HOUSE RESEARCH ORGANIZATION bill analysis | 4/4/2001 | HB 1333 Junell (CSHB 1333 by Junell)

SUBJECT: Supplemental appropriations for fiscal 2001

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 25 ayes — Junell, West, Coleman, Gallego, Glaze, Gutierrez, Hamric, Heflin, Maxey, Moreno, Mowery, S. Turner, Allen, Eiland, Farrar, Flores, Giddings, Hochberg, Janek, T. King, Luna, McReynolds, Pickett, Pitts, Smith

0 nays

2 absent — Delisi, Puente

WITNESSES: For — None

Against — None

On — Charles Bell, Leilani Rose, Texas Department of Health; Brad Cargile, Ron Josselet, State Office of Risk Management; Don Gilbert, Health and Human Services Commission; Billy Hamilton, Comptroller of Public Accounts; Wayne Scott, Texas Department of Criminal Justice

DIGEST: CSHB 1333 would transfer unencumbered fiscal 2001 funds from certain state agencies to other state agencies, primarily to the Texas Department of Health (TDH), the Texas Department of Criminal Justice (TDCJ), and the State Office of Risk Management (SORM), for the remainder of fiscal 2001. It also would make a new fiscal 2001 appropriation to TDH of $99 million in interest from an account held by the comptroller and would appropriate $68.2 million in general revenue for fiscal 2002 to six state agencies from which unencumbered fiscal 2001 funds would be transferred. The bill would take effect immediately upon enactment.

Medicaid. TDH would receive a total of $485.4 million for fiscal 2001. These funds would have to be used to provide Medicaid services for the rest of the fiscal year.

CSHB 1333 would transfer to TDH $333.9 million in general revenue that was appropriated to various agencies by the general appropriations act for fiscal 2000-01. The bill also would transfer to TDH $47.5 million in general revenue originally appropriated to the Texas Department of Education by SB 4 by Bivins, 76th Legislature.

CSHB 1333 would appropriate an additional $99 million in general revenue to TDH, contingent on enactment of SB 848 by Ellis/Zaffirini, which would allow the comptroller to transfer interest in the suspense account to general revenue. (See analysis of SB 848 in today's Daily Floor Report.)

The funds transferred to TDH could be used only if Medicaid expenditures exceeded all of the revenue otherwise available to TDH because of changes in caseloads and costs or a lower federal match rate and only if TDH had used all revenue available for Medicaid. If TDH did not use all the additional funds in fiscal 2001, the unspent balance would be reappropriated to TDH in fiscal 2002 to pay for Medicaid services, but TDH could spend those funds only with the prior approval of the Legislative Budget Board.

CSHB 1333 also would appropriate $5 million from the comprehensive rehabilitation account to the Texas Rehabilitation Commission (TRC) for the remainder of fiscal 2001. This appropriation would provide access to some of the funds in that account that are in excess of the agency's appropriations. (See the Notes section of this analysis.)

Prison capacity and career-ladder adjustments. TDCJ would receive transfers of $110.3 million from other agencies for the rest of fiscal 2001.

The bill would transfer to TDCJ $66.5 million in general revenue appropriated to various agencies by the general appropriations act for fiscal 2000-01. Of that total, $30.8 million would be for the purpose of paying for the operation of additional prison capacity and for contracts with counties that provide temporary capacity, and $35.7 million would be for the purpose of career-ladder salary adjustments for correctional officers, sergeants, and food-service and laundry managers. TDCJ also would receive $41 million from the fugitive apprehension account to pay for additional prison capacity and contracts with counties that provide temporary capacity, and $2.8 million from the criminal justice planning account in the Governor's Office for the same purposes.

Worker's compensation claims. The bill would transfer $13 million in general revenue appropriated to the Governor's Office for disaster and emergency and deficiency grants in fiscal 2000-01 to the State Office of Risk Management (SORM) to pay for higher than expected worker's compensation claims.

TNRCC. CSHB 1333 would appropriate $5.4 million from the low-level radioactive waste account to the Texas Natural Resource Conservation Commission (TNRCC) for the rest of fiscal 2001. (See the Notes section of this analysis.)

Appropriations for fiscal 2002. The bill would appropriate $68.3 million in general revenue for fiscal 2002 to six agencies from which unencumbered fiscal 2001 funds would be transferred:

- $15.8 million to the Governor's Office for the criminal justice planning account and for emergency and deficiency grants and disaster grants;
- $5 million to TRC for the comprehensive rehabilitation account;
- $39 million to the Texas Higher Education Coordinating Board;
- $1 million to the Texas Historical Commission for archeological heritage protection and to evaluate and interpret resources;
- $6.5 million to the State Preservation Board; and
- $1 million to the Office of Court Administration for the Judicial Committee on Information Technology.

SUPPORTERS SAY:

CSHB 1333 would reallocate funds among state agencies to meet the state's current fiscal needs without spending any additional general revenue for fiscal 2000-01. Many appropriations to state agencies are based on estimates of factors such as caseload or population growth, and it is not unusual for the Legislature to have to make supplemental appropriations to agencies if the actual numbers exceed projections. CSHB 1333 would move funds from agencies or accounts that will not need the appropriations in fiscal 2001 to agencies with a critical need for funds to finish the fiscal year.

CSHB 1333 would not put the state over the constitutional spending cap, which restricts the growth of appropriations to the estimated growth of the state's economy. Most of the money in the bill would involve transfers between agencies, not new spending, and already had been counted toward the spending limit when originally appropriated by the 76th Legislature. Money from general revenue-dedicated accounts is not counted toward the cap, and the $99 million that would come from remaining interest on the comptroller's suspense account is nontax revenue, so it also is not counted against the cap.

It would be appropriate to use the interest from the suspense fund because the disputed tax should have been credited to general revenue in the first place. If SB 848 is enacted, the comptroller will have to transfer interest on the funds held in the suspense account to the account to which the disputed tax was owed. If the state prevailed in a tax dispute and the disputed tax was general revenue, the interest ultimately would be transferred to general revenue. CSHB 1333 would transfer this general revenue to TDH.

It also would be appropriate to give TNRCC money from the now-abolished radioactive waste authority, since TNRCC has taken over the authority's responsibilities and can use funds from the account for agency operations and maintenance. If a low-level radioactive waste site program is revitalized, TNRCC could secure funding for it through an appropriations request or could use its general agency funding.

Appropriating $41 million from the fugitive apprehension account to TDCJ would be an appropriate use of the fund, and the state should not hesitate to spend this money, regardless of how large a cushion it leaves in the account. The account always has included an earmark for TDCJ's capacity needs, and those needs are pressing now. The account, funded by court fees, will replenish itself, so there is no reason for concern about possibly depleting this funding source.

Medicaid. TDH projects a $595 million shortfall in the amounts appropriated to cover Medicaid benefits for fiscal 2000-01. The appropriation in CSHB 1333 would cover $485 million of that liability, with the remaining $110 million proposed to be transferred from other health and human services agencies under the authority of the Health and Human Services Commission (HHSC).

For every dollar spent on Medicaid, the state-federal health-benefit program for the poor and uninsured, Texas now pays 39.8 cents and the federal government pays 60.2 cents. Medicaid is an entitlement program, meaning that federal law requires states to provide medically necessary care to all eligible people who seek services, and the state may not cap enrollment.

According to TDH, the state's anticipated shortfall in the Medicaid program is due to four factors: higher than expected case loads (49 percent), rising costs (25 percent), higher cost of pharmaceuticals in the vendor drug program (17 percent), and a lower than expected federal match rate (9 percent).

TDH would use $295 million of the supplemental funds to pay for higher than expected Medicaid caseloads. Medicaid caseloads trended down for the first half of 1999, including the period when the 76th Legislature met, due to a strong economy and welfare-reform measures. The Medicaid caseload projection for fiscal 2000-01 was based on data indicating this downward trend. During this biennium, however, the number of Medicaid recipients has not declined to the extent projected because of diminishing returns on welfare reform and because of the state's outreach efforts, including informing people who leave the Temporary Assistance for Needy Families program that they may remain eligible for Medicaid and attempting to enroll children in the Children's Health Insurance Program, resulting in Medicaid spillover. TDH estimates that Medicaid caseloads for fiscal 2000-01 will be about 99,000 recipient-months higher than the projections used by the 76th Legislature for its appropriations.

About $150 million of the supplemental appropriations would pay for higher than expected hospital and physician costs. These costs are part of the rates TDH negotiates with National Heritage Insurance Co. (NHIC), the company that processes Medicaid claims. While the general appropriations act for fiscal 2000-01 provided a rate increase of 1.8 percent for providers and a 2.5 percent increase for higher utilization, the higher than expected costs can be attributed to changes in case mix, including more clients with greater needs, and to changes in treatment protocols. The weighted average cost per month for Medicaid premiums was projected at $166.72 for 2000 and $171.10 for 2001. The actual premiums were 5 percent and 10 percent higher, respectively.

TDH's vendor drug program, the prescription drug-benefit provider for Medicaid recipients, would receive $100 million of the supplemental appropriations. Higher than expected costs have been driven by greater use of new and more expensive drugs, as well as by changes in case mix. One area of significant price increase was new-generation antipsychotic medications. TDH estimates that these drugs accounted for 30 percent of the increase in the cost of the top 200 drugs from fiscal 1996 to 2000 and that they account for more than 10 percent of expenditures in the vendor drug program. The number of Medicaid clients with unlimited prescription benefits also has increased as more recipients are enrolled in Medicaid managed care and waiver programs. The weighted average cost per prescription was projected at $39.89 for 2000 and $41.58 for 2001. The actual premiums were 10 percent and 14 percent higher, respectively.

TDH would allocate $50 million of the supplemental funding to increase the state's contribution to Medicaid. The federal government matches the state's Medicaid payments at a percentage (the Federal Medical Assistance Percentage, or FMAP) that is based on the state's per-capita income relative to that of other states for the previous three years. As Texas' per-capita income has risen more rapidly than that of other states, the federal match rate that Texas receives has declined. Thus, Texas must contribute a higher proportion of general revenue to fund Medicaid services. Because the federal government sets the FMAP in October for the coming year and Texas has a biennial budget, the Legislature must project the FMAP during the appropriations process for two years.

Prison capacity and career-ladder salary adjustment. CSHB 1333 would provide TDCJ $35.7 million to pay for an emergency employee pay raise implemented in July 2000 to address the soaring rate of correctional officer turnover, particularly among experienced guards. Gov. George W. Bush issued an executive order in May 2000, creating a new position for TDCJ guards called Correctional Officer IV. TDCJ worked with the governor, lieutenant governor, and House speaker to implement the position and used the agency's "spend forward" authority to shift funds from the second year of the biennium to the first year.

CSHB 1333 would replace funds shifted from fiscal 2001 to pay for the new position. The Correctional Officer IV position provided a pay raise of

$1,656 per year to correctional officers with at least three years' experience, raising the maximum annual salary to $28,380. About 68 percent of current correctional officers are affected. Both the House and the Senate have proposed further pay increases for these employees in fiscal 2002-03.

CSHB 1333 would repay TDCJ $74.6 million for expenditures it made to ensure that the state has adequate capacity to meet a larger than anticipated demand for adult prison space. TDCJ was required to use its "spend forward" authority to contract for 1,500 additional correctional beds in June 1999 and April 2000 to meet unexpected demand due to increased parole revocations and a policy change in Harris County that sent state jail felons to serve their sentences in state facilities rather than in county jails. CSHB 1333 would replace funds moved from fiscal 2001 to cover the unanticipated demand for beds. The Criminal Justice Policy Council projects that if parole and crime rates remain at their fiscal 2000 level, TDCJ will not need additional beds before fiscal 2005.

If TDCJ does not receive the needed money, it would have to make cuts throughout the agency. This could result in inadequate resources to operate or contract for beds, which, in turn, could lead to a backlog of prisoners in county jails and violations of Government Code provisions requiring the acceptance of inmates from county jails by state facilities within 45 days of their processing.

Worker's compensation claims. SORM estimates that it has a $23.2 million shortfall in worker's compensation claims for fiscal 2001. Upon receipt of supplemental appropriations, the agency would switch from an accrual-based to a cash-based accounting method, which would reduce the shortfall to about $13 million in fiscal 2001. This change would allow the agency to charge a claim payment to the year it was received, instead of to the year the claim was incurred. By following this practice, SORM could make better estimates of payments for worker's compensation claims than by having to hold claims over for two years and keep a tally under an accrual-based system.

Appropriations for fiscal 2002. The appropriations that CSHB 1333 would make for fiscal 2002 simply would repay some of the agencies for their fiscal 2001 monies that the bill would appropriate for the current emergencies. For example, the bill would appropriate $6.5 million of the State Preservation Board's unspent funds from fiscal 2000-01 to TDCJ, then would appropriate $6.5 million to the State Preservation Board from general revenue for fiscal 2002. Making both transactions in one bill would make it easier to account for the changes.

OPPONENTS SAY:

Some of the funding mechanisms used in CSHB 1333 could be problematic. For example, the bill would transfer $5.4 million from TNRCC to TDCJ and then appropriate $5.4 million from the low-level radioactive account to TNRCC. While TNRCC may have taken over the duties and funds of the now-abolished low-level radioactive authority, it should not be allowed to use for general purposes the money that was paid by Texas waste generators and intended to handle low-level radioactive waste. These fees should be held separate from the agency's general funds in case the state renews its project to build a waste facility or has other needs relating to low-level radioactive waste.

Medicaid. Some of the factors contributing to the Medicaid shortfall might have been prevented. The state should direct TDH to increase its oversight of Medicaid spending and to convey information about changing trends more frequently. The State Auditor's Office found deficiencies in TDH's management of the NHIC contract, including monitoring of controls to prevent improper payments and the delays in NHIC's development of a new claims processing system. CSHB 1333 should direct TDH to improve its contract management practices. TDH reports Medicaid caseload data to the Legislature four times during the session and quarterly during the interim. The bill should require TDH to report this vital information monthly so that the governor, LBB, the Legislature, and others are aware of changing trends.

Worker's compensation claims. Changing to cash accounting could obscure SORM's actual financial situation. Because the cash method accounts for claims when they are paid rather than when they are incurred, the amount of outstanding claims could appear smaller than it actually is. SORM estimates that it has $23.2 million above its original appropriation in claims that it will incur in fiscal 2001. In conjunction with the supplemental appropriations, changing the accounting methodology still would push about $10 million in expenses to the next biennium.

Appropriations for fiscal 2002. It would be better to include all appropriations for fiscal 2002 in the general appropriations act for fiscal 2002-03. If agencies will not spend funds during fiscal 2000-01 and the funds are given to other agencies for this biennium, the donor agencies should not have those funds restored automatically for fiscal 2002. All funding requests for fiscal 2002 should be considered and handled at the same time.

NOTES:

The fiscal note for CSHB 1333 reports that the net certification cost of the bill in reduced available revenue for fiscal 2002-03 would be $361.2 million, calculated by figuring:

- a general revenue cost of $355.4 million for fiscal 2001 and fiscal 2002 ($287.1 million in fiscal 2001 plus $68.3 million for fiscal 2002);
- fiscal 2001 transfers from general revenue-dedicated accounts reducing the amount of money available for certification for fiscal 2002-03 biennium by $54.2 million; and
- transfers of fiscal 2001 unexpended appropriations to other agencies reducing unexpended balance appropriations in the fiscal 2002-03 general appropriations act by $48.4 million.

The fiscal note also reports that:

- the health and human services commissioner would transfer $5 million from TRC to TDH, and the funds would be replaced by CSHB 1333's $5 million appropriation to TRC from the comprehensive rehabilitation account;
- in addition to the funding provided to TDH in the bill, the health and human services commissioner would transfer $109.9 million in existing appropriation authority to TDH from other health and human services agencies, for a total of $595.3 million to TDH;
- the transfer of $5.4 million in general revenue from TNRCC to TDCJ would be offset by the appropriation of $5.4 million from the low-level radioactive account to TNRCC; and
- the appropriations for fiscal 2002 would offset appropriations transferred to TDH and TDCJ.

Major differences between the House committee substitute and the filed version include:

- a transfer of $333.9 million from various state accounts to TDH for Medicaid, rather than an appropriation of $46 million in general revenue;
- an appropriation from interest on the suspense account, contingent on enactment of SB 848 by Ellis/Zaffirini;
- an appropriation of unspent Medicaid supplemental appropriations to fiscal 2002-03;
- a transfer of $82.6 million from various accounts to TDCJ for prison capacity and career-ladder adjustments, rather than an appropriation of $110.3 million in general revenue;
- a transfer of $13 million from the Governor's Office to SORM for worker's compensation claims;
- an appropriation of $5 million from the comprehensive rehabilitation account to TRC, which the fiscal note assumes would be swept by HHSC to TDH for Medicaid;
- an appropriation of $5.4 million from the low-level radioactive waste account to TNRCC, which would replace funds transferred from TNRCC to TDCJ; and
- general revenue appropriations for fiscal 2002 to various agencies from which the bill would transfer funds in fiscal 2001.

SB 848 by Ellis/Zaffirini is on today's House calendar. Enactment of this bill would require the comptroller to transfer all remaining accumulated interest in the suspense account on a pro-rata basis to the accounts that were allocated the protested tax. According to the fiscal note for SB 848, this would result in a net gain of $99 million in general revenue during fiscal 2002.