

SUBJECT: Supplemental appropriations for fiscal 2005 and fiscal 2006-07

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 27 ayes — Pitts, Luna, Berman, Branch, B. Brown, F. Brown, Chisum, Crownover, J. Davis, Dukes, Edwards, Gattis, Guillen, Haggerty, Hegar, Hope, Hopson, Isett, T. King, Kolkhorst, Martinez, Menendez, Pena, Pickett, T. Smith, Truitt, Turner

0 nays

2 absent — Hamric, McClendon

WITNESSES: None

DIGEST: CSHB 10 would appropriate \$848 million in general revenue-related funds in fiscal 2005 and \$207 million in general revenue-related funds in fiscal 2006-07. It would appropriate \$973 million from the economic stabilization (rainy day) fund in fiscal 2005 and \$941 million in fiscal 2006-07. Funds in CSHB 10 would draw down an additional \$964 million in federal funds for fiscal 2005.

The bill would appropriate a total of \$2.7 billion to health and human services (HHS), education, criminal justice, and other needs for fiscal 2005 and \$1.3 billion to child protective services (CPS) and public education for fiscal 2006-07.

The bill would take effect immediately. The transfers from the rainy day fund would take effect only if the bill were approved by at least a two-thirds vote of the members present in each house.

Using the rainy day fund and other funds. CSHB 10 would appropriate a total of \$1.9 billion from the rainy day fund to use as a method of finance for the appropriations in CSHB 10. The bill also would appropriate out of the Foundation School Fund \$2.1 million in fiscal 2005 for Juvenile Justice Alternative Education Programs (see Criminal Justice appropriations) and \$25 million out of the Petroleum Storage Tank Remediation Account for cleaning up contaminated sites (see Other

appropriations). The new HHS appropriations in the bill would draw down federal funding in the amount of \$964.4 million.

Sweeping balances. The bill would sweep lapsed money from four state funds: The Texas Capital Trust Fund (\$1.9 million), the State Lottery Account (\$1.7 million), the System Benefit Fund (\$57.2 million), and the Subsequent Injury Fund (\$6 million). It would reduce the appropriation in fiscal 2005 for two agencies: the Texas Public Finance Authority (\$17.5 million) and the Texas Historical Commission and Emancipation Juneteenth Cultural and Historical Commission (\$0.4 million). The bill also assumes two sources of savings to the fiscal 2005 budget that were not built in to the original general appropriations act (HB 1 by Heflin) for that year and are available to count against supplemental spending: \$180.5 million in federal fiscal relief funds and \$26.6 million from the governor's line-item vetoes during the 78th Legislature.

HHS appropriations. CSHB 10 would appropriate \$1.8 billion in all funds to HHS programs in fiscal 2005, including \$1.2 billion for Medicaid, \$234.6 million for the Children's Health Insurance Program (CHIP), and \$85.6 million to the Health and Human Services Commission (HHSC) for savings not realized. It would appropriate \$382.3 million for CPS. The bill also would raise the FTE cap for the Department of Family and Protective Services by almost 4,900 in fiscal 2005-07.

Public education appropriations. The bill would appropriate \$767.6 million in all funds for public education in fiscal 2005, including \$735 million to the Texas Education Agency (TEA) for textbooks and the Foundation School Program (FSP), \$1.9 million to the State Board for Educator Certification (SBEC) for teacher certification, and \$30.7 million to the Teacher Retirement System (TRS) for the health insurance passthrough. The bill also would appropriate \$735.4 million to TEA for school facilities funding, textbooks, pre-kindergarten and kindergarten programs, and the Student Success Initiative in fiscal 2006-07. TRS also would receive \$200 million for health insurance for retirees for fiscal 2006-07.

Criminal justice appropriations. TDCJ would receive \$15.9 million for operations and \$31.3 million for correctional managed health care. An additional \$2.1 million would be appropriated to Juvenile Justice Alternative Education Programs (JJAEPs) through TEA.

Other appropriations. CSHB 10 would appropriate \$78.9 million to various agencies to account for unrealized proceeds from the sale of land, \$25 million to the Texas Commission on Environmental Quality for petroleum storage tank remediation, \$2.1 million to the Texas Parks and Wildlife Department for San Jacinto Monument repairs, and \$1.5 million to the secretary of state to implement the federal Help America Vote Act. It also would shift \$36,000 to the Ninth Court of Appeals in Beaumont from the 10th Court of Appeals in Waco.

**SUPPORTERS
SAY:**

Using the rainy day fund. It would be appropriate to use the rainy day fund to address budget shortfalls, as proposed by CSHB 10. The fund is one of many sources of revenue in the state and should be used when other sources are insufficient to cover pressing state needs. The economic conditions that led up to the fiscal 2004-05 budget forced reductions in many programs, some of which have proven to be too drastic. Using the rainy day fund to cover these shortfalls would be an appropriate use of the state's "savings account."

The 79th Legislature clearly has demonstrated a commitment to public education and child protective services and should use some rainy day funds to get those priorities back on track. Both public education and child protective services are vital state functions and are in crisis. Their needs in fiscal 2005, 2006, and 2007 should be supported by a one-time use of rainy day funds so that the infusion of money can make a significant difference in the programs in the near future.

The state's bond rating is unlikely to fall because of appropriations from the rainy day fund. A recent Standard & Poor's publication says: "Drawing down reserve funds is not a credit weakness on its own A balanced approach to utilizing reserves in combination with recurring revenue or spending measures is optimal from a credit standpoint." The measures proposed in CSHB 10 would reflect this balanced approach.

Sweeping unexpended balances.

System benefit fund. Allocating the \$57.2 million balance in the System Benefit Fund to other purposes would not affect the discount on electric bills that currently is available to low-income consumers. Those who receive the 10 percent discount today would not lose this benefit, as the money needed for this program in fiscal 2004-05 already has been appropriated. Further, the fund will replenish itself next biennium, ensuring its availability for continued discounts in the future.

Historical Commission. The bill would authorize a method-of-finance swap for the Emancipation Juneteenth Cultural and Historical Commission. Instead of the general revenue it currently receives, the commission would receive an equivalent amount in federal transportation enhancement funds.

HHS appropriations. Both Medicaid and CHIP enrollment numbers are very difficult to project because they depend on a number of economic factors and policy decisions. The 78th Legislature made a significant number of policy changes in each program, but the projections were low. While CHIP, unlike Medicaid, is not an entitlement, it is important that the state backfill any funding shortfalls in each program. Alternatives to additional funding, such as establishing a CHIP waiting list, would not be in the interests of Texas' neediest citizens.

Savings. The savings assumed in the fiscal 2004-05 general appropriations act and outlined in HB 2292 by Wohlgenuth involved all aspects of HHS administration and programs, including reorganizing the entire HHS enterprise, integrating eligibility, and changing Medicaid, CHIP, TANF, and other programs. While most of the changes were implemented during fiscal 2004-05, integrated eligibility was postponed until all of the implications of the policy change could be vetted fully. Also, the limit on prescription drugs for all Medicaid recipients is not expected to go forward. HHSC expects integrated eligibility to generate savings in fiscal 2006-07.

Child protective services. Texas' child protective services is a broken system. Recent high profile cases of abuse and neglect where CPS failed to intervene prompted review during the interim, which have generated plans to increase the number of caseworkers, reduce caseloads, improve investigations, and improve services to families and children through privatization of both case management and substitute care.

Public education appropriations. State funding is distributed to school districts through the FSP using weights and adjustments based on student and district characteristics to account for varying costs of educating different types of students and other factors. In fiscal 2004, TEA needed an additional \$360 million to meet the state's responsibility to school districts for funding through the FSP. These funds were "borrowed" from fiscal 2005 to make the necessary payments to school districts. Along with funds to repay that transfer, TEA needs an additional \$200 million to

cover payments to school districts for fiscal 2005. Contributing factors to the increased costs include enrollment growth and late property value audit adjustments.

Facilities funding. The state needs to provide additional funding for school district facilities beyond the amount required to maintain basic funding commitments. In the school finance lawsuit now pending before the Texas Supreme Court, District Judge John Dietz of Austin, in determining that the current system for funding facilities violates constitutional standards for equity, identified the lack of consistent funding for the Instructional Facilities Allotment and the Existing Debt Allotment, the two state facilities funding programs, as a contributing factor.

Textbooks. The appropriation to TEA is necessary to cover the cost of textbook purchases delayed in fiscal 2004-05. In response to funding cuts in fiscal 2004-05, the State Board of Education (SBOE) adopted but delayed acquisition of about \$145 million in textbooks for the 2004-05 school year, including English as a Second Language texts for kindergarten through 2nd grade and 6th through 8th grades. The state cannot continue to balance its books by delaying textbook purchases indefinitely. While delaying textbook purchases helped the state through the fiscal 2004-05 budget crisis, it has compounded the funding demand for instructional materials for fiscal 2006-07. The 2006 textbooks have been produced by publishers and fully reviewed and adopted by SBOE. Deferring this purchase would delay their use by two years and leave publishers at risk for millions of dollars in textbooks that they developed and printed in good faith.

CSHB 10 includes \$30 million to reimburse other TEA programs for funds that were “borrowed” to cover textbook purchases when collections of motor fuels taxes were significantly lower than expected. The change in the point of collection for motor fuels taxes, initiated in 2003 with the enactment of HB 2458 by Krusee, brought in only \$7.9 million for textbooks, far less than the original estimate of \$75 million. TEA was able to adjust for part of the shortfall by purchasing fewer textbooks but had to borrow \$30 million from other programs to pay textbook costs that were expected to be covered by motor fuels tax revenue.

Pre-kindergarten and kindergarten programs. The bill would use \$177.8 million in rainy day funds rather than the general revenue that CSSB 1 would use to fund kindergarten and pre-kindergarten grants to school

districts under TEA's Early Start Program in fiscal 2006-07. This would represent a 5 percent decrease from fiscal 2004-05 funding.

Student Success. CSHB 10 would use rainy day funds to cover \$175.6 million of the Student Success Initiative, a TEA program that funds intensive reading and mathematics instruction for students who have failed the 3rd and 5th grade TAKS tests three times. These funds are needed because the requirement that students pass the TAKS in order to be promoted to the next grade applies only if the education commissioner certifies each year that sufficient state funds have been appropriated outside the FSP to provide the required accelerated instruction programs.

SBEC. The State Board for Educator Certification (SBEC) needs \$1.9 million in general revenue to cover costs of test administration. SBEC regulates and oversees public school teachers' preparation, certification, continuing education, and standards of conduct. Last session, the Legislature made a sum-certain appropriation that was not sufficient to cover increased demand for educator certification test administration. These funds ultimately will be covered by fee revenue, but the agency needs increased appropriation authority in order to administer the exams.

TRS passthrough. TRS needs \$30.7 million to cover costs related to the health insurance passthrough for school district employees. TRS distributes to school districts \$500 for full-time employees and \$250 for part-time employees to help pay for insurance and other health care costs. In 2003, the Legislature deferred payment of the passthrough for the 12th month of fiscal 2005, for a savings in fiscal 2004-05 of \$22.6 million. CSHB 10 would cover this cost, as well as \$8.1 million needed because the actual number of eligible employees exceeded the 2004-05 projection. Under HB 2 by Grusendorf, beginning in fiscal 2006-07, funding for the passthrough would be appropriated to TEA rather than TRS and distributed to school districts through the FSP.

TRS-Care. CSHB 10 would use rainy day funds to cover \$200 million of the state's \$506 million appropriation for fiscal 2006-07 to TRS-Care, the health insurance program for retired public school employees. These funds are needed to cover a portion of the cost of the state's statutory contribution to TRS-Care of 1 percent of active member payroll and would help cover projected increases in fiscal 2006-07 for retiree health care and prescription drug costs.

Criminal justice appropriations. The appropriation to TDCJ is necessary to meet the state's obligation to house offenders sent to state correctional facilities and to pay other unexpected expenses that total about \$48.3 million. TDCJ has identified about \$32.4 million in other funds to offset some of its need, reducing the total amount the agency needs and that would be appropriated in CSHB 10 to \$15.9 million.

The latest projections show that by May or June 2005 the state may run out of room to house offenders in state correctional facilities. Because this need was not anticipated when the fiscal 2004-05 appropriations were made, the agency does not have funds to expand its capacity. CSHB 10 would give TDCJ \$3.5 million to lease beds as needed to ensure that prisoners did not become backlogged in county jails in violation of Government Code sec. 499.121, which gives the state a 45-day deadline for moving prisoners from county jails to state facilities once they have been sentenced to a state facility and all processing for the transfer has been completed. TDCJ would not use the funds until and unless state facilities became full.

By leasing space from the counties, Texas could avoid committing resources to building and operating new prison beds that may not be needed in the future, especially given proposals being made in the 79th Legislature that may reduce the state's future need for prison beds. In general, these proposals would increase funding for probation programs to divert offenders from prison and thereby reduce the number of direct sentences to prison and the number of probationers who are sent to prison for violating their probation.

TDCJ also has had to pay for employee retirement incentives mandated by the 78th Legislature in HB 3208 by Heflin that were not anticipated when the fiscal 2004-05 appropriations were made. The agency needs about \$17.8 million to cover the cost of the incentive in fiscal 2005 for the approximately 2,100 employees who retired or will retire under the bill this fiscal biennium.

In addition, the agency's bill for utilities will be about \$26 million more than anticipated due to a nationwide rate increase. The agency works hard to keep its utilities costs as low as possible by pursuing competitive rates in the deregulated market, and has been able to minimize the increase in its rates for utilities. Due to an unanticipated increase in energy prices,

the agency will exceed its appropriation for fuel in fiscal 2005 by about \$1 million.

Juvenile Justice Alternative Education Programs. The state must spend \$2.1 million to pay for an unprecedented increase in the number of attendance days in the current biennium by students required by law to attend the programs. JJAEP attendance is required for certain students who are expelled from school for serious on-campus or school-related offenses listed in Education Code, sec. 37.007. The Texas Juvenile Probation Commission estimates that it will exhaust its current appropriation in April 2005 due to an increase of 22 percent in the number of required student school year attendance days over the previous year. The average annual increase in these attendance days for the previous four years was 6.4 percent.

CSHB 10 appropriately would add funding to the program from the Foundation School Fund. Funding for JJAEPs comes from the Foundation School Fund and flows through the Texas Education Agency to the Texas Juvenile Probation Commission, which in turn sends the money to county juvenile probation departments. Under Rider 9 in TJPC's appropriation in the general appropriations act, the agency is required to pay counties \$59 per student day of attendance.

Inmate managed health care. The \$31.3 million for inmate managed health care in CSHB 10 is needed to pay the University of Texas Medical Branch at Galveston and Texas Tech University Health Sciences Center for additional costs to provide a constitutional level of health care for prison inmates in fiscal 2004-05. Despite reductions in services and staff, the universities report that they will spend about \$31.3 million more than they will earn this biennium due to a reduction in revenue, an increase in demand for services, especially among the population of elderly inmates, and an increase in operating costs. Increases in operating costs were due mainly to increases in costs to recruit and retain medical staff and other medical cost pressures. Without reimbursing the universities for operating losses it may be difficult for them to continue their contracts to provide inmate health care. Because of the unique capabilities of the universities' health care systems, such as special pricing on prescription drugs, it is unlikely that another provider could deliver the same services more cheaply to the state.

Other appropriations.

Unrealized savings from the sale of state land. One of the savings measures adopted by the 78th Legislature in 2003 in the general appropriations act was to require state agencies that owned real property purchased with general revenue-related funds to sell some of it, as directed by the governor and Legislative Budget Board. The measure assumed a savings of \$97 million in the biennium as state funding would be replaced by the proceeds of the sale of land. However, not enough savings were generated by the sale of land, so the state should restore the funding that had been cut and include \$78.9 million in CSHB 10.

Petroleum storage tank remediation. CSHB 10 would remedy the current shortfall in funds appropriated for the remediation program, which performs emergency response actions and clean-up at sites where the responsible parties are unknown, unwilling, or financially unable to pay. The program expects to deplete its funds by May 2005. Although the program is scheduled to sunset in 2006, TCEQ estimates that, without a supplemental appropriation, up to 2,000 fund-eligible sites would not be serviced before the program ended.

San Jacinto Monument. The San Jacinto Monument is a unique tribute to the decisive battle of the Texas Revolution and the tallest monumental column in the world. It is in dire need of fire safety upgrades that are essential to the continued popularity and vitality of this visitor destination.

Secretary of State. The Office of the Secretary of State needs an additional \$1.5 million in general revenue-related funds for the state match required to qualify for \$103.2 million in remaining federal Help America Vote Act (HAVA) funds, the money available from the federal government to improve polling-place accessibility, replace outdated voting machines, and implement voter education programs. Most of the remaining HAVA implementation deadlines are in 2006, making timing of these HAVA federal funds critical. The total amount of the state's 5 percent match is \$5.4 million; however, the secretary of state has been able to save \$3.9 million internally from the current biennium toward the match.

OPPONENTS
SAY:

Using the rainy day fund. The Legislature should stop using the rainy day fund like any other revenue stream in the state budget. It was designed to protect the state from serious economic downturns, not to boost finances during relatively favorable economic times. Continually draining

the fund could jeopardize the state's credit rating as it no longer would be regarded as a hedge against falling revenues.

If the Legislature wishes to make public education and child protective services priorities, then it should find a sustainable revenue source for those programs. Using the rainy day fund in this one-time manner would leave both education and child protective services hunting for new funds next biennium. Lawmakers should make the difficult decisions necessary to fund these important state priorities permanently.

Sweeping unexpended balances.

System benefit fund. By sweeping the remaining balance of the System Benefit Fund, CSHB 10 would divert a dedicated revenue source away from its designated purpose of helping low-income consumers pay their monthly electric bills. All Texas electric consumers pay into the SBF with the assumption that these funds go toward helping low-income consumers, and it would be a betrayal of their trust to use this money for unrelated purposes. Any money remaining in the fund should be carried forward into fiscal 2006-07 and made available for use under the low-income discount. Rather than diverting money from this fund, the Legislature should use the balance to raise the low-income discount to its statutory ceiling of 20 percent, expand eligibility, or restore the low-income weatherization program, which has been discontinued due to a lack of funding.

Criminal justice appropriations.

Managed health care. The universities should be able to cover their costs with the approximately \$681.5 million they received in fiscal 2004-05 appropriations for managed health care and psychiatric managed health care to state prison inmates. Some of the expenditures identified by the universities and contributing to operating losses are inappropriate or under the universities' control. For example, the universities say that some of the increase in operating costs were due to costs to recruit and retain medical staff —discretionary costs that are not driven by circumstances beyond the universities' control.

OTHER
OPPONENTS
SAY:

Using the rainy day fund. The Legislature should ensure that money taken from the rainy day fund would be returned in a timely manner. In 2003, a constitutional amendment (HJR 2 by Heflin) was proposed, but not adopted, that would have required repayment to the fund. The rainy day fund should be used only for emergencies. To encourage more appropriate use of the fund, any amount appropriated from the rainy day

fund during a biennium should be repaid from general revenue the following biennium.

NOTES:

The fiscal note attached to CSHB 10 estimates that the bill would cost the state \$848 million in general revenue-related funds in fiscal 2005 and \$207 million in general revenue-related funds in fiscal 2006-07. It would appropriate from the rainy day fund \$973 million in fiscal 2005 and \$941 million in fiscal 2006-07. These additional funds would increase federal funding by \$964 million in fiscal 2005.

Some of the funds that would be appropriated in CSHB 10 are the subject of a rider, sec. 13.19 of Art. 9 in CSSB 1 by Ogden (Pitts), the general appropriations bill for fiscal 2006-07, also on today's calendar. Contingent upon enactment of HB 10, that rider would reduce the appropriation in CSSB 1 by \$317 million in all funds for child protective services reform and \$1.1 billion in general revenue for public education in fiscal 2006-07.

The bill as filed contained many of the same elements as the committee substitute, including fiscal 2005 supplemental funding for Medicaid, CHIP, other HHS needs, CPS reform, TDCJ operations, correctional managed healthcare, JJAEP's, public education programs, the Secretary of State, court of appeals, and restoration of savings assumed from sale of state property. It would have swept funds from unexpended balances, including the Texas Public Finance Authority, Texas Capital Trust Fund, Lottery Commission, System Benefit Fund, and Subsequent Injury Fund, but would not have used the rainy day fund as a method of finance. The bill as filed would not have made appropriations for fiscal 2006-07.