

- SUBJECT:** Appropriations-related statutory changes
- COMMITTEE:** Appropriations — committee substitute recommended
- VOTE:** 19 ayes — Pitts, Branch, F. Brown, Chisum, Crownover, J. Davis, Edwards, Gattis, Guillen, Haggerty, Hamric, Hegar, Hope, Hopson, Kolkhorst, Pena, Pickett, T. Smith, Truitt
- 1 nay — Menendez
- 3 present not voting — Luna, McClendon, Turner
- 6 absent — Berman, B. Brown, Dukes, Isett, T. King, Martinez
- WITNESSES:** None
- BACKGROUND:** Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Because the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.
- On April 7, the House passed SB 1 by Ogden (Pitts), its version of the general appropriations bill for fiscal 2006-07. The Senate passed its version of the bill on March 23, and it now is in conference committee.
- For further discussion of issues in the state budget, see HRO State Finance Report Number 79-2, *CSSB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2006-07*, April 4, 2005.
- DIGEST:** CSHB 3540 would make various statutory changes assumed in the House version of the proposed general appropriations bill, SB 1 by Ogden.
- State employee benefits and pay.** The bill would make several changes relating to benefits for state employees:

90-day waiting period. CSHB 3540 would repeal the September 1, 2005, expiration date for the 90-day waiting period for state employees to become members of the Employees Retirement System.

Waiving health benefits. A state employee wishing to waive health coverage would be required to show coverage by a substantially similar plan or eligibility for benefits under TRICARE military coverage, in which case an employee would be eligible for an incentive payment in an amount set by the general appropriations act. If an employee were eligible for TRICARE, the state also would offer a supplemental health coverage program. The state could reduce its contribution for employees who waived health coverage or those who waived and chose an incentive payment or supplemental coverage.

Annuitant state employees. A state employee who returned to work and received an annuity would not be eligible for longevity pay or benefit replacement pay. The employee's vacation time would be calculated based on the length of employment after the employee retired and returned to work.

Benefit replacement pay. The bill would shorten the amount of time an employee or state-paid judge could leave state employment before becoming ineligible for benefit replacement pay from 12 consecutive months to 30 days. Unpaid leave-of-absence or periods when an employee usually does not work would not count toward the 30 days.

Quality assurance fee. The bill would continue the existing quality assurance fee for intermediate care facilities for the mentally retarded and give HHSC broad authority to establish quality assurance fees for any health care provider or facility. In addition, HHSC would establish a quality assurance fee of no more than 6 percent to be assessed against state-owned veterans' nursing facilities or continuing care retirement communities. The fee would be an allowable cost reimbursement under Medicaid and could not be charged directly to a patient or resident.

The fee would be calculated based on patient days and gross receipts, as reported to HHSC by the 25th day after the last day of the month. Any administrative penalty related to the fee could not exceed one-half the amount outstanding or \$20,000, whichever was greater.

Proceeds from the fee would be deposited to an account in the general revenue fund and, with federal matching funds, would be used to pay higher Medicaid reimbursement rates for institutions.

If a waiver or other federal authorization were required, HHSC would be directed to obtain it and could exempt certain patient days, including those reimbursed by Medicare. If a court held the fee invalid or HHSC determined that it could not obtain federal matching funds, collection of the fee would be stopped and the money returned to the contributing institutions. If the federal government held that the fee did not meet its qualifications for a waiver of the broad-based requirement for taxes in the Medicaid program, HHSC could make changes to meet the qualifications. The bill also would direct HHSC to seek federal approval for a quality assurance fee for home and community-based services waiver programs.

Petroleum storage tank remediation. CSHB 3540 would extend the reimbursement deadline to August 31, 2007, for eligible owners or operators who took corrective action, if an application for reimbursement was received by July 1, 2007. In the application, the owner or operator would permit site access to the state. The bill would extend by two years, to September 1, 2007, the deadline for receiving site closure requests. It also would expand the sites that could submit a closure request to include those that required either a corrective action plan or groundwater monitoring and had met all deadlines, including annual progress reports demonstrating progress toward meeting closure requirements.

Operators of storage tanks in sites that had been admitted into the state petroleum storage tank remediation program would not be held liable for releases of regulated substances or for costs related to corrective action. The bill also would remove limitations on the amount of funds within the petroleum storage tank remediation account that could be spent on administration of the account and the groundwater protection cleanup program.

Collection of fees for the petroleum storage tank remediation account would be maintained at fiscal 2003 levels, rather than the annual reduction in current statute. The petroleum storage tank remediation account could not be used after March 1, 2008, and the reimbursement program would expire September 1, 2008.

The provisions relating to the petroleum storage tank remediation account would take effect September 1, 2005.

Homestead appraisals. The bill would limit the time to apply an application for a residence homestead exemption to the delinquency date for taxes — generally February 1 of the year following the year in which the taxes were imposed, rather than one year after that date. It would apply to homestead exemption applications for 2005 and subsequent tax years.

The deadline for filing a rendition statement or property report could be extended by the chief appraiser for a single period of 15 days with good cause, rather than an initial extension to May 15, then a second extension of 15 days with good cause.

Correction of clerical errors about homestead exemptions in the appraisal roll for any of the last five years could be ordered by the appraisal review board upon a request by the chief appraiser or a property owner. Correction for other clerical errors also could be ordered, but the request would be required within one year of the deadline for the appraisal board to determine timely filed protests.

Attorney fees would be awarded to the taxing entity if it prevailed in a claim of excessive appraisal or unequal appraisal of property that was not claimed as the owner's homestead and that had an appraised value of more than \$1 million.

School district settle-up. If the comptroller made a final determination that the state overvalued a school district's property in response to a property tax audit requested by the district, the state would pay the district the difference from the Foundation School Fund in one-fifth installments for the succeeding five years. The district would have to request a comptroller's audit no later than the first anniversary of the final certification of property value, rather than the extended period under current statute.

Lottery ticket sales. The bill would direct the Texas Lottery Commission to study and recommend ways that tickets could be more cost effectively and conveniently sold.

Multi-state bulk purchasing of prescription drugs. If feasible and cost-effective, the Health and Human Services Commission (HHSC) would enter into a multi-state prescription drug bulk purchasing compact for drugs used in Medicaid, CHIP, or other state programs under HHSC. The feasibility would be determined by January 15, 2006, and, if advisable, the HHSC would take action to join an agreement by March 1, 2006. If a waiver or other federal authorization were required, HHSC would be directed to obtain it.

License plates. Vehicles only would be required to display one license plate if it was attached to the rear of the vehicle. Beginning September 1, 2005, the Texas Department of Transportation would be required to issue only one license plate.

Transportation funds. The bill would standardize all registration fees for vehicles at \$58.50 by eliminating the lower fees for older vehicles. The proceeds would be deposited to the state highway fund. It would direct the comptroller to transfer \$56 million each year from state highway funds. Inspection and certification fees up to \$68 million each fiscal year would be deposited to general revenue with the remainder going to the Texas Mobility Fund.

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, 2005.

**SUPPORTERS
SAY:**

The statutory changes made by CSHB 3540 would generate an additional \$333.5 million in general revenue during fiscal 2006-07 that would help ensure that the state budget can be certified and meet the state's spending priorities. Some of the items contained in CSHB 3540, such as state employee compensation and benefit changes and homestead appraisal changes, were included in the LBB's *Staff Performance Report*, January 2005.

State employee benefits and pay. This package of changes to state employee benefits and pay represents a very small change to overall compensation, compared to the changes made in 2003. The 90-day ERS waiting period for new hires was implemented in 2003 and should be continued because it offers the state a way to save money, about \$16 million in all funds, without cutting benefits for all employees, and it has not adversely affected recruitment. Offering an incentive to waive health

benefits would steer employees into less expensive but appropriate options when one existed, such as a spouse's insurance or federal military insurance.

The changes to annuitant state employees' pay and vacation leave would put them on the same footing as any other new state employee if they return to work after retiring, which would save the state the higher costs of longevity pay and benefit replacement pay, which is a supplement for Social Security payments that only longer-serving state employees still receive and newer employees do not. Returning to work after retiring should not be a way for employees to continue accruing credit as if they had never retired.

Quality assurance fee. Medicaid is the primary source of funding for the nursing home industry, which would benefit from the quality assurance fee. Compensation for services in nursing homes pays for all operations of the home. At least 33 states currently assess quality assurance fees on nursing homes. States that have imposed nursing home provider taxes generally have done so to provide relief to the nursing home industry in a time of Medicaid cutbacks. Some states, including North Carolina and Oregon, have obtained waivers of broad-based and uniformity Medicaid regulations. The waivers are designed to mitigate the impact on facilities that have few Medicaid beds or none because there would be no benefit to them.

Petroleum storage tank remediation. Petroleum storage tank cleanup has been remarkably successful to date, with close to 90 percent of the estimated 25,000 designated sites having been cleaned up. However, remediation has not been completed for some 2,800 sites. Due to factors such as geologic challenges, conflicts with landowners on adjacent lots, and the bankruptcy of a large remediation contractor, some of these sites have taken more time to clean up than was expected. Two more years would allow enough time for the remaining projects to be completed.

Homestead appraisals. Late property value adjustments can have a negative fiscal impact because they collectively can result in increases in the state share of public education funding. According to the Legislative Budget Board (LBB), late property value adjustments in 2001 and 2002 adjusted property values downward, which requires higher state funding under the school finance formulas.

School district settle-up. This change would provide more predictability for the state in making payments to school districts when a comptroller's audit found that a district was entitled to a payment from the Foundation School Fund. Sometimes these audit results can be presented several years after the state has settled up with the school district, and the state is required to make a lump sum payment to the district, which can add up to millions of dollars in unexpected payments. Districts usually know if they are going to request a comptroller's audit and should not be allowed to wait several years before requesting one. The bill appropriately would require districts to request an audit within one year of the final certification of property value.

Lottery ticket sales. The Lottery Commission should look at different ways of selling tickets, such as paying with a debit card or establishing an account that could be drawn against to purchase tickets. Other options could include buying tickets online or at gas pumps. The bill would not authorize any of these ideas; it simply would require the commission to study the issues and make recommendations for consideration by the 80th Legislature.

Multi-state bulk purchasing of prescription drugs. Texas could save a significant amount of money if it pooled its buying power with other states. Other states that have successfully established agreements to bulk purchase drugs have obtained 100 percent of manufacturer rebates, while others have achieved large discounts.

License plates. Many other states — and all neighboring ones — only require drivers to display the license plate on the back of the car. By also doing so, Texas would save \$10 million each biennium. There is little public safety need for two license plates, as evidenced by the low number of tickets issued for having only one plate. All of the major toll authorities and some of the airports in Texas take pictures of the rear license plate.

Transportation funds. An amendment proposed by the author would direct that additional funds generated by standardizing vehicle registration fees be deposited to Fund 6, which would be considered dedicated funds, and would transfer \$68 million of the fees to the mobility fund before reducing appropriations to the mobility fund by an equal amount. This would be a way for the state to swap constitutionally dedicated funds for general revenue.

OPPONENTS
SAY:

State employee benefits and pay. The changes to annuitants' benefits and pay unfairly would punish seasoned state employees who return to state service after their retirement. Because it would have no actuarial impact on the pension fund, there is no reason to treat these employees differently than any other state employee with many years of experience.

Quality assurance fee. Because about 80 of the 1,100 nursing homes in Texas are substantially private-pay, a bed fee on nursing homes could be a tax on some private payors. These private payors would be facing the burden of an added fee but would see no benefit. Burdening patients using personal assets and income to pay for nursing home care hastens them towards Medicaid eligibility, thereby increasing the number of state and federally assisted patients on the rolls.

School district settle-up. School districts should not have to wait five years for payments to which they are entitled simply to help the state manage its cash flow. Some districts may have difficulty filing an audit request within one year and should continue to have up to three years because they must go through procedures locally before filing an audit request with the comptroller.

Lottery ticket sales. Some of the ideas to be contemplated by the Lottery Commission would be potentially harmful. Easier access to gambling can fuel addiction and some of the purchase points, such as the Internet or at a gas pump, could give access to children. The Lottery Commission should remain within its current statutory limitations.

Multi-state bulk purchasing of prescription drugs. The feasibility of a multi-state bulk drug purchasing program is unproven for a large state such as Texas. The benefit of additional savings more likely would accrue to a smaller state joining Texas, rather than Texas joining other states. In addition, in the last two years Texas has employed a preferred drug list and other cost-saving mechanisms that should generate savings to the state without the high administrative costs that can come with multi-state agreements.

License plates. Only requiring one license plate seriously would compromise public safety and law enforcement operations. With two plates, officers can run the plates when cars pull into customs or as they see them approaching on the road. This is particularly helpful when looking for vehicles leaving crime scenes as law enforcement approaches

and for convenience store cameras that take pictures of license plates on cars in the parking lot. Historically, many law enforcement groups have opposed eliminating one of the license plates, including the National Sheriff's Association, National Troopers Coalition, and the National Association of Governors' Highway Safety Representatives.

Transportation funds. By routing funds through the mobility fund, this bill could jeopardize the Texas Department of Transportation's ability to issue bonds from that fund. Not only would a change in the revenue stream supporting the bond issue result in delay because new documentation would have to be prepared, it also could reduce the amount of bonds the department could issue because the revenue might not be available for consideration as a basis for the bonds. Also, eliminating the registration fee discount for older vehicles would amount to a significant hike in vehicle registration fees for those who often can least afford to pay.

NOTES:

The filed version was a shell bill written before the general appropriations bill had been approved by the House Appropriations Committee.

The fiscal note attached to CSHB 3540 estimates that it would generate a total of \$333.5 million in general revenue in fiscal 2006-07.