpose of controlling the management of affairs of such other corporations, when and if said other corporations make returns under this Act.

Sec. 6. Tax a Debt:

Every tax imposed by this Act, and all increases, interest and penalties thereon, shall be from the time it is due and payable a personal debt from the person liable to pay same, to the State of Texas, and shall be a lien upon the real and personal property of said person, wherever located within this State.

Sec. 7. Inventories:

Whenever, in the opinion of the Tax Commissioner, the use of inventories is necessary in order to determine clearly the income of any taxpayer, inventories shall be taken by

such taxpayer upon such basis as the Tax Commissioner may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income.

Sec. 8. Basis of Return of Net Income:

a. The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been employed, or if the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the Tax Commissioner does clearly reflect the income. If the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

b. If a taxpayer changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, the net income shall, with the approval of the Tax Commissioner, be computed on the basis of such new accounting period, subject to the provisions of Section 25 of this Act.

c. Under regulations prescribed by the Tax Commissioner, a taxpayer who regularly calls or otherwise disposes of personal property on the installment plan may return as income therefrom in any taxable year that proportion of the installment payments actually received in that year which the gross profit realized or to be realized when the payment is completed, bears to the total contract price. In the case (1) of a casual sale or other casual disposition of personal property when the profit is taxable income for a price exceeding One Thousand Dollars ($1,000), or (2) of a sale or other disposition of real property when the profit is taxable income if in either case the initial payments do not exceed one-fourth of the purchase price, the income may be returned on the basis and in the manner above prescribed in this subdivision. As used in this Section, the term "initial payments" means the payments received in cash or property other than evidences of indebtedness of the purchaser during the taxable period in which the sale or other disposition is made.

d. An individual carrying on business in a partnership shall be liable for income tax only in his individual capacity, and shall include in his gross income the distributive share of the net income of the partnership received by him or distributable to him during the income year.

e. Every individual, taxable under this Act, who is a beneficiary of an estate or trust, received by him or distributable to him during the income year. Unless otherwise provided in the law, the will, deed or other instrument creating the estate, trust or fiduciary relation, the net income shall be deemed to be distributed or distributable to the beneficiaries (including the fiduciary as a beneficiary in the case of income accumulated for future distribution) ratably, in proportion to their respective interests.

Sec. 9. Net Income Defined:

The term "Net Income" means the gross income of a taxpayer less the deductions authorized by this Act.

Sec. 10. Gross Income Defined:

a. The term "gross income" as used in this Act includes gain, profits and income derived from salaries, wages or compensation for personal services of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, provided such property has not been held longer than one year, growing out of the ownership or use of or interest in such property; also from interest, rents, dividends, securities, provided such securities have not been held longer than one year, or the transaction of any business carried on for gain or profit. The amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the methods of accounting permitted by this Act any such amounts are to be properly accounted for as of a different period. This section shall be construed to include all other gains and income not listed, which are not expressly exempted from taxation under this Act.

b. Exclusions from Gross In-

come: The following items shall be excluded from gross income and shall be exempt from taxation under this Act:

(1) The proceeds of life insurance policies and contracts paid upon the death of the insured to individual beneficiaries or to the estate of the insured.

(2) The amount received by insured as a return of premiums or premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon the surrender of the contract.

(3) The value of property acquired by gift, bequest, devise, or descent (but the income from such property shall be included in gross income).

(4) Interest upon the obligations of the United States or its possessions.

(5) Salaries, wages and other compensation received from the United States by officials or employes thereof, including persons in the military and naval forces of the United States.

(6) Any amounts received through health or accident insurance or under workmens' compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received, whether by suit or agreement, on account of such injuries or sickness.

(7) Amounts received as pensions or bonuses from the United States for services rendered by the beneficiary or another in the military or naval forces of the United States in time of war, or as a State pension for services rendered by the beneficiary or another for which the State is paying a pension.

(8) The rental value of a dwelling house and appurtenances thereof furnished to a clergyman as part of his compensation and occupied by him and his immediate family.

Sec. 11. Deductions From Gross Income:

In computing net income there shall be allowed as deductions;

a. All the ordinary and necessary expenses paid during the income year in carrying on any trade or business or in the production of income required to be reported as gross income under this Act, including (1) As to individuals, payments made within the taxable year for wages or other compensation for services actually rendered in carrying on the profession, vocation, or business from which the taxable income is derived, provided no deduction shall be allowed unless there be reported the name and address and amount paid each person to whom a sum of One Thousand Dollars ($1,000) or more shall have been paid during the income year. (2) As to corporations, payments made within the year for wages of employes and salaries of officers, if reasonable in amount, for services actually rendered in producing such taxable income; provided, no deduction shall be allowed under this paragraph unless there be reported the name and address and amount paid to each such employee or officer to whom a compensation of One Thousand Dollars ($1,000) or more was paid during the income year. (3) Rentals or other payments required to be made a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity; provided, no deduction shall be allowed under this paragraph unless there be reported the name and person receiving such rentals or address and amount paid to each other required payments to whom Seven Hundred Dollars ($700) or more shall have been paid during the income year. (4) Interest paid during the income year on indebtedness, except interest on indebtedness incurred or continued to purchase or carry obligations or securities, the interest upon, or income from which is wholly exempt from taxation under this Act; provided no deduction shall be allowed under this paragraph unless the taxpayer reports the name, address, amount paid each, and the form of indebtedness of the parties to whom such interest was paid in the amount of Five Hundred Dollars ($500) or over during the income year.

b. Losses actually sustained during the income year, if not compensated for by insurance or otherwise;

(1) If incurred in trade or business, or

(2) If incurred in any transaction entered into for profit, though not connected with trade or business, or

(3) Of property not connected

with trade or business if the loss arises from fires, storms, shipwreck or other casualty or from theft.

(4) The losses allowed under this subdivision shall only be allowed insofar as they arise from business done, or property owned in the State of Texas, the income from which would be taxable under this Act.

(5) Provided, no deduction shall be allowed under this subdivision b. for any losses claimed to have been sustained in any sale or other disposition of shares of stock or securities where it appears that within thirty days before or after the date of sale or other disposition the taxpayer has acquired (other than by bequest or inheritance) or has entered into a contract or option to acquire substantially identical property, and the property so acquired is held by the taxpayer for any period after such sale or other disposition.

c. Debts ascertained to be worthless and actually charged off the taxpayers' books during the year, (or, in the discretion of the Tax Commissioner, a reasonable addition to a reserve for bad debts); and when satisfied that a debt is recoverable only in part, the Tax Commissioner may allow such debt, in an amount not in excess of the part charged off within the taxable year, as a deduction.

d. A reasonable allowance for the exhaustion, wear, and tear of property the income from which is required to be included in gross income under this Act, used in the trade or business, including a reasonable allowance for obsolescence.

e. In the case of mines, other natural deposits, and timber, except oil and gas wells, a reasonable allowance for depletion and for depreciation of improvements according to the peculiar conditions in each case, based upon cost, including cost of development not otherwise deducted; provided, that in the case of such properties acquired prior to the effective date of this Act, the fair market value of the property (or the taxpayers' interest therein) on that date shall be taken in lieu of cost up to that date; provided, further, that in the case of mines discovered by the taxpayer on or after the effective date of this Act, and not acquired as the result of a purchase of a proven tract or lease, where the fair market value of the property is materially disproportionate to the cost, the depletion allowance shall be based upon the fair market value of the property at the date of the discovery or within thirty days thereafter; but such depletion allowance based on discovery value shall not exceed fifty per cent of the net income of the taxpayer (computed without allowance for depletion) from the property upon which the discovery was made, except that in no case shall the depletion allowance be less than it would be if computed without reference to discovery value.

Discoveries shall include minerals in commercial quantities contained within a vein or deposit discovered in an existing mine or mining tract by the taxpayer after the effective date of this Act, if the vein or deposit thus discovered was not merely the uninterrupted extension of a continuing commercial vein or deposit already known to exist, and if the discovered minerals are of sufficient value and quantity that they could be separately mined and marketed at a profit.

In the case of oil and gas wells the allowance for depletion shall be twenty seven and one-half per cent of the gross income from the property during the taxable year; provided that such allowance shall not exceed fifty per cent of the net income of the taxpayer (computed without allowance for depletion) from the property, except that in no case shall the depletion allowance be less than it would be if computed without reference to this paragraph. Such reasonable allowance in all the above cases to be made under rules and regulations to be prescribed by the Tax Commissioner. In the case of leases the deductions allowed by this subdivision shall be equitably apportioned between the lessor and lessee.

f. Contributions or gifts made within the taxable year to or for the use of:

(1) The United States, or any State, territory or any political subdivision thereof or to the District of Columbia for exclusively public purposes;

(2) Any corporation, trust, community chest, fund, or foundation

organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(3) Posts or organizations of war veterans or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual;

(4) A fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals to an amount which in all the above cases combined shall not exceed, fifteen (15%) per cent of the taxpayer's net income as computed without the benefit of this subdivision. Such contributions and gifts shall be allowed as deductions only if verified under rules and regulations prescribed by the Tax Commissioner.

In the case of a non-resident taxpayer, the deductions under this subdivision shall be allowed only as to contributions or gifts made to corporations or associations organized or incorporated under the laws of this State, or to this State or any political subdivision thereof for exclusively public purposes.

g. Taxes (other than income taxes, inheritance taxes, or local or special assessments tending to increase the value of the property assessed) paid or accrued within the income year, imposed by the authority of the United States or any of its possessions, or by the authority of any State, territory, county, school district, municipality, or other political subdivision of any State or territory, or by the authority of this State, or any county, school district, or other defined district, municipality or other political subdivision of this State.

h. In the case of taxpayers who keep regular books of account upon an accural basis and in accordance with standard accounting practice reserves for bad debts and for contingent liabilities under such rules and regulations as the Tax Commissioner may prescribe. If at any time the Commissioner shall deem the reserve excessive in amount, it may restore such excess to income, either in a subsequent year or as a part of the income of the income year and assess it accordingly.

i. Dividends received during the taxable year from stock in any corporation, the income of which was assessable for the preceding year under the provisions of the income tax laws of this State; provided that when only a part of the income of any such corporation was assessable, only a corresponding part of the dividends received therefrom shall be deductible; provided that deductions under this paragraph shall be made in conformity with rules and regulations of the Tax Commissioner.

Sec. 12. Proration of Credits, Etc., To Non-residents.

In the case of a taxpayer, other than a resident of this State, the deductions, exemptions, and credits allowed by this Act shall be allowed only if, and to the extent that, they are connected with income arising from sources within this State and taxable under this Act to a non-resident taxpayer; and the proper apportionment and allocation of the deductions with respect to sources of income within and without this State shall be determined under rules and regulations to be prescribed by the Commissioner.

Sec. 13. Items Not Deductible.

The following items shall not be deductible from gross income:

a. Personal, living, or family expenses.

b. Any amount paid out for new buildings or for permanent improvements or betterments, made to increase the value of any property or estate.

c. Any amount expended to restore property for which allowance is or has been made.

d. Premiums paid on any life insurance policy covering the life of any officer or employer of any individual financially interested in any trade or business carried on by any taxpayer, when the taxpayer is directly or indirectly a benefactor under such policy.

Sec. 14. Determination of Gain or Loss:

a. For the purpose of determining the gain or loss from the sale or other

disposition of property, real, personal, or mixed, the basis shall be the cost thereof, plus amounts expended for permanent improvements or betterments not otherwise deducted under this Act; provided that such basis shall be diminished by the amounts of the deductions for depreciation, obsolescence, and depletion which have, since the acquisition of the property been allowed in respect to such property under this Act; provided further that the property has not been held longer than one year.

b. In the case of property disposed of after being held one year or longer no gain or loss shall be recognized.

c. In the case of property acquired by gift, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift. If the facts necessary to determine such basis are unknown to the donee, then the Tax Commissioner shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Tax Commissioner finds it impossible to obtain such facts, gain or loss shall be determined as provided in subdivision a and b of this section except that the word "cost" as used in such subdivision shall be deemed to mean the fair market value of such property as found by the Tax Commissioner as of the date or approximate date at which, according to the best information the Tax Commissioner is able to obtain, such property was acquired by such donor or last preceding owner.

d. If property was acquired by bequest, devise or intestacy, gain or loss shall be determined as provided in subdivision a or b of this section, except that the word "cost" as used in said subdivision shall mean the fair market value of such property at the time of death of decedent. In the case of property transmitted in trust to pay the income for life to or upon the order or direction of the grantor, title to such property to pass at the death of such grantor with the right reserved to the grantor at all times prior to his death to revoke the trust, gain or loss in the hands of persons entitled to the property after the grantor's death shall, after said death, be determined in the manner as if the trust instrument had been a will executed on the day of the grantor's death.

Sec. 15. Exchanges of Property:

a. Upon the sale or exchange of property the entire amount of gain or loss, determined under Section 14 of this Act, shall be recognized, except as hereinafter provided in this section:

b. No gain or loss shall be recognized:

(1) If property held for productive use in business or trade or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidence of indebtedness or interest), is exchanged solely for property of like kind to be held for productive use in trade or business or for investment.

(2) If common stock in a corporation is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation:

(3) If stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization;

(4) If property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such persons or person are in control of the corporation; but in the case of an exchange by two or more persons this subdivision shall only apply if the amount of the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange;

(5) If property, (as a result of its destruction in whole or in part, theft, or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the Tax Commissioner expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund; but if any part of of the

money is not so expended, the gain, if any, shall be recognized, but in an amount not in excess of the money which is not so expended.

c. If there is distributed, in pursuance of a plan or reorganization to a shareholder in a corporation a party to the reorganization, stock, or securities in such corporation or in another corporation a party to the reorganization, without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

d. If an exchange would be within the provisions of subdivision (1), (2), (3), or (4) of subsection b. of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivisions to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property. No loss shall be recognized under the provisions of this subsection d.

e. The distribution, in pursuance of a plan of reorganization, by or on behalf of a corporation a party to a reorganization, of its stock or securities or of stock or securities in a corporation a party to the reorganization, shall not be considered a distribution of earnings or profits within the meaning of Section 16, subsection a. of this Act, for the purpose of determining the taxability of subsequent distribution by the corporation.

f. As used in this section;

(1) The term "reorganization" means (a) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation or substantially all the properties of another corporation), or (b) a transfer by one corporation of all or a part of its assets to another corporation if immediately after the transfer the transferrer or its stockholders or both are in control of the corporation to which the assets are transferred, or (c) a recapitalization, or (d) a mere change in identity, form or place of organization, however affected.

(2) The term "A party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

(3) The term "control" means the ownership of at least eighty (80%) per cent of the voting stock and at least eighty (80%) per cent of the total number of shares of all other classes of stock in the corporation.

Sec. 16. Distribution and Dividends:

a. For the purposes of this Act, every distribution is presumed to be made out of earnings or profits to the extent thereof, except as herein expressly provided, and from the most recently accumulated earnings or profits. Any earnings or profits accumulated, or increase in value of property accrued, before the effective date of this Act, may be distributed exempt from tax after the earnings or profits accumulated after the effective date of this Act have been distributed, but any such tax free distribution shall be applied against and reduce the bases of the stock provided in Section 15 of this Act.

b. Distributions in liquidation: Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated in part or full payment for the stock. The gain or loss to the distributee resulting from such exchange shall be determined under Section 14 of this Act, but shall be recognized only to the extent provided in Section 15. In the case of amounts distributed in partial liquidation (other than a distribution within the provisions of Section 15, subsection e of stock or securities in connection with a reorganization) the part of such distribution which is properly chargeable to capital account shall not be considered a distribution of earnings or profits within the meaning of sub-

section a of this section for the purpose of determining the taxability of subsequent distributions by the corporation.

c. If any distribution (not in partial or complete liquidation) made by a corporation to its shareholders is not out of increase in value of property accrued before the effective date of this Act and is not out of earnings of profits, then the amount of such distribution shall be applied against and reduce the basis of the stock provided in Section 14, and if in excess of such basis, such excess shall be taxable in the manner as a gain from the sale or change of property. The provisions of this paragraph shall also apply to distribution from depletion reserves based on the discovery value of mines and other natural deposits.

d. Stock dividends when received by a shareholder shall not be subject to tax; but if before or after the distribution of any such dividend the corporation proceeds to cancel or redeem its stock at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be treated as a taxable dividend. Any stock divided shall be considered in computing gain upon the disposition of the stock upon which the stock dividend has been declared or of the stock included in any stock dividend, as provided in Section 15 of this Act.

e. As used in this section, the term "amounts distributed in partial liquidation" means a distribution by a corporation in complete cancellation of, or redemption of a part of its stock, or one of a series of distributions in complete cancellation or redemption of all or a portion of its stock.

Sec. 17. Allocation and Apportionment of income:

Persons engaged in business within and without the State of Texas shall be taxed only on such income as is derived from business transacted and property located within this State. The amount of such income apportionable to Texas may be determined by the allocation and separate accounting thereof, when in the judgment of the Tax Commissioner that method will reasonably reflect the income properly assignable to this State, but otherwise in the following manner:

a. Interest, dividends, rent, and royalties not received in connection with the transaction of business, and gains from the sale of property (as provided in section 10 of this Act) not held, owned or used in connection with business (less related expenses, if any) shall be allocated to Texas if received from sources within the State of Texas and if received from sources without the State of Texas such income shall be allocated outside the State of Texas and the balance, hereinafter referred to as business income, shall be allocated to Texas and shall be taxable as hereinafter set forth.

b. If the trade or business of the taxpayer is carried on entirely within the State, the tax shall be imposed on the entire business income, but if such trade or business is carried on partly within and partly without the State, the tax shall be imposed only on the portion of the business income reasonably attributable to the trade or business within the State, to be determined as follows:

(1) Interest, dividends, rents, and royalties (less related expenses, if any) received in connection with business in the State, shall be allocated to the State, and where received in connection with business outside of the State shall be allocated outside of the State.

(2) Gains from the sale of capital assets or property (as provided in Section 10 of this Act) held, owned, or used in connection with the trade or business of the taxpayer but not for sale in the regular course of business, shall be allocated to the State if the property sold is real or tangible personal property situated in the State or intangible property connected with the business in the State: otherwise, such gains shall be allocated outside of the State.

(3) Net income of the above classes having been separately allocated and deducted as above provided, the remainder of the net business income of the taxpayer shall be allocated and apportioned as follows:

(a) Where income is derived from business other than the manufacture and sale of tangible personal property, the portion thereof attributable to business within the State shall be

taken to be such percentage of the total of such income as the tangible property and business within the State bear to the total tangible property and total business, the percentage of tangible property and of business being separately determined as hereinafter provided and the two percentages averaged.

For purposes of the foregoing computation, the value of the tangible property shall be taken to be the average value of the tangible property held and owned by the taxpayer in connection with such business during the year for which the income is retained, excluding any property the income of which is not taxable or which is separately allocated under the foregoing provisions of this Act.

The business of the taxpayer shall be measured by the amount which the taxpayer has paid out during the year for which the income is returned for wages, salaries or other compensation to employees and for the purchase of goods, materials, and supplies consumed or sold in the regular course of business, plus the amount of all receipts during the year from sales and other sources connected with said business, excluding, however, receipts from the sale of capital assets and property not sold in the regular course of business and also receipt from interest, dividends, rents and royalties separately allocated as above provided.

Accounts payable for compensation and purchases and accounts receivable from sales and other sources arising from business during the year, shall be included in the formula if the taxpayer's return is made on the accrual basis.

For the purpose of this subdivision, payments for wages, salaries and other compensation shall be assigned to the office, agency or other place of business of the taxpayer at which the employee chiefly works or from which he is sent out or with which he is chiefly connected.

Payments for purchases shall be assigned to the office, agency or place of business of the taxpayer at or from which such purchases are chiefly handled and attended to with respect to the negotiation and execution.

Receipts from sales and other sources shall be assigned to the office, agency or place of business of the taxpayer at or from which the transaction giving rise to such receipts are chiefly handled and attended to with respect to the negotiation and execution.

For the purpose of this section, the word "sale" shall include exchange and the word "manufacture" shall include the extraction and recovery of natural resources and all processes of fabricating and curing.

For the purpose of this section, the term "tangible property" shall mean real estate and corporeal personal property and shall not mean money, bank deposits, shares of stock, notes, credits, evidences of debt, choses in action or evidence of interest in property.

Sec. 18. Allocation in Special Cases:

If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed as administered by the Tax Commissioner and applied to his business has operated or will so operate as to subject him to taxation of a greater portion of his net income than is reasonably attributable to business or sources within the State, he shall be entitled to file with the Tax Commissioner a statement of his objection and of such alternative method of allocation and apportionment as he believes to be proper under the circumstances with such detail and proof and within such time as the Tax Commissioner may reasonably prescribe; and if the Tax Commissioner shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, he shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the State for taxation, the portion of the income reasonably attributable to business and sources within the State, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

Sec. 19. Exemptions:

a. There shall be deducted from the net income the following exemptions:

(1) In the case of a single individual, or a married individual, not living with husband or wife, a personal exemption of One Thousand Dollars ($1000);

(2) In case of a head of a family, or a married individual living with husband or wife, a personal exemption of Two Thousand Dollars ($2000). A husband and wife living together shall receive but one personal exemption of Two Thousand ($2000) Dollars against their aggregate net income; and in case they make separate returns, the personal exemption of Two Thousand Dollars ($2000) shall be divided equally between them.

(3) For each person (other than husband or wife) who is dependent upon and receives his chief support from the taxpayer, and exemption of Two Hundred Dollars ($200.00), if such dependent is under twenty-one years of age or is incapable of support because mentally or physically defective.

(4) In the case of a non-resident individual, the exemption allowed in subdivisions (1), (2), and (3), of this section shall be allowed in the same proportion that the net income of such non-resident individual taxable under this Act to the total net income of such individual.

b. The status on the last day of the taxable year shall determine the right of the taxpayer to exemptions provided in this section. A taxpayer shall be entitled to such exemptions for husband or wife who has died within the taxable year; provided that in no case shall the exemptions allowed under subdivisions (1) and (2) of sub-division a of this Section exceed Two Thousand Dollars ($2000).

Sec. 20. Credits:

a. Non-residents Whenever a taxpayer other than a resident of this State become liable to income tax to the State or country where he resides, upon his net income for the taxable year, derived from sources within this State and subject to taxation under this Act, the amount of income tax payable to this State under this Act shall be credited with such proportion of the tax payable by him to the State where he resides as his income subject to taxation under this Act bears to his entire income upon which the tax is so payable to such other state was imposed; provided, that such credits shall be allowed only if the laws of said state (1.) grant a substantially similar credit to residents of this State subject to income tax under such laws, or (2) impose a tax upon the income of its residents derived from sources within this State and exempt from taxation the income of residents of this State. No credit shall be allowed against the amount of the tax on any income taxable under this Act which is exempt from taxation under the laws of such other state.

b. In any case where a taxpayer under this Act has, under the laws of this State of Texas, paid taxes during the income year in respect to the intangible property or assets of his business as a going concern, the earnings or income of which are taken into consideration in determining such value, or in any case where a taxpayer under this Act has, under the laws of this State, paid taxes during the income year upon his business, the gross receipts or gross net earnings of which are taken as the measure of the tax, such taxes shall, at the option of the taxpayer, be allowed either as a deduction from gross income, as provided in Section 11, Subsection g. of this Act, or as a credit against the amount of tax computed with respect to the total net income of such taxpayer (provided that if such taxpayer elects to credit such taxes against his net income tax, as allowed in this paragraph, he shall not be allowed to deduct such taxes in accordance with Section 11, sub-section g. of this Act); but the tax computed with respect to his total net income shall not be decreased by such credit in any greater proportion than his net income derived from the business upon which the tax or taxes hereinbefore set forth are levied bears of his total net income from all sources, before the deduction of exemptions as provided in Section 19 of this Act. The optional credit allowed in this Section shall not be allowed as to payment of occupation taxes upon the sale of cigarettes, as provided in Chapter 73, Laws of 1931, Regular Session as amended or the occupation tax on the sale of gasoline as provided in Article 7065, Revised Civil Statutes of 1925, as amended; or the tax upon corporate franchises as provided in Chapter 3, Title 122 of the Revised Civil Statutes of 1925, as amended; provided this shall not be construed to disallow deduction

for these taxes under Section 11, subsection g. of this Act.

Sec. 21. Returns:

(a) Every individual resident, having a net income during the income year of One Thousand ($1000) Dollars or over, if single, or if married and not living with husband or wife; or having a net income for the income year of Two Thousand ($2000) Dollars or over, if married and living with husband or wife; or having a gross income of Four Thousand ($4000) Dollars, regardless of net income, shall make a return under oath, stating specifically the items of his gross income and the deductions and exemptions allowed by this Act.

(b) If a husband and wife living together have an aggregate net income of Two Thousand ($2000) Dollars or over, or an aggregate gross income of Four Thousand ($4000) Dollars or over, each shall make such a return, unless the income of each is included in a single joint return.

(c) If the taxpayer is unable to make his own return, the return shall be made by his duly authorized agent or by his guardian or any other person charged with the care of the person or property of such taxpayer.

(d) Every partnership shall furnish a return to the Tax Commissioner in such manner and form and setting forth such facts as the Tax Commissioner shall deem necessary to enforce the provisions of this Act; such statement shall be made upon the oath or affirmation of one of the members of said partnership.

(e) Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included in computing the income of each partner his distributive share, whether distributed or not, of the net income of the partnership for the income year. When practical, partners shall be required to file individual returns on the basis of a fiscal or calendar year which coincides with that upon which the partnership return is filed. When partners can not file their individual income tax returns on the basis of the fiscal or calendar year which coincides with that upon which the partnership return is filed, then the share of the partner's income from the partnership for the year for which the partnership return is made shall be reported by the partner in the year for which his income tax return is made. The net income of the partnership shall be computed in the same manner and on the same basis as provided for computation of the income of persons other than corporations.

(f) Every corporation subject to taxation under this Act shall make a return to the Tax Commissioner stating specifically the items of gross income and the deductions and such other facts as the Tax Commissioner may deem necessary to the enforcement of the provisions of this Act. Such statement shall be made upon the oath or affirmation of the president, vice president, or other principal officer, and the treasurer of said corporation, and in the case of corporations in liquidation or in the hands of a receiver such returns shall be made upon the oath or affirmation of the person responsible for the conduct of the affairs of such corporation.

(g) Whenever in the judgment of the Tax Commissioner any person shall be subject to income tax under the provision of this Act, the Tax Commissioner shall notify such person to make report to him in such manner and form as he shall prescribe setting forth therein such information as he may deem necessary to enforce the provisions of this Act.

(h) If any person required under this Act to file an income tax return fails to file such return within the time prescribed by law, or as extended under the provisions of Section 26 of this Act, the Tax Commissioner shall add ten (10%) of the amount of tax finally determined to the tax of such person, and if no tax is assessed against such person then Five ($5.00) Dollars shall be certified for collection and collected as income taxes are collected.

Sec. 22. Returns of Fiduciaries:

(a) Every fiduciary (except receivers appointed by authority of law and in possession of part of the property of a taxpayer) shall make under oath a return for the individual estate or trust as follows:

(1) If acting for an individual whose entire income from whatever

source derived as in his charge and the net income of such individual in One Thousand ($1000) Dollars or over if single or if married and not living with husband or wife, or Two Thousand Dollars ($2000.00) or over if married and living with husband or wife, or if the gross income is Four Thousand Dollars ($4000) or over regardless of the net income;

(2) If acting (a) for an estate of a deceased person during the period of administration or settlement, whether or not the income of such estate during such period of administration or settlement is properly paid or credited to any legatee, heir or other beneficiary; (b) for an estate or trust, the income of which is accumulated in trust for the benefit of unborn or unascertained person or persons with contingent interest or (c) for an estate or trust the income of which is held for future distribution under the terms of the will or trust, provided that the net income of such estate or trust in this paragraph (2) hereof is One Thousand Dollars ($1000) or over.

(3) If acting (a) for an estate or trust the income of which is to be distributed to the beneficiaries periodically, or (b) as the guardian of an infant whose income is to be held or distributed as the court may direct; provided, that any beneficiary of such estate or trust received or is entitled to a distributive share of the income of the estate or trust of One Thousand Dollars ($1000) or over.

b. The return made by a fiduciary shall state specifically the items of the gross income and the deductions, exemptions, and credits allowed under this Act. Under such regulations as the Tax Commissioner may prescribe, a return made by one or two or more joint fiduciaries shall be a sufficient compliance with the above requirement. The fiduciary shall state under oath (or affirmation) that he has sufficient knowledge of the affairs of the individual estate or trust for whom or which he acts to enable him to make the return, and that the same is, to the best of his knowledge and belief true and correct. Fiduciaries required to make returns under this Act shall be subject to all the provisions of this Act which apply to individuals.

c. Every executor, administrator or personal representative of a deceased person shall file a return in all cases where the decedent, if living, would have been required to file such return. Such executor, administrator, or personal representative shall include in such return:

(1) All income received by the decedent during that portion of the year covered by the return preceding the demise of the decedent;

(2) All receipts by him from the estate of the deceased during the year covered by the return, if such receipts would have been taxable as income to the decedent had he survived;

(3) All receipts by him during the year from the estate of the deceased accrued at the date of death of the decedent but not reported by the decedent on the accrual basis, if such receipts would have been taxable as income to the decedent had he survived and made the return.

Sec. 23. Consolidated Returns:

a. Corporations which are affiliated within the meaning of this Section, may, for any taxable year, make separate returns, or, under regulations prescribed by the Tax Commissioner, make a consolidated return of net income for the purpose of this Act, in which case the taxes thereunder shall be computed and determined upon the basis of such return. If a return is made on either of such bases, all returns thereafter shall be made upon the same basis unless permission to change the basis is granted by the Tax Commissioner.

b. In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or in the absence of such agreement, then on the basis of the income properly assignable to each.

c. For the purpose of this section two or more corporations shall be deemed to be affiliated (1) if one corporation owns at least ninety-five per cent of the voting stock of the other or others, or (2) if at least ninety-five per cent of the voting stock of two or more corporations is owned by the same interests.

d. In any case of two or more related trades or businesses liable to

taxation under this Act owned or controlled directly or indirectly by the same interest, the Tax Commissioner may, and at the request of the taxpayer shall, if necessary in order to make an accurate distribution or apportionment of gains, profits, income, deductions, or capital between or among such related trades or businesses, consolidate the accounts of such related trades or businesses.

e. Where the Tax Commissioner has reason to believe that any taxpayer so conducts the trade or business as either directly or indirectly to distort his true net income and the net income properly attributable to the State, whether by the arbitrary shifting of income, through price fixing, charges for services or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, he may require such facts as he deems necessary for the proper computation of the entire net income and the net income properly attributable to the State and in determining the same, the Tax Commissioner shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

Sec. 24. Informational Returns:

a. Every individual, partnership, corporation, joint stock company, association, or insurance company, being a resident or having a place of business in this State, in whatever capacity acting, including lessees or mortgagers or real or personal property, fiduciaries, employers, and all officers and employees, of the State or of any political subdivision of the State, having the control, receipt, custody, disposal or payment of interest (other than interest coupons payable to bearer), rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments or other fixed or determinable annual or periodical gains, profit and income, amounting to One Thousand Dollars ($1000) or over paid or payable during any year to any taxpayer, shall make complete return thereof under oath (or affirmation) to the Tax Commissioner, under such regulations and in such form and manner and to such extent as may be prescribed by him. No deductions shall be allowed to any taxpayer under Section 11, subsection a. of this Act unless there is reported the name, address, and amount paid to each person as provided therein.

b. Every partnership having a place of business in this State shall make a return, stating specifically the items of its gross income and the deductions allowed by this Act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed, and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

c. Every fiduciary shall make, under oath, a return for the individual, estate or trust for whom or for which he acts, if the net income thereof, distributed or distributable to beneficiaries during the year is One Thousand Dollars ($1000) or over, in which case the fiduciary shall set forth in such return the items of the gross income, the deductions allowed by this Act, the net income, the names and addresses of the beneficiaries, the amounts distributed or distributable to each and the amount, if any, lawfully retained by him for future distribution. Such returns may be made by one or two or more joint fiduciaries.

Sec. 25. Returns When Accounting Period Changed:

a. If a taxpayer, with the approval of the Tax Commissioner, changes the basis of computing net income from fiscal year to calendar year, a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December thirty-first. If the change is made from calendar year to fiscal year, a separate return shall be made for the period between the close of the last calendar year for which return was made and the date designated as the close of the fiscal year within the next calendar year. If the change is made from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year, provided, however, that the period shall not be greater than one year.

b. In all the above cases the net income shall be computed on the basis of such period for which separate re-

turn is made, and then shall be placed on an annual basis by multiplying the amount thereof by twelve and dividing by the number of months included in the period for which the return is made. The tax shall be such part of the tax computed on such annual basis as the number of months in such period is of twelve month. The exemptions allowed in this Act shall be reduced respectively to amounts which bear the same ratio to the full exemptions provided for as the number of months in such period bears to twelve months.

Sec. 26. Time and Place of Filing Returns:

Taxpayer's returns and information returns shall be in such form as the Tax Commissioner may from time to time prescribe and shall be filed with the Tax Commissioner, at his main office or at any branch office which he may establish, on or before the fifteenth day of March in each year, if the return is made on the basis of the calendar year, or if the return is made on the basis of a fiscal year, then on or before the fifteenth day of the third month following the close of the fiscal year; provided that in filing the first return under this Act, all taxpayers who keep their books on the basis of a fiscal year shall file with the Tax Commissioner, within sixty (60) days after the effective date of this Act, of such fact, setting forth therein the date of the close of such year. In case of sickness, absence or other disability, or whenever in his judgment good cause exists, the Tax Commissioner may allow further time for filing a return, and he shall keep a record of every such extension granted and the reason therefor; provided, that no extension of time shall exceed sixty days. There shall be annexed to the return the affidavit or affirmation of the taxpayer making the return to the effect that the statements contained therein are true. Each return (excepting informational returns) shall be accompanied by a filing fee of One Dollar ($1), regardless of whether a tax is due or not, and no extension of time for filing shall be granted until the filing fee herein provided for has been paid; provided, that such filing fee is not necessary in connection with notice to the Tax Commissioner under the first return made under this Act regarding the fiscal year of any taxpayer, as provided hereinabove.

The Tax Commissioner shall cause to be prepared blank forms for the said returns and shall cause them to be distributed throughout the State and to be furnished upon application, but failure to receive or secure the form shall not relieve any taxpayer from the obligation of making any return herein required.

Sec. 27. When Tax is Payable:

a. Each taxpayer shall, or in cases, where an agent or a guardian or other fiduciary makes return for the taxpayer on whose behalf he is acting, then the agent, guardian or other fiduciary shall, at the time of filing his return, pay to the Tax Commissioner the amount of tax payable hereunder as the same shall appear from the face of the return.

b. If the time for filing the return shall be extended, such taxpayer or agent or guardian or other fiduciary shall pay, in addition, interest thereon at the rate of six per cent per annum from the time when the return was originally required to be filed to the time of payment.

c. The tax herein provided may be paid with uncertified check, during such time and under such regulations as the Tax Commissioner shall prescribe, but if a check so received is not paid by the bank on which it is drawn, the taxpayer by whom such tax is tendered shall remain liable for the payment of the tax and for all legal penalties, the same as if such check had not been tendered.

Sec. 28. Failure to File Returns; Supplementary Returns:

If the Tax Commissioner shall be of the opinion that any taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, items of taxable income, he may require from such taxpayer a return or a supplementary return, under oath, in such form as he shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this Act. If from a supplementary return, or otherwise, the Tax Commissioner finds that any items of income, taxable under this Act, have been omitted from the original return, he may require the items so omitted to be disclosed to him, under oath of the taxpayer, and to be

added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provision of this Act. The Tax Commissioner may proceed under the provisions of Section 30 of this Act whether or not he requires a return or a supplementary return under this Section.

Sec. 29. Examination of Returns: Recomputation of Tax: Protest of Additional Assessment, etc:

a. As soon as practicable after the return is filed, the Tax Commissioner shall examine it and compute the tax.

b. If the amount of tax as computed shall be greater than the amount theretofore paid, the excess plus a penalty of ten per cent (10%) of such excess shall be paid by the taxpayer to the Tax Commissioner within fifteen (15) days after the notice of final assessment of such tax as computed shall be mailed by the Tax Commissioner as provided in Section 30, Subsection c. paragraph (2) of this Act.

(1) If payment be not made within fifteen (15) days, there shall be added to the amount of the deficiency ten per cent (10%) thereof, and, in addition, interest at the rate of one per cent (1%) per month for each month or fraction of a month, calculated from the date of the notice until paid.

(2) If the understatement is false or fraudulent with intent to evade the tax, the tax on the additional income discovered to be taxable shall be doubled and an additional one per cent (1%) per month shall be added to the amount so due for each month or fraction of a month, calculated from the date the tax was originally due to the date of payment.

c. If the tax as computed shall be less than the amount theretofore paid, the amount of such excess shall be refunded by the Comptroller of Public Accounts out of the undistributed proceeds of the tax in the State Treasury, as herein provided; provided that such funds shall be made only upon a certificate of the Tax Commissioner approved by the Comptroller of Public Accounts.

Sec. 30. Additional Tax:

a. As used in this Act, in respect to a tax imposed by this Act, the term "deficiency" means:

(1) the amount by which the tax imposed by this Act as determined by the Tax Commissioner exceeds the amount shown as the tax by the taxpayer upon his return; but the amount so shown on the return shall first be increased by the amounts previously assessed (or collected without assessment) as a deficiency, and decreased by the amounts previously abated, credited, refunded or otherwise repaid in respect to such tax; or

(2) if no amount is shown by the taxpayer upon his return as the tax, or if no return is made by the taxpayer, then the amount by which the tax as determined by the Tax Commissioner exceeds the amount previously assessed (or collected without assessment) as a deficiency; but such amounts previously assessed (or collected without assessment) shall first be decreased by the amounts previously abated, credited, refunded or otherwise repaid in respect of such tax.

(b) Notice of deficiency to taxpayer:

(1) If in the case of any taxpayer, the Tax Commissioner determines that there is a deficiency in respect to the tax imposed by this Act, the Tax Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within thirty days after such notice is mailed, the taxpayer may file a petition with the Tax Commissioner for a redetermination of the deficiency.

(2) No assessment of a deficiency in respect to the tax imposed by this Act, and no levy or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such thirty day period, nor, if a petition has been filed with the Tax Commissioner, until his decision has become final.

c. Collection of deficiency:

(1) If the taxpayer files a petition with the Tax Commissioner, the entire amount redetermined as the deficiency by the decision of the Tax Commissioner which has become final shall be assessed and shall be paid ten days after such notice of final de-

termination and assessment is mailed by the Tax Commissioner.

(2) If the taxpayer does not file a petition for redetermination with the Tax Commissioner within thirty days after the notice of deficiency is mailed, as provided in subsection b of this Section, the deficiency shall be assessed and shall be paid within ten days after notice and demand from the Tax Commissioner. The Tax Commissioner, if such petition for redetermination is not filed, shall mail notice to such taxpayer of the final assessment of the delinquency immediately after the expiration of the thirty day period allowed for filing such petition.

d. Hearing on petition for redetermination:

If a petition for a redetermination of a deficiency has been filed by a taxpayer, notice and an opportunity to be heard shall be given to the taxpayer, and after hearing, a decision shall be made as quickly as practicable.

e. Redetermination of deficiency:

The Tax Commissioner shall have jurisdiction to redetermine the correct amount of the deficiency even if the amount so determined is greater than the amount of the deficiency, notice of which has been mailed to the taxpayer, and to determine whether any penalty, additional amount or addition to the tax should be assessed.

Sec. 31. Period of Limitation on Assessment of Income Taxes:

a. Except as provided in subsection b of this Section, the amount of income taxes imposed by this Act shall be assessed within three (3) years after the return is filed, and no proceeding in court for the collection of such taxes shall be begun after the expiration of such period, unless the taxes shall have been assessed within the time allowed herein.

b. (1) In case of a false or fraudulent return with intent to evade the tax, or of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(2) Where the assessment of any income tax imposed by this Act has been made within the period of limitation provided in subdivisions a of this Section, such tax may be collected by warrant and levy as provided in Section 39 of this Act or by a proceeding in court, but only if begun within three years after the assessment of the tax.

Sec. 32. Overpayments and Refunds:

a. Overpayments: Where there has been an overpayment of any tax imposed by this Act, the amount of such overpayment shall be credited against any income tax then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer in the manner provided in Section 29, Subsection c of this Act.

b. Limitations: No such credit or refund shall be allowed or made after three years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer with the Tax Commissioner.

c. Refunds: The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

Sec. 33. Revision and Readjustment by the Tax Commissioner:

A taxpayer may apply to the Tax Commissioner for revision of the tax assessed against him at any time within one year from the time of the filing of the return or from the date of the notice of the assessment of any additional tax. The Tax Commissioner shall grant a hearing thereon and if it shall be made to appear upon such hearing, by evidence submitted to him or otherwise, that any such computation includes taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the Tax Commissioner shall resettle the same according to law and the facts, and adjust the computation of taxes accordingly, and shall send notice of his determination thereon to the taxpayer.

Section 34. Decisions by Tax Commissioner:

Every decision of the Tax Commissioner shall be in writing and notice thereof shall be mailed to the taxpayer by registered mail within ten (10) days and all such decisions shall become final upon the expiration of sixty (60) days after notice of such decisions shall have been mailed to the taxpayer, unless proceedings are

thereafter taken for review of the determination as provided for in the succeeding sections of this Act.

Sec. 35. Review of Decisions of Tax Commissioner:

a. The determination of the Tax Commissioner upon any application made to him by the taxpayer for a revision and resettlement of any accounts as prescribed by this Act may be reviewed for fraud, gross irregularity, arbitrariness, or manifest error in the interpretation or application of this Act upon appeal made by the taxpayer to the proper Court of Travis County, Texas, within sixty (60) days after notice of the determination of the Commissioner has been mailed to the taxpayer in accordance with this Act. Ten (10) days notice of the appeal shall be given to the Tax Commissioner of any hearing on appeal from his decision.

b. In the event of an appeal from the decision of the Tax Commissioner, the taxpayer shall deposit with the Tax Commissioner the full amount of the taxes, interest, and other charges, audited and stated in the determination or decision of the Tax Commissioner, and an undertaking filed with the Tax Commissioner in such amount and with such surety as the Tax Commissioner shall approve, conditioned that the taxpayer will pay all costs and charges which may accrue against him in the prosecution of the case in the event the decision of the Commissioner is affirmed; or, at the option of the taxpayer, the undertaking may be in a sum sufficient to cover the taxes, interest, and other charges audited and stated in the determination or decision, plus the costs and charges which may accrue against him in the prosecution of the case in the event the determination of the Tax Commissioner is affirmed, and in the event the taxpayer enters into such an undertaking sufficient to cover taxes, interest, and other charges, plus possible costs of suit, he shall not be required to pay such taxes, interested, and other charges as a condition precedent to the maintenance of his appeal.

Sec. 36. Exclusive Original Jurisdiction of Appeals From the Tax Commissioner:

The District Court of Travis County, Texas, shall have exclusive original jurisdiction to review on appeal any determination of the Tax Commissioner. It shall be the duty of the clerk of any court rendering a decision affecting an income tax assessment to transmit promptly, without charge, two copies of such decision to the Tax Commissioner.

Sec. 37. Collection not to Be stayed:

The collection of income taxes under this Act shall not be stayed by any injunction, writ, or order issued by any Court; and no writ, order, or process of any kind, staying or preventing the Tax Commissioner from taking any steps or proceedings in the assessment or collection of any income tax, whether the same is legally due or not, will be granted by any court or judge; provided that in all cases the taxpayer against whom any income tax shall stand charged shall have the privilege of review and appeal against such tax as provided in this Act.

Sec. 38. Penalties, Additional Taxes and Interest:

a. If any taxpayer, without intent to evade any tax imposed by this Act, shall fail to file a return of income or pay a tax, if one is due, at the time required by or under the provisions of this Act, but shall voluntarily file a correct return of income and pay the tax within sixty (60) days thereafter, there shall be added to the tax an additional amount equal to five (5) per cent thereof, but such additional amount shall in no case be less than One Dollar ($1) and an additional one per cent (1%) for each month or fraction of a month during which the tax remains unpaid after the date on which the return was voluntarily filed.

b. If any taxpayer fails voluntarily to file a return of income or to pay a tax if one is due within sixty (60) days of the time required by or under the provisions of this Act, there shall be added to the tax an additional amount equal to fifty per cent (50%) thereof, and such increased tax shall be increased by one per cent (1%) for each month or fraction of a month from the time the tax was originally due to the date of payment.

c. Any individual, corporation, or partnership, or any officer or employee of any corporation, or member or employee of any partnership, or any officer or employee thereof,

who, without fraudulent intent, shall fail to make, render, sign, or verify any return, or to supply any information, within the time required by or under the provisions of this Act, shall be liable to a penalty of not more than Five Hundred Dollars ($500) to be imposed, assessed, and collected by the State Tax Commissioner in the same manner as is provided in this Act with regard to income taxes.

d. Any individual, corporation, or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this Act, or any lawful requirement of the Tax Commissioner thereunder, shall fail to pay the tax, or to make, render, sign, or verify any return, or to supply any information within the time required by or under the provisions of this Act, or who, with like intent, shall make, render, sign, or verify any false or fraudulent return or statement, or shall supply any false or fraudulent information, shall be liable to a penalty of not more than One Thousand Dollars ($1,000) to be recovered by the Attorney General in the name of the people by action in any Court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed One Thousand Dollar ($1,000) or be imprisoned not to exceed one year, or both at the discretion of the Court.

e. Upon making record of its reasons therefor, the Tax Commissioner shall have the power in his discretion to waive or reduce any of the penalties provided in subdivision b. of Section 29, and subdivisions a., b., and c. of Section 38 of this Act, or to compromise the same.

f. The Attorney General shall have the power, with the consent of the Tax Commissioner, to compromise any penalty for which he is authorized to bring action under subdivision d. of this Section.

g. The penalties provided in subdivisions c. and d. of this Section shall be in addition to all other penalties in this Act provided.

h. The failure to do any act required by or under the provisions of this Act shall be deemed an act committed in part at the office of the Tax Commissioner in Austin, Travis County, Texas. The certificate of the Tax Commissioner to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this Act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

i. If any taxpayer, who has failed to file a return or has filed an incorrect or insufficient return and has been notified by the Tax Commissioner of his delinquency, refuses or neglects within twenty (20) days after such notice to file a proper return, or files a fraudulent return, the Tax Commissioner shall determine the income of such taxpayer according to his best information and belief and assess the same at not more than double the amount so determined. The Tax Commissioner, in his discretion, may allow further time for the filing of a return in such case, such additional time not to exceed thirty (30) days.

Sec. 39. Warrant for Collection of Taxes:

If any tax imposed by this Act or any portion of such tax be not paid within sixty days after the same becomes due, the Tax Commissioner shall issue a warrant under his official seal directed to the Sheriff of any county of the State commanding him to levy upon and sell the real and personal property of the person owning the same, found within his county, for the payment of the amount thereof, with the added penalties, interest, and the cost of executing the warrant, and to return such warrant to the Tax Commissioner and pay to him the money collected by virtue thereof within sixty (60) days after the receipt of such warrant. The sheriff shall within five (5) days after the receipt of the warrant file with the clerk of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax or portion thereof and penalties for which the warrant

is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is issued in the same manner as a judgment duly docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the Tax Commissioner a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the Tax Commissioner shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the State had recovered judgment against the taxpayer for the amount of the tax.

Sec. 40. Action for Recovery of Taxes:

Action may be brought at any time by the Tax Commissioner in the name of the State, to recover the amount of any taxes, penalties, and interest due under this Act.

Sec. 41. Administration of Income Tax Law:

The State Tax Commissioner shall administer and enforce the tax herein imposed, for which purpose he may divide the State into districts in each of which a branch office of the Tax Commissioner may be maintained; provided that in no case shall a county be divided in forming a district.

Sec. 42. Power of Tax Commissioner:

In addition to all other powers and duties heretofore conferred upon the Tax Commissioner by law, or which may hereafter be conferred upon said Commissioner, and in addition to all other powers and duties specifically set forth in this Act, the Tax Commissioner shall have the powers, authority, and duties hereinafter set forth:

a. Estimate of Taxable Income.

If any taxpayer fails to make a return as herein required, the Tax Commissioner is authorized to make an estimate of the taxable income of such taxpayer from any information in his possession, and assess it in accordance with the provisions of this Act.

b. Examination of Records, etc.

The Tax Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, shall have power to examine or cause to be examined, by any agent or representative designated by him for that purpose any books, papers, records, or memoranda bearing upon the matters required in the return and may require the attendance of any person rendering a return or any officer or employee of such person, firm, corporation, or partnership, and may take testimony and require proof material for his information.

c. Employees.

The Tax Commissioner shall appoint and remove such deputy tax commissioner, tax assistants, agents, statisticians, experts, or other assistants or employees as may be necessary for the exercise of the powers and duties conferred upon the Tax Commissioner by this Act, and the Tax Commissioner shall prescribe their duties and fix their compensation, such compensation not to exceed in the aggregate the sum appropriated therefor by the Legislature. The Tax Commissioner shall have the authority to appoint such district commissioners and district administrators and other employees as shall be necessary to the enforcement of this Act, under the provisions of Section 41 thereof, and shall have the power to transfer such district administrators from one district to another; provided, that insofar as practicable, preference shall be given in the appointment of such district administrators to persons resident in the particular district.

The Tax Commissioner may require such of the officers, agents and

employees as he may designate to give bond for the faithful performance of their duties in such sum and with such sureties as he may determine, and all premiums on such bonds shall be paid by the Tax Commissioner out of moneys appropriated for the purpose of this Act.

d. Oaths.

The Tax Commissioner, and such officers, agents, or representatives as he may from time to time designate, shall have the power to administer an oath to any person, or to take the acknowledgment of any person in respect to any income tax report or return required by or pursuant to this Act, or the rules and regulations of the Tax Commissioner.

e. Rules and Regulations.

The Tax Commissioner shall make such reasonable rules and regulations, not inconsistent with this Act, as may be necessary for the exercise of his powers and performance of his duties under this Act, such rules and regulations prescribed by the Tax Commissioner to this Act shall have the full force of law, and the findings of fact of the Tax Commissioner shall be final and conclusive and shall not be subject to review, change, or modification in the absence of fraud. Insofar as practicable, the rules and regulations of the Internal Revenue Department of the Federal Government shall be conformed to by the Tax Commissioner in issuing his rules and regulations under this Act.

f. Blanks, forms, etc.

The Tax Commissioner shall prescribe the form of blanks, reports, and such other forms as he may deem necessary under the provisions of this Act for the proper enforcement thereof.

g. Publication of Statistics.

The Tax Commissioner shall compile and publish annually such statistics as are reasonably available, with respect to the operations of this Act, including accounts collected, classifications of taxpayers, income and exemptions, and such other facts as are deemed pertinent and valuable.

h. Agents to Collect.

The Tax Commissioner is authorized at his discretion to designate agents for the purpose of collecting income taxes and shall require from them reasonable bond, the premium on such bonds to be paid out of the moneys appropriated for the purposes of this Act.

Sec. 43. Secrecy Required of Officials: Penalty for Violation:

a. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Tax Commissioner, agent, clerk, or other officer or employee to divulge or make in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this Act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding an any court, except on behalf of the Tax Commissioner in an action or proceeding under the provisions of this Act to which he is a party, or on behalf of any party to any action or proceeding under the provisions of this Act when the reports of facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production or, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding, and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General or other legal representatives of the State of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of Section 39 of this Act. Reports and returns shall be preserved for three years and thereafter until the Tax Commissioner orders them to be destroyed.

b. Any offense against Subsection a. of this Section shall be punished by a fine not exceeding One Thonsand Dollars ($1,000.00) or by imprisonment not exceeding one year, or both, at the discretion of the Court, and if the offender be an officer or employee of the State, he shall be dismissed from office or service and

be incapable of holding any public office in this State for a period of five years thereafter.

c. Notwithstanding the provisions of this Section, the Tax Commissioner may permit the Commissioner of Internal Revenue of the United States, or the proper officer of any State imposing an income tax upon the income of individuals, partnerships, corporations, and fiduciaries, or the authorized agent or representative of either such officer, to inspect the income tax return of any taxpayer, or may furnish to such officer or his authorized representative an abstract of the return of income of any taxpayer or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any such taxpayer; but such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other State, as the case may be, grant substantially similar privilages to the proper officer of this State charged with the administration of the income tax law of this State.

Sec. 44. Disposal of Tax:

a. All revenues collected by the Tax Commissioner under this Act shall be deposited daily with the State Treasurer, and shall be credited by him to the funds as hereinafter provided:

(1) Five per cent (5%) of the tax, penalties, and interest provided in this Act and collected by the Tax Commissioner within one year from the effective date of this Act and three per cent (3%) thereafter and all of the filing fees in connection with this Act shall be deposited by the State Treasurer in a special fund and may be expended, or so much thereof as may be necessary, by the Tax Commissioner in the administration and enforcmeent of this Act.

(2) Five per cent (5%) of the revenue collected from the tax, penalties, and interest provided herein, exclusive of filing fees, shall be retained by the State Treasurer as a reserve fund for the payment of refunds to which taxpayers are entitled under this Act.

(3) The balance of such receipts, exclusive of filing fees, shall be credited to a fund to be called the Texas Pension Fund, and shall be used to pay such pensions as shall be created or provided for by the Legislature of the State of Texas.

b. If at the end of any State fiscal year there is in the reserve fund for refunds provided in Subsection a., paragraph (2) of this Section a sum in excess of Two Hundred and Fifty Thousand Dollars ($250,000.00), such excess shall be allocated to the Texas Pension Fund as provided in Subsection a., paragraph (3) of this Section.

c. Refunds due to taxpayers under this Act shall be paid out of said reserve fund provided herein; provided that such refunds shall be made as provided in Section 29, Subsection c. of this Act; provided, further, that if at any time the reserve is exhausted and there are no funds with which to pay refunds lawfully due, then such refunds shall be paid in the chronological order of their allowance by the Tax Commissioner out of the funds first accruing to said fund.

Sec. 45. Contract to Assume Income Tax Illegal:

It shall be unlawful for any person to agree or contract directly or indirectly to pay or assume or bear the burden of any tax payable by any taxpayer under the provisions of this Act. Any such contract or agreement shall be null and void and shall not be enforced or given effect by any court.

Sec. 46. Appropriations.

To carry into effect the provisions of this Act, there is hereby appropriated out of any money in the Treasury not otherwise appropriated in the sum of Fifty Thousand ($50,000.00) Dollars or so much of said amount as may be needed by the Tax Commissioner to be paid upon Comptroller's Warrant according to Law, provided that this amount or so much thereof that may have been used be refunded to the General Fund out of the first moneys collected and set aside for the use of the Tax Commissioner as provided for in Section 44 of this Act. Salaries payable hereunder shall not exceed the salaries in each classification as set out in the appropriation of the Tax Commissioner. Any unexpended portions in excess of Twenty-five Thousand Dollars ($25,000.00) of the fund set aside for use of the

Tax Commissioner in Section 44 of this Act shall on the first day of January, 1937, and on the first day of January of each year thereafter revert to the Texas Pension Fund; provided that the Twenty-five Thousand Dollars ($25,000.00) herein referred to shall be retained in the fund on the first day of January, 1937, and each year thereafter in order to supply funds for use in the administration and enforcement of this Act until such moneys are deposited in this fund when taxes become payable.

Sec. 47. Saving Clause:

If any word, phrase, sentence, paragraph, or section of this amendment shall be held invalid or unconstitutional, such holding shall not affect the remaining portions of this amendment and it is hereby declared to be the legislative intent to enact such other portions of this amendment not so held invalid.

BURNS.
WOODRUFF.

Previous Question.

Senator Hopkins moved that the Senate order the previous question on the amendment to the amendment and the passage to third reading of the bill.

The motion was duly seconded.

Senator DeBerry called for a division of the motion.

The previous question was not ordered on the amendment as shown by the following vote:

Yeas—13.

Beck.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Martin.	Sanderford.
Moore.	Stone.
Neal.	Van Zandt.
Pace.	

Nays—17.

Blackert.	Nelson.
Burns.	Oneal.
Collie.	Poage.
Cotten.	Shivers.
Davis.	Small.
DeBerry.	Sulak.
Hill.	Westerfeld.
Hornsby.	Woodruff.
Isbell.	

Absent—Excused.

Fellbaum.

Previous Question.

Senator Hill moved that the Senate order the previous question on the pending amendment by Senator Burns.

The motion was duly seconded.

The previous question was ordered by the following vote:

Yeas—16.

Beck.	Nelson.
Davis.	Pace.
Hill.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Sanderford.
Moore.	Van Zandt.
Neal.	Westerfeld.

Nays—13.

Blackert.	Poage.
Burns.	Shivers.
Collie.	Small.
Cotten.	Stone.
Isbell.	Sulak.
Martin.	Woodruff.
Oneal.	

Present—Not Voting.

DeBerry.

Absent—Excused.

Fellbaum.

The Burns amendment was adopted by the following vote:

Yeas—21.

Beck.	Nelson.
Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
Davis.	Redditt.
DeBerry.	Shivers.
Hill.	Sulak.
Hornsby.	Van Zandt.
Isbell.	Westerfeld.
Martin.	Woodruff.
Neal.	

Nays—9.

Blackert.	Regan.
Holbrook.	Sanderford.
Hopkins.	Small.
Moore.	Stone.
Rawlings.	

Absent—Excused.

Fellbaum.

Amend House Bill No. 46, Section 10, as amended by Committee Amendment No. 16, by adding after the period in line 53, page 13, the following:

"In addition to the tax herein above levied, there is hereby levied on every person placing or making a wager or bet with any person, association or corporation licensed to use the 'Certificate System' of betting, under Chapter 10, Acts of the Forty-third Legislature, a tax equal to one and one-half (1½%) per centum of the amount so placed as a wager or bet.

"Each such licensee is hereby authorized and required to retain out of any moneys placed as a wager or bet with such licensee an amount sufficient to pay said one and one-half (1½%) per centum tax hereby levied against the person placing such bet with said licensee, and in case money is due by the licensee to the purchaser, in connection with said bet, the said licensee shall be authorized and required to deduct the tax so levied from payments due to the person making the bet with the licensee.

"At the end of each racing meet the licensee shall remit to the State Treasurer at Austin, Texas, through the Comptroller of Public Accounts all taxes levied against bets made with him by the provisions of this Act. The Comptroller of Public Accounts shall be and is hereby authorized to require reports supported by the oath of each licensee, his agent or attorney, and is authorized to require all such reports as he may deem necessary to the proper execution of the provisions of this Act and in the collection of the tax levied hereby; and he is further authorized and empowered to make and promulgate all such reasonable rules and regulations as he may deem necessary in connection with the enforcement hereof; providing further that all money so collected from said 1½% levy as above provided shall be deposited to the credit of the 'Old Age Assistance Fund.'"

NELSON.

Point of Order.

Senator Rawlings raised the point of order that the amendment seeks to put into the bill that which was taken out by amendment without a motion to reconsider the previous action.

The Chair overruled the point of order.

Previous Question.

Senator Hill moved that the Senate order the previous question on the amendment.

The motion was seconded.

The previous question was not ordered as shown by the following vote:

Yeas—7.

Beck.	Pace.
Hill.	Sulak.
Hornsby.	Westerfeld.
Martin.	

Nays—19.

Blackert.	Poage.
Burns.	Rawlings.
Collie.	Redditt.
Cotten.	Regan.
Davis.	Sanderford.
Holbrook.	Shivers.
Hopkins.	Small.
Isbell.	Stone.
Moore.	Woodruff.
Neal.	

Present—Not Voting.

DeBerry.	Oneal.
Nelson.	Van Zandt.

Absent—Excused.

Fellbaum.

Previous Question.

Senator Stone moved that the Senate order the previous question on the amendment and the passage to third reading of the bill.

The motion was seconded.

Senator Sanderford called for a division of the motion.

The previous question was ordered on the amendment by the following vote:

Yeas—21.

Beck.	Hopkins.
Blackert.	Hornsby.
Burns.	Martin.
Collie.	Moore.
Davis.	Neal.
DeBerry.	Pace.
Holbrook.	Rawlings.

Redditt.
Regan.
Shivers.
Small.
Stone.
Sulak.
Van Zandt.

Nays—8.

Hill.
Isbell.
Nelson.
Oneal.
Poage.
Sanderford.
Westerfeld.
Woodruff.

Present—Not Voting.

Cotten.

Absent—Excused.

Fellbaum.

The previous question was not ordered on the passage to third reading of the bill as shown by the following vote:

Yeas—15.

Beck.
Davis.
Hopkins.
Hornsby.
Martin.
Moore.
Neal.
Pace.
Rawlings.
Regan.
Sanderford.
Shivers.
Small.
Stone.
Van Zandt.

Nays—15.

Blackert.
Burns.
Collie.
Cotten.
DeBerry.
Hill.
Holbrook.
Isbell.
Nelson.
Oneal.
Poage.
Redditt.
Sulak.
Westerfeld.
Woodruff.

Absent—Excused.

Fellbaum.

The Chair voted "nay" on the motion.

The amendment by Senator Nelson lost by the following vote:

Yeas—13.

Burns.
Cotten.
DeBerry.
Hill.
Hornsby.
Nelson.
Oneal.
Pace.
Poage.
Sulak.
Van Zandt.
Westerfeld.
Woodruff.

Nays—17.

Beck.
Blackert.
Collie.
Davis.
Holbrook.
Hopkins.
Isbell.
Martin.
Moore.
Neal.
Rawlings.
Redditt.
Regan.
Sanderford.
Shivers.
Small.
Stone.

Absent—Excused.

Fellbaum.

Amend H. B. No. 46 as substituted by adding a new sub-Section to Section 8 to be known as sub-Section 15 and to read as follows:

"All farm implements and equipment to be used in any manner for agricultural pursuits."

NELSON.

Read.

Substitute for Nelson amendment:

Amend H. B. No. 46 as amended, by striking out all of Article 1 thereof.

DeBERRY,
POAGE,
WESTERFELD,
SULAK.

Read.

Previous Question.

Senator Pace moved that the previous question be ordered on the amendment and the substitute for the amendment, and the passage to third reading of H. B. No. 46.

The motion was duly seconded.

A division was called for.

The previous question was ordered on the substitute amendment by the following vote:

Yeas—23.

Beck.
Blackert.
Burns.
Cotten.
Davis.
DeBerry.
Hill.
Holbrook.
Hopkins.
Hornsby.
Martin.
Moore.
Neal.
Pace.
Rawlings.
Redditt.
Regan.
Sanderford.
Shivers.
Small.
Stone.
Sulak.
Woodruff.

Nays—6.

Collie.
Isbell.
Nelson.
Oneal.
Poage.
Westerfeld.

Present—Not Voting.

Van Zandt.

Absent—Excused.

Fellbaum.

The previous question was ordered on the amendment by viva voce vote.

The previous question was ordered on the passage to third reading by the following vote:

Yeas—18.

Beck.	Neal.
Burns.	Pace.
Cotten.	Rawlings.
Davis.	Redditt.
Holbrook.	Regan.
Hopkins.	Shivers.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.

Nays—10.

Blackert.	Oneal.
Collie.	Poage.
Hill.	Sanderford.
Isbell.	Sulak.
Nelson.	Westerfeld.

Present—Not Voting.

DeBerry.	Van Zandt.

Absent—Excused.

Fellbaum.

The substitute amendment was not adopted as shown by the following vote:

Yeas—10.

Collie.	Nelson.
DeBerry.	Oneal.
Hill.	Poage.
Hornsby.	Sulak.
Isbell.	Westerfeld.

Nays—19.

Beck.	Rawlings.
Blackert.	Redditt.
Burns.	Regan.
Cotten.	Sanderford.
Davis.	Shivers.
Holbrook.	Small.
Hopkins.	Stone.
Martin.	Van Zandt.
Neal.	Woodruff.
Pace.	

(Pair Recorded.)

Senator Moore (present) who would vote yea, with Senator Fellbaum (absent) who would vote nay.

The amendment by Senator Nelson was adopted by the following vote:

Yeas—18.

Beck.	Nelson.
Burns.	Oneal.
Collie.	Pace.
Cotten.	Poage.
DeBerry.	Redditt.
Hill.	Shivers.
Hornsby.	Sulak.
Isbell.	Westerfeld.
Moore.	Woodruff.

Nays—12.

Blackert.	Rawlings.
Davis.	Regan.
Holbrook.	Sanderford.
Hopkins.	Small.
Martin.	Stone.
Neal.	Van Zandt.

Absent—Excused.

Fellbaum.

Senator Burns asked unanimous consent to amend the caption to conform to the body of the bill.

Unanimous consent was granted.

H. B. No. 46, as amended, was passed to third reading by the following vote:

Yeas 17.

Beck.	Rawlings.
Burns.	Redditt.
Collie.	Regan.
Cotten.	Shivers.
Davis.	Small.
Martin.	Stone.
Neal.	Van Zandt.
Oneal.	Woodruff.
Pace.	

Nays—13.

Blackert.	Moore.
DeBerry.	Nelson.
Hill.	Poage.
Holbrook.	Sanderford.
Hopkins.	Sulak.
Hornsby.	Westerfeld.
Isbell.	

Absent—Excused.

Fellbaum.

On motion of Senator Burns the constitutional rule requiring bill to be read on three several days was suspended and H. B. No. 46 was put on its third reading and final passage by the following vote:

Yeas—27.

Beck.	Nelson.
Blackert.	Oneal.
Burns.	Pace.
Collie.	Poage.
Cotten.	Rawlings.
Davis.	Redditt.
DeBerry.	Regan.
Hill.	Shivers.
Hopkins.	Small.
Hornsby.	Stone.
Isbell.	Sulak.
Martin.	Van Zandt.
Moore.	Woodruff.
Neal.	

Nays—3.

Holbrook.	Westerfeld.
Sanderford.	

Absent—Excused.

Fellbaum.

Amend H. B. No. 46, as amended, by adding in Section Eight (8) of Article No. One (1), a Subdivision to be known as Subdivision (15) the following:

"Tools and/or implements sold to artisans, craftsmen or laborers, to be used in the pursuit of their craft, trade, or labor, and ordinarily used by such artisans, craftsmen and laborers in such pursuit."

ONEAL.

Read.

The amendment by Senator Oneal was lost, not having received the required two-thirds vote.

Yeas—16.

Collie.	Oneal.
Cotten.	Pace.
DeBerry.	Poage.
Hill.	Redditt.
Hornsby.	Shivers.
Isbell.	Sulak.
Moore.	Westerfeld.
Nelson.	Woodruff.

Nays—14.

Beck.	Davis.
Blackert.	Holbrook.
Burns.	Hopkins.
Martin.	Sanderford.
Neal.	Small.
Rawlings.	Stone.
Regan.	Van Zandt.

Absent—Excused.

Fellbaum.

Read third time and finally passed by the following vote:

Yeas—19.

Beck.	Rawlings.
Burns.	Redditt.
Collie.	Regan.
Cotten.	Sanderford.
Davis.	Shivers.
Hopkins.	Small.
Martin.	Stone.
Neal.	Van Zandt.
Oneal.	Woodruff.
Pace.	

Nays—11.

Blackert.	Moore.
DeBerry.	Nelson.
Hill.	Poage.
Holbrook.	Sulak.
Hornsby.	Westerfeld.
Isbell.	

Absent—Excused.

Fellbaum.

Motion to Adjourn.

Senator Pace at 12:01 a. m. moved that the Senate adjourn until 10:00 o'clock a. m., Tuesday.

The motion prevailed by viva voce vote.

APPENDIX.

Committee on Engrossed Bills.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Engrossed bills, have had S. C. R. No. 16 carefully examined and compared and find same correctly engrossed.

DAVIS, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. C. R. No. 20

carefully examined and compared and find same correctly engrossed.

DAVIS, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. C. R. No. 21 carefully examined and compared and find same correctly engrossed.

DAVIS, Chairman.

Committee on Enrolled Bills.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. C. R. No. 16 carefully examined and compared and find same correctly enrolled.

POAGE, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. C. R. No. 15 carefully examined and compared and find same correctly enrolled.

POAGE, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. C. R. No. 14 carefully examined and compared and find same correctly enrolled.

POAGE, Chairman.

Committee Reports.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Federal Relations, to whom was referred

"H. C. R. No. 20, requesting members of Congress to take such action as may be necessary to bring about the appropriation and allotment of the funds necessary for the completion of the Army Construction Program in the State of Texas."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

DAVIS, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred

H. B. No. 112, A bill to be entitled "An Act providing that wherever a person has died or may die, testate, owning property in Texas, and such person's will has been or may be admitted to probate by the County Court, and such probated will names an independent executor, or executors, and/or trustees acting in the capacity of independent executors, to execute the terms and provisions of the will, or provided that no other action shall be had in the Courts of Texas in reference to the settlement of the estate than the probating and recording of the will and the return of an inventory, appraisement and list of claims of the estate dealt with in the will, or contains language of similar import, and said will grants to such independent executor, or executors, and/or trustees, acting in the capacity of independent executors the power to raise or borrow money and to mortgage, etc., and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

SMALL, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Civil Jurisprudence, to whom was referred H. B. No. 103,

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

SMALL, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We your Committee on Civil Jurisprudence, to whom was referred

H. B. No. 111, A bill to be entitled "An Act authorizing the selection and the summoning of a general jury panel for jury service in the district and county courts in counties of Texas wherein two (2) or more district courts are situated and maintained; defining district courts within the meaning of the Act; authorizing the judges of the district and county courts in any such county to meet together at stated intervals and determine the number of jurors necessary for jury service for all district and county courts during a period of two (2) months or as many weeks in advance as they decide upon; providing that such judges shall appoint a presiding judge who shall appoint a jury commission to select the jurors who shall be summoned by the sheriff to appear before the presiding judge for the week for which they have been selected; providing for the summoning of additional jurors in cases of emergency; providing that the general jury panel, when properly summoned and sworn in shall constitute a general panel for all district and county courts, and may be used interchangeably in all of said courts; providing that any court in need of a jury shall make this request known to the presiding judge and such jury shall be furnished from the general panel; providing that any party to a suit or his attorney of record may have a requested jury drawn from the panel; or from any number remaining thereon, and providing for the method of drawing the same; providing that the commissioners court shall supply a convenient room in or near the court house for the general panel and that the sheriff shall assign a deputy to have custody and control of such jurors; providing that such Act shall be cumulative in such counties; providing that if any Section or paragraph of the Act shall be declared unconstitutional it shall not affect the balance, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

SMALL, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Towns and City Corporations, to whom was referred

H. B. No. 105, A bill to be entitled "An Act validating all elections, election orders, election proceedings, affidavits and city ordinances annexing adjacent territory or extending and prescribing the corporate limits of any incorporated city incorporated and functioning under the General Laws of Texas under commission form of government, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

RAWLINGS, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Game and Fish, to whom was referred

H. B. No. 124, A bill to be entitled "An Act to prohibit the selling, taking or possession for barter or sale of wild fox, or the pelt thereof in Newton and Jasper Counties; to prohibit the killing of wild fox in said counties; providing penalties, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

SHIVERS, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Game and Fish, to whom was referred

H. B. No. 126, A bill to be entitled "An Act to prohibit the trapping or hunting with guns of wild foxes or having in possession the pelts thereof in Camp County; providing a penalty; providing that farmers or poultry raisers may kill such foxes while in the act of actually destroying chickens or other poultry or farm

animals; repealing all laws or parts of laws in conflict herewith, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

SHIVERS, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Mining and Irrigation, to whom was referred

H. B. No. 130, A bill to be entitled "An Act providing a method for the exclusion of lands from fresh water supply districts in counties having a population of not more than 20,000 or not less than 3,000 according to the last preceding Federal Census and embracing not less than 50,000 acres, which districts have no outstanding bonded indebtedness; providing for the alteration of the boundaries of such districts so as to exclude the lands; validating all such fresh water supply districts; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass but that the committee's substitute attached hereto do pass in lieu thereof, and be not printed.

REGAN, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Mining and Irrigation, to whom was referred

H. B. No. 104, A bill to be entitled "An Act to create the Sulphur River Conservation and Reclamation District under the authority of Section 59 of Article 16, of the Constitution of Texas authorizing subordinate districts and for the creation and government thereof; defining the powers and duties of said districts; providing for directors and organization and operation of the districts and the authority and duties of said directors; etc., and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass, and be not printed.

REGAN, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

S. B. No. 30, A bill to be entitled "An Act authorizing cities having a population of more than 3,500 and not exceeding 4,000 inhabitants, and which are not served either by a natural gas or an artificial gas distribution system to acquire by purchase or otherwise a system to make available and to distribute to their inhabitants who subscribe for the service, a gas for fuel and lighting purposes manufactured and compounded in the manner herein prescribed; adopting by reference the procedure for the issuance of other revenue bonds, notes and warrants, as prescribed in Articles 1111 to 1118, of the Revised Civil Statutes of 1925, as amended and in Chapter 163, Acts of the Regular Session of the Forty-second Legislature, prescribing that the provisions of this Act are cumulative of all other laws and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. C. R. No. 11, A resolution "to grant J. D. George, The J. D. George Construction Company and the Valley Dredging Company, a Texas corporation of which J. D. George is President, permission to sue the State."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. B. No. 110, A bill to be entitled "An Act authorizing and empowering all cities and towns, including Home Rule cities, to build and purchase, to mortgage and encumber certain projects, . . . and declaring an emergency.

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. B. No. 97, A bill to be entitled "An Act giving L. B. Hammett and wife, Mrs. L. B. Hammett, consent of the Legislature to sue the State of Texas and State Highway Commission for damages resulting from the construction of State Highway No. 6, in and through Grayson County, Texas; fixing the venue of said suit; providing that limitation shall not be pleaded, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. C. R. No. 19, A resolution "Granting Mrs. Julia Martin and others permission to sue the State."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. C. R. No. 15, A resolution "Granting Mrs. Fannie Williams permission to sue the State of Texas."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on State Affairs, to whom was referred

H. B. No. 94, A bill to be entitled "An Act providing for the compensation of Criminal District Attorneys or County Attorneys who perform the duties of District Attorneys in those counties in which the Commissioners' Courts elect to compensate such officers on a salary basis; fixing the compensation of Criminal District Attorneys or County Attorneys who perform the duties of a District Attorney and whose district is composed of one county only; providing the method of payment; providing that warrants shall not be approved where an officer has been absent from the State for a period of time exceeding ten (10) days during the time for which the warrant is issued; providing no officer shall leave the State for a longer period than three (3) days without securing the consent of the Commissioners' Court; providing for the disposition of fees, commissions and perquisites earned and collected by such Criminal District Attorney or County Attorney; providing that this Act shall be cumulative of prior Acts, except where in direct conflict, especially with reference to assistants and special investigators; providing for the payment of expenses of Criminal District Attorneys and County Attorneys performing the duties of District Attorneys when engaged in the actual discharge of their duties; reappropriating money to pay salaries and expenses authorized and incurred in this Act; providing for the validity of the remainder of this Act in the event any portion hereof is declared to be unconstitutional, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recom-

mendation that it do pass and be not printed.

PACE, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Education, to whom was referred

S. B. No. 23, A bill to be entitled "An Act validating an election held under the provisions of Chapter 339, Acts Regular Session, Forty-fourth Legislature, transferring certain lands from the Badgett Common School District No. 4 in Martin County, Texas, to Courtney Independent School District No. 5, Martin County, Texas, and declaring an emergency."

Have had same under consideration, and I am instructed to report it back to the Senate with recommendation that it do pass, and be not printed.

COTTEN, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Education, to whom was referred

H. B. No. 99, A bill to be entitled "An Act increasing the amount that may be allowed by County Boards of Trustees to the County Superintendents of Public Instruction for expenditures for office and traveling expenses in counties with a population of not less than sixty thousand (60,000), nor more than sixty-one thousand ($61,000), according to the last preceding Federal Census; repealing all laws or parts of laws, general or special, in conflict therewith; and declaring an emergency."

Have had same under consideration, and I am instructed to report it back to the Senate with recommendation that it do pass, and be not printed.

COTTEN, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Education, to whom was referred

S. B. No. 31, A bill to be entitled "An Act applying only to independent school districts in counties having a population of not less than thirty-two thousand five hundred (32,500) and not more than thirty-seven thousand five hundred (37,500) according to the last preceding Federal census; authorizing said school districts to fund into time warrants all outstanding obligations of said school districts which existed on November 12, 1935; prescribing the terms and conditions of issuance of said time warrants; authorizing said school districts to borrow money in a sum not to exceed fifteen thousand dollars ($15,000) with which to pay current expenses for the school year 1935-36; providing for the levying of a tax to pay the same and fixing the rate of interest thereon; prescribing the terms and conditions of said time warrants; and declaring an emergency."

Have had same under consideration, and I am instructed to report it back to the Senate with recommendation that it do pass, and be not printed.

COTTEN, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

H. B. No. 118, A bill to be entitled "An Act reappropriating an appropriation of Seventy-five Thousand Dollars ($75,000.00) made by Acts of the Regular Session, Forty-fourth Legislature, Chapter 352, page 868, for the purpose of remodeling and re-equipping hospital building at the State Hospital for Crippled and Deformed Children at Galveston, Texas; providing that said appropriation shall be used for the purpose of erecting a new hospital building; appropriating an additional Thirty-five Thousand Dollars ($35,000.00) for such purpose, and declaring an emergency."

Have had same under consideration, and I am instructed to report it back to the Senate with recommendation that it do pass, and be not printed.

REDDITT, Chairman.

Committee Room,
Austin, Texas, Nov. 11, 1935.

Hon. Walter F. Woodul, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

H. B. No. 116, a bill to be entitled "An Act making certain emergency and supplemental appropriations out of the General Fund of the State of Texas for the Texas Prison System for the fiscal years ending August 31, 1936, and August 31, 1937, respectively, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass with Committee Amendments 1 to 8 inclusive, and be not printed.

REDDITT, Chairman.

Committee Amendment No. 1.

Amend H. B. No. 116, page 1, by adding the following, to-wit:

"Night guard for lower prison yard, $240.00 each year."

Committee Amendment No. 2.

Amend H. B. No. 116, page 1, by adding the following, to-wit:

"Inspector and searcher for bull ring, $240.00 each year."

Committee Amendment No. 3.

Amend H. B. No. 116, page 1, by adding the following, to-wit:

"Secretary to warden, $240.00 each year."

Committee Amendment No. 4.

Amend H. B. No. 116, page 2, by striking out "Salary for superintendent of brick plant for both years."

Committee Amendment No. 5.

Amend H. B. No. 116, page 2, by striking out the salary for Assistant General Manager for both years.

Committee Amendment No. 6.

Amend H. B. No. 116, page 2, four lines from the bottom of the page, by striking out the following words: "insofar as the same are applicable."

Committee Amendment No. 7.

Amend H. B. No. 116, by adding at the end of Section 1, the following, to-wit:

"Provided, that the Chairman of the Prison Board shall not use the office or offices of the Prison Board to conduct or operate his own private business, and in the event this is done, the State of Texas shall not pay any office rent for said Prison Board."

Committee Amendment No. 8.

Amend H. B. No. 116, by adding a new Section to be known as Section 1-A.

"Section 1-A. There is hereby appropriated out of any moneys in the General Revenue Fund not otherwise appropriated the sum of Three Thousand ($3,000.00) Dollars for the Texas Agricultural Experiment Station, A. & M. College, for research work in, and extermination of Garlic Smut in this State.

Minutes of Committee Meetings.

Minutes of Committee on Education, Held Nov. 11, 1935.

Called Meeting.

Quorum present.

H. B. No. 99 reported favorably with recommendation that it do pass and be not printed.

S. B. No. 23 reported favorably with recommendation that it do pass and be not printed.

S. B. No. 31 reported favorably with recommendation that it do pass and be not printed.

EDITH GREEN, Secretary.

ADDRESS OF SENATOR T. J. HOLBROOK AT A JOINT SESSION OF THE HOUSE AND SENATE IN THE HOUSE OF REPRESENTATIVES ARMISTICE DAY, 1935, IN AUSTIN, TEXAS.

Mr. President and Members of the Legislature:

I esteem it a great honor to have been invited to make a few observations on this, the seventeenth anniversary Armistice of the World War, and to join with you in speaking the homage of our affections to the memory of those who fought and fell in the line of battle. It denotes a fine conception of the ideals conceived of the illustrious dead, that we draw apart on this anniversary and join our spirits with those of our soldiers who have crossed to life and light eternal.

Memorial days proclaim the merits of the living, as well as the virtues of the dead. We would indeed prove ourselves unworthy to enjoy the blessings purchased by the labors of the dead, if we were indifferent to their sacrifices and their achievements. We pause at this hour, in union with the people of this Nation in testimony of our grateful remembrance and real appreciation of the rare qualities of leadership which actuated the soldiers of this Republic who have fallen upon the field of battle.

The fact that we do this, is evidence that the same spirit which animated them, awakens a like response in our breasts. We have not paused here to redress any wrongs, to discuss methods of trade, to discuss Legislative problems, to promote commerce, to formulate constitutions, nor to indulge in recollections of our social or economic progress; but rather have we met in the confines of this Chamber to commune again with those shadows of the past and take courage from the lessons we learn by reviewing their achievements.

In an era of apparent tranquility, when the nation is at peace with the world, this Armistice Day marks the time when its citizens should assemble and pay the homage of love and respect to the memory of those who, besides enduring untold hardships have made the supreme sacrifice; that "Government of the people, by the people, and for the people, shall not perish from the earth."

Nearly seventy-five years have passed since one of our martyred Presidents stood upon the plains of a great battlefield, and said "Four score and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal. Now, we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated can long endure." He stated moreover, upon that occasion, that no act of that generation could hallow the ground upon which they stood, but that it should never be forgotten what our soldiers accomplished on that battlefield. These words have burned deeply into the hearts of the American people, because they furnish a true concept of the principle upon which the Republic was founded, and fully emblemize the spirit which gave it birth.

I thank God that the Government has endured, not only through that unfortunate war, but through a more recent one in which the foundation of civilization was at stake. The young men of this country who participated in that war, and who are sponsoring memorial services like this over the nation today, together with multiplied thousands of their comrades who will never answer another roll call, played a conspicuous part in that titanic struggle. We have set apart these moments here to join with those who helped them from behind the lines, in expressing our undying gratitude to the memory of their buddies who are now ensconsed,

"On fame's eternal camping ground,
Where their silent tents are spread,
Where glory guards with solemn round,
The bivouac of the dead."

In America, the recollection of their glorious deeds will always be a treasured memory with those who knew and loved these men.

It is delightful to learn from those who saw them fight and fall, in trenches on a foreign soil, that they had a touch of the high spirit, of religion; that they knew they were exhibiting a spiritual as well as a physical might, and those of us who know and love America that they were disclosing to the whole world a true spirit and devotion of their native land. It was America who went to battle in the person of these men, and who will be forever grateful that she was so represented. And it is more delightful to entertain such thoughts because we know that these men, though buried in a foreign land, are not interred in an alien soil. They are home, sleeping with the souls of those who thought the same thoughts and entertained the same aspirations.

Since our last great war ended, there has annually come to us on this recurring anniversary, messages of genuine comradeship and sympathy from those nations beyond the sea who were allied with us in a common cause.

For this we are grateful, and join hopes with them on this Armistice Day that that war will prove to be indeed and in truth a war that ended wars, among the enlightened nations of the world.

But it will be no profit to eulogize the spirit of our dead who fell on the fields of battle if we did not take to heart the lesson they taught. They are gone, never to be buffeted again by time or chance. They have done their part to show their devotion to a great country, and they left us to see to it that that country shall not be betrayed either in war or in peace. It is our privilege and duty to consecrate ourselves anew, on a day like this, to the objects for which they fought and died. These men did not travel across the seas merely to defeat an enemy with his associated powers in war, they went to defeat forever the things for which those powers stood, the sort of power they meant to assert in the world, the arrogant, selfish domination which they meant to establish, and they went moreover to see to it that there never should be a war like that again. It is for us, particularly those of us who claim to be civilized, to use our proper weapon of council and agreement to see to it that there never is such a war again. The nation that should now fling out of this common concord would betray the human race. In an address at Suresnes, near Paris, on May 30, 1919, the immortal Woodrow Wilson said, "So it is our duty to take and maintain the safeguards which will insure the mothers of America and the mothers of France and England, Italy and Belgium, and all other suffering nations, against being called upon for this sacrifice again. This can be done. It must be done, and it will be done. The things that these men left us, though they did not in their counsels conceive it, is the great instrument which we have just erected in the league of nations. The league of nations is the covenant of Governments that these men shall not have died in vain. I like to think that the dust of these sons of America, who were privileged to be buried in their mother country, will mingle with the dust of the men who fought for our union, and that as those men gave their lives in order that America might be united, these men have given their lives in order that the world might be united.

Those men gave their lives in order to secure the freedom of the nation. These men gave theirs in order to secure the freedom of mankind and I look forward to an age when it will be just as impossible to regret the results of their labor and sacrifice as it is now impossible to regret the result of the labor and sacrifice of those men who fought for the union of our States."

These words were prophetic, and whether or not the League of Nations as conceived by Wilson, shall ever become a reality, there will, in my judgment, come a time when wars such as the last was, will become an impossibility through the instrumentality of a World Court, or some such agency, working for the betterment and ennoblement of mankind. It

is true that no previous generation has given particular attention to this method of procedure, but due to the progress of science, in annihilating space and inventing destructive materials, I have faith enough in the race to believe that sane thinking will drive the peoples of the world to flee from total annihilation, by finding a way to escape the ravages of cruel and useless war.

In the solution of this new problem, America, of course, in God's good time, will take a leading part. She was born to show mankind the way to liberty, and to make of it a common gift. This is amply proven in the fact that she has never engaged in a war of conquest. She was born to show men the way of experience by which they might realize this gift and maintain it; and I hail the American Legion in the name of all the traditions of our common country, to make themselves soldiers now and for all time in this cause where they will need no uniform except the uniform of a righteous heart; clothing themselves with the principles of right, and saying to men everywhere "You are our brothers, and we invite you into a comradeship of liberty and of peace." Let us not dismiss the thought of this hour without hearing these unspoken mandates of the Legion and their comrades.

To our soldiers who are living and who fought our battles across the sea, we have welcomed them back, with outstretched arms and open hearts to the land of their Fathers. Peaceful in your pursuits while furthering the welfare of our common country, we shall rejoice to find you always and everywhere in opposition to unwarranted oppression, and in defense of those benign principles which make for the perpetuity of a government whose basic ideals are founded upon a just conception of liberty regulated by law.

To those immortal comrades who have fallen asleep in the democracy of death, we pledge anew our grateful remembrance. We are not unmindful of the fact that 1656 of our American boys rest in graves across the sea, which are marked at the head on the tiny crosses that rise above them the simple but expressive inscription "Unknown."

It was my privilege a little while ago to stand in the cemetery at Arlington, by the side of the sarcophagus in which rests the remains of the "Unknown Soldier." There in transcedent glory, he awaits the ressurrection in company with the Nation's great immortals. With uncovered head and subdued feelings, I saw uncounted thousands pass by and lay their flowers of affection upon the marble slab that stood above his dreamless dust. It was a scene never to be forgotten; and one which no true patriot could view without a renewed gratitude toward the memory of those "Whom we have long loved but lost awhile."

At Chalons-Sur-Marne, his body was selected from that of four unknown American boys, brought there in sealed caskets from the different fields, to be re-interred at the Nation's Capital; so that there might be made for all time a permanent shrine at which the President and our Representatives might gather on this Armistice Day and pay fitting tribute to those gallant defenders of our common faith.

Every American mother who mourns a son in a grave marked "Unknown can, through the knowledge of this gracious act, feel an intimate thrill of pride in such service; for it is in spirit, and may have been in fact, her own son who has been so signally honored—her own son who is buried there. She can also feel and know that the people of America will never agree in truth, that such a son is "unknown"; for they will remember him—

"The unknown dead? Not so; we knew him well
Who died for us on that red soil of France,
Who faced the fearful shock of shot and shell,
And laughed at death in some blood-strewn advance.

Nameless in truth, but crowned with such a name
As glory gives to those who greatly die,
Who marched a simple soldier; with the flame
Of duty bidding him to Calvary.

He is all brothers dead, all lovers lost,
All sons and comrades resting over there;
The symbol of the Knightly, fallen host,
The sacred pledge of burdens yet to bear.

Mangled and torn, for whom we pray today,
Whose soul rose grandly to God's peaceful throne,
Leaving us this quiet, shattered clay,
Silent and still—unnamed—but not unknown.

He sleeps beneath no immortal yews;
His resting place no temple arches hem;
No blazoned shaft or graven tablet wooes
Men's praises—and yet, we shall remember him.

The unforgetting clods shall drop their tears;
The winds in ceaseless lamentations, wail,
For God's White Knights are lying on their biers,
Who vowed their service to restore the Grail.

He gave his life to make the whole world free;
He recked not, to what flag he was assigned,
The Starry Banner, Cross, or Fleur-de-Lis
His sacrifice was made for all mankind.

For Him the task is done, the strife is stilled;
No more shall care disturb, nor zeal condemn;
And when the larger good has been fulfilled,
In coming years, we shall remember him.

How can the world his deeds forget? In France
White crosses everywhere lift pallid hands,
Like silent sentinels with sword and lance,
To keep his memory safe for other lands.

What need has he for holy sepulture?
Within the heart of men are hallowed ground—
A sanctuary where they rest secure,
And with love's immortality are crowned.

And far off voices of the future sing,
'They shall remain in memory's diadem';
And winds of promise still are whispering
Through storied years, "We shall remember him."