SUBJECT: Relating to state fiscal matters.

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 23 ayes — Pitts, Turner, Aycock, Button, Chisum, Crownover, Eiland, Giddings, Gooden, Hochberg, Johnson, S. King, Margo, Martinez, D. Miller, Morrison, Otto, Patrick, Riddle, Schwertner, Shelton, Torres, Villarreal

0 nays

4 absent — Darby, Dukes, McClendon, Zerwas

SENATE VOTE: On final passage, April 29 — 21-10 (Birdwell, Carona, Fraser, Hegar, Huffman, Jackson, Nelson, Patrick, Shapiro, Williams)

WITNESSES: None

BACKGROUND: Texas Constitution, Art. 3, sec. 35 limits bills to one subject, except for general appropriations bills, which may 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 Senate passed its version of HB 1 on May 4. 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: **Article 1: State agency authorizations.** CSSB 1811 would authorize state agencies 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;
- modifying eligibility requirements, processes, and services for people who receive benefits from the agency to ensure the benefits were received by the most deserving people, consistent with the purpose for the benefits;
- allowing agency communications with people and required agency documents delivered to or by the agency, including applications, notices, billing statements, receipts, and certificates, to be delivered by email or through the Internet; and
- adopting and collecting fees to cover agency costs.

Article 2: Premium tax credits. The bill would repeal provisions that currently allow insurers to credit against their premium taxes their payments related to regulatory examination and evaluation fees. This change would affect property and casualty insurers, health insurers and HMOs, title insurers, and other domestic insurers.

Article 3: TANF/SNAP application requirements. The bill would amend the Human Resources Code to direct the Health and Human Service Commission (HHSC) to use appropriate technology to confirm the identity of applicants for Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP) and prevent duplicate participation in the program. It also would repeal the requirement to electronically fingerprint applicants of these programs.

Article 4: Tax records. The bill 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 also would add that taxpayers contesting a state tax or seeking a refund would have to produce contemporaneous records and supporting documentation to substantiate their claims.

Article 5: Collection Improvement Program audits. CSSB 1811 would amend the Code of Criminal Procedure to remove the comptroller's involvement in the auditing of cities and counties participating in the Collection Improvement Program at the Office of Court Administration, and instead assign the duties to the Office of the Court Administration.

Article 6: Penalties for failing to file tax reports. The bill would repeal current law authorizing the comptroller to impose a $50 penalty on entities that fail to file a required sales, excise or use tax report three or more times and would instead authorize the comptroller to impose a $50 penalty for *each* failure to report or remit taxes, without regard to whether the entity subsequently filed the report or whether any taxes were due. This new penalty would apply to entities subject to the beer wholesaler/distributor tax, motor vehicles tax, seller-financed motor vehicle tax, hotel occupancy tax, motor fuels tax, franchise tax, mixed beverage tax, and emergency 9-1-1 service fee collection.

Additionally, entities subject to the mixed beverage tax collections and emergency 9-1-1 fee collection who failed to file a report or remit taxes would have to pay 5 percent of the amount due as a penalty, and if the penalty was not paid within 30 days after the fee or report was due, an additional 5 percent.

Article 7: Foundation School Program payments. The bill would amend the Education Code to defer the Foundation School Program August payments to September. The payment deferments would take effect in fiscal 2012, deferring August 2013 payments to September 2013. This section also would repeal a provision in the Government Code that requires the comptroller each August to estimate the amount to be transferred to the Foundation School Fund and transfer the estimated amount on or before September 15.

Article 8: Unclaimed property. The bill would amend the Property Code to move up the dates regarding unclaimed property starting in 2013, by requiring property holders of abandoned intangible (financial) property on June 1 of every year to report to the comptroller by July 1 instead of November 1 of each year, and for property valued at $250 or more, to notify the last known owner by May 1 instead of August 1 that the holder may deliver the property to the comptroller.

Article 9: Voter registration. 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.

Article 10: Comptroller powers and duties. 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 agreement with institutions, the article would eliminate criteria for institutions agreeing to hold state deposits of $98,000 or less. The article also would authorize the comptroller to obtain criminal history records for the enforcement of the motor fuels tax in addition to other taxes administered by the agency.

Article 11: Preparation/publication of reports. The bill would require the Higher Education Coordinating Board, instead of the comptroller, to prepare and deliver required reports concerning student enrollment, tuition and other issues. The comptroller would be required to electronically publish all materials related to the appraisal of property and administration of taxes and explanation of taxpayer remedies and no longer would be required to provide hard copies free of charge. The comptroller would be required to electronically report biennially, instead of annually, specified property tax value information. The article also would repeal required reports by the comptroller regarding court cost fee changes implemented by the Legislature and the progress of the state's economic development. The article also would repeal a duty by municipal corporations created for skilled workforce development to report annual objectives, revenues, expenditures, and assets to the comptroller.

Article 12: Sales and use tax holidays. The bill would halt the sales tax holidays in state fiscal years in which the comptroller determined a general revenue-related deficit existed in the current fiscal biennium and general revenue-related funds for the subsequent biennium were less than the general revenue-related funds in the current biennium. The comptroller would have to make the determination in January of odd-numbered years and provide notice that the exemptions would not apply by February 15. Sales tax exemptions would not take place in fiscal 2012, and if the bill received enough votes to take immediate effect, in fiscal 2011.

Article 13: Surplus lines and independently procured insurance. The bill would expand the definition of what constituted an insurance premium subject to premium taxes. It would specify 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 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.

Article 14: Obesity intervention and prevention. The bill would require the comptroller to establish an obesity intervention and prevention grant program and study, which would award grants to public school programs and other entities that provide nutrition education and intervention, prevention, and other programs to combat obesity. The comptroller would be required to identify geographic areas where students were at high risk for obesity and give preference to those areas in awarding grants. The bill would specify the compilation of data used to identify risk and the creation of an interactive map that showed the results. Applicants would have to use matching funds, and the grants would be awarded on a competitive basis. Grant awardees would be required to collect and report data regarding the program's effectiveness. The comptroller would be required to establish an obesity and wellness information web portal to educate the public and to report to the Legislature in January of odd-numbered years the effectiveness of the grant program.

Effective dates. The bill would take effect on September 1, 2011, unless otherwise provided. For Articles 2, 3, 4, 6, 12, and 13, the provisions would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, they would take effect September 1, 2011. Articles 5, 7, 8, and 9 specify an effective date of September 1, 2011.

SUPPORTERS SAY:

CSSB 1811 is needed to make statutory changes in agency operations that would help generate $17 million in general revenue for fiscal 2011 and a net gain to general revenue-related funds of $2.5 billion through fiscal 2013. These savings are needed to minimize the impact on state services of spending reductions in the fiscal 2012-13 general appropriations bill. Many of its provisions were derived from recommendations by state agencies and from the LBB's January 2011 *Government Efficiency and Effectiveness Report* (*GEER*).

Premium tax credits. This provision 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 provision would implement an LBB recommendation found in the *Government Effectiveness and Efficiency Report*, but would authorize insurers to still credit their assessments against their owed premium taxes. The fiscal implications of these amendments have been assumed under HB 1, and the fiscal note assumes that the fee credits earned prior to the effective date of the bill would be applicable to premium tax liabilities in fiscal 2012.

Repealing SNAP/TANF finger-imaging requirements. Finger-imaging applicants is an unnecessary expense to the state, and this provision would save about $3.1 million in general revenue in fiscal 2012-13. Several state and national studies have concluded that finger imaging is not cost-effective and may deter legitimate participation. The bill still would require HHSC to use appropriate technology to confirm applicant identity and prevent duplicate participation. Better technology is available today than 15 years ago when Texas first implemented finger imaging. For example, now with the statewide operations of the TIERS eligibility system and the use of an electronic benefit card, it is harder to commit fraud and easier to use alternative means of identifying duplicative participation and verifying identities. Savings would result from reducing staff time on processing eligibility, staff training and overhead, technology-related costs, and ending the contract with Lone Star Imaging

Services. Among other studies is a 2008 report by the Urban Institute that showed the use of biometric technology can lead to as much as a 4.3 percentage point decline in food stamp receipts because it reduces the likelihood that food stamp applicants will complete the application process. The fiscal implications of these amendments have been assumed in HB 1.

Tax Records. CSSB 1811 would conform the record-keeping requirements for all business taxpayers, thus treating all entities equitably, including those who are contesting a tax or seeking a refund. These provisions would increase state revenues by streamlining state administration of cases involving contesting a state tax or requesting a refund by putting in place recordkeeping requirements that would allow for an easy verification of the claim and by reducing the number of unsubstantiated refund claims filed with the comptroller. The record-keeping requirements also would allow the comptroller's auditors to use their time more effectively and more quickly process cases.

Collection Improvement Program audits. These changes would streamline program administration and appropriately would put auditing responsibilities in the Office of Court Administration, which runs the program. The provision also would allow the comptroller to focus staff time on tax auditing and collections and therefore is expected to increase state revenues by about $5 million per year.

Penalties for failing to file tax reports. These provisions would make penalties associated with late filing consistent across taxable entities and incentivize on-time payments, which would help state revenues. The bill would maintain the comptroller's discretion to waive the application of penalties, if needed.

Foundation School Program. Deferring the Foundation School Program payment would provide significant relief to the state in fiscal 2012 while still providing the same level of support to local school districts. This would be a simple change that would minimally impact school districts but would substantially affect the budget, and it is expected to save $1.8 billion in fiscal 2013. The payment delay would be for only a couple of weeks, and school districts would have enough lead time to appropriately budget their spending. Additionally, keeping the deferral permanent would prevent worse problems next biennium if the state had to resume the August payment. This funding shift has been made before when the state faced fiscal difficulties, most recently in 2003. As in the past, when state finances improve, the Legislature could consider restoring the previous payment schedule.

Unclaimed property. This provision would reduce the dormancy period for unclaimed financial instruments, such as bank accounts and utility deposits, thereby more quickly increasing the transfer of abandoned property to the state or to the rightful owners. Shorter dormancy periods also would make it easier for the holders of unclaimed property to find the property owner because they would be more likely to be in the same area using the same name.

Voter registration. This provision would streamline the administration 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.

Sales tax holidays. This recommendation would tie August sales tax holidays to state budget conditions, as recommended by LBB's *Government Effectiveness and Efficiency Report*, by suspending the tax holidays and establishing a permanent review process. Other states have cancelled or eliminated their tax holidays due to budgetary shortfalls, and Texas should too. Taxpayers understand what it is to tighten one's belt, and they would understand that tax holidays would continue when the state could afford them.

The benefits of tax holidays to consumers and retailers have not been conclusive. Some studies show that the holidays are too insignificant to make a difference in family expenditures and that the volume of goods purchased during the holiday would most likely have been purchased over a longer period of time. Immediate implementation of this provision would result in a general revenue gain of $17 million in fiscal 2011, $57.4 million in fiscal 2012, and $41.4 million in fiscal 2013. An effective date of September 1, 2011, if the bill did not take immediate effect, would mean that the tax holiday would remain in 2011, thereby resulting in a lower general revenue gain of $17 million for fiscal 2012 and $42.4 million in fiscal 2013.

Obesity Prevention Program. The Obesity Intervention and Prevention program would help identify best practices in reducing the incidence of childhood obesity, especially in areas where there was a higher risk of obesity. Currently, many programs exist to help families and communities address obesity. This program would use information technology system and data from multiple sources to identify high-risk areas in Texas, then offer grants to help study the impact of an anti-obesity program. This grant program would foster local control and creativity while targeting high-risk areas. Obesity is a serious health problem because it deteriorates or complicates children's health and quality of life. The program would not cost the state and has been assumed in HB 1 projections within the comptroller's budget.

OPPONENTS SAY:

Many of these provisions are one-time budget maneuvers that would help capture or retain state revenues for the next fiscal year, but do nothing to remedy structural tax problems that perpetually create deficiencies. Some provisions would, in effect, increase taxes, for example, by eliminating tax breaks or holidays.

State agency authorizations. Sec. 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.

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

Repealing SNAP/TANF finger-imaging requirements. Verifying a person's identity to determine eligibility for state health and human service benefits directly increases in importance with increases in caseloads. Finger-imaging should be kept in place to ensure benefits are delivered only to those in need and who are truly entitled to them, and other ways should be found to minimize the cost of this program.

Collection Improvement Program audits. This program unfairly requires large cities and counties to adopt specified court fee collection processes and procedures and does not sufficiently allow local control. Instead of amending just the comptroller's role in the program, this bill also should authorize counties to implement their own programs.

Foundation School Program payments. School districts count on state Foundation School Program funding and need this funding as soon as they can get it. In these tight budgetary times, waiting 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 payment delay would be a "sleight of hand" maneuver that would do nothing to resolve the structural and other tax and spending problems that are creating the state's shortfall and budget challenges. This deferral would create an even bigger budget hole in the future when the state resumes its normal August payment period.

Sales tax holidays. An economic downturn is the worst time to suspend a tax holiday because that is when families most need the financial break and retailers could use the added boost from sales. Retailers say store revenues can increase as much as 10 percent during a tax holiday, and families get added benefits when stores offer additional sales. Since sales taxes typically are regressive — that is, lower-income individuals and families pay disproportionately more of their income on sales tax than wealthier individuals and families — offering a sales tax holiday is one of the best ways to give a break to families that are hurting the most. Sales tax holidays do not lose money for the state. August tax collections do not drop in comparison to other months of the year, and both retailers and the states benefit from increased sales revenues. According to February 2011 conclusions by the Washington Economics Group on Florida's tax holiday, "Contrary to conventional wisdom, a tax holiday resulted in higher tax collections…while consumers may time-shift purchases of some items to take advantage of the sales tax holiday, they do not shift their overall level of spending."

Obesity Prevention Program. This is a "nanny state" program that would attempt to do for families what they should do for themselves. Obesity is a problem that is well-recognized and can be controlled by appropriate nutrition and exercise in most cases, activities that any parent knows how to handle.

NOTES:

The House committee substitute for SB 1811 is identical to CSHB 3790 by Pitts, the companion bill, which was set on the Major State Calendar for May 3 and postponed.

SB 1811 as passed by the Senate contains the following provisions that are *not* in CSSB 1811:

- directing the General Land Office to sell by August 31, 2013, specified real property and to deposit proceeds to the credit of the General Revenue Fund;
- requiring customs brokers to only report exempted tangible property via the comptroller's secure web site, establishing certain penalties for noncompliance, and increasing by 50 cents the cost of a stamp to be used to fund the enforcement of custom broker laws;
- repealing sales and franchise tax refund opportunities for entities located in reinvestment zones or areas receiving tax abatements;
- authorizing the comptroller to pay consultants who assist in state purchasing and procurements from the realized cost savings;
- defining when a utility deposit and a matured CD were presumed abandoned and shortening from seven years to three years when a money order would be considered abandoned;
- moving the Judicial and Court Training Fund to the General Revenue Fund from the Court of Criminal Appeals;
- authorizing fees for process server certification to be deposited to the General Revenue Fund;
- making permanent fees related to the delivery of petroleum products, which were set to expire August 31, 2011;
- requiring 25 percent tax prepayments in August 2013 relating to gasoline and diesel fuel distribution taxes normally paid in September 2013 and shifting from August to September 2013 tax allocation to the Available School Fund, State Highway Fund, County and Road District Fund, and the Texas Department of Transportation;
- requiring 25 percent tax prepayments in August 2013 relating to alcoholic beverage taxes normally paid in September;

- requiring 25 percent tax prepayments from large taxable entities by July 31, 2013, and from other entities that collect sales tax by August 2013;
- reducing by 1 percent the allowance given to cigarette distributors for affixing stamps to cigarette packages;
- establishing the judicial access and improvement account and proportional funding requirements through specified court fees, raising certain filing fees, and requiring collection of the $5 court cost from convicted defendants;
- redefining “sale for resale” of property used in the performance of a federal government contract;
- requiring reporting of monthly net sales by brewers and alcoholic beverage manufacturers, wholesalers and distributors and authorizing the comptroller to release certain information reported by alcoholic beverage sales under certain circumstances;
- authorizing the Legislature to appropriate money from tobacco settlement funds dedicated to EMS and trauma care, children and public health, and health and tobacco education to pay the principal or interest on a bond issued for the Cancer Prevention and Research Institute of Texas;
- imposing an enrollment fee on state and higher education employers whose employees participate in the ERS group benefits program;
- requiring the Legislative Budget Board to hold public hearings each November to hear a report from the comptroller and receive public testimony about the financial condition of the state and revenue forecasts;
- requiring the disclosure of certain information in the appropriations bill for fees that are newly proposed or increased and requiring the comptroller to annually issue a schedule of all revenue from fees;
- requiring the disclosure by state agencies of information related to expenditure reductions required by the governor or the Legislature during an interim; and
- requiring the governor to transfer $30 million from the Texas Enterprise Fund to the Texas Back to Work Program and $15 million to the Skills Development Fund.

CSSB 1581 by Ogden, which also contains a provision to shift the Foundation School Program payment, is on today’s Major State Calendar.