

SUBJECT: Omnibus government reform initiatives

COMMITTEE: Government Reform — committee substitute recommended

VOTE: 6 ayes — Swinford, Gallego, Allen, Callegari, R. Cook, T. Smith  
0 nays  
1 absent — Casteel

SENATE VOTE: On final passage, May 22 — voice vote

WITNESSES: No public hearing

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 parole 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.

Sec. 401.047 establishes a fine of between \$100 and \$1,000, confinement in the county jail for one month to one year, or both fine and confinement for a person who refuses to comply with provisions of ch. 401, subchapter C, relating to the governor's budget responsibilities, except for provisions calling for cooperation with the Legislative Budget Board (LBB).

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.

**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.

**Employee 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. ERS trustees subsequently revised the policy to allow participants to purchase maintenance medications at pharmacies for an additional copayment per prescription for a 30-day supply.

DIGEST:

CSSB 1952 would make many 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;
- change various environmental permit and hearing procedures;
- cap the number of management and human relations personnel in large state agencies;
- grant the governor additional power to manage executive agencies and direct the state's economic development policy;
- require statewide coordination of public transportation through the Texas Department of Transportation (TxDOT) and other agencies;
- create a centralized system to determine the 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.** CSSB 1952 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 governor, lieutenant governor, and House speaker 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.

The bill 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.

The bill 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.

**Environmental permitting.** CSSB 1952 would establish procedures for providing public notice, a public comment period, and an opportunity for a nonadjudicative hearing on certain wastewater permits, injection well permits, solid waste disposal permits, and air permits. The executive director of the Texas Commission on Environmental Quality (TCEQ) would have to hold a nonadjudicative hearing on a permit application, after the public comment period, if there was significant public interest in the application.

The bill would amend procedures for a permit subject to a contested case hearing. A person could ask the TCEQ executive director to refer a permit application to the State Office of Administrative Hearings (SOAH) for a contested case hearing. If the executive director received a request for a contested case hearing from the permit applicant or an affected person, the director would have to refer the application to the TCEQ office of hearing examiners. The bill would define an affected person for permit applications according to the distance of the person's property from the proposed facility. TCEQ would have to establish rules for determining whether a group, association, or governmental entity was an affected person. The amended permitting procedure would not preclude the executive director from referring any application for a contested case hearing.

Certain permit applicants, such as for an existing facility, certain electricity generation facilities, or pipeline facilities, would have to provide the opportunity for a nonadjudicative hearing. An applicant for a preconstruction or multiple-plant permit would have to publish notice of a preliminary decision on the permit, instead of notice of intent to obtain a permit, and provide an opportunity for a contested case hearing. TCEQ could not hold a contested case hearing on a permit amendment, modification, or renewal that would not result in an emissions increase or an air contaminant that had not been permitted previously. Certain facilities would not be subject to an opportunity for a contested case hearing but would be subject to an opportunity for a nonadjudicative hearing, including concrete batch plants, rock crushing facilities, concrete crushing facilities, hot-mix asphalt facilities, cotton gins, grain handling facilities, and animal crematory facilities. Notwithstanding other provisions, a permit application would be subject to an

opportunity for a contested case hearing if it involved a facility with an unacceptable compliance history.

The bill would repeal statutes requiring publication of notice of intent to obtain a permit, specifying procedures for referring a contested case to SOAH, and authorizing a SOAH division to perform contested case hearings for TCEQ. It also would repeal statutes authorizing TCEQ's performance-based regulation program and would provide alternative criteria for considering compliance history in permit decisions.

**Other environmental changes.** CSSB 1952 would create a new account in the state treasury for annual operating permit fees collected by TCEQ for emissions sources subject to the federal Clean Air Act. It would eliminate the state coastal discharge contingency plan. Money from the coastal protection fund could be used for plugging of abandoned or orphaned oil wells on state-owned submerged lands. The bill would eliminate statutes requiring TCEQ to develop a comprehensive statewide strategic solid waste management plan and to assess commercial and noncommercial hazardous waste capacity. The bill also would repeal statutes requiring alternative-fuel vehicle programs at metropolitan, regional, municipal, or county transit authorities or agencies.

**Governor's powers.** CSSB 1952 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 repeal Government Code, sec. 401.047, which provides for criminal penalties for a person who refuses to comply with provisions of subchapter C.

CSSB 1952 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.** CSSB 1952 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 budget office the primary responsibility for monitoring, coordinating, and reporting on the state's effort to ensure the receipt of an equitable share of federal formula funds.

The bill 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.** CSSB 1952 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.** CSSB 1952 would require the comptroller and TxDOT to adopt rules to determine a standard presumptive value of a motor vehicle that was at least 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.

**Consolidating state public transportation.** CSSB 1952 would require contracting for public transportation between TxDOT and all state health and human services (HHS) agencies. TxDOT would become the central contract manager for transportation services available for the HHS agencies' eligible clients. The Texas Transportation Commission (TTC), TxDOT's governing body, could require any state agency responsible for ensuring public transportation services to contract with TxDOT to assume all of that agency's transportation service responsibilities.

TxDOT could contract with any public or private transportation provider for public transportation services. TTC could increase or reduce grants to any public transportation provider based on the provider's compliance with the bill, regardless of any other law. TxDOT would have to encourage providers to agree on allocating services and service areas in order to eliminate waste and maximize efficiency. TxDOT could develop an interim service plan in the absence of an agreed plan.

TxDOT would have to contract with and promote the use of private-sector transportation resources to the maximum extent feasible. TxDOT could contract with any public or private transportation provider or regional transportation broker to provide public transportation services.

**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.

**State agency staffing and management polices.** CSSB 1952 would require a state agency with more than 500 full-time equivalent (FTE) employees to adjust its human resource employee-to-staff ratio to no more than one human resource staffer per 100 employees. Agencies with fewer than 500 FTEs would have to consider consolidating human resources staff with other state agencies or contract with private firms to provide the service.

The bill would establish management-to-staff ratios for each state agency in the executive branch with more than 100 full-time employees. These ratios would be phased in, beginning with a 1:8 ratio from September 1, 2004, to September 1, 2005. Each year thereafter, the ratio would rise by one employee until the final ratio of 1:11, which would become mandatory after August 31, 2007. A state agency could appeal application of the management-to-staff ratio to the governor, whose decision would be final.

The bill also would authorize a recruitment or retention bonus of up to \$5,000 and performance agreements to hold upper management personnel responsible for meeting their agencies' goals.

**Employee benefit changes.** CSSB 1952 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. It also would eliminate insurance coverage or other benefits for volunteer member of state boards or commissions.

**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.

**Agency changes.** CSSB 1952 would abolish the Commission on Private Security and transfer its functions to the Department of Public Safety.

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

**Lease of state-owned parking lots in Austin.** CSSB 1952 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 LBB 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.** CSSB 1952 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.

**Other transportation changes.** The bill would require the Texas Transportation Institute to inform LBB or the Higher Education Coordinating Board whether state highway fund money could be used instead of general revenue to fund its operations. TxDOT would have to demonstrate the effectiveness of four fuel-saving technologies on a combined maximum of 100 vehicles. TTC could sell the Bull Creek campus and deposit the money in the state highway fund and could buy the State Aircraft Pooling Board property at the former Robert Mueller Municipal Airport in Austin.

**Fuel ethanol and biodiesel production.** CSSB 1952 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.** The bill also would:

- make changes to the TexasOnline program, including requiring additional agencies to participate in its online application procedure;
- abolish the Recycling Marketing Development Board;
- change the qualifications for the adjutant general;
- change the term of the insurance commissioner from two years to one;
- 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 LBB to review and approve or disapprove an agency's biennial operating plan or amendment within 60 days of receipt; 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 CSSB 1952 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:**

CSSB 1952 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.

**Private correctional facilities.** CSSB 1952 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 CSSB 1952 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. CSSB 1952 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 and by requiring TDCJ to assist the commission in overseeing and monitoring vendors.

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 LBB. Private facilities would have to beat the state rate by 5 percent, ensuring that the program produced real savings.

CSSB 1952 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.

**Environmental permitting.** CSSB 1952 would define more properly who should have standing in a contested case hearing involving environmental permitting. The adjudicative hearings are not required by federal regulatory programs administered by the state and are a vestige of the earlier state programs in place before federal regulations took effect. Since then, state agencies and the permitting process have matured. Technical review and other procedures are more sophisticated, reducing the need to hold an adjudicative hearing on a permit.

The permitting process should not be designed to reject permit applications but to approve applications that comply with the law. Unfortunately, some groups have used contested case hearings as delaying tactics to make it too expensive and time-consuming for an applicant to continue seeking a permit. The bill would provide a more efficient and appropriate permitting process.

The bill also would repeal the compliance history provisions in last session's TCEQ sunset act (HB 2912 by Bosse, et al.). Although using compliance history in permitting may be an idea worth exploring, the approach taken in the sunset bill was flawed. It requires TCEQ to set uniform compliance history standards for the vast array of entities that it regulates, from dry cleaners to petrochemical refineries. The compliance history provisions treat highly-regulated entities unfairly. Repealing these provisions would allow the Legislature, members of industry and the environmental community, and other interested parties more time to study the concept of using compliance history in permitting decisions, in order to pursue a more deliberate approach to implementation.

**Governor's powers.** CSSB 1952 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 CSSB 1952 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 CSSB 1952, 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.** CSSB 1952 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.** CSSB 1952 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 not affect significantly the agency's budget or the operation of the RTS system. The comptroller's revenue estimators project \$172 million in additional revenue for the biennium 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.

**Consolidating state public transportation.** A wide array of entities provide public transportation services throughout the state. Funding can be federal, state, local, or a combination of all three and can be allocated among many agencies. Services are not centrally coordinated. These conditions have resulted in waste, inefficiency, lost opportunities, and consumer confusion. Functions such as contract management and funding allocation are duplicative and fragmented. As a result, passenger service is well below optimum levels.

Transportation is an area of significant duplication among HHS agencies. Many different programs offering transportation to their target populations may visit the same geographic area. It would be more efficient for one service provider to visit a neighborhood and pick up all HHS clients than to do so by agency. The comptroller has estimated that outsourcing the management of TDH's medical transportation program to a transportation "broker" could save the state about \$4.3 million in general revenue related-funds during the next biennium.

The coordination proposed by CSSB 1952 is essential to make these savings a reality. TxDOT should coordinate this type of centralized service delivery, because it already serves these clients, works with some of the same providers, and manages public transportation grant programs. TxDOT's status as a large state- and federally-funded agency with vast resources would enable it to bring economies of scale to public transportation services. Individual agencies must contract with providers separately. TxDOT could combine

health-related transportation services into its existing contract structure at considerable savings to the state, with much less geographic overlapping.

**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.

**Employee benefit changes.** Initiatives in CSSB 1952 would improve the way state government operates. The bill would save an estimated \$17 million in general revenue in fiscal 2004-05 alone, while lifting the burden of top-heavy management structures at state agencies and rewarding valuable employees.

Texas needs to address turnover. According to the comptroller's e-Texas report, *Limited Government, Unlimited Opportunity*, the turnover rate for state agencies is almost 18 percent, far above the national average of 12 percent. Turnover costs the state some \$254 million annually in recruitment, hiring, training costs, and lost productivity. The leading causes of turnover include lack of recognition and feedback, training, and information about goals and performance, as well as inadequate compensation. This bill would address those issues by expanding the bonus program and assisting agencies with their workforce plans.

The state needs to codify the employee bonus program and increase the bonus amount to attract and retain valuable employees. The bonuses authorized by the 77th Legislature through a rider in the general appropriations act were a start, but to have significant impact, the bonuses should be larger and set in statute. Also, the current program is limited to retaining employees, while the bonus program in CSSB 1952 would help with recruitment.

According to the e-Texas report, many state agencies are top-heavy and could reduce costs by reducing the number of managers to employees. Although the average ratio for all state agencies is 1:13, that number is influenced heavily by the Texas Department of Criminal Justice, which has a ratio of 1:73. At

least 36 agencies have ratios below the levels recommended by this bill, including the Texas Department of Health, 1:4; the Texas Education Agency, 1:6; the Texas Railroad Commission, 1:8; and even the Comptroller's Office, 1:9. Bringing all agencies up to the levels proposed by CSSB 1952 would result in 1,200 fewer state employees by 2008 and a net saving of \$69 million over the next five years.

Agencies already have plans to achieve the ideal staffing ratio, but many have not implemented them. Current law requires agencies to develop procedures to achieve a management-to-staff ratio of 1:11. The Legislature should take the next step and require implementation of this ratio.

The required change in staffing ratios would enable agencies to focus their resources on services and to streamline their organizations anew. Because management structure is built over time, it can become unruly and difficult to fix. Even if agency leaders might choose a different structure if they could start anew, reworking the infrastructure would pose a significant challenge. This bill would offer agency leaders an opportunity to build the structure that suits the agency's current work.

**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 are within walking distance of many popular downtown entertainment venues. 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 \$4 or \$5 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:

CSSB 1952 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.

**Private correctional facilities.** 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.

CSSB 1952 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

uses in 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.

**Environmental permitting.** Environmental provisions of CSSB 1952 would weaken state laws providing for public hearings on environmental permits. The bill would deprive many property owners of the right to pursue a contested case hearing on a permit for a facility that could affect their property rights. In cases where it was possible to pursue a contested case hearing, the bill would restrict severely who could request a hearing. Also, it would move permit hearings from independent administrative law judges at SOAH to hearings before TCEQ-employed examiners.

The bill would eliminate provisions enacted in last session’s TCEQ sunset legislation, requiring the agency to consider a company’s history of compliance with environmental regulations in permitting decisions. TCEQ already has spent nearly \$2 million implementing compliance history rules.

The bill also would eliminate early-notice requirements on permit applications. These requirements were the product of a fair compromise negotiated between industry and public interest groups in 1999. Requiring

companies to provide early notice allows interested parties time to begin research and to discuss solutions early, when it is easier to amend an application. Early notice allows parties time to develop meaningful public comments to help TCEQ's review of a permit application. The bill also would eliminate requirements for providing bilingual notice.

**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.

CSSB 1952 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.** CSSB 1952 would cost the state a substantial amount of money 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.

**Employee benefit changes.** There is no basis to suggest that a 1:11 ratio is ideal. The article cited by the comptroller's report as the source stating that 1:11 is a nationally recognized ratio for the public and private sector does not recommend such a ratio. The *Wall Street Journal* article of September 25, 1995, analyzed data from the Equal Employment Opportunity Commission and concluded that the average was 1:11 but made no recommendation. The proposals of CSSB 1952 would be unlikely to reduce turnover. The state auditor's report, "Full-Time Classified State Employee Turnover for Fiscal Year 2001," upon which the comptroller's e-Texas recommendation is based, tells a different story. The exit interview information that cited the leading reasons for leaving employment actually were culled from a survey of incumbent high-tech employees and high-tech employees who resigned within six months of their hire date. Turnover is high in Texas' state government, but solutions should not be based on the experience of the high-tech industry. A measure that would solve that industry's problems might not help recruit or retain state employees.

Firing managers or not filling management positions to meet an arbitrary staffing ratio likely would exacerbate the turnover of front-line employees. The state has had a "soft freeze" on hiring for some time, and many employees already are asked to do more than their jobs alone. As supervisory positions have remained empty, front-line workers have been asked to serve as "acting supervisors." The employees who remain also are asked to fill in

for open positions at the same level. For example, correctional officers at the Texas Youth Commission often work both as a correctional officer and caseworker. These front-line employees cannot take on more work. If the state fires or fails to hire managers to meet an arbitrary staffing ratio, turnover will increase among direct-care and service employees.

Establishing a hard cap would encourage agencies to be evasive about what they do. The determination of “manager” is based, in part, on what the agency reports. If the agency will suffer negative consequences from reporting that information, staff classification likely will change to make the new system less of a burden. Instead of encouraging state agencies to be evasive, the staffing ratio of each agency should be evaluated as part of the overall picture presented by the agency, the state auditor, the comptroller, the Sunset Advisory Commission, and other governmental oversight bodies.

**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.

**Consolidating state public transportation.** CSSB 1952 would give TTC and TxDOT too much discretion and authority over an area in which they lack sufficient experience and expertise.

Small urban and rural transit districts, but not metropolitan and other transit authorities, would be affected adversely by proposed provisions giving TTC more control of public transit funding. Notwithstanding any other law, TTC could increase or decrease grants to providers based on whether TTC found

they were complying fully with the law, as amended by the bill. TTC's control would extend over small urban and rural providers, but not over metropolitan and other transit authorities.

**Fuel ethanol and biodiesel production.** Spikes in the price of 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:

Comprehensive reform of state government should be done in conjunction with a rewrite of the Texas Constitution. The governor's powers probably should be enhanced to help manage the increasing complexities of state government. However, the decision on changing the fundamental structure of state government should be submitted as a constitutional revision so that Texans could vote on this vital question.

NOTES:

The fiscal note projects that CSSB 1952 would result in a net general revenue gain of \$283.7 million for fiscal 2004-05. According to the comptroller, the change in establishing the presumptive value of used vehicles would generate \$172 million in additional revenue for the biennium. The comptroller also estimates that requiring an owner-controlled insurance program would save \$24.3 million for the state highway fund in fiscal 2004 and \$48.6 million in fiscal 2005.

The House Government Reform Committee substituted a revised version of CSHB 2 by Swinford, et al., for the Senate engrossed version of SB 1952. CSHB 2 was set on the House Major State Calendar for May 10 but was recommitted after a point of order was sustained. The recommitted version of CSHB 2 was scheduled for the May 12 calendar but died without consideration.

As passed by the Senate, SB 1952 would have authorized the governor, in conjunction with LBB, to issue an emergency order to reorganize a state agency, other than one headed by a statewide elected official. This differs from the CSSB 1952 provision, which would allow the governor to reorganize a state agency by executive order, as long as the executive order did not conflict with the Constitution or state law. Also, the Senate version excludes a

provision in the House version that would exempt the governor's working papers on the budget from disclosure under the open records act.

The Senate version includes numerous provisions not incorporated in CSSB 1952. Major differences include provisions that would:

- abolish the Sunset Advisory Commission and replace it with a Performance Review Commission headed by the lieutenant governor and House speaker, along with three senators and three House members;
- abolish the State Auditor's Office (SAO) and the Legislative Audit Committee and move the SAO audit functions to the new Performance Review Commission and other financial functions to LBB;
- split existing functions of the Texas Legislative Council (TLC), with TLC computer operations placed in a new Legislative Information Services Board and the TLC legal and research functions divided between the two houses;
- require the new Performance Review Commission to conduct performance audits of state agencies and a review of interscholastic competition;
- reorganize the Texas Board of Pardon and Paroles and replace its 18-member board with a seven-member policy board;
- provide zero-interest student loans to students who maintain a certain grade-point average and graduate from college within four years;
- limit paperwork required of classroom teachers;
- establish a school-based individual health-care plan for students with diabetes;
- establish criminal penalties for collecting premiums on insurance policies sold on race-based grounds;
- establish a registry of insurance policies sold to Holocaust victims;
- create a corporate integrity unit in the Attorney General's Office;
- allow LBB to hold teleconference meetings;
- change the definition of "express advocacy" in political advertising;
- allow the poet laureate, state musician, and state artists to be appointed for two-year terms, rather hold the designation for one year;
- require safety training for extracurricular activities;
- change the permitting process for certain concrete plants;
- change rules on voluntary admission to state schools;

- allow a consumer to notify a credit reporting firm of an identity theft and place a freeze on release of information based on that identity theft without the consumer's authorization;
- create the TexasNextStep grant program to allow eligible students attend a two-year public college at no charge; and
- make various changes in regulation of pari-mutuel and bingo regulation.

A floor amendment to CSSB 1952 is expected to delete sections that would consolidate several smaller agencies into the Texas Department of Licensing and Regulation (TDLR). Similar provisions are included in SB 279 by Jackson, the TDLR sunset bill, which passed the House on May 16 and is pending in a conference committee.