

SUBJECT: Omnibus government reorganization initiatives

COMMITTEE: Government Reform — committee substitute recommended

VOTE: 6 ayes — Swinford, Gallego, Allen, Callegari, Casteel, R. Cook,

0 nays

1 absent — T. Smith

WITNESSES: *(On original bill:)*
For — Dan Pearson, NUCOR Steel

Against — Yvonne R. Castillo, Texas Society of Architects; Mark J. Hanna and Patrick Smith, Texas Society of Professional Surveyors; Kelly Haragan, Public Citizen; Rick Levy, Texas AFL-CIO; Caroline O'Connor, Texas State Employees Union; Meredith Rountree, American Civil Liberties Union of Texas and Prison and Jail Accountability Project; Dee Simpson, American Federation of State, County, and Municipal Employees

On — Sheila Bailey Taylor and Cathleen Parsley, State Office of Administrative Hearings; Douglas A. Beran, Texas State Board of Barber Examiners; Susan Biles, Tom Currah, Ruthie Ford, Martha McCabe, Vicki Anderson, and Richard D. English, Comptroller's Office; Dale Burnett, Structural Pest Control Board; Frank DiTucci, Texas Polygraph Examiners Board; Teri E. Flack, Texas Higher Education Coordinating Board; Brian Francis and William H. Kuntz, Jr., Texas Department of Licensing and Regulation; Tony Gilman, Office of State-Federal Relations; Dustin Lanier, Governor's Office; Stephen Minick, Texas Commission on Environmental Quality; John Moore, Texas Workforce Commission; Sandy Smith and C.B. Thompson, Texas Board of Professional Land Surveying; Cathy Williams and Amadeo Saenz, Texas Department of Transportation; Jeff Moseley, Texas Department of Economic Development

BACKGROUND: **Private correctional facilities.** Government Code, ch. 495 authorizes the Texas Department of Criminal Justice (TDCJ) to enter into contracts with private vendors and county commissioners courts to finance, build, operate,

maintain, and manage secure correctional facilities. The total number of beds under private contract is 18,782. Sec. 495.007 limits TDCJ's institutional (prison) division to 4,580 beds under private contract. Currently, about 4,100 beds in seven facilities are under contract with the institutional division.

In addition to these beds, TDCJ's state jail division has authority to enter into contracts with private vendors, the institutional division, probation departments, and county commissioners courts to build, operate, maintain, and manage state jail facilities. Currently, about 7,300 state jail beds are operated by private facilities. TDCJ also has under private contract 2,300 beds in preparole transfer facilities, 1,400 beds in intermediate sanction facilities, 500 beds in a work program, 1,200 halfway-house beds, and 2,000 beds in transitional treatment centers.

Proposals for private facilities must offer a level and quality of programs at least equal to those provided by state facilities that house similar types of inmates and must save the state at least 10 percent of the cost of housing inmates in similar state facilities.

Governor's budget powers. Government Code, ch. 401 designates the governor as the state's chief budget officer and establishes the governor's responsibility for preparing a budget and presenting copies to the Legislature.

Government Code, sec. 552.022 provides that information collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official government business is considered public information and must be open to public access, unless some specific exception applies.

On April 8, Attorney General Greg Abbott determined in an Open Records letter opinion (OR2003-2330) that "all working papers, research material and information used to estimate the need for or the expenditure of public funds or taxes by a governmental body, on completion of the estimate" are subject to mandatory public disclosure. The ruling also determined that the open records law mandates the release of working papers prepared in conjunction with the governor's fiscal 2004-05 budget.

State-federal relations. The Office of State-Federal Relations (OSFR), created in 1965 as a division of the Governor's Office, was established by the

Legislature as a separate state agency in 1971. The purpose of OSFR is to monitor and increase the state's share of federal funds; develop policy; work with Congress, the Governor's Office, the Legislature, and 13 state agencies to communicate the state's needs to the federal government; and evaluate state agency applications for federal funds. The OSFR is subject to the Texas Sunset Act and will expire September 1, 2007, unless continued by the Legislature.

Economic development. The Economic Stabilization Fund or "rainy day fund," established in Texas Constitution, Art. 3, sec. 49-g by a constitutional amendment in 1988, is appropriated half of any unencumbered revenue at the end of a biennium and 75 percent of any oil or natural-gas production tax revenue that exceeds the amount collected in fiscal 1987. No transfers of unencumbered revenue have occurred since 1991, as the state's budgets have left no such revenue at the end of fiscal biennia. However, the rainy day fund has received about \$1 billion from excess natural-gas production tax revenues since 1997. The fund may not exceed an amount equal to 10 percent of the general revenue (minus certain types of income and funds) received during the previous biennium. The fund balance projected at the end of the current biennium, \$1.2 billion, would represent about 2 percent of general revenue appropriated for fiscal 2002-03.

HB 7 by Heflin, passed by the House on April 17, would appropriate \$295 million from the rainy day fund to the proposed Texas Enterprise Fund for the governor's use during the two-year period following creation of the fund. If the Legislature also created an Other Events trust fund for the governor's use, \$10 million of the \$295 million would be appropriated to that new fund.

State Property Tax Board. In 1979, the 66th Legislature transferred oversight of the property-tax system from the comptroller to the newly created State Property Tax Board. In 1991, the 72nd Legislature abolished the board and transferred its duties back to the comptroller.

Employment benefit changes. The U.S. Internal Revenue Service (IRS) issued a federal tax opinion in 2002 authorizing employer-provided health reimbursement plans, called Health Reimbursement Arrangements (HRAs), in which reimbursements for medical care expenses made from the plan are excluded from employee gross income. An HRA reimburses employees only

for medical care expenses of employees, their spouses, and dependents. It is solely employer-funded and not paid for directly or indirectly from salary reduction. Although a participant may carry forward unused amounts for use in later coverage periods, these amounts may be used only for reimbursements for qualified medical expenses. (IRS Rev. Rul. 2002-41)

On April 16, the board of trustees of the Employees Retirement System (ERS) adopted several benefit changes in the health insurance and prescription drug programs for all participants, including retirees served by Medicare. Among the changes would be a limit on refilling prescriptions at retail pharmacies. Effective May 1, ERS participants can obtain an initial prescription and one refill at a retail pharmacy. After that, long-term medications (up to a 90-day supply) must be purchased through mail order for a copayment of \$30 for generic drugs, \$75 for preferred brand-name drugs, and \$120 for nonpreferred brand names.

DIGEST:

CSHB 2 would make numerous changes to the structure and operations of state agencies. Among the more significant changes, the bill would:

- create a Private Correctional Facilities Commission to oversee contracts with private vendors for correctional facilities and services;
- grant the governor additional power to manage executive agencies and direct state's economic development policy;
- create a centralized system to determine value of motor vehicles and increase sales-tax collections on the sale of used vehicles; and
- transfer oversight of the property-tax system from the comptroller to a new State Board of Property Valuation.

Private correctional facilities. CSHB 2 would give the duty of administering Texas' program for contracting with private vendors for correctional facilities and services to the Private Sector Prison Industries Oversight Authority, which now oversees a TDCJ program under which private industries employ state felons. The authority would be renamed the Commission on Private Initiatives and would have to oversee and monitor private vendors with TDCJ's assistance.

The commission would have to establish a daily "price to beat" for privately operated facilities. The price would have to be based on a level and quality of

programs at least equal to those provided by state facilities that house similar types of inmates and at a rate that provided the state with a savings of at least 5 percent, compared to the 10 percent requirement of current law.

The commission would have to include in an annual report to the Legislature a recommendation as to whether the number of beds operated by private vendors should be increased or decreased and a list of facilities operated by TDCJ that should be privatized, the projected savings from privatization, and an analysis of vendors' performance.

CSHB 2 would remove the current cap of 4,580 private beds operated by the institutional division and would remove the 1,000-bed cap on individual facilities. It also would repeal the current two-year limit on the length of an initial contract with a private vendor. The commission would have to enter into private contracts for at least 1,000 beds for people convicted of intoxication offenses.

If the commission determined that an increase in private prison beds was cost-effective, the commission and the TDCJ board could enter into an interagency contract to increase the number of beds under private contract. In deciding whether to accept a contract, the commission would have to consider the effect the contract would have on state employees in correctional facilities.

CSHB 2 also would authorize the commission to contract with a private vendor for TDCJ's screening and diagnostic services. If appropriate, the commission would have to request proposals for a contract to provide residential infant care and parenting programs for mothers confined by TDCJ. The program would have to be substantially similar to a program offered by the Texas Youth Commission, to the extent practicable.

Governor's powers. CSHB 2 would allow the governor to issue an executive order to change the organization and operations of a state agency — including a higher education institution, except for a junior college — in the executive branch of state government if the governor considered the change necessary for efficient administration and if the change was not inconsistent or incompatible with the Texas Constitution or a state law. The executive order would have the force and effect of law, but the governor could amend or rescind an order at any time. The governor could designate a member of the

governing board of a state department, commission, board, office, council, authority, or other agency in the executive branch as the presiding office to serve at the governor's pleasure.

The governor would have to deliver a copy of the governor's budget before the state of the state message, rather than no later than the sixth day of the legislative session. The bill would exempt the governor's "budgetary working papers," defined as any information, other than a uniform budget estimate form, used in preparing the final biennial state fiscal budget, from disclosure under the open records law. Excluded materials would include a draft, working paper, supporting material, research material, or an internal or external communication relating to that budget.

State-federal relations division. CSHB 2 would designate the OSFR as a division of the Governor's Office. The governor would have to appoint a director of the office but would not have to seek the Senate's advice and consent. The director would have to coordinate state and federal programs dealing with the same subject.

The bill would give the governor's office of budget, planning, and policy the primary responsibility for monitoring, coordinating, and reporting on the state's effort to ensure the receipt of equitable share of federal formula funds.

It would repeal the September 1, 2007, sunset date for the state-federal affairs office, plus other specific provisions for the OSFR. It would transfer all powers, duties, obligations, rights, contracts, records, real and personal property, funds, appropriations, money, and authorized full-time equivalent positions from OSFR to the Governor's Office as of September 1, 2003. Existing rules, policies, procedures, reports, or decisions of OSFR would be continued until superseded by an act of the governor.

Economic development. CSHB 2 would create the Texas Enterprise Fund, consisting of money appropriated or transferred from other accounts by the Legislature and any gifts, grants, and donations received by the governor or Texas Department of Economic Development. Money in the account would have to be used for economic, infrastructure, or community development; job training and creation programs; and business incentives. The comptroller could use the fund temporarily for cash management purposes.

Used car sales-tax collection. CSHB 2 would require the comptroller and the Texas Department of Transportation (TxDOT) to adopt rules to determine a standard presumptive value of a motor vehicle that was not less than 80 percent of the retail value. County tax assessor-collectors would have to use the presumptive value to assess the state sales and use tax on vehicles, and the tax assessor-collector could reject an application for transfer of a motor-vehicle title if the sales price of the vehicle on the application was less than the presumptive value. The buyer of the vehicle could appeal the rejection according to rules that the comptroller would have to develop before December 1, 2003.

TxDOT would have to include the presumptive value information on the TxDOT registration and title system (RTS) by January 1, 2004. If TxDOT failed to implement the change on the RTS by September 1, 2003, the comptroller could withhold a portion of its monthly allocation of the motor-fuels tax to the State Highway Fund until the amount withheld equalled \$200 million or until TxDOT fully implemented the RTS system with the presumptive value information.

Property valuation board. The bill would create a five-member panel appointed by the governor to serve as the State Board on Property Valuation (SBPV). It also would move the responsibility for administering appraisal district accountability and establishing minimum standards for administration and operation of appraisal districts from the comptroller to the new board. The SBPV commissioner could audit the total taxable value of property in a school district at the request of the district or the education commissioner. The bill also would require a yearly ratio study in each appraisal district and would require performance audits of districts under certain conditions.

Consolidation of smaller state agencies. CSHB 2 would abolish several agencies and their boards and would transfer those functions to the Texas Department of Licensing and Regulation (TDLR). The bill would require that the governor appoint a seven-member advisory committee for each of the agencies being transferred to advise TDLR on administering each regulatory act. The agencies that would move to TDLR would be:

- Funeral Services Commission;
- Board of Professional Land Surveying;

- State Board of Plumbing Examiners;
- State Board of Barber Examiners;
- Cosmetology Commission;
- Structural Pest Control Board;
- Board of Professional Geoscientists; and
- the manufactured housing regulation division of the Texas Department of Housing and Community Affairs.

The bill also would abolish the Commission on Private Security and transfer its functions to the Department of Public Safety (DPS).

Other sections would increase the registration and renewal fees for landscape architects, interior designers, professional land services, and property tax consultants by \$200. Fifty dollars of the increase would be deposited in the Foundation School Fund and \$150 in general revenue.

Employment benefit changes. CSHB 2 would allow state agencies to offer employer-provided HRAs in which reimbursements for medical care expenses made from the plan would be excluded from employees' gross income.

The bill would allow ERS trustees to require state employees who choose to purchase prescription drugs through a retail pharmacy rather than a mail-order program to pay an additional deductible, copayment, coinsurance, or other cost-sharing obligation to cover the additional cost.

Unclaimed wages and mutual insurance proceeds. The bill would provide that any wages unclaimed after one year would be considered abandoned and would revert to the state, rather than after three years as in current law. It would establish a three-year deadline after the last contact with a valid policyholder or the date of the demutualization for defining the dormancy period after which property is considered unclaimed.

Lease of state-owned parking lots in Austin. CSHB 2 would require the Texas Building and Procurement Commission to develop a program to lease state-owned parking lots and garages in Austin for private commercial uses. The commission could contract with a private vendor to manage the parking lots, and money received would be allocated to general revenue. Other provisions would require a report to the Legislature and Legislative Budget

Board on the effectiveness of the program on or before December 1 of each even-numbered year and would require that existing private tenants and state employees working at night have access to the parking lots and garages.

Highway contract changes. CSHB 2 would require TxDOT and local governments to develop an “owner-controlled insurance program” under which one vendor would provide a comprehensive and centrally controlled insurance program. The coverage would be broad and uniform for all participants, including subcontractors and the governmental entity.

Fuel ethanol and biodiesel production. CSHB 2 would create a fuel ethanol and biodiesel account to provide incentives for development of fuel ethanol and biodiesel and related agricultural production in Texas. The account would be funded through a fee of 3.2 cents per gallon of fuel ethanol or biodiesel production. The fee could not be imposed on more than 18 million gallons produced by one producer in a fiscal year. The incentive fund would provide up to 20 cents per gallon of fuel ethanol or biodiesel produced, with a maximum grant of \$3.6 million for one producer.

Other provisions. Other sections of CSHB 2 would:

- make changes to the TexasOnline program, including requiring additional agencies to participate in its online application procedure;
- abolish the Recycling Marketing Development Board;
- expand the qualifications for the adjutant general;
- require a review of university system administration;
- change the term of the insurance commissioner from two years to one;
- prohibit the Texas Higher Education Coordinating Board from issuing student loans after September 1, 2003;
- require TDCJ to conduct a study to evaluate its organizational arrangement and efficient administration, include methods of reducing inmate transportation costs, maximizing the use of manufacturing capital investments, and using inmate labor in performing construction, repairs, and maintenance;
- require the Legislative Budget Board to review and approve or disapprove an agency’s biennial operating plan or amendment within 60 days of receipt.
- establish a fuel-saving pilot program for state vehicles; and

- change the Texas Building and Procurement Commission to a five-member commission appointed by the governor.

In event of a conflict between this bill and any other bill that became law this session, provisions of CSHB 2 would prevail and control, regardless of the relative dates of enactment.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2 represents a thoughtful effort to reorganize and bring efficiency to state government. Texans will not accept business as usual from the 78th Legislature, and this bill would answer those concerns. The bill would settle some longstanding questions about government organization and would provide a positive fiscal impact of \$460 million in general revenue during a time of tough budget choices.

Commission on Private Initiatives. CSHB 2 would move the establishment and oversight of private prisons in Texas to an existing commission that could facilitate the use of private prison beds and save the state money by operating more efficiently than TDCJ. Problems exist in correctional facilities in both the public and private sector, and CSHB 2 would ensure that private facilities in Texas received adequate, appropriate oversight.

Because TDCJ has a vested interest in state-run correctional beds, it has a conflict of interest when establishing and overseeing private prison beds. TDCJ is a large agency, often unresponsive to innovation and plagued with inefficient bureaucratic procedures. CSHB 2 would move responsibility for private prisons to an entity that could focus on establishing those prisons and would be small enough to operate efficiently. However, the bill would ensure that TDCJ plays a role in any expansion of private prison beds by requiring the commission and TDCJ to enter into an interagency contract to increase the number of prison beds.

The commission could convert certain TDCJ facilities to private facilities so that it would have the flexibility necessary to carry out its function. In some

cases, the most cost-effective and efficient way to privatize some beds would be to move a facility from state to private hands.

The commission would be the most appropriate entity to calculate the “price to beat.” It would have the necessary expertise because it would be assisted by the comptroller, state auditor, governor’s office of budget and planning, and the Legislative Budget Board. Private facilities would have to beat the state rate by 5 percent, ensuring that the program produced real savings.

CSHB 2 would remove current caps on private beds and restrictions on initial contract terms for institutional division inmates so that the new commission would have flexibility to contract for beds as necessary. Eliminating the cap would enable the state to contract for additional beds in fiscal 2004-05 to meet projected needs for additional prison capacity.

The Legislature would retain oversight of any expansion of private beds through the appropriations process, and the commission would have to report to the Legislature.

Giving the commission authority now given to TDCJ to award a contract to a private vendor to screen and diagnose offenders would allow this practice if it could be done efficiently by the private sector. There is no reason why a private entity could not perform this job if it was cost-effective. Monitoring and oversight by the commission would ensure that a private entity would not use bias in screening or diagnosing inmates.

Governor’s powers. CSHB 2 would remedy the relative lack of power delegated to the governor by the 1876 Texas Constitution. Texas needs strong leadership, particularly in the months that the Legislature is not in session. Governors have expanded their authority over executive agencies informally over the years, and CSHB 2 would recognize the governor’s ability to make changes through executive orders. Those executive orders still would have to conform to the Texas Constitution and statutes, and the Legislature could review those changes when it returns in session. Even with the changes in CSHB 2, the executive branch would remain fragmented by a multitude of boards and commissions whose members serve long, staggered terms. The governor should be able to designate presiding officers to send a consistent message across state government.

Changing the requirement for when the governor presents a budget to legislators would not delay the Legislature's review of the appropriations process unnecessarily. The language would be permissive, and the governor could meet the previous deadline. However, the new requirement would allow the governor to confer with legislative leaders, particularly after a leadership transition such as has occurred this session.

Texans and others outside the state recognize the governor as a visible spokesman and representative of Texas. Those speaking for the state in Washington, D.C., should be a part of the governor's staff so that the best interests of all Texans will be served.

Economic development. CSHB 2 would give Texas the flexibility to compete with other states for economic development projects. The Texas Enterprise Fund would provide the governor with enough money so that the state could make an initial overture to the next large project like the Toyota plant in San Antonio. The governor also would have access to additional incentives to close large economic deals that would benefit the state. Texas was fortunate in the timing of the Toyota project in that the Legislature was in session and could approve additional funding to attract the facility. This bill would give the governor flexibility to act to spur economic development during the interim between sessions.

Used car sales-tax collection. CSHB 2 would give state and local authorities the tools to collect sales taxes on vehicles that already should be paid. No mechanism exists to ensure that people who transfer titles on used vehicles accurately state the sales price. The state maintains a sophisticated computer network through the RTS that tracks millions of vehicle titles. It would be technologically feasible to add objective information about vehicle values to the system. TxDOT officials report that changing the RTS system to include vehicle price information would have no significant effect on the agency's budget or on operation of the RTS system. The comptroller's revenue estimators project \$170 million in additional revenue from improved collection of the sales tax on automobiles under this bill.

Tax assessor-collectors overstate the difficulty in administering the used car tax-collection program. Compliance would increase over time. Most tax assessor-collectors are elected to office understanding that collecting fees and

sales taxes on automobile sales will make up the bulk of their responsibilities. They have a responsibility to ensure compliance with all state and local laws, as do all elected officials.

Property valuation board. Appointed members of this board could provide perspectives from various areas of the state from a variety of professional backgrounds and would have a degree of independence in policy and decision-making that elected officials may not have. The annual study of school district property values would be the board's primary responsibility and concern. Local tax officials and property owners would have direct access to the agency's leadership, without competing for attention with other important state programs and policies at the Comptroller's Office.

Consolidation of smaller state agencies. Consolidating smaller agencies into an umbrella regulatory agency would create both cost savings and improved service to regulated industries and to the public. The fiscal note projects that merging the agencies into TDRL would save \$874,000 in fiscal 2004 and about \$1.5 million in fiscal 2005. Moving the Commission on Private Security to DPS would save \$230,000 per year. Duplicate administrative services and costs would be eliminated, and inspectors could be cross-trained to investigate several aspects of state regulations. The advisory boards would provide the necessary expertise to ensure that discipline- and industry-specific standards were upheld.

Reducing the number of smaller regulatory agencies would streamline the appropriations process during the legislative session. Some of these boards are merely relics of history. There is no need for separate boards to regulate people who cut men's hair and people who cut women's hair.

Lease of state-owned parking lots in Austin. The state maintains several parking lots and garages that typically are empty and unused after 6 p.m. Many of these facilities are within walking distance of many popular downtown entertainment venues, such as the Warehouse District in Austin. Lack of parking discourages many people from patronizing the restaurants and clubs in downtown Austin. The state would realize revenue from nightly rentals to visitors or from long-term leases to employees of the restaurants and clubs. Parking fees could be \$2 or \$3 a night, rather than the \$6 to \$7 charged by private lots.

Highway contract changes. Owner-controlled insurance programs (OCIPs) have revolutionized how large construction projects are insured. The owner provides for a single insurance program, rather than requiring the architects, engineering consultants, contractors, subcontractors, project manager and owner to obtain their own insurance. The World Trade Center cleanup, which involved more than 44 contractors and subcontractors and had an estimated value of \$1 billion, was insured through a “wrapup” insurance policy similar to an OCIP. The comptroller’s e-Texas report estimates that OCIPs could save 0.5 to 4 percent on construction costs, and even a conservative estimate would project \$24.3 million in annual savings for TxDOT.

Fuel ethanol and biodiesel production. Encouraging fuel ethanol and biodiesel production would help achieve strategic energy independence, preserve clean water and air in Texas, and aid rural economic development through value-added processing. The fund would be self-supporting and would require no general revenue.

OPPONENTS
SAY:

CSHB 2 falls well short of a comprehensive effort to reform state government in Texas. The bill is a hodgepodge of minor changes and relies heavily on budget gimmicks to shift the costs to nongeneral revenue funds and local governments. It would provide no overall organizing principle to guide state government into the 21st century.

Commission on Private Initiatives. It would be unwise to expand the state’s private prisons, since the ones that exist have not been entirely successful. Existing private prisons have had many ongoing problems with public, inmate, and employee safety. Studies show that private prisons offer little in the way of cost savings for states. Savings often are realized through low salaries, lax oversight, and poor performance.

It is unnecessary to move oversight of private prisons from TDCJ. TDCJ does a good job of overseeing the private facilities, especially since the 77th Legislature established enhanced monitoring procedures. Some complaints about TDCJ efforts in these areas stem from dissatisfaction with TDCJ’s vigorous oversight of current private prisons.

There is no reason to expand state government by enlarging a small commission and transferring the job of overseeing private prisons to it. The

Private Sector Prison Industries Oversight Authority has no experience in regulating private prisons. Oversight of private prisons should not be entrusted to an entity whose primary job involved expanding private facilities, because of the inherent conflict of interest.

CSHB 2 would give the commission too much authority to increase the number of prison beds in Texas unilaterally. The effect would be to establish a parallel corrections agency that would not have the resources that TDCJ now puts into the task of regulating private prisons. A weak, small agency would be more likely to provide lax oversight and to become captive to the private interests that would want to expand private prisons. Similarly, the job of calculating a “price to beat” should be done by an entity that does not have an interest in expanding privatization and that has experience in auditing or accounting.

The current requirement that private facilities provide savings of at least 10 percent should not be reduced to 5 percent. Private facilities should have to produce significant savings for the state.

The caps on the number of private beds and on the size of individual facilities should not be removed. If these caps were lifted, nothing would prevent the commission from working to privatize the entire prison system without adequate legislative or public oversight.

A private entity should not take over the job of screening and diagnosing offenders. This could open up the practice to self dealing by a private entity that might choose to send the easiest-to-handle and cheapest-to-house inmates to a private facility or might misclassify inmates with the intent of producing more inmates who could be housed in private facilities.

Governor’s powers. Texans may like their governor’s personalities, but they retain their Jeffersonian-Jacksonian suspicion of gubernatorial power. In 1999, more than 52 percent of the voters rejected constitutional amendments to allow the adjutant general and human services commissioner serve at the pleasure of the governor. Similarly, the people should be allowed to voice their opinion about whether to grant additional power to the governor.

CSHB 2 could weaken some of the checks and balances and separation-of-

powers protections in the Texas Constitution by granting the governor authority to reorganize state government unilaterally. The governor can influence the day-to-day operations of state government more than a part-time citizen legislature that meets only 140 days every two years.

Economic development. The governor should not have a “slush fund” under his or her complete control, even for as vital an activity as economic development. The bill also would set a bad precedent by allowing the governor to have access to funds in other departments. The Legislature must be careful about surrendering its control of the budgetary process.

Used car sales-tax collection. CSHB 2 would create a substantial fiscal note by requiring the RTS to incorporate and update vehicle sales-price data. Several sources exist, such as the NADA Blue Book or Kelley Blue Book, but these reports include regularly updated information on thousands of makes, models, and years of automobiles. Many sales of automobiles are not arms-length transactions in which willing buyers and willing sellers independently set a price. Family members may transfer titles to vehicles for nominal fees and pay the gift tax. Motor vehicles may be exchanged as even trades, regardless of the actual value of the vehicles being swapped.

The bill would put tax assessor-collectors in the position of policing a tax collection program for which they might not be qualified. Determining the value of a particular automobile is a subjective process, even if a clerk has access to RTS values. The new owner could claim that a value is not correct because the vehicle is not in running condition or is damaged. Other features such as leather seats or special wheel covers could increase the value of a vehicle. Some vehicles, such as a 1981 Honda Prelude, might not be included in the updated RTS system. A clerk would have to spend 15 minutes or more to research values not included in the system before processing the transfer application. Typically, tax-assessor offices are the busiest during the first five and last five days of a month, and the delays caused by this bill could push lines out of the doors. Even medium-sized counties such as Brazoria may receive 100 transfer requests for both new and used vehicles from the same automobile dealers, and larger jurisdictions such as Harris County process thousand of transactions on a daily basis. Tax assessor-collectors would not be able to process transfers on a timely basis.

Consolidation of smaller state agencies. Specialized professions and industries would not be well served by a general regulatory agency. The advisory committees would lack the authority and clout to enforce their specific standards. Many of these smaller agencies date back to the beginning of the 20th century, and they provide a level of expertise and service that would be missed by regulated industries and the public. Consolidation reaches a limit when mixing very different kinds of agencies.

Lease of state-owned parking lots in Austin. Many privately owned and managed parking lots already serve downtown Austin. They pay property taxes to Austin and Travis County, and the state collects sales tax on parking fees. It would be unfair for the state to use taxpayer-owned property to compete against private enterprise. Downtown visitors also are taxpayers, and taxes generated by their spending in the restaurants and clubs would more than justify maintaining free after-hours parking in state lots and garages.

Highway contract changes. The projected savings for TxDOT projects are based on aggregate estimates and do not take into account the number and complexity of individual projects. These contracts range from \$500 per contractor to several millions of dollars. Also, OCIPs do not necessarily provide for motor-vehicle liability insurance, an important consideration in TxDOT projects.

Fuel ethanol and biodiesel production. Spikes in the price for petroleum have not been enough to stimulate demand for alternative energy sources such as fuel ethanol and biodiesel. The market, not government subsidies, should determine the future of these fuel sources.

OTHER
OPPONENTS
SAY:

Governor's powers. CSHB 2 would not give the governor sufficient power to rein in state bureaucracies. The Legislature should examine a cabinet form of executive government and should allow Texans to vote on changing the Constitution to establish it.

NOTES:

CSHB 2 was set on the Major State Calendar for May 10 but was recommitted to the Government Reform Committee after a point of order was sustained. The fiscal note for the second committee substitute estimates a net gain of \$240 million in general revenue for fiscal 2004-05, compared to an estimate of \$291 million for the first committee substitute.

The second substitute deleted from the first committee substitute a provision that would have required a statewide evaluation of the percentage of noninstructional costs for each school district and would have reduced state funding for districts that spent more on those expenses than do other similar school districts in Texas. Also removed from the recommitted version are provisions that would have replaced the TWC with a single commissioner; changed the term of office of various boards; and abolished the Board of Vocational Nurse Examiners and transferred its duties to the Board of Nurse Examiners.

The new version of the bill added a section on statewide coordination of public transportation that is similar to provisions in HB 2292 by Wohlgemuth and Heflin, which would consolidate health and human service agencies. HB 2292 passed the House on April 28 and is pending in the Senate Finance Committee. The provisions also are in HB 3343 by Wohlgemuth and Turner, which passed the House on May 10.

Some provisions of CSHB 2 are contained in bills already considered by the House. Several floor amendments are expected to strike language in the bill that have been passed in other legislation.

Provisions of CSHB 2 for a savings incentive for state agencies were included in HB 651 by Pitts, passed by the House on April 9. Sections that would limit the ratio of human resources personnel to state agency staff were included in HB 906 by Gallego, which passed the House on April 14. CSHB 2 also includes sections on state workforce initiatives and management-to-staff ratios contained in HB 1318 by Swinford, which passed the House on May 5.

On April 30, the House passed HB 1481 by Allen, which would create a new account for certain air-quality fees. CSHB 2 also would propose changes in environmental regulations, the subject of HB 1063 by W. Smith, which was postponed until today.

On May 6, the Senate passed SB 671 by Staples, which would establish standards for property value studies and would provide for appraisal district performance reviews. Portions of CSHB 2 regarding the State Board of

Property Valuation incorporate much of the language of SB 671 and the House companion bill, HB 3072 by Wohlgemuth.