HOUSE RESEARCH ORGANIZATION bill analysis | 6/9/2011 | SB 1 Duncan, et al. (Pitts) (CSSB 1 by Pitts)

SUBJECT: Public school finance, state fiscal matters

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 14 ayes — Pitts, Aycock, Button, Chisum, Crownover, Darby, Gooden, Margo, Otto, Patrick, Schwertner, Shelton, Torres, Zerwas

5 nays — Eiland, Hochberg, Johnson, S. King, McClendon

1 present not voting — Morrison

7 absent — Turner, Dukes, Giddings, Martinez, D. Miller, Riddle, Villarreal

SENATE VOTE: On final passage, June 3 — 19–12 (Davis, Ellis, Gallegos, Hinojosa, Lucio, Rodriguez, Uresti, Van de Putte, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On companion bill, HB 1:*

For — Bill Hammond, Texas Association of Business

Against — Paul Colbert, El Paso ISD; Ray Freeman, Equity Center; Bill Grusendorf, Texas Association of Rural Schools; Jerry Hunkapiller, Millsap ISD; Rene Lara, Texas AFL-CIO; Louis Malfaro and Ted Melina Raab, Texas AFT, American Federation of Teachers; Wayne Pierce, Equity Center; Sue Deigaard; Harold Huff; Richard Kneupper; Kim Kriegel; Rowena McKee;

On — David Anderson and Lisa Dawn-Fisher, Texas Education Agency; Daniel Casey, Fast Growth School Coalition; Scott McCown, Center for Public Policy Priorities; Lynn Moak, Texas School Alliance; Bee Moorhead, Texas Impact

SCHOOL FINANCE AND PUBLIC EDUCATION

BACKGROUND: **Public school finance.** The state's statutory financial obligation to school districts is determined by the sum of the amounts to which each district is entitled by statute. The Legislative Budget Board has estimated the state's financial obligation to be $42.6 billion, which takes into account increased student enrollment and decreased local property tax revenue. Because the school finance system is set by statute, the Legislature would have to amend the Education Code to permit a state appropriation to the Foundation School Program below the statutory financial obligation.

Public school districts receive state funding based either on their target revenue hold-harmless amount— the district's 2009-2010 funding— or the public school finance formula, whichever is higher. Formula funding is distributed using weights and adjustments based on student and district characteristics to account for the varying costs of educating different types of students.

The 79th Legislature in 2006 enacted HB 1 in its third called session, in response to the Texas Supreme Court's holding that school districts lacked meaningful discretion in setting local school property tax rates, effectively resulting in an unconstitutional state property tax. At the time, most local governments were taxing at or near the state property tax rate cap of $1.50. In HB 1, the Legislature compressed local property-tax rates to $1.00. The target revenue hold-harmless mechanism was included in HB 1to ensure school districts did not lose funding by guaranteeing they would receive, at minimum, their 2005-06 funding. The 81st Legislature in 2009 enacted HB 3646 to determine target revenue amounts for a school district's 2009-2010 funding. About 76 percent of school districts receive their target revenue hold-harmless amount.

DIGEST:

Foundation School Program payments (Art. 1). Art. 1 would amend the Education Code to defer the Foundation School Program (FSP) August 2013 payments to September 2013.

(According to the fiscal note, Art. 1 would have the effect of deferring the August FSP payment in fiscal 2013 to September of fiscal 2014, so that a total of 23 monthly FSP payments would be dispersed during fiscal 2012-13 biennium. Under the current distribution to the FSP, this deferral would result in a one-time savings of $2.3 billion in fiscal 2013. However, any statutory reduction to school districts' FSP entitlements would decrease the savings gained from this deferral. Funding levels in HB 1, the general appropriations act, would produce a savings of $2.3 billion.)

Public school finance (Art. 56). Art. 56 of CSSB 1 would reduce the amount of additional state aid for tax relief (target revenue hold-harmless) paid to school districts and open-enrollment charter schools for the 2012-2013 school year to 92.35 percent of the school district's total revenue guaranteed by the target revenue hold-harmless. For subsequent school years, the Legislature by appropriation would establish the percentage reduction to be applied.

On September 1, 2017, SB 1 would eliminate additional state aid for tax relief (ASATR) — target revenue hold harmless funding — for school districts and open-enrollment charter schools. At that point, if the state compression percentage were not established by appropriation for a school year, the commissioner would determine the percentage for each school year.

Basic and regular program allotments. Beginning with the 2011-2012 school year, Art. 56 would amend the basic allotment calculations and establish the regular program allotment. A school district would be entitled to the regular program allotment (RPA), which would be calculated by multiplying the number of students in average daily attendance not including student time in special education programs (ADA), the district's adjusted basic allotment (AA), and the regular program allotment factor (RPAF). The RPAF would be 0.9239 for the 2011-12 school year and 0.98 for the 2012-13 school year and would be established by appropriation thereafter.

$$RPA = ADA \times AA \times RPAF$$

Charter schools. Beginning with the 2011-2012 school year, to determine the funding for an open-enrollment charter school, the education commissioner would apply the regular program adjustment factor to calculate the regular program allotment to which the charter school was entitled.

Legislative intent. Art. 56 would codify legislative intent to continue to reduce the amount of ASATR funding to which a school district was entitled and to increase the basic allotment to which a school was entitled between fiscal 2014 and fiscal 2018.

Additional state aid for tax increment financing payments. Art. 56 would ensure that school districts required to pay taxes into a tax increment fund for a reinvestment zone, which has the purpose of making that land more attractive to economic development, received additional state aid to meet their obligations.

Minimum salary schedule. Beginning September 1, 2011, SB 1 would change the calculation of the monthly minimum salary for each classroom teacher, full-time librarian, full-time counselor, and full-time nurse. The salary factor that represents years of experience in the minimum monthly salary formula would be decreased under the bill. The minimum monthly salary determined by formula would be the product of the applicable salary factor and the amount determined by the commissioner based on the basic allotment for a school district with a maintenance and operations tax rate at least equal to the state maximum compressed tax rate. Each employee would receive the amount determined by the minimum monthly salary formula or by the specified monthly amount listed on the minimum salary schedule that corresponded to an employee's years of service, whichever was greater.

The bill would repeal temporarily the requirement that if the minimum monthly salary for a particular level of experience were less than the preceding year, the minimum monthly salary would be the minimum salary for the previous year. On September 1, 2017, the requirement would be reinstated.

The education commissioner would be required to submit a report evaluating and providing written recommendations regarding the salary schedule to the governor, the lieutenant governor, the speaker, and the appropriate legislative standing committees by January 1, 2013.

Interest and sinking tax rates. Art. 56 would provide that if the interest and sinking tax rate calculated decreased after the publication of the meeting notice required by law, the president of the board of trustees would not be required to publish another notice or call another meeting to discuss and adopt the budget and the proposed lower tax rate. The change in law would apply beginning with adoption of a tax rate for the 2011 tax year.

Proration. Art. 56 would change the method by which the education commissioner prorated Foundation School Program payments to school districts should the amount appropriated to the FSP for the second year of a fiscal biennium be less than that to which the school district was entitled for that year. The bill would require the commissioner to adjust the total amount for each district by the same percentage to achieve the necessary overall adjustment. A school district would no longer be entitled to reimbursement in a subsequent fiscal year of the amount lost due to an adjustment.

Department of Defense school districts. Art. 56 would authorize the commissioner to ensure that U.S. Department of Defense school districts did not receive more than an 8 percent reduction should the federal government reduce appropriations.

Over-allocation to school districts. The Texas Education Agency could recover an over-allocation of state funds over a maximum of five school years if the education commissioner determined that the over-allocation resulted from exceptional circumstances reasonably caused by statutory changes.

Interim committee. The speaker and the lieutenant governor would establish a joint legislative interim committee to conduct a comprehensive study of the public school finance system in Texas. The committee would make recommendations to the 83rd Legislature by January 15, 2013.

Unless otherwise specified, the provisions of Art. 56 would apply beginning with the 2011-2012 school year.

(According to the fiscal note, a model of the bill's changes to the calculation of Foundation School Program (FSP) formulas indicates that savings of approximately $2.0 billion each fiscal year would be achieved in fiscal 2012-13. In fiscal 2012, the $2.0 billion in reduction would be achieved through a proportional reduction to the FSP regular program. In fiscal 2013, the reduction would be achieved through a reduction to the regular program (25 percent of the reduction) and through a reduction to target revenue (75 percent of the reduction). In fiscal 2014 and beyond, those amounts would be determined in the general appropriations act.)

Advanced placement (Art. 48). The bill would amend the eligibility criteria for awarding advanced placement (AP) exam fee subsidies to students. Eligible students would have to demonstrate financial need. (According to the fiscal note, Art. 48 would produce a total saving of $12.3 million in fiscal 2012-13.)

District retention of certain FSP payments (Arts. 51 and 52). School districts that received their state aid based on their target revenue hold-harmless amount for the 2009-2010 and 2010-2011 school years based on the amount the district was entitled to in January 2009 would not have their hold harmless amounts reduced if their maintenance and operations (M&O) tax rate was below their 2005 tax rate. This exemption would expire September 1, 2013.

The bill would restore language removed by HB 3646, enacted by the 81st Legislature, that were a school district to adopt a M&O tax rate below the rate equal to the state compression percentage multiplied by the district's 2005 M&O tax rate, then the education commissioner would reduce the district's entitlement to additional state aid for tax relief by the difference. The provision would apply beginning with M&O tax rates adopted for the 2009 tax year.

Tax increment fund reporting (Art. 55). The commissioner of education would reduce by one-half the reductions in entitlement amounts computed for adjustments to account for taxes deposited into a tax increment fund for certain school districts. This would apply only to school districts notified by the commissioner before May 1, 2011, of a reduction in state funding for school years 2004-2005 through 2008-2009 based on the school district's reporting of payments to a tax increment fund. These provisions would expire September 1, 2013. (According to the fiscal note, this provision would cost the Foundation School Program $11.8 million in fiscal 2012-13.)

SUPPORTERS SAY:

Deferring FSP payments (Art. 1). Deferring the Foundation School Program payment would provide significant relief to the state while still providing the same level of support to local school districts. This simple change would minimally impact school districts but would substantially affect the budget, and it is expected to save $2.3 billion in fiscal 2013. The payment would be delayed for only a few weeks, and school districts would have enough lead time to adjust their budgets. Additionally, keeping the deferral permanent would prevent worse problems next biennium than if the state had to resume the August payment. As in the past, when state finances improve, the Legislature could consider restore the existing payment schedule.

Public school finance (Art. 56). The school finance proposal in Art. 56 of CSSB 1 would distribute the impact of the state budget crisis equally across the public schools. Those who benefited the most from funding under the target revenue system would lose more, while those who were in the formula funding system would lose less. All school districts would share in the reductions. This proposal would be manageable for all school districts.

Critics of Art. 56 cite enrollment growth as a reason these changes would be particularly damaging to school districts, which assumes the cost to educate a student new to a school district is the same as the cost to educate an existing student. This assumption is incorrect because it costs less to educate an existing student. When assessing the asserted $9 billion shortfall in public education spending, one must recognize that new and existing student costs should be viewed in terms of starting a business. Establishing the foundation when starting a business (new students) is more expensive but the cost decreases in future years. As such, the decrease in state appropriation for public education would not impact school districts ability to serve students to the degree that some claim.

Additional state aid for tax increment financing payments (Art. 55). Art. 55 would ensure 34 school districts were able to fulfill their tax obligations for the benefit of land zoned to enhance the area's attractiveness to new businesses. When the Legislature compressed local property-tax rates in 2006, these school districts did not have funds to pay their obligations. The bill would require state aid to be sent to these districts for this purpose.

Advanced placement (Art. 48). The state should not continue to subsidize exam fees for all students. Art. 48 would revise this program, through which students receive subsidies toward the AP or International Baccalaureate Exam fees, to restrict eligibility to students based on financial need. In its *Government Effectiveness and Efficiency Report* (*GEER*), the Legislative Budget Board determined that the program was unsuccessful at increasing student achievement but caused a significant cost to the state. The incentives provided by the program have not increased the number of students successfully passing AP and International Baccalaureate exams. Changing the eligibility requirements would ensure that the state's money was spent more effectively.

District retention of certain FSP payments (Arts. 51 and 52). These provisions would correct a problem caused by an inadvertent repeal of a provision that existed prior to 2009. Currently, if a school district adopts a maintenance and operations tax rate lower than the district's compressed tax rate, the district would not receive state aid. TEA, in letters stating that it was not the Legislature's intent to make the change, has not enforced the provision, allowing about six school districts to receive state aid despite a maintenance and operations tax rate lower than their compressed tax rate. If the Legislature did not enact the provisions in Articles 51 and 52 and these school districts were not able to adopt a higher tax rate, the districts would not receive state funding. Article 52 provisions would reinstate the previous statutory language. The Article 51 provisions would allow the affected districts to retain funding that the state has paid to the districts in anticipation of this legislative correction. The provision only would apply to districts that met the criteria in the current biennium and would prevent those districts from losing the funds.

Tax increment reporting (Art. 55). Art. 55 would allow school districts that incorrectly reported their tax collections to the state, which has resulted in an overpayment of state funds, to repay half of the debt over five years instead of paying over two years.

OPPONENTS SAY:

Deferring FSP payments (Art. 1). In these tight budgetary times, waiting even a couple of extra weeks to receive FSP funding would put some school districts in a bind. Many districts do not expect to have sufficient savings to finance the remainder of 2012 while they wait for the state's payment. Additionally, this would be a "sleight of hand" maneuver that does nothing to resolve the structural problems that have created the state's shortfall and budget challenges.

Public school finance (Art. 56). Art. 56 of CSSB 1 could be crippling for the public schools. Low target revenue school districts cannot afford to share any more of the economic burden. These districts have been sharing the pain with high target revenue districts for five years.

State funding to school districts for public education is, and should remain, an entitlement according to the Texas Constitution and legislative intent stated in current law. The proposed changes would codify the sentiment that public education funding no longer is an entitlement, but should be based only on available revenue, not the school finance formulas, on which school districts depend.

Target revenue hold-harmless. The budget crisis and the school finance system would be best served by eliminating target revenue entirely. The target revenue hold-harmless provision has nothing to do with the cost of education. It is arbitrary, inefficient, and inequitable and should be eliminated before decreasing funding to school districts who receive their funding through the formulas. The bill instead should include a phase out of the target revenue hold-harmless while increasing the basic allotment.

Regular program allotment. Art. 56 states the Legislature's intent to raise the basic allotment between 2014 and 2018, but intent is not a guarantee. It would be very detrimental to the system if this intent did not come to fruition. If the Legislature chose to increase the regular program allotment (RPA) without raising the basic allotment, then every weight and adjustment that accounts for the cost of educating different types of students would be frozen and useless. As the RPA increases, the percentage of total revenue to districts made up by formulas would be decreased, which would continue to fail to fund the high cost of educating certain students.

Structural deficit. It is not acceptable to decrease funding to school districts to compensate for the Legislature's inability to live up to its promise to buy down property taxes. Any legislation to fix the school finance system is futile if the structural deficit created by chronically insufficient business tax revenue is not addressed. Until additional revenue is created to support the compression of local property-tax rates, there will be a gap between state revenue and the state's obligation to adequately fund the school finance system.

Proration. The existing proration procedure should not be changed. The current proration procedure is driven by wealth, which ensures each school district experiences the same decrease in wealth per penny. Because school districts set their budgets in July, the proration terms in Art. 56 would leave school districts high and dry without a method to cope with the loss in funding.

The proposed language does not specify whether the percentage decrease would be taken from a school district's state revenue or total net revenue. If the intention is to apply the percentage to a district's state revenue, proration would affect poorer school districts disproportionally.

The proposed language would return the proration statutes to those of the 1980s, which created many problems for the state. The proposed method would take away financial predictability and security afforded school districts. In the 1980s, school districts were forced to guess what their net revenue would be for each school year, which caused districts to increase tax rates in anticipation of possible proration. The method proposed could cut money from school districts after money already has been committed or spent.

Additional state aid for staff salary increases. The bill would create confusion by deleting a reference to the $500 for certain full-time employees, including teachers, and $250 for certain part-time employees. The bill no longer would require this funding to be certified by the commissioner for school districts and charter schools, but would not repeal the funding.

Additional state aid for tax increment financing payments. The choice to enter into a tax increment program is a local decision made by a school board to entice businesses to that community. The state should not use public education dollars to fund this local decision because it does not benefit public education. State involvement is equivalent to handing a blank check to a local school district and permits a school district to commit state resources for its community's economic development. Subsidizing economic development in this way would sanction communities attempting to lure businesses away from each other.

Advanced placement (Art. 48). The bill would not adequately define the financial need that a student would have to demonstrate to qualify for the AP subsidy. Eliminating incentives to take AP courses would decrease the quality of education for all students. Some students require the monetary reward to achieve their potential by pursuing advanced courses.

OTHER OPPONENTS SAY:

Public school finance (Art. 56). The school finance cuts implemented by Art. 56 should include a cap on the percentage of state aid reduction a school district could lose as a result of school finance changes.

The Rainy Day Fund was created to prevent public education from being cut during tough economic times. The fund should be used as was intended to provide the remaining $4 to 5 billion necessary to fund public education adequately.

The bill would remove the most recent hold-harmless provision, but other similar provisions exist in current law that should be removed as well.

HIGHER EDUCATION

DIGEST:

Tuition exemptions (Art. 49). Art. 49 would limit eligibility for educational aide tuition exemptions to persons seeking certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers. This provision would apply beginning with tuition and fees charged for the 2012 fall semester. (According to the fiscal note, this change is estimated to reduce state costs for this program by $7.5 million in general revenue-related funds for fiscal 2012-13.)

Texas Guaranteed Student Loan Corporation (Art. 53). Art. 53 would reduce the Texas Guaranteed Student Loan Corporation's board of directors from 11 to nine directors and remove the comptroller from the board. The governor would be required to appoint all of the members, including four members – instead of five – with knowledge or experience in finance. The governor would designate the chairman from among the board's membership, rather than the board electing the chairman. The chairman and vice-chairman could be redesignated, in addition to being reelected, as applicable.

Leases of public land for mineral development (Art. 54). The bill would remove the involvement of the comptroller in issues regarding state mineral funds outside the treasury for Texas A&M University System, Texas State University System, Texas Tech University, and Texas A&M Kingsville. The commissioner of the General Land Office would transmit all payments received for the these entities for income from investment of the special mineral investment fund, royalties, leases and all other payments directly to their governing boards, rather than the comptroller, similar to other state mineral funds. This article would take effect September 1, 2011.

SUPPORTERS:

Tuition exemption (Art. 49). Limiting eligibility for the educational aide tuition exemptions is estimated to reduce state costs for this program by $7.5 million in general revenue for fiscal 2012-13.

The Educational Aide Exemption Program exempts certain educational classroom aides from tuition and some fees. Awards vary based on the number of hours taken by the student and the relative costs at the institution. The 81st Legislature appropriated about $28.7 million to this program for fiscal 2010-11. In the current budget climate, it would be proper to target this small financial aid program toward people seeking certification in specific subject areas, such as bilingual education, math, and science that are experiencing critical teacher shortages.

The shortage of teachers in critical areas is forcing otherwise unqualified teachers into these subject areas. If there are shortages in certain subject areas, it would make sense to find ways to help a teacher attain the necessary certification to address the shortage. The tuition exemption would offer an incentive for teachers to work in disadvantaged schools

OPPONENTS: **Tuition exemptions (Art. 49).** The bill would eliminate tuition exemptions for those who were seeking certification in subject areas not deemed to have a critical shortage of teachers. This could deny or limit access to those individuals.

SALES TAXES

DIGEST: **Prepayment of sales taxes (Art. 11).** Art. 11 of CSSB 1 would require a business that collects sales tax to make a prepayment of sales taxes due in September 2013. The prepayment would be 25 percent of the amount of taxes due in August 2013 and would be counted as a credit on sales taxes due in September 2013. (According to the fiscal note, this change would add $231.2 million in general revenue in fiscal 2012-13.)

Requiring retailers engaged in business in Texas to collect sales taxes (Art. 29). Art. 29 would expand the definition of a retailer engaged in business in Texas for purposes of collecting sales taxes to include a retailer holding a substantial ownership interest in, or owned by, an entity with a location in Texas from which business was conducted if:

- the retailer sold the same or a substantially similar line of products as the person with the location in Texas and sold those products under a business name that was the same or substantially similar to the business name of the person with the location in Texas; or
- the facilities or employees of the person with the location in Texas were used to advertise, promote, or facilitate sales by the retailer to consumers or perform any other activity on behalf of the retailer intended to establish or maintain a marketplace for the retailer in Texas, including receiving or exchanging merchandise.

The definition also would include an entity holding a substantial ownership interest in another entity that had a distribution center, warehouse, or similar location in Texas and delivered property sold by the retailer to consumers.

SB 1 would expand the definition of a seller or retailer to include a person or business who, under an agreement with another person, was:

- entrusted with possession of tangible personal property with respect to which the other person had title or another ownership interest; and
- authorized to sell, lease, or rent the property without additional action by the person having title to or another ownership interest in the property.

The bill would define “ownership” as direct, common, or indirect ownership through a parent entity, subsidiary, or affiliate. “Substantial” would mean an ownership interest of at least 50 percent.

Any additional tax revenue raised by this article would be deposited in the Property Tax Relief Fund. The article would take effect on January 1, 2012 and would expire on September 1, 2017. (According to the fiscal note, this change would add $16 million in general revenue in fiscal 2012-13.)

Sales for resale (Art. 10). Art. 10 would exempt from the sales tax purchases of personal property that were to be transferred to the federal government as part of performing a contract or a subcontract with the federal government. (According to the fiscal note, this change would add $150 million in general revenue-related funds in fiscal 2012-13.)

Sales tax holiday dates (Art. 32). Art. 32 would change the date of the sales tax holiday weekend from the third Friday in August to the Friday before the eighth day preceding the earliest date on which any school district may begin instruction.

Place of business for sales tax purposes (Art. 44). The bill would amend the definition of “place of business” for the purposes of municipal sales and use taxes to exclude an outlet, office, or any location contracting to process purchase orders or similar records, including an office operated for the purpose of buying and selling taxable goods to be used by a retail business, if the comptroller determined it existed to avoid the tax or to rebate a portion of the tax to the contracting business.

SUPPORTERS SAY:

Sales tax speed-up (Art. 11). Art. 11 of CSSB 1 would allow a one-time acceleration of tax payments to boost general revenue by $231.2 million during the upcoming fiscal biennium that would help pay for essential programs like education and health care. Businesses would make a prepayment, but they would receive a credit on that payment in the next tax period. While the prepayments would not be painless for businesses to make, they would be the lesser evil when compared to tax increases or further cuts in essential state programs. Legislators should use every tool available to fund spending priorities essential to the state. Texas businesses realize that certain investments must be made in public services in order to keep the economy healthy and demand strong for their goods and services

Nexus (Art. 29). Art. 29 would clarify existing law requiring businesses that have a physical presence in Texas to collect sales tax on their sales to Texas customers. Currently, some businesses that sell to Texas customers attempt to skirt the statutory definition of doing business in Texas through creative corporate and ownership structures, in which certain business aspects are fulfilled by companies present in Texas while the taxable sales are performed by related out-of-state companies.

Texas only may require those businesses with a physical presence in the state to collect sales taxes. In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the U.S. Supreme Court prohibited states from requiring sellers to collect sales tax on interstate shipments unless the seller had a physical presence or “nexus” in the state where delivery occurred. Quill stemmed from a case concerning mail-order catalogs. However, since 1992, the number of sellers making remote sales to customers online has grown exponentially.

Art. 29 is narrowly drafted and would deem retailers as being physically present in Texas only if they had more than 50 percent control of a business entity in the state where the retailer sold substantially the same product line as the subsidiary and did so under substantially the same business name. The bill also would cover out-of-state retailers more than 50 percent controlled by a Texas business.

OPPONENTS SAY:

Sales tax speed-up (Art. 11). Moving up the date when businesses must remit sales taxes to the state would be hard on Texas businesses during a rough economy. Businesses collect sales taxes on behalf of the state from their customers when they make a sale. Certain small businesses are able to balance their books only by floating the collected taxes before remitting them to the state. While this may not be the best way for these businesses to deal with state taxes, many do, and if the state collected early, it would deny them the ability to use those funds as part of their cash flow.

Nexus (Art. 29). Art. 29 of CSSB 1 would regulate Internet companies that are regulated more appropriately by Congress. Internet commerce provides a textbook case of the issues entangling interstate and international commerce. But the U.S. Constitution assigns the regulation of interstate and international commerce to the federal government. Piecemeal state statutes complicate an already byzantine system of sales taxes and regulations with which retailers must comply when doing business in multiple jurisdictions.

NOTES:

The governor vetoed HB 2403 by Otto, a bill enacted during the regular session that contained the stand alone nexus provisions, on May 31. Art. 29 of CSSB 1 differs from HB 2403 in that any additional tax revenue collected would be applied to the Property Tax Relief Fund.

FRANCHISE TAXES

BACKGROUND:

(Art. 35) Businesses with revenue less than $1 million currently are exempt from the franchise tax. This exemption will be lowered on January 1, 2012, to cover only those with less than $600,000 in revenue.

DIGEST:

Extension of franchise tax exemptions for small businesses (Art. 35). Art. 35 of CSSB 1 would extend, for fiscal 2012-13, the small business franchise tax exemption for businesses with less than $1 million in revenue. This article would take immediate effect if the bill was passed by a two-thirds vote of each house of the Legislature. (According to the fiscal note, this change would cost $149.9 million in general revenue-related funds in fiscal 2012-13.)

Franchise tax credits carryforward (Art. 30). Art. 30 of CSSB 1 would allow franchise credits that existed before the franchise tax was remade into a tax on a business' margins in 2006 to carry forward until 2016.

(According to the fiscal note, this change would result in a loss of $6.8 million in general revenue-related funds in fiscal 2012-13.)

Taxing apparel rental businesses as retailers under the franchise tax (Art. 50). Art. 50 would add apparel rental activities to the definition of "retail trade" for franchise tax purposes. The bill would define "apparel rental activities" as those classified as Industry 5999 or 7299 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget. This article would take effect on January 1, 2012, and would only apply only to a report originally due on or after that date. (According to the fiscal note, this reclassification would result in a loss of $200,000 in franchise tax revenue in fiscal 2012-13.)

SUPPORTERS SAY:

Small business franchise tax exemption (Art. 35). Art. 35 of CSSB 1 would deliver targeted tax relief to small businesses, the group affected by the franchise tax that most needs relief during the recession. Allowing their taxes to rise would hinder the capacity of these small businesses to expand their businesses and hire more workers. Historically, small businesses are responsible for most new job creation. Extending the small business exemption from the franchise tax would allow them to continue this vital role.

OPPONENTS SAY:

Small business franchise tax exemption (Art. 35). This article would cost millions of dollars in lost general revenue for the next biennium. According to the LBB, SB 1 would result in a loss of $149.9 million. A cut in general revenue of this size would reduce the state's ability to fund critical public services. Moreover, during an economic downturn, public spending on critical needs would better stimulate the economy than would tax cuts for business.

PROPERTY TAXES

DIGEST:

Taxing certain stored property (Art. 47). Art. 47 of CSSB 1 would narrow the definition of property tax-exempt goods-in-transit to cover only goods stored under a contract for bailment in public warehouses not in any way owned or controlled by the owner of the stored goods.

Real property valuation for land used to keep bees (Art. 43). SB 1 would amend the meaning of "agricultural use" to include the use of land to raise or keep bees for pollination or for the production of human food or other tangible products having a commercial value, provided that the land used was not less than five or more than 20 acres.

Quarterly property tax payments for surviving spouses of disabled veterans (Art. 34). SB 1 would allow unmarried surviving spouses of deceased disabled veterans to pay property taxes on their homesteads in quarterly payments.

Articles 34 and 47 would take effect on January 1, 2012, and Art. 43 would apply beginning January 1, 2012.

SUPPORTERS SAY:

Stored property (Art. 47). In 2001, the 77th Legislature enacted, and voters endorsed, SJR 6 by Duncan, authorizing the Legislature to exempt from ad valorem taxation all "goods-in-transit." The 80th Legislature in 2005 enacted HB 621 by Chavez to implement the exemption.

HB 621 contained provisions inconsistent with constitutional language authorizing the tax exemption. Language on the arrangement under which property must be held to qualify for the exemption was broader than was provided for by the constitutional amendment, resulting in a more expansive application of eligibility than originally intended. Because the exemption is local option, almost all local taxing entities have chosen not to implement it because the overly broad interpretation would be too great a hit to tax revenues.

Art. 47 would clarify that only goods held under a contract for bailment by a public warehouse operator qualified for property tax exemption. This would provide greater consistency between the enabling statute and the Constitution. It would more accurately reflect the original intent and more precisely define when goods-in-transit qualified for the exemption. This would allow more local taxing entities to adopt the exemption and provide important tax relief to the warehousing industry and businesses that use them.

Bees (Art. 43). Honey bees are essential to agriculture in Texas because they are responsible for pollinating many species of plants and crops. Also, honey is designated as an agricultural product in the state. Many Texas crops would be at risk without honey bees. Those who use their land to raise honey bees should have the same opportunity for an agricultural tax exemption as those whose crops rely on honey bees for pollination. Art. 43 of CSSB 1 could encourage more people to take up raising honey bees, for which there is a great need in the state.

The acreage parameters in the bill would help to ensure that people did not exploit the open-space land designation for tax purposes. A minimum of five and maximum of 20 acres were found to be the optimal parameters for a legitimate honey bee operation.

OPPONENTS SAY:

Stored property (Art. 47). Changing the definition of stored goods in transit could cause more taxing jurisdictions to adopt its exemption. This would reduce the revenue local governments had to provide essential services.

Bees (Art. 43). Under Art. 43, the open-space land designation could be exploited for tax purposes. A person with a single hive on their property should not qualify for an agricultural tax exemption.

The bill could result in reduced property tax appraisals, which would create a cost to local governments from reduced revenue and to the state through the school funding formula.

ALCOHOL AND TOBACCO TAXES

DIGEST:

Prepayment of alcohol taxes (Art. 8). Art. 8 of CSSB 1 would require that permittees and licensees who were liable to pay alcoholic beverage taxes on liquor, ale and malt liquor, beer, or mixed beverages to make a prepayment on their alcoholic beverage taxes due in September 2013. The bill also would require permittees authorized to sell alcoholic beverages on planes and trains to make a prepayment. The prepayment would be 25 percent of the amount of taxes due during August 2013 and would be counted as a credit on alcoholic beverage taxes due in September 2013. (According to the fiscal note, this article would result in a gain of $17.6 million in general revenue in fiscal 2012-13.

Cigarette tax stamping allowance (Art. 9). Art. 9 would lower from 3 percent to 2.5 percent the discount distributors receive on the cost of cigarette stamps in return for placing the stamps on cigarette taxes on behalf of the state. (According to the fiscal note, this change would result in an additional $11.6 million in general revenue in fiscal 2012-13.

SUPPORTERS SAY:

Alcohol tax speed-up. Art. 8 of CSSB 1 would allow a one-time acceleration of mixed-beverage tax payments to boost general revenue during the upcoming fiscal biennium that would help pay for essential programs like education and health care. Businesses would make a prepayment, but they would receive a credit on that payment in the next tax period. While the prepayments would not be painless for businesses to make, they are the lesser evil when compared to tax increases or to further cuts in essential state programs. Legislators should use every tool available to fund spending priorities essential to the state. Texas businesses realize that certain investments must be made in public services in order to keep the economy healthy and demand strong for their goods and services.

Cigarette tax stamping allowance. Changing the amount of the cigarette tax stamping allowance would not be a tax increase. The state issues a subsidy to help cover the cost of implementing cigarette taxes. Cigarette distributors have been affixing tax stamps onto packages of cigarettes for decades. Improvements in automation and tracking mean the cost of implementing the tax grows smaller over time. Distributors would not be significantly impacted by a reduction in this state subsidy.

OPPONENTS SAY:

Alcohol tax speed-up. Art. 8 would be hard on Texas businesses during a rough economy. Businesses collect mixed-beverage taxes on behalf of the state from their customers when they make a sale. Certain small businesses are able to balance their books only by floating the collected taxes before remitting them to the state. While this may not be the best way for these smaller businesses to deal with state taxes, many do, and if the state collects early, it denies them the ability to use those funds as part of their cash flow.

Cigarette tax stamping allowance. By reducing the amount the cigarette tax stamp rebate, the Legislature would, in effect, raise taxes on the cigarette distributors. This increase would make the already arduous task of collecting cigarette taxes on behalf of the state even more expensive for these businesses during a down economy.

MOTOR FUELS TAXES

DIGEST:

Remittance of certain motor fuels taxes (Art. 7). Art. 7 of CSSB 1 would prohibit the comptroller from transferring gasoline and diesel tax revenue from general revenue to the Available School Fund and the State Highway Fund as required by law before fiscal 2013. It also would require licensed gasoline and diesel distributors and importers to prepay 25 percent of taxes for July 2013 by August 30, 2013. An offsetting credit would be available in September of the following fiscal year. Provisions governing motor fuels taxes would expire September 1, 2015. (According to the fiscal note, for fiscal 2012-13 the motor fuels tax speed-up would increase general revenue by $67.1 million and the delay in the motor fuels tax transfer would increase general revenue-related funds by $403 million.)

SUPPORTERS SAY:

Motor fuels tax delay. Art. 7 of CSSB 1 would make available about $470 million for fiscal 2013 by altering certain motor fuels tax payments without raising taxes or imposing an undue burden on fuel distributors and importers. The bill would free up $403 million for fiscal 2012-13 simply by delaying by a few days the date that the comptroller transfers motor fuels tax collections from general revenue to the Available School Fund and State Highway Fund.

The Legislature has turned to similar measures in the past and previously delayed the payment of motor fuels taxes to augment revenue in 1999. These measures provide a temporary, one-time boost to revenue without any tax or fee increases. The bill would include a sunset provision so the Legislature could restore the original transfer and payment schedules when fiscal conditions improved.

Motor fuels tax speed-up. Motor fuels tax transfer delays and the motor fuels tax speed-up in Art. 7 should be reserved for times of clear and pressing need, such as would be required in fiscal 2012-13. It would raise an additional $67.1 million by hastening a portion of motor fuels tax payments required from motor fuels distributors and importers to accrue in fiscal 2013 instead of fiscal 2014. The motor fuels tax prepayment would be offset by an equivalent credit for the succeeding month. While the prepayments would not be painless for businesses to make, they are the lesser evil when compared to tax increases or further cuts in essential state programs. Legislators should use every tool available to fund spending priorities essential to the state. Texas businesses realize that certain investments must be made in public services in order to keep the economy healthy and demand strong for their goods and services.

OPPONENTS SAY:

Motor fuels tax delay. Art. 7 of CSSB 1 would resort to "smoke and mirrors" motor fuels tax delays to create the appearance that the state has an additional $403 million to spend in fiscal 2012-13. The additional revenue generated would be debited from the following biennium. These accounting gimmicks postpone difficult decisions, gambling that the state's fiscal position will substantially improve in the next two years. If economic and fiscal conditions do not improve in that time, then the delays only will serve to amplify the challenges ahead. The Legislature should confront budgetary shortfalls now and either raise revenue or cut spending further so that appropriations fall within means.

TAX RECORDS AND PAYMENTS

DIGEST:

Tax Records kept by tax payers (Art. 3). Art. 3 of CSSB 1 would amend record requirements for all entities from which the comptroller collects taxes to require that records be kept at least four years or during the period when any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or during the period an administrative hearing or a judicial proceeding was pending to determine the amount of tax, penalty, or interest that was to be assessed, collected or refunded. It also would require taxpayers to produce contemporaneous records and supporting documentation appropriate to enable verification of the amount of tax, penalty, interest or fee that may be owed or refunded for the period in question. It would define contemporaneous records and supporting documentation to include invoices, vouchers, checks, shipping records, contracts, and other written documentation reflecting legal relationships and taxes. Summary records without supporting contemporaneous records would not be sufficient to substantiate the claim. It would add that taxpayers contesting a state tax or seeking a refund had to produce contemporaneous records and supporting documentation to substantiate their claims. (According to the fiscal note, this article would result in a gain of $11 million in general revenue in fiscal 2012-13.)

Penalties for failure to report or remit certain taxes or fees (Art. 12). Art. 12 would impose a $50 penalty on any taxpayer required to pay a tax or file a report on the tax who failed to do so. The penalty would apply to sales taxes, motor vehicle rental receipts, seller financed sales of motor vehicles, hotel taxes, motor fuel taxes, and franchise taxes. This article would take immediate effect if it was passed by a two-thirds vote of each house. (According to the fiscal note, these fines would generate an additional $13.2 million in general revenue in fiscal 2012-13.)

UNCLAIMED PROPERTY AND COMPTROLLER DUTIES

BACKGROUND: **(Art. 4)** In Texas, after a dormancy period, unclaimed property is turned over to the Comptroller's Office, which tries to locate the rightful owner. Property is declared unclaimed after a set dormancy period that starts after the last act of ownership. This is usually defined as a transaction or communication with the business holding the property.

The Property Code and comptroller rules set the dormancy periods for different types of unclaimed property. Property Code, sec. 72.103, sets the dormancy period for money orders at seven years. Sec. 73.101 sets the dormancy period for bank accounts at five years. Comptroller rule sets the dormancy period for utility deposits at three years.

(Art. 46) The comptroller collects data from the Department of Public Safety, the Employee Retirement System, the Teacher Retirement System, and the Texas Workforce Commission every year to assist the comptroller's efforts to identify and locate the rightful owners of unclaimed property.

DIGEST: **Unclaimed Property (Art. 4).** Art. 4 of CSSB 1 would reduce the dormancy period for unclaimed money orders from seven years to three, bank accounts from five years to three, and utility deposits from three years to one. The bill would define utility deposits. The bill also would increase the fee per month a holder of an unclaimed money order may charge for maintenance from 50 cents to one dollar. (According to the fiscal note, this article would result in a total gain of $315.7 million in fiscal 2012-13, with one-time gains of $200 million from moving the transfer deadline from November 1 to July 1 and $77.7 million from reducing the dormancy period, plus $38 million from unclaimed securities liquidation.)

Quinquennial reporting of certain information for unclaimed property (Art. 46). SB 1 would allow the comptroller to collect data for unclaimed property searches every five years from the Department of Public Safety, the Employee Retirement System, the Teacher Retirement System, and the Texas Workforce Commission. These agencies would begin providing information to the comptroller every five years beginning in 2016. (According to the fiscal note, this change would result in savings of $400,000 in general revenue in fiscal 2012-13.)

Powers and duties of the comptroller (Art. 14). In matters related to the comptroller's authority to deduct for employee indebtedness, this article would change the definition of compensation to instead use the definition used in recovering excess compensation (eliminating references to payments for accrued vacation and sick time). For the execution of simplified depository agreements with institutions, the article would eliminate criteria of institutions agreeing to hold state deposits of $98,000 or less.

Electronic publication of comptroller reports (Art. 15). Art. 15 would require the comptroller to publish property tax information and reports online, including appraisal manuals, explanations of taxpayer remedies, and biennial reports on the taxable value of property in Texas by category.

Moving uniform grant and contract management into the Comptroller's Office (Art. 42). Art. 42 would move responsibility for uniform contract management to the Comptroller's Office from the Governor's Office.

SUPPORTERS SAY:

Unclaimed property (Art. 4). SB 1 would implement one of the LBB's recommendations from the January 2011 Texas State Government Effectiveness and Efficiency Report (GEER). Implementing this recommendation would raise an additional $200 million in general revenue in fiscal 2012. According to the GEER recommendation, reducing the dormancy period to three years for bank accounts, matured certificates of deposit, and money orders, and to one year for utility deposits would improve the comptroller's unclaimed property return rates to rightful owners. Return rates deteriorate the longer property remains unclaimed. Owners are more likely to be in the same area and to use the same name as before their property was turned over to the state. Increasing the likelihood of finding owners would improve return rates and could encourage others to search the comptroller's unclaimed property website.

The bill would increase the fee per month the holder of a money order could charge in order to allow holders to recover revenue lost under the bill that they receive under current law. Current law has a dormancy period of seven years. This allows holders a relatively long period to accrue interest and fees off of unclaimed money orders. The industry in Texas is dependent on the long period and fees to make a profit because the initial fees on money orders are relatively low in Texas compared to other states. The bill would increase the allowable monthly fee to $1 in order to make up for interest and fee periods lost by compressing the dormancy period from seven to three years.

OPPONENTS SAY:

Unclaimed property (Art. 4). Some industries might lose valuable fees or interest on unclaimed property because the dormancy period would be shortened under the bill. These industries often rely on these funds as a basic part of their business model.

INSURANCE

DIGEST:

Premium tax credits (Art. 2). Art. 2 of CSSB 1 would suspend credits for insurers against their premium taxes for regulatory examination and evaluation fees paid in calendar years 2012 and 2013. This change would affect property and casualty insurers, health insurers and HMOs, title insurers, and other domestic insurers. (According to the fiscal note, this change would raise an additional $7.1 million in general revenue in fiscal 2012-13.)

Surplus lines and independently procured insurance (Art. 16). Art. 16l would expand the definition of an insurance premium subject to premium taxes. It would state that premium taxes would not be imposed on nonadmitted insurance premiums, consistent with the federal Nonadmitted and Reinsurance Reform Act of 2010. It would authorize the comptroller to establish by rule an alternate basis for taxation for the purpose of achieving uniformity and would make adjustments for taxes on multistate policies in which Texas was in a cooperative agreement or compact with another state on the allocation of the tax.

SUPPORTERS SAY:

Premium tax credits. Art. 2 of CSSB 1 would close a loophole that in effect pays with general revenue what private insurer examination fees are intended to pay. Insurance carriers now are required to pay a fee to cover the Texas Department of Insurance’s (TDI’s) examination of the carriers’ regulatory compliance. Insurers receive credit against their premium tax payments for their payment of examination fees, which in effect means that general revenue ends up paying for the examination costs. These provisions also would incentivize insurers to maintain full compliance with state laws and regulations, since the size of their examination fees are related to the size of the problems found in conducting the examinations.

This change would implement an LBB recommendation found in the *Government Effectiveness and Efficiency Report*. It still would authorize insurers to credit their assessments against their owed premium taxes. The fiscal implications of these amendments have been assumed under the general appropriations bill, and the fiscal note assumes that the fee credits earned before the effective date of the bill would be applicable to premium tax liabilities in fiscal 2012.

OPPONENTS SAY:

Premium tax credits. By removing insurers' ability to credit against their premium taxes the fees the state charges for examining them, the bill would in essence increase taxes on insurers, which could ultimately increase consumer rates. Additionally, since the Legislature in the regular session enacted provisions in SB 1291 by Hegar authorizing the Texas Department of Insurance to spend fees without a budgetary appropriation, the department could be incentivized to increase fee revenues at the expense of insurers.

ECONOMIC DEVELOPMENT

DIGEST:

Texas Back to Work Program (Art. 33). Art. 33 of CSSB 1 would authorize the governor to transfer money from the Texas Enterprise Fund to the Texas Workforce Commission (TWC) to fund the Texas Back to Work (TBTW) program. Art. 33 also would establish the TBTW program in statute.

Homeless Housing and Services Program (Art. 41). Art. 41 would allow the Texas Enterprise Fund to be used for the Texas Homeless Housing and Services Program in the Texas Department of Housing and Community Affairs (TDHCA). It also would also establish the program in statute.

NOTES:

Transfer from the Texas Enterprise Fund. Provisions authorizing the governor to transfer funds from the Texas Enterprise Fund to TWC's Texas Back to Work program and TDHCA's Homeless Housing and Services Program would implement appropriations authorized in the Senate-passed version of SB 2 by Ogden. The Senate version of SB 2 — but not the House committee substitute — would add language authorizing the governor to transfer $20 million to each program. HB 1 by Pitts, the general appropriations act, included a contingency rider that would have required the governor to transfer $20 million to TBTW upon enactment of SB 1811 or similar legislation authorizing this transfer that failed to pass during the regular session.

CORRECTIONAL MANAGED HEALTH CARE

BACKGROUND:

Correctional managed health care. (Art. 40) Health care delivery to prison inmates is based on a managed care model. TDCJ contracts through the Correctional Managed Health Care Committee (CMHCC) with the University of Texas Medical Branch (UTMB) at Galveston and the Texas Tech University Health Sciences Center (TTUHSC) to provide the statewide managed care network. It is similar to health maintenance organizations operating in the open market and offers a full range of medical, dental, and psychiatric services. The CMHCC's appropriation is within TDCJ's budget. UTMB's contract covers about 120,200 of the state's about 150,000 inmates, and TTUHSC's contract covers the rest.

The CMHCC has nine members, including:

- two who are employed full-time by TDCJ, with at least one a physician, appointed by TDCJ's executive director;
- two who work full-time for UTMB, with at least one a physician, appointed by the president of the medical branch;
- two who work full-time for TTUHSC, with at least one a physician, appointed by the president of the university; and
- three public members appointed by the governor, with at least two being doctors.

The public members appointed by the governor serve six-year terms, and other members serve at the will of the appointing official.

DIGEST:

Correctional managed health care. (Art. 40) Responsibility for contracting with health care providers for the managed health care system for inmates in TDCJ would be transferred to TDCJ from the Correctional Managed Health Care Committee (CMHCC). Art. 40 would reduce the CMHCC from nine members to five voting members and one non-voting member, including:

- one employed full time by TDCJ, appointed by the TDCJ director;
- one physician employed full time by UTMB, appointed by the director of the medical branch;
- one physician employed full time by TTUHSC, appointed by the university president;
- two public members appointed by the governor with at least one being a physician; and
- the state Medicaid director, as an ex officio, non-voting member.

Terms of public committee members would be reduced from six years to four, with other members continuing to serve at the will of the appointing official.

Monitoring UTMB and TTHSC expenditures would be done by the committee, with TDCJ.

TDCJ, in cooperation with the committee, could contract with an entity for a biennial review of managed health care plan expenditures. The review would have to be conducted by an individual or firm with experience in auditing the state's Medicaid and other medical expenditures. By September 1 of each even-numbered year, TDCJ would submit a report to the health care providers, the Legislative Budget Board, the governor, the lieutenant governor, and the speaker of the House.

The current CMHCC would be abolished November 30, 2011, and appointments to the new committee would be made by that date.

Longevity pay for prosecutors. (Art. 36) Under Art. 36, if sufficient funds were not available for longevity pay supplements for assistant prosecutors in a given period, a county would not be entitled to the balance of funds at a later date. The program would be suspended to the extent of any insufficiency.

GENERAL GOVERNMENT

DIGEST:

Tobacco settlement funds (Art. 27). The bill would authorize the Legislature to expand the use of three tobacco settlement funds, including the corpus and available earnings of the funds, to pay the principal or interest on a bond issued on behalf of the Cancer Prevention and Research Institute of Texas. The permanent funds are the Permanent Fund for

Health and Tobacco Education and Enforcement; the Permanent Fund for Children and Public Health; and the Permanent Fund for Emergency Medical Services and Trauma Care. This provision would not authorize an appropriation made to the funds that was not consistent with the use of the money in accordance with current law.

Art. 27 would take effect immediately on receiving a two-thirds vote in both houses. Otherwise, it would take effect on the 91st day after the last day of the session. (According to the fiscal note, this change would result in an estimated gain to general revenue-dedicated funds of $78.1 million for fiscal 2012-13.)

Fees for review of comprehensive development agreements (Art. 20). The bill would require a toll project entity to pay a nonrefundable examination fee to the attorney general upon submitting each proposed CDA for review. The attorney general would have to provide a legal sufficiency determination within 60 days of receiving the examination fee and a transcript of the proceedings associated with the agreement. The attorney general could extend the review period by 30 days by notifying the toll project of the reason for the delay.

The attorney general would have to set the examination fee by rule in an amount that could not exceed reasonable attorney's fees charged for similar services in the private sector. The fee could not be set based on a percentage of the cost of a toll project.

The bill also would require payment of an administrative fee to the attorney general for certain legal services and would allow reasonable fees for electronic filing of certain documents. (According to the fiscal note, the increased fee collections under this article would produce $3.9 million in general revenue in fiscal 2012-13.)

Continuing legal education for attorney general staff (Art. 23). Attorneys employed with the attorney general would automatically receive state bar credit for continuing legal education requirements, except requirements governing professional responsibility and legal ethics. The attorney general would recognize and administer continuing education requirements for its attorneys. The provisions would expire January 1, 2014. (According to the fiscal note, this change would produce savings of $430,543 in fiscal 2012-13.)

Texas Preservation Trust Fund Account (Art. 21). Art. 21would allow money in the Texas Preservation Trust Fund account to be used to pay the operating expenses of the Texas Historical Commission. The bill would repeal provisions related to investment and distribution of funds by the comptroller. The bill would require the comptroller and the Texas Historical Commission to enter into a memorandum of understanding to facilitate the conversion of trust fund assets into cash in a way that resulted in the least revenue loss to the state. This article would take effect November 1, 2011. (According to the fiscal note, this change would result in a one-time gain of $10.1 million in general revenue-dedicated funds in fiscal 2012.)

Department of Information Resources programs (Art. 22). SB 1 would allow revenue from fees collected under current law for statewide technology center services to be appropriated to the Department of Information Resources (DIR) for the following:

- developing statewide information resources technology policies and planning for statewide technology centers and Texas computer network security systems; and
- providing shared information resources technology services.

For consolidated telecommunications system charges collected by DIR under current law, the bill would require DIR to set and charge a sufficient fee to each entity that received services to cover direct and indirect costs of providing the telecommunications service. SB 1 would allow revenue from these fees to be appropriated to DIR for the purposes listed above.

Fee amounts in excess of paying the bills of the consolidated telecommunications system and the centralized capitol complex telephone system no longer would be transferred to the statewide network applications account as under current law.

This article would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session. (According to the fiscal note, this article would produce a total gain of $7.6 million in fiscal 2012-13.)

Lease of state-owned parking spaces (Art. 18). Art. 18 would allow the Texas Facilities Commission (TFC) to lease state-owned parking spaces in

Austin to private individuals, if TFC determined the spaces were not needed for nearby state employees or state government visitors. The money earned through the leases would go to general revenue. TFC also would be allowed to lease blocks of state-owned parking lots or garages to local governments or higher education institutions, if TFC determined that the block of parking would not be needed for nearby state employees and state government visitors. The money earned through the leases would go to general revenue. In leasing these spaces, the TFC would have to ensure that the lease did not restrict existing uses of the parking spaces, including special event parking for institutions of higher education. The TFC would have to give leasing preference to individuals who currently or previously leased the parking space.

Art. 18 would require TFC to report the effectiveness of these parking programs to the Legislative Budget Board (LBB) by October 1 of every even-numbered year. The report would have to include:

- the yearly revenue generated;
- the yearly administrative and enforcement costs;
- yearly usage statistics for each program; and
- any initiatives and suggestions by TFC to modify the lease programs' administration or increase their revenue.

This article would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session. (According to the fiscal note, this change would produce a net gain of $1.6 million in fiscal 2012-13.)

Veterans Commission analysis of public assistance reporting information data (Art. 25). Art. 25 would require that money appropriated to the Texas Veterans Commission through the Fund for Veterans' Assistance be used to analyze and investigate data gathered by the federal Public Assistance Reporting Information System. The bill would delete a provision allowing the money to be used to improve veterans' assistance programs.

Regional Poison Control Center Management Controls and Efficiency (Art. 26). The Commission on State Emergency Communications could standardize the operation of and implement management controls to improve the efficiency of regional poison control centers. If the commission implemented such management controls, it would have to submit a plan to governor and the Legislative Budget Board no later than October 31, 2011.

Sexual Assault Program Fund revisions (Art. 39). Art. 39 would remove the $25 million biennial cap on the revenue generated by the fee on sexually oriented businesses deposited to the credit of the Sexual Assault Program Fund. It would expand possible uses of the fund to include grants to health science centers and related tax-exempt nonprofit entities for research related to the preventions and mitigation of sexual assault and Internet Crimes Against Children Task Force locations recognized by the U.S. Department of Justice. The fund also could be used for Department of Family and Protective Services programs and research related to sexual assault prevention and intervention. Entities receiving money from the fund would be required to report to the Legislative Budget Board by December 1 of even-numbered years on the purposes and results of the funding. The comptroller would be required to continue to collect the fee on sexually oriented businesses until a final judgment on appeal found it to be unconstitutional.

Surplus and salvage property (Art. 28). Art. 28 would change certain rules regarding the disposal by a state agency of surplus and salvage property. The bill would require state agencies to report to TFC transactions involving disposal of surplus or salvage property. This article would allow TFC to contract with a private vendor to assist in the sale of surplus and salvage property. The bill would require that surplus or salvage data processing equipment, if not transferred to another state agency, be donated to a school, an assistance organization, or the Texas Department of Criminal Justice.

Voter registration (Art. 13). The bill would amend the Election Code to consolidate the administration of financing the voter registration program at the Secretary of State's Office and remove the involvement of the comptroller in issues regarding noncompliant registrars, registration updates, and payments to registrars.

Publish session laws electronically (Art. 19). Art. 19 would eliminate the requirement that the general and special laws and resolutions approved each session to be printed and distributed to the governor, the lieutenant governor, the speaker, the Texas Legislative Council, the courts of appeals, county law libraries, the Legislative Reference Library, the State Law Library, and the Texas State Library

As soon as practicable after each legislative session, the secretary of state would have to electronically publish and maintain the session laws. The electronic publication would have to be available by an electronic link on the agency's website. The electronic publication would have to be indexed by bill number and assigned chapter number. The change in law would not apply to a contract for publication of session laws already in effect before the effective date of the bill.

This article would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the session. (According to the fiscal note, this change would save $75,000 each even-numbered year.)

Lobby registration fees (Art. 24). The bill would increase lobby registration fees and registration renewal fees from $100 to $150 for registrants employed by a 501(c)(3), (c)(4), or (c)(6) charitable organization. It would increase the lobbyist registration fee and renewal fee from $50 to $75 for registrants required to register because they were independent contractors whose contingent compensation depended on state agency purchasing decisions. The bill also would increase the lobbyist registration and renewal fee from $500 to $750 for any other registrants. (According to the fiscal note, this change would produce a general revenue gain of $738,500 for fiscal 2012-13.)

SUPPORTERS SAY:

Tobacco settlement funds (Art. 27). It would be appropriate to use tobacco settlement funds to pay for cancer research bonds because the settlement funds were intended to be used to prevent and reduce the incidence of cancer in Texas.

Fees for review of comprehensive development agreements (CDAs) (Art. 20). Art. 20 of CSSB 1 appropriately would allow the attorney general to charge a fee for the time-consuming review of CDA contracts. The attorney general already is required to review these complex multibillion-dollar toll road CDAs to make sure that they meet state law and constitutional requirements. The attorney general started reviewing CDAs in 2008 and reviewed a few each year in 2009 and 2010. The bill would make clear that the fee could not exceed reasonable attorney's fees charged for similar legal services in the private sector, thereby ensuring that the fees would not be disproportionate.

Texas Preservation Trust Fund Account (Art. 21). Art. 20 would result in a one-time estimated general revenue gain of $10,089,461 in fiscal 2012. The revenue gain would result from transferring the Texas Historical Commission's preservation grant funds from the safekeeping trust outside the treasury to a general revenue-dedicated account. Art. 21 would allow the funds to be used for the operating expenses of the commission. Allowing the agency to use the money for operations would be necessary because even after the appropriation of some of these funds for operations, the agency's operations budget would still be cut by about three-quarters from the last biennium.

DIR programs (Art. 22). Art. 22 would transfer the existing fund balance of about $2.6 million from the DIR telecommunications revolving fund to the General Revenue Fund. Funds from the telecommunications revolving fund have been used for cyber-security purposes for years, but this bill would give DIR the explicit legislative authority to use the money for that purpose.

Lease of state-owned parking spaces (Art. 18). Art. 18 would result in an estimated general revenue gain of $887,471 every year by allowing the TFC to lease state parking spaces in Austin to private individuals and local governments and universities. The LBB has noted that on an average daily basis, most state parking spaces are unused. TFC has successfully operated a parking program that allows private individuals to use Austin state garages and parking lots on nights and weekends for a fee. It also would need only one more employee to manage this daytime parking lease program, which would have a significant positive fiscal impact.

Voter registration (Art. 13). Art. 13 would streamline the administration of the state's grant program to help counties meet expenses associated with elections by placing the entire responsibility for the program under the Secretary of State's Office and removing the comptroller's involvement. The program has been in place since the mid-1960s and uses formula funding based on voter registration growth and cancellations to help counties pay for such activities as hiring temporary workers or upgrading equipment. While the SOS administers the program and tallies registration records, it must inform the Comptroller's Office of the registration figures so the comptroller can pay the grantees. This provision would change nothing about the program other than allowing the SOS to make grantee payments.

Publish session laws electronically (Art. 19). CSSB 1 would result in an estimated fiscal gain in general revenue of $75,000 every even-numbered year by discontinuing the hard-copy publishing and distribution of session laws. These savings are assumed in HB 1 from the regular session.

Art. 19 also would require the session laws to be indexed and searchable from the secretary of state's website. The secretary of state has been electronically publishing the session laws in an unsearchable format since the 79th Legislature in 2005, so requiring this searchable format would be the next logical step for improved government accessibility and transparency.

OPPONENTS SAY:

Texas Preservation Trust Fund Account (Art. 21). The Texas Preservation Trust Fund Account should be preserved as a separate account in the safekeeping trust to maximize funding for historical preservation grants as intended. Since 2005, the Texas Historical Commission has awarded over $2 million in grants for historical preservation. Reducing or eliminating grants for brick-and-mortar preservation of historic parks, bridges, and buildings would be detrimental to Texas' cultural history, since few other sources exist for its preservation.

DIR programs (Art.22). DIR now has access to the telecommunications revolving fund to make time-sensitive upgrades to capitol complex phone systems when necessary. Transferring funds from the revolving fund to general revenue could prevent upgrades from happening in a timely manner.

Lobby registration fees (Art. 24). Art. 24 would significantly increase the fee for some lobbyists to register, from $500 to $750. Lobbyists would bear the highest fees of any profession. The purpose of the current law is to encourage registration. The proposed increases could be counterproductive and could result in fewer registrations for those who chose to register because they were close to the spending threshold. Fewer registrations could result in less disclosure, when more disclosure is what should be encouraged.

JUDICIARY

DIGEST:

Juror pay (Art. 38). Art. 38 of CSSB 1 would, for fiscal 2012-13 only, eliminate the statutory rate of $40 currently provided to jurors as reimbursement and would eliminate the $34 reimbursement rate paid by the state to the county to cover a portion of that cost. Instead of referencing a specific dollar amount, the bill would tie the amount paid by the county to a juror and the amount reimbursed by the state to the county to the amounts provided in the general appropriations act.

If reimbursement to a county for juror pay is reduced during the biennium under current law, the bill would allow the comptroller to apportion the payment of the balance owed, and would eliminate the requirement that the comptroller pay the balance owed to the county when sufficient money was available or with the next payment.

Judicial and Court Personnel Training Fund (Art. 5). Art. 5 would change the classification of the Judicial and Court Personnel Training Fund from an account in the state treasury to a dedicated account in the General Revenue Fund. (According to the fiscal note, this fund shift would add a total of $22.4 million to general revenue in fiscal 2012-13.)

Process server certification fees (Art. 37). SB 1 would require the Office of Court Administration to set up a certification division to oversee the regulatory programs assigned to it. The bill also would authorize board members of the Process Server Review Board to receive reimbursement for actual and necessary expenses incurred in traveling and performing official board duties. The board members would not receive salaries or other compensation. (According to the fiscal note, this change would cost $43.200 in general revenue in fiscal 2012-13.)

SUPPORTERS SAY:

Juror pay (Art. 38). This article is a cost containment measure. The changes in the bill would result in a sum certain for juror pay in the general appropriations act that would be paid quarterly to the counties in different amounts, depending on the reimbursement claims coming in each quarter. The comptroller could set by rule a maximum reimbursement of $40 paid for each juror so that a county could get only what it paid out and no more, regardless of the reimbursements filed in that quarter.

Judicial and Court Personnel Training Fund (Art. 5). Reclassifying the fund as a general revenue account would increase general revenue by $11.7 million in fiscal 2012 and by $10.6 million each year thereafter.

OPPONENTS SAY:

Juror pay (Art. 38). Juror pay could be significantly reduced, which would go against the rationale of the $40 a day minimum reimbursement amount intended to encourage jurors to serve. HB 1, the general appropriations act, appropriates only $18.4 million for juror pay in fiscal 2012-13, a reduction from the $21.6 million appropriated for fiscal 2010-11.

NATURAL RESOURCES

BACKGROUND:

Petroleum industry regulation (Art. 6). Water Code, ch. 26 establishes the Petroleum Storage Tank (PST) Remediation Account, which funds the PST Reimbursement Program and the PST State Lead Program. The PST Reimbursement Program reimburses tank owners or operators who perform cleanup of sites contaminated by petroleum product releases from underground and aboveground storage tanks. The PST State Lead Program hires contractors to clean up leaking PST sites where the responsible parties are unwilling or unable to do so or cannot be found or if other more expeditious corrective action is necessary.

Fees assessed on the delivery of a petroleum product on withdrawal from bulk are the primary source of funds to the Petroleum Storage Tank (PST) Remediation Account.

The current fees for the state fiscal year beginning September 1, 2007 through the state fiscal year ending August 31, 2011 are:

- $3.75 for each delivery into a cargo tank having a capacity of less than 2,500 gallons;
- $7.50 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;
- $11.75 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;
- $15.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and
- $7.50 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons.

DIGEST:

Petroleum industry regulation (Art. 6). Art. 6 of CSSB 1 would extend the collection of petroleum product fees indefinitely and would reduce the amounts to be collected. (According to the fiscal note, the fee would generate an estimated $44.8 million to the Petroleum Storage Tank Remediation Fund 655 in fiscal 2012-13.)

Oil and gas regulation (Art. 17). Art. 17 would create a general revenue oil and gas regulation and cleanup fund to be funded by surcharges on existing industry fees. The fund could be used for purposes related to the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, and oil and gas well plugging. The surcharges would be in amounts sufficient to enable the Railroad Commission (RRC) to recover the costs of performing their functions. Art. 17 also would allow for the use of pipeline safety fees for gas utility regulation. (According to the fiscal note, these changes would produce a net positive impact of $56.4 million to general revenue and general revenue-dedicated funds in fiscal 2012-13.)

Texas farm and ranch lands conservation program (Art. 45). Art. 45 would eliminate the 50 percent match requirement for grants under the Texas farm and ranch lands conservation program.

SUPPORTERS SAY:

Petroleum industry regulation (Art. 6). The petroleum product delivery fee that would be indefinitely reauthorized by Art. 6 of CSSB 1 is used by the Texas Commission on Environmental Quality (TCEQ) to fund the remediation of certain sites contaminated by motor fuels released from underground storage tanks and for its related regulatory program. The number of eligible sites has fallen from 2,500 in 2007 to 650 today. Lowering the fee would reflect current needs and ensure resources for TCEQ to accomplish its mission. Reauthorization of this fee is supported by the industry.

Oil and gas regulation (Art. 17). Because the Railroad Commission (RRC) has no statutory authority to add surcharges to existing fees or to vary a tax rate, it must seek additional general revenue appropriations or statutory adjustment of fixed fees for the oil and gas program to meet funding needs. This limits its ability to respond quickly to industry changes, such as expanded drilling in the Barnett Shale and other areas.

Art. 17would allow the oil and gas program to be self-supporting with adjustable surcharges, giving the RRC flexibility to adjust to changing conditions and budgetary needs. The oil and gas industry is aware that more general revenue funds are not available and is willing to accept surcharges for the agency to self-fund.

Texas farm and ranch lands conservation program (Art. 45). Art. 45 would eliminate the 50 percent match requirement for grants under the Texas farm and ranch lands conservation program. This would allow the Texas Farm and Ranch Lands Conservation Council to determine a match requirement.

Fiscal impact of provisions in CSSB 1

Art#	Description	Amount: FY 2012-13	Account
1	deferring FSP payment to fiscal 2014	$ 2,300,000,000	GR
2	GEER**: repeals insurance premium tax credits for TDI exam fees	7,100,000	GR
3	extends time taxpayers must keep certain records	11,000,000	GR
4	GEER**: move unclaimed property transfer deadline to Jul 1 from Nov 1	200,000,000	GR
4	GEER**: reduce various unclaimed property dormance periods	77,700,000	GR
4	GEER**: unclaimed securities liquidation	38,000,000	GR
5	change judicial training fund from other funds to a GR-dedicated account	23,504,000	GR
6	continue petroleum products delivery fee	44,800,000	PSTRF
7	delay transfer of motor fuels taxes from general revenue to Fund 6	403,000,000	GR
7	motor fuels tax speed-up	67,100,000	GR
8	alcohol tax speed-up	17,600,000	GR
9	reduce cigarette tax distributors discount by a half-percent	11,630,000	GR
10	amend Tax Code to redefine sale for resale	150,000,000	GR
11	25 percent prepayment of sales and use tax in fiscal 2013	231,200,000	GR
12	$50 penalty for failing to file certain tax reports	13,150,000	GR
17	require RRC to cover all costs of oil and gas-related activities	27,800,000	GR
17	revisions to oil and gas regulation	56,400,000	GR & GRD
18	GEER**: expanding the lease of state parking facilities	1,600,000	GR
19	eliminate publication of General and Special Laws of Texas	75,000	GR
20	authorize specific fees for the Office of the Attorney General	3,900,000	GR
21	authorize Preservation Trust Fund to be used for Historical Commission	10,089,461	GRD
22	transfer balances from DIR revolving fund to general revenue; other	7,600,000	GR
23	State Bar CLE credit for attorneys employed with OAG	430,543	GR
24	increase lobby registration fees by 50 percent	738,500	GR
27	expand use of tobacco settlement funds to pay bonds	78,100,000	GRD
29-30	revisions to collection and allocation of certain taxes	9,200,000	GR
31	allow comptroller to contract with procurement specialists	16,000,000	GR
35	extend small business franchise tax exemption at $1 million until 2014	(149,900,000)	GR
37	revisions to process servers and process server review board	43,200	GR
43	agricultural tax exemption for beekeeping	indeterminate	
46	data collection from unclaimed property searches	400,000	GR
47	revisions to definition of certain goods in transit	indeterminate	
48	limit AP/IB exam fee subsidies to educationally disadvantaged	12,300,000	GR
49	limiting eligibility for educational aide tuition exemptions	7,500,000	GR
50	revise definition of "retail trade" in the Tax Code	(200,000)	GR
55	revisions to FSP financing and reporting	(11,800,000)	FSP
56	structural changes in the Foundation School Program	4,000,000,000	GR

* includes only items estimated to have a potential fiscal impact

** *Government Effectiveness and Efficiency Report 2011 recommendations*

source: Legislative Budget Board fiscal note

NOTES:

The House committee substitute made numerous changes to the Senate-passed version of the bill, including deleting provisions relating to:

- repeal of the sales and franchise tax rebates from economic development reinvestment zones or tax-abatement agreements under chapters 312 and 313 of the Tax Code;
- process server certification fees;
- repeal of eligibility to redeem early high school graduation credits for students graduating from high school on or after September 1, 2011;
- state contribution rate to the Texas Retirement System;
- General Land Office's coastal erosion reporting requirements;
- voluntary contributions to Texas Parks and Wildlife Department when registering a vehicle;
- limiting state debt payable from the General Revenue Fund;
- charging state employees who use tobacco a premium fee for group health benefits;
- charging an employer enrollment fee for certain health benefits plans;
- the law enforcement and custodial officer supplemental retirement fund;
- requiring the LBB to hold certain public meetings relating to the budget and budget reductions;
- the collection improvement program for court costs, fees, and fines imposed in criminal cases;
- changes to the applicability of the franchise tax and to certain exclusions from taxable revenue for certain business types;
- revising the enterprise and emerging technology funds;
- excluding physical education curriculum from counting towards contact hours used to determine a junior college's proportionate share of the state money appropriated;
- contribution rate computations for the state retirement system; and
- adjusting the mixed beverage tax reimbursement rate for cities and counties.

The House committee substitute also added provisions to the Senate-passed version, including: amending the allocation and uses of fees imposed on certain sexually oriented businesses; making certain petroleum delivery and withdrawal fees the maximum fees provided by statute until TCEQ adopts a fee applicable to the delivery; and revising current provisions so that the commissioner of education has authority to ensure Department of Defense schools districts do not receive more than an 8 percent reduction, should the federal government reduce these schools' appropriations.