SB 1863
Ogden (Pitts)
(CSSB 1863 by Pitts)

SUBJECT: Appropriations-related statutory changes

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 19 ayes — Pitts, Berman, Branch, B. Brown, F. Brown, Chisum, J. Davis, Edwards, Gattis, Hamric, Hegar, Hope, Hopson, Isett, Kolkhorst, Martinez, Pena, T. Smith, Truitt

1 nay — T. King

9 absent — Luna, Crownover, Dukes, Guillen, Haggerty, McClendon, Menendez, Pickett, Turner

SENATE VOTE: On final passage, May 18 — 24-6 (Barrientos, Gallegos, Shapleigh, Van de Putte, Whitmire, Zaffirini)

WITNESSES: No public hearing

BACKGROUND: Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Because the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.

On April 7, the House passed SB 1 by Ogden (Pitts), the House version of the general appropriations bill for fiscal 2006-07. The Senate passed its version of the bill on March 23, and it now is in conference committee.

For further discussion of issues in the state budget, see HRO State Finance Report Number 79-2, *CSSB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2006-07*, April 4, 2005.

DIGEST: CSSB 1863 would make appropriations-related statutory changes that, if enacted in whole, would result in a gain to general revenue and related funds of $1.7 billion in fiscal 2006-07.

Significant elements of the bill and their associated estimated revenue or savings gains to general revenue and related funds in fiscal 2006-07 would include:

- motor fuel tax transfer delay — $364.4 million;
- maintaining six-month eligibility for Medicaid and Children's Health Insurance (CHIP) recipients — $267 million;
- transfer of funds from the Texas Mobility Fund — $254.6 million;
- quality assurance fees — $209 million;
- Telecommunications Infrastructure Fund (TIF) — $200 million;
- repealing the timely filer discount — $143 million;
- delay of motor vehicle sales tax exchange — $42 million;
- presumptive value of motor vehicles — $39 million;
- repealing the permanent resident tax exemption — $13.2 million;
- recovery audits — $10.5 million;
- state employee health benefit opt-out — $8.5 million;
- Medicaid client emergency room use reduction — $3.2 million; and
- increasing the fee paid by certain lobbyists — $1.8 million.

Gains to general revenue and related funds also would be offset by costs to certain funds, such as in the case of delayed transfers, accelerated depreciation, or the change in flare-offs for wells. In addition, certain changes would reduce the amount of federal funding received by the state, such as the Medicaid and CHIP eligibility requirement. Generally, the bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

Standard presumptive value for vehicle sales. CSSB 1863 would require the Texas Department of Transportation (TxDOT) to determine the "standard presumptive value" — or average retail value — of a motor vehicle based on a national industry reporting service. The department would maintain the standard presumptive values of vehicles in its registration and title system and update the data at least quarterly. This data would be made available to county tax assessor-collectors.

A county tax assessor-collector would have to use a vehicle's standard presumptive value to assess the state sales and use tax on the purchase unless the amount paid for the vehicle exceeded its standard presumptive value, in which case the tax would be levied on the higher value. The county tax assessor-collector could assess the sales and use tax on an amount less than the standard presumptive value only if the retail value were shown on a certified appraisal performed by a licensed adjuster and presented by the purchaser to the tax assessor-collector within 20 days after the purchase. In that case, the tax would be levied on the retail value.

On request, a motor vehicle dealer would have to provide a vehicle's certified appraised value to a county tax assessor-collector. The comptroller by rule would mandate the length of time the appraisal information would be held by the county tax assessor-collector and authorize a fee that a dealer could charge for providing the appraisal.

These requirements would not apply to transactions involving an even exchange of vehicles or to a gift.

This provision would take effect July 1, 2005, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

Telecommunications Infrastructure Fund. CSSB 1863 would repeal the current $1.75 billion TIF cap. The bill also would extend the expiration date of the fund until September 1, 2011. Revenue collected under this TIF assessment would go into the general revenue fund.

After the amount paid into the fund by all utilities equaled $1.5 billion, a telecommunications utility could recover the amount that it paid into the fund from its customers through their monthly bills. A utility could collect from its customers only the amount assessed after the fund had reached $1.5 billion. The comptroller would publish in the *Texas Register* the date on which the fund equaled this amount. A utility that wished to recover its assessment would have to file an affidavit no later than February 15 of each year stating the amount it paid to the fund and the amount it collected from its customers during the previous year.

This provision would take effect July 1, 2005, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

Delayed transfers. The bill would delay the transfer of certain funds. Motor fuel tax revenue for the last three months of odd-numbered fiscal years would not be transferred to the state highway fund and the county and road district fund until September 5 of the following fiscal year.

It also would delay by two years the phase-in exchange of motor vehicle sales tax for motor vehicle registration fees between the state and counties established in the 2003 transportation bill, HB 3588 by Krusee.

The bill would deposit driver's license and other fees to general revenue, rather than the Texas Mobility Fund, in fiscal 2006-07. This section would take effect September 1, 2005, and would expire January 1, 2008.

Increased fees. CSSB 1863 would raise the registration fee for lobbyists from $300 to $1,000 per year. It also would authorize a fee to cover the cost of inspecting a municipal or county jail following a determination that the jail was not in compliance with minimum standards or on the request of the jail operator.

Hotel tax. CSHB 1863 would repeal the hotel occupancy tax exemption for permanent residents. A resident of a hotel for more than 30 days would be required to pay the hotel occupancy tax, except for residents of unfurnished apartments and condominium buildings. Permanent residents still would be eligible for an exception for county and city taxes.

Audits. The bill would require agencies with expenditures of greater than $100 million each biennium to participate in recovery audits.

Medicaid and CHIP changes. The bill would continue six-month eligibility for Medicaid and CHIP. It also would direct HHSC to implement a plan to reduce emergency room use, which could include pilot programs designed to:

- improve access to bilingual health service providers;
- provide information on accessing primary care and local health clinics;
- offer financial incentives to providers that offered after-hours services;
- pay a referral fee to hospitals that performed preadmission

screenings in the emergency room and referred, when appropriate, non-emergent patients to more appropriate care settings;
- contact high-emergency-room-use patients and provide them with information about other health care resources; and
- create a health literacy program offering patients health literature.

HHSC would, if cost effective and permitted under federal law:

- pay a stipend for the premium for long-term care insurance in lieu of paying for long-term care for an individual;
- assist an individual who had a chronic health condition and was likely to need long-term care in the future; and
- form an agreement under which an individual would pay the premium for long-term care insurance and Medicaid would pay benefits once the insurance was exhausted.

It would direct HHSC to establish an Office of Medical Technology at HHSC, which would evaluate new medical technology and propose implementation of new, cost-effective technologies.

CSSB 1863 would expand the return of unused drugs under existing procedures to include drugs in tamper-evident packaging but not in a manufacturer's original packaging, unless required by federal law.

The bill also would direct HHSC to establish reimbursement under Medicaid for:

- nursing care in a patient's home under the Medicaid program, if it would prevent hospitalization and a physician certified that the services were medically appropriate;
- group appointments for certain medical conditions, if cost effective;
- online medical consultations, if cost effective and a procedure code was developed federally, or if a pilot program to determine whether online medical consultations were cost-effective;
- performance bonuses, through a pilot program for primary care providers that treat Medicaid patients with chronic health conditions in accordance with recognized best practices and standards of care, with a report on the effects of the program by December 1, 2006, and the conclusion of the pilot on September 1, 2007.

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

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

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

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

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

Tax collections. The bill would make changes to the collection of gasoline taxes, including amending the required information for gasoline tax returns and requiring the comptroller to pay any refunds within 60 days.

It also would repeal the 0.5 percent timely filer discount for the sales tax and seller-financed motor vehicle sales tax.

The bill would expand the use of accelerated depreciation under the franchise tax for oil and gas exploration and offer an oil production tax credit for taxpayers using enhanced efficiency production equipment. The bill also would create a natural gas tax exemption for production from wells that had been vented or flared for six months as opposed to the currently-required 12 months.

Other tax collection changes would include:

- permitting the comptroller to manage certain preservation trust fund assets;
- removing certain information that identifies a taxpayer from forms issued by a governmental body with tax authority;
- requiring county development, county assistance, hospital, and emergency services districts to submit a district map to the comptroller along with election results after a local sales tax election;
- changing and clarifying insurance premium tax requirements;
- extending by one year the statute of limitations for assessing trust fund taxes; and
- other tax collection changes and clarifications, including changes relating to refunds and local tax collections.

Tobacco sales. The bill would make buying tobacco products a class C misdemeanor (maximum fine of $500) for individuals younger than 18 years of age, unless they were participating in a sting operation. The bill also would make the sale of tobacco products for personal use by mail or through the Internet an offense punishable by a civil penalty of at least $500 but no more than $5,000 or five times the value of the products and a penalty equal to the profit received from the illegal sales. This offense also would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) or a state-jail felony (180 days to two years in a state jail and an optional fine of up to $10,000) for a repeat offender.

Commercial driver's licenses. CSSB 1863 would add to the required application for a non-resident commercial driver's license a copy of the applicant's social security card or passport and visa. It also would raise the fee to $100 and change the expiration date to the date of the visa expiration.

SUPPORTERS SAY:

Standard presumptive value for vehicle sales. CSSB 1863 would give state and local authorities the tools to collect vehicle sales taxes that already should be paid. Currently, no mechanism exists to ensure that people who transfer titles on used vehicles accurately state the sales price. The state maintains a sophisticated computer network through the registration and title system (RTS) that tracks millions of vehicle titles. It would be technologically feasible to add objective information about vehicle values to the system. TxDOT officials report that changing the RTS system to include vehicle price information would have no significant effect on the agency's budget or on operation of the RTS system. CSSB 1863 would allow the state to gain significant additional revenue from improved collection of the sales tax on automobiles.

Tax assessor-collectors overstate the difficulty in administering the used car tax collection program. Compliance would increase over time. Most tax assessor-collectors are elected to office understanding that collecting fees and sales taxes on automobile sales will make up the bulk of their responsibilities. They have a responsibility to ensure compliance with all state and local laws, as do all elected officials.

CSSB 1863 would provide safeguards to ensure that a consumer paid taxes on a vehicle's actual price when that price was less than a vehicle's standard presumptive value. A buyer could provide the assessor-collector with a certified appraisal of the vehicle's value to verify that a lower price was paid. Concerns that individuals who paid a discounted price for damaged vehicles might inappropriately be taxed at an inflated rate value are immaterial.

TIF. The 74th Legislature in 1995 created the TIF to finance access to telecommunications services for public schools, nonprofit hospitals, public libraries, and higher education institutions across the state. The fund was created and maintained through an assessment of 1.25 percent of the telecommunications providers' taxable receipts and was authorized to collect up to $1.5 billion over 10 years. TIF was governed by a nine-member board, which awarded grants for Internet connections, computer hardware, distance learning, telemedicine technology, and technology training programs to eligible entities.

Citing the state's budget shortfall, Gov. Perry in January 2003 froze $224 million of the TIF board's fiscal 2003 appropriation. The 78th Legislature later eliminated the TIF board's appropriation and directed money from the fund toward other programs, including a pre-existing "technology allotment" of $30 per student that had been funded through general revenue. The Legislature did not appropriate any money for new grant awards for fiscal 2004-05 and instead appropriated $2.1 million to the board to oversee existing grants before the board's 2005 Sunset review. Gov. Perry vetoed this appropriation and transferred all of the TIF board's remaining funds, assets, and employees to the Texas Workforce Commission, which is responsible for closing out all outstanding grants.

In addition to eliminating TIF grants, the 78th Legislature increased TIF's revenue cap from $1.5 billion to $1.75 billion, allowing the fund to continue collecting receipts from telecommunications providers. The Legislative Budget Board projects that TIF will reach its $1.75 billion cap in fiscal 2005.

Eliminating the revenue cap for TIF would result in $200 million per year that could be used for property tax relief and essential government services. TIF was restructured during the regular session of the 78th Legislature, and funds from TIF have been used for the $30-per-student technology allotment, fulfilling the fund's original goal of promoting technology in schools. Eliminating the revenue cap and extending TIF's existence would continue to enrich the educational opportunities of Texas' schoolchildren.

Given that the telecommunications utilities have met their obligations up to the original revenue cap of $1.5 billion, it would be reasonable to allow those incumbent local exchange carriers (ILECs) that have not been passing the 1.25 percent assessment on to consumers to now do so. During negotiations in 1995 when the Legislature was considering creation of TIF, the ILECs agreed to absorb the assessments on their receipts without passing those charges on to customers. The ILECs have fulfilled this obligation every year since TIF was created. After TIF exceeds its original cap of $1.5 billion, it is only fair that ILECs be statutorily authorized to pass additional TIF charges on to their customers, as the competitive carriers have been doing since 1995.

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

OPPONENTS SAY:

Standard presumptive value for vehicle sales. The bill would put tax assessor-collectors in the position of policing a tax collection program for which they might not be qualified. Determining the value of a particular automobile is a subjective process, even if a clerk has access to registration and title system (RTS) values. The new owner could claim that a value was not correct because the vehicle was damaged or not in running condition. Options or added features such as leather seats or special wheel covers could increase the value of a vehicle.

This change would create greater inconvenience for sellers and buyers. Some vehicles, especially older vehicles or special imports, might not be included in the updated RTS. A clerk would have to spend 15 minutes or more to research values not included in the system before processing the transfer application. Tax-assessor offices typically are the busiest during the first five and last five days of a month, and the delays caused by this bill could push lines out the doors. Even medium-sized counties such as Brazoria may receive 100 transfer requests for both new and used vehicles from the same automobile dealers, and larger jurisdictions such as Harris

County process thousand of transactions on a daily basis. Tax assessor-collectors would not be able to process transfers on a timely basis.

TIF. Allowing ILECs to pass their 1.25 percent assessment on to customers would amount to a new tax that millions of consumers would have to pay each month. Telecommunications companies benefited greatly from the 1995 Public Utilities Regulatory Act, and in return ILECs pledged to assume the cost of the 1.25 percent TIF assessment. It would be unfair to shift this charge to telephone customers. Texas consumers already shoulder one of the highest rates of taxation for telecommunications services in the nation, and the passthrough provision only would increase this burden.

Eliminating the revenue cap on TIF and using these additional receipts for programs other than technology grants would violate the spirit of the original TIF agreement and amount to a discriminatory sales tax on telecommunications services. Changes in the administration of the fund have shifted contributions into the fund toward general obligations that should not be funded through specific charges on telecommunications utilities and consumers. The state has fulfilled the goal of the original legislation by disbursing more than $1 billion for technology grants since 1995, and TIF now should be retired.

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

OTHER OPPONENTS SAY:

Standard presumptive value for vehicle sales. The requirement that a vehicle buyer obtain a certified appraisal for a purchase would be too onerous. The bill should be amended to allow an individual to present a receipt prepared by the seller that showed the price paid for the vehicle.

NOTES:

The revised fiscal note attached to CSSB 1863 estimates a gain of $1.7 billion in general revenue and related funds for fiscal 2006-07 along with costs to certain other funds.

Many of the provisions in this bill also have appeared in other legislation during the 79th Legislature. They include:

- standard presumptive value for vehicle sales — HB 3 by J. Keffer;
- Telecommunications Infrastructure Fund — HB 3 by J. Keffer and HB 789 by P. King, and an amendment by Rep. Thompson on HB 789 that would repeal the TIF;
- quality assurance fees — HB 3540 by Pitts, continuing the ICF-MR fee, and SB 1830 by Zaffirini;
- emergency room use reduction and other Medicaid changes, HB

2479 by Delisi;

- recovery audits, HB 2801 by T. Smith;
- state employees waiving health benefits, HB 3540 by Pitts, and TRICARE supplement, HB 417 by Delisi;
- repealing the timely filer discount, HB 3540 by Pitts; and
- enhanced efficiency production equipment, HB 2983 by West.

Certain provisions also appeared in the LBB's *Staff Performance Report*, published in January 2005, which include recovery audits, state employee waiver of health insurance, repealing the hotel tax exemption, quality assurance fees, and other Medicaid changes.

The committee substitute made significant changes to the Senate-passed version to include new statutory changes to implement elements of the general appropriations bill since SB 1863 passed the Senate on May 18.