

- SUBJECT:** State fiscal matters related to general government
- COMMITTEE:** Appropriations — committee substitute recommended
- VOTE:** 25 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Darby, Dukes, Eiland, Giddings, Gooden, Hochberg, Johnson, S. King, Margo, McClendon, D. Miller, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Villarreal, Zerwas
- 0 nays
- 2 absent — Martinez, Morrison
- WITNESSES:** None
- BACKGROUND:** Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which can include various subjects and accounts. However, this provision has been interpreted as prohibiting the general appropriations bill from changing substantive law. In other words, appropriations bills deal only with spending. Because the levels of funding in an appropriations bill assume certain programmatic changes, the statutory changes required to meet that funding level are contained in other legislation.
- On April 3, the House passed HB 1 by Pitts, the House version of the general appropriations bill for fiscal 2012-13, and the bill was reported favorably, as substituted, by the Senate Finance Committee on April 21. For further discussion of issues in the state budget, see HRO State Finance Report Number 82-4, CSHB 1: The House Appropriations Committee's Proposed Budget for Fiscal 2012-13, March 31, 2011.
- DIGEST:** CSHB 3665 would amend portions of the Government Code and other statutes as required to implement provisions for general government agencies in the general appropriations act for fiscal 2012-13.
- Article 1. Agency authorizations.** CSHB 3665 would authorize state agencies that receive appropriations under Article 1, general government, of the general appropriations act to reduce or recover expenditures by:

- consolidating required reports or publications and filing or delivering them exclusively by electronic means;
- extending the effective period of any license, permit, or registration granted or administered by the agency;
- entering into a contract with another governmental entity or a private vendor to perform the agency's duties;
- adopting additional eligibility requirements for people who receive benefits from the agency to ensure the benefits are received by the most deserving people, consistent with the purpose for the benefits;
- making agency communications with people and required agency documents delivered to or by the agency, including applications, notices, billing statements, receipts, and certificates, by email or through the Internet; and
- adopting and collecting fees to cover agency costs.

Article 2. Lease of state-owned parking spaces. CSHB 3665 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 the General Revenue Fund.

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.

CSHB 3665 would require TFC to report the effectiveness of these parking programs to the Legislative Budget Board (LBB) on 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 program administration or increase revenue generated.

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 September 1, 2011.

Article 3. Calculation of state debt limit. For the purpose of comparing the calculation to the maximum annual debt service allowed, CSHB 3665 would authorize the Bond Review Board (BRB) to calculate yearly debt service requirements using any assumptions for unissued debt that the BRB determined were necessary to reflect common or standard debt issuance practices, including assumptions about interest rates, debt maturity, and debt service payment structures. Unissued debt would be defined as state debt payable from the General Revenue Fund that was authorized but not issued.

CSHB 3665 would require the BRB to publish a report every year starting in fiscal year 2011 detailing the method used to calculate the annual debt service in that fiscal year, which would be required to describe:

- the debt service included in the calculation, including debt service on issued and unissued debt;
- the assumptions on which the debt service on unissued debt was based; and
- any other factors required by law that affected the calculation.

The report could be included as part of any other report required by law, including the annual report, and the report would have to be made available to the public.

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 September 1, 2011.

Article 4. Electronic pay cards. CSHB 3665 would require the comptroller to establish an efficient and effective system of making payments by electronic pay card. The comptroller would be authorized to use an electronic pay card to pay an employee's net state salary and travel expense reimbursements. An employee, regardless of classification or amount paid, would be required to receive payment by direct deposit or electronic pay card. The comptroller would have to make payments to all annuitants from the Employees Retirement System, the Teacher Retirement System, or any state treasury-paid retirement system by direct deposit or electronic pay card, including for amounts less than \$100. Vendors could choose to be paid with an electronic pay card rather than by check.

Current law would be repealed that requires the comptroller to issue checks instead of using direct deposit under certain circumstances. The comptroller would be required to adopt rules for allowing state payment recipients to choose at appropriate times among the options of receiving payments by direct deposit, electronic pay card, or check.

CSHB 3665 would allow the comptroller, only by competitive bid, to contract with a vendor or vendors for electronic pay card services. The bill would require that the comptroller specify the qualifications for bidders, including that the vendor was federally insured or possessed sufficient financial resources to ensure protection of those paid and would be able to provide 24-hour customer service so that those paid could access their funds worldwide at any time.

This article would take effect January 1, 2012.

Article 5. Publish session laws electronically. CSHB 3665 would repeal the requirement for the laws passed each session to be printed and distributed to the governor, lieutenant governor, speaker, Texas Legislative Council, courts of appeals, county law libraries, Legislative Reference Library, State Law Library, and 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 secretary of state's website.

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 September 1, 2011.

Article 6. Collection of fees by attorney general. CSHB 3665 would allow the attorney general to charge a reasonable fee for the electronic filing of a document.

The bill would require the attorney general to review invoices submitted to state agencies under contracts for legal services to determine whether the invoices were eligible for payment. When entering into a contract for legal

services, the attorney or law firm would be required to pay an administrative fee to the attorney general for the invoice review. CSHB 3665 would allow the attorney general to adopt rules to implement this provision.

CSHB 3665 would allow the attorney general to charge toll project entities a reasonable fee for the attorney general's review of each proposed comprehensive development agreement, including separate fees for agreements for the same toll project. The toll project entity would be authorized to seek reimbursement of the fee from the private participant under the proposed comprehensive development agreement. CSHB 3665 would allow the attorney general to adopt rules to implement this provision.

The fees established by this article would apply only to electronic documents, invoices, or comprehensive development agreements submitted on or after the effective date of this article.

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 September 1, 2011.

Article 7. Texas Preservation Trust Fund Account. CSHB 3665 would allow money in the Texas preservation trust fund account to be used to pay operating expenses of the Texas Historical Commission in addition to the preservation grants already allowed by law. 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.

Article 8. Department of Information Resources programs. CSHB 3665 would allow revenue from fees collected under current law for statewide technology center services and for technology commodity item purchasing 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. CSHB 3665 would allow revenue from these fees to be appropriated to DIR for the purposes bulleted immediately above.

Fee amounts in excess of paying the bills of the consolidated telecommunications system and the centralized capitol complex telephone system would be transferred to the General Revenue Fund rather than the statewide network applications account as under current law. The bill would allow these general revenue funds to be appropriated to DIR for the purposes bulleted above.

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 September 1, 2011.

Article 9. Lobby registration fees. CSHB 3665 would change the lobbyist registration fee and registration renewal fee from \$100 to an amount set by the general appropriations act of between \$100 and \$200 for registrants employed by a 501(c)(3) or (c)(4) charitable organization. CSHB 3665 would change the lobbyist registration fee and registration renewal fee from \$50 to an amount set by the general appropriations act of between \$50 and \$100 for registrants required to register because they were independent contractors whose contingent compensation depended on state agency purchasing decisions. The bill also would change the lobbyist registration fee and registration renewal fee from \$500 to an amount set by the general appropriations act of between \$500 and \$1,000 for any other registrants.

Except as otherwise provided, this bill would take effect September 1, 2011.

SUPPORTERS
SAY:

The changes made in CSHB 3665 would result in an estimated net positive fiscal note impact of \$9,687,570 in general revenue funds for fiscal 2012-2013. Many of its provisions were derived from recommendations by state agencies and from the LBB's January 2011 *Government Efficiency and Effectiveness Report (GEER)*.

Article 1. Agency authorizations. These authorizations would give agencies flexibility and control in reducing or recovering expenditures in ways other than those specifically identified in this bill. They have in-depth knowledge of their programs and operations and could find ways to meet program needs while maximizing the use of appropriated funds.

Article 2. Lease of state-owned parking spaces. CSHB 3665 would result in an estimated fiscal note gain in general revenue of \$887,471 every year by allowing the TFC to lease state parking spaces in Austin to private individuals and to local governments and universities. The *GEER* noted that on 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, and would only need one more employee to manage this daytime parking lease program that would have a significant positive fiscal impact.

Article 3. Calculation of state debt limit. CSHB 3665 would allow the Bond Review Board to update its method for calculating unissued debt projections to more accurately reflect the risks of outstanding debt by reflecting actual issuing practice. This would help protect the state's credit rating and could enable the state to issue more debt based on updated projections.

The BRB calculates the yearly debt service requirements payable from unrestricted general revenue funds to determine whether additional state debt can be authorized without exceeding the maximum annual debt service limit.

Since meeting or exceeding the limit would stop the state from issuing more debt and could hurt its credit rating, the LBB researched the issue and found that the BRB assumed interest rates, lengths of bond terms, and types of debt service payments for unissued debt that overstated the likely cost and resulted in an overall debt service calculation that reflected worst-case scenario rather than current issuing practices. The LBB also found

that the Attorney General's Office advised the BRB that because it had used the same methodology and assumptions for so long, it had set a precedent that could not be changed without legislative authorization. CSHB 3665 would give that authority to the BRB to update its methodology and would require the methodology to be published every year, which would be a good step toward more transparency for this complicated aspect of state government finance.

Article 4. Electronic pay cards. By requiring all state employees and retirees to receive their salaries by direct deposit or by using an electronic pay card, CSHB 3665 would save dollars by eliminating the paper, postage, storage, processing time, and personnel costs of issuing paper checks. The LBB recommended this change in the *GEER*, which noted that 10 percent of payroll and annuity payments were still made by paper check in 2010.

The Texas Workforce Commission, the attorney general, and the Health and Human Services Commission use electronic pay cards to pay unemployment, child support, and food stamp benefits, and they have reported improved efficiencies. The fiscal note states that the full impact could not be assessed until full implementation in 2013, but assumes that the administrative cost of implementing electronic pay cards would be offset with administrative savings from issuing fewer paper checks.

Article 5. Publish session laws electronically. CSHB 3665 would result in an estimated fiscal note gain in general revenue of \$75,000 every even-numbered year by discontinuing the hard-copy publishing and distribution of session laws. These savings would be assumed in CSHB 1.

CSHB 3665 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 transparency.

Article 6. Collection of fees by attorney general. CSHB 3665 would result in an estimated gain in general revenue of \$1,969,220 every year by allowing the attorney general to collect fees for electronic filing of documents, outside counsel invoice reviews, and toll road comprehensive development agreement reviews. This fee revenue would be assumed in CSHB 1.

Electronic filing would improve efficiencies as well as save money; the Open Records Division processes about 20,000 open-records requests each year and the administrative costs of handling that much paper are significant. The Attorney General's Office already is in the planning stages of implementing an electronic filing system, and the fee would offset those implementation costs.

Requiring the attorney general to review outside counsel invoices would be an appropriate oversight function. The attorney general would require a deposit of the estimated invoice review fee at the same time the contract between the state agency and outside counsel was executed. The deposit would be a good way to ensure the outside legal firm got paid promptly and would ensure that the state agency got the legal service it needed without delay. The attorney general would set the fee by rule to ensure that those affected could give their feedback on what would be fair. The invoices would be reviewed, the review fee would be drawn down against the deposit, and the attorney general and outside counsel would settle up at the end of the contract term.

The attorney general already is required to review the complex multibillion-dollar toll road comprehensive development agreements to make sure they meet state law and constitutional requirements. CSHB 3665 would appropriately allow the attorney general to charge a fee for this time-consuming review. The attorney general started reviewing comprehensive development agreements in 2008 and has reviewed a few each year in 2009 and 2010. The attorney general would set the fee by rule to ensure that those affected could give their feedback on what would be fair.

Article 7. Texas Preservation Trust Fund Account. CSHB 3665 would result in a one-time estimated fiscal note gain to general revenue of \$10,089,461 in fiscal 2012. This revenue gain would be assumed in CSHB 1. 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. CSHB 3665 would allow the funds to be used for operating expenses of the Historical 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 would still experience a 74-percent cut to its operations budget from the last biennium.

Article 8. Department of Information Resources programs. CSHB 3665 would transfer the existing fund balance of \$2,550,000 from the Department of Information Resources (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.

Article 9. Lobby registration fees. CSHB 3665 would result in an estimated fiscal note gain in general revenue of up to \$1,477,000 for fiscal 2012-2013, resulting from the increase in lobbyist registration fees. CSHB 1 would appropriate, contingent on fee authority, collection, and other factors, \$187,500 each year to the Ethics Commission from this fee for its operations.

OPPONENTS
SAY:

Article 1. Agency authorizations. Section 1.02(4) is too broadly worded, and would give state agencies authority to change program eligibility, services, and benefits without legislative direction or oversight.

Article 6. Collection of fees by attorney general. Charging a fee for the electronic filing of documents could be a deterrent to using that option. In addition, the fee charged for the review of toll road comprehensive development agreements should not be allowed to be a percentage of the cost of the toll project; that prohibition should be specified in CSHB 3665 as it is in SB 731. SB 731 also makes clear that the amount of the fee could not exceed reasonable attorney's fees charged for similar legal services in the private sector.

Article 7. Texas Preservation Trust Fund Account. 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 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 as few other sources exist for its preservation.

Article 8. Department of Information Resources programs. 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.

Article 9. Lobby registration fees. CSHB 3665 could double the fee for some lobbyists to register, from \$500 to \$1,000. Lobbyists would bear the highest fees of any profession. This increase could result in fewer registrations for those who chose to register because they were close to the spending threshold. Fewer registrations would result in less disclosure, but more disclosure is what should be encouraged.

OTHER
OPPONENTS
SAY:

Article 4. Electronic pay cards. HB 3665 should provide more direction for the comptroller regarding how to protect and educate people who would transition from checks to electronic pay cards (debit cards) or direct deposit. Direct deposit should be the default, or the preferred option, because debit cards do not allow for savings, but rather are set up only for spending. Debit cards also would not allow employees to earn interest as a bank account would. In addition to requiring electronic pay card vendors to be able to provide 24-hour access to pay card holders' funds, which the bill does, the bill should require that only a reasonable, minimal fee should be charged for that access.

The bill also should require the comptroller, as well as all the state agencies using electronic means for transferring funds, to make information available about the choices people make regarding direct deposit and debit cards, and any difficulties reported. This would help any attempt in the future to centralize electronic state payments, which are currently on different platforms.

NOTES:

SB 1579 by Ogden, which contains some similar provisions to CSHB 3665 concerning fiscal matters relating to general government, was reported favorably, as substituted, by the Senate Finance Committee on April 26.

HB 2866 by Harper Brown, which would allow the attorney general to charge a fee for the electronic filing of documents until 2015, passed the House by 132-10 on April 11 and was considered in a public hearing on May 2 by the Senate Government Organization Committee.

SB 731 by Nichols, which would authorize fees for legal sufficiency reviews of comprehensive development agreements by the attorney general, passed the Senate by 31-0 on March 31 and was reported

favorably, as substituted, by the House Transportation Committee on
April 20.