

BILL ANALYSIS

Senate Research Center
82R12071 JJT-D

S.B. 1584
By: Ogden
Finance
4/18/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Article 1 of this bill authorizes state agencies to reduce or recover expenditures by taking action to consolidate reports; extend license, permit; or registration periods; enter into contracts to carry out an agency's duties; adopt additional eligibility requirements for benefits; provide for electronic communication; and adopt and collect fees or charges to recover costs incurred by an agency.

Article 2 of the bill amends Chapter 161 of the Agriculture Code, regarding animal disease and pest control, to allow the Texas Animal Health Commission (TAHC) by rule to set and collect a fee for any service it provides that incurs a cost.

Article 3 of the bill amends the Water Code to extend the petroleum product delivery fee. Under current law, the fee will not be collected after August 31, 2011. The bill would continue the fees with no expiration date and at the same rate as in fiscal year 2011. The fee would continue to be imposed on the delivery of virtually all petroleum products withdrawn from bulk storage at various rates on each delivery, based on cargo tank capacity, and would range from \$3.75 to \$15 per delivery. According to the comptroller of public accounts (comptroller), revenues collected would be subject to a two percent service charge that would be deposited to the General Revenue Fund, and the remaining receipts deposited to the GR-Dedicated Petroleum Storage Tank Remediation Account No. 655.

Articles 4 and 5 of the bill implement recommendations contained in the reports, "Increase Private Contributions for State Parks," and "Increase Private Contributions for State Parks," in the Legislative Budget Board's (LBB) *Government Effectiveness and Efficiency Report* (GEER) submitted to the 82nd Legislature, 2011. Article 4 of the bill authorizes the Texas Parks and Wildlife Department (TPWD) to designate companies as official corporate partners, and conduct joint promotional fund-raising campaigns with these companies for the purpose of generating contribution for the operations and maintenance of state parks, historic sites, and natural areas. Also, the bill allows TPWD to contract with companies to sell park passes in their retail locations; and receive licensing fees from companies authorized by the agency to use TPWD brand. Article 5 amends Chapter 502 of the Transportation Code, to establish a system in which motorists can voluntarily donate \$5 or more with their initial vehicle registration or renewals to TPWD. The bill would require the county assessor-collector to send the contributions to the comptroller for credit to TPWD for use in the operations and maintenance of state parks.

Article 6 of the bill implements recommendations in the report, "Require All Beneficiaries to Fund the Coastal Erosion Planning and Response Account," in the LBB's GEER report, submitted to the 82nd Legislature, 2011. The bill amends the Natural Resources Code to authorize commissioner to use one-third, rather than one-half, of the amount appropriated to the GLO for coastal erosion planning and response projects that do not require a partner to pay a portion of the project costs. The bill establishes an exception in the case of a federally declared natural disaster in which up to one-half of the amount appropriated for coastal planning and response projects could be used on projects without a partner paying a portion of the costs. The bill removes administration of the coastal management program from allowable uses of the Coastal Erosion Response Account. The bill establishes a commercial vessel docking fee of \$2 for each foot of vessel length to be paid each time a vessel greater than 18 feet docks at a Texas port. The comptroller would be required to adopt rules necessary for the administration, collection, reporting, and payment of the docking fee. The bill re-establishes the General

Revenue Dedicated Coastal Erosion Response Account and require that the commercial vessel docking fee, one-sixth of Outer Continental Shelf Act (Section 8(g), 43 U.S.C. Section 1337(g)) settlement funds, and one-third of the current 75 percent allocation to the General Revenue Fund of unclaimed motorboat fuels tax refunds that under current law is dedicated to TPWD be deposited into this account.

Article 7 amends the Health and Safety Code and the Government Code relating to programs funded under the Texas Emissions Reduction Plan (TERP). The bill amends Chapter 386 of the Health and Safety Code to create and fund the air quality research program, which would be established and administered under a contract between the Texas Commission on Environmental Quality and a nonprofit organization or institution of higher education. The bill eliminates the allocation from General Revenue-Dedicated Texas Emissions Reduction Plan Account No. 5071 for the new technology research and development program; and provide \$2 million per year, instead of a percentage allocation share, for the new air quality research program. The bill repeals Chapter 387 of the Health and Safety Code, regarding the new technology research and development program.

As proposed, S.B. 1584 amends current law relating to state fiscal matters related to natural resources and the environment.

[**Note:** While the statutory reference in this bill is to the Texas Natural Resource Conservation Commission (TNRCC), the following amendments affect the Texas Commission on Environmental Quality, as the successor agency to TNRCC.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Animal Health Commission is modified in SECTION 2.01 (Section 161.060, Agriculture Code) of this bill.

Rulemaking authority is expressly granted to the Texas Parks and Wildlife Commission in SECTION 4.01 (Section 11.225, Parks and Wildlife Code), SECTION 4.02 (Sections 13.0151 and 13.0155, Parks and Wildlife Code), and SECTION 4.03 (Section 13.103, Parks and Wildlife Code) of this bill.

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 6.05 (Section 33.614, Natural Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. REDUCTION OF EXPENDITURES AND IMPOSITION OF CHARGES GENERALLY

SECTION 1.01. Provides that this article applies to any state agency that receives an appropriation under Article VI of the General Appropriations Act.

SECTION 1.02. Provides that, notwithstanding any other statute of this state, each state agency to which this article applies is authorized to reduce or recover expenditures by:

- (1) consolidating any reports or publications the agency is required to make and filing or delivering any of those reports or publications exclusively by electronic means;
- (2) extending the effective period of any license, permit, or registration the agency grants or administers;
- (3) entering into a contract with another governmental entity or with a private vendor to carry out any of the agency's duties;
- (4) adopting additional eligibility requirements for persons who receive benefits under any law the agency administers to ensure that those benefits are received by the most deserving persons consistent with the purposes for which the benefits are provided;

(5) providing that any communication between the agency and another person and any document required to be delivered to or by the agency, including any application, notice, billing statement, receipt, or certificate, may be made or delivered by e-mail or through the Internet; and

(6) adopting and collecting fees or charges to cover any costs the agency incurs in performing its lawful functions.

ARTICLE 2. FISCAL MATTERS CONCERNING ANIMAL HEALTH REGULATION

SECTION 2.01. Amends Section 161.060, Agriculture Code, as follows:

Sec. 161.060. New heading: AUTHORITY TO SET AND COLLECT FEES. Authorizes the Texas Animal Health Commission (TAHC) by rule to set and collect a fee for any service provided by TAHC, rather than to charge a fee, as provided by TAHC rule, for an inspection made by TAHC, including:

- (1) the inspection of animals or facilities;
- (2) the testing of animals for disease;
- (3) obtaining samples from animals for disease testing;
- (4) disease eradication and treatment efforts;
- (5) services related to the transport of livestock;
- (6) control and eradication of ticks and other pests; and
- (7) any other service for which TAHC incurs a cost.

ARTICLE 3. FISCAL MATTERS REGARDING PETROLEUM INDUSTRY REGULATION

SECTION 3.01. Amends Section 26.3574(b), Water Code, as follows:

(b) Requires each operator of a bulk facility on withdrawal from bulk of a petroleum product to collect from the person who orders the withdrawal a fee in an amount determined as follows:

- (1) \$3.75 for each delivery into a cargo tank having a capacity of less than 2,500 gallons, rather than \$3.75 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011;
- (2) \$7.50 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons, rather than \$7.50 for each deliver into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011;
- (3) \$11.75 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons, rather than \$11.75 for each delivery into a cargo tank having a capacity of 5,000 or more but less than 8,000 for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011;
- (4) \$15.00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons, rather than \$15,00 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons

for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011; and

(5) \$7.50 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more, rather than \$7.50 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for the state fiscal year beginning September 1, 2007, through the state fiscal year ending August 31, 2011.

ARTICLE 4. FISCAL MATTERS REGARDING FUNDING FOR STATE SITES

SECTION 4.01. Amends Chapter 11, Parks and Wildlife Code, by adding Subchapter J-1, as follows:

SUBCHAPTER J-1. FOR-PROFIT PARTNERSHIPS

Sec. 11.221. DEFINITIONS. Defines, in this subchapter, "official corporate partner" and "state site."

Sec. 11.222. SELECTION; CONTRACT. (a) Authorizes the Texas Parks and Wildlife Department (TPWD), subject to Texas Parks and Wildlife Commission (TPWC) approval, to select a for-profit entity as an official corporate partner.

(b) Authorizes TPWD to contract with an official corporate partner to raise funds for state site operations and maintenance.

Sec. 11.223. GIFTS AND GRANTS; FUND-RAISING. (a) Authorizes an official corporate partner, to raise funds for state site operations and maintenance, to accept contributions, gifts, grants, and promotional campaign proceeds on behalf of TPWD. Requires TPWD to ensure that an official corporate partner transfers the contributions, gifts, grants, and promotional campaign proceeds to TPWD as soon as possible.

(b) Authorizes TPWD to contract with an official corporate partner to conduct joint promotional campaigns or other fund-raising efforts conducted by TPWD to raise funds for state site operations and maintenance.

Sec. 11.224. USE OF FUNDS. Authorizes money received by TPWD under this subchapter, including money received under a contract or licensing or other agreement or as a gift or grant, to be used only for state site operations and maintenance.

Sec. 11.225. RULES. Requires TPWC to adopt rules to implement this subchapter, including rules that establish guidelines or best practices for official corporate partners.

SECTION 4.02. Amends Subchapter A, Chapter 13, Parks and Wildlife Code, by adding Sections 13.0151 and 13.0155, as follows:

Sec. 13.0151. STATE PARK PASSES. (a) Authorizes TPWD to contract with any entity TPWD considers appropriate to sell state park passes in any of the entity's retail locations.

(b) Authorizes TPWC to adopt rules to implement this section.

Sec. 13.0155. USE OF PARKS AND WILDLIFE DEPARTMENT BRAND. (a) Authorizes TPWD to contract with any entity TPWD considers appropriate to use the TPWD brand in exchange for licensing fees paid by the entity to TPWD.

(b) Requires TPWD to use the licensing fees received under Subsection (a) only for the operation and maintenance of state sites as defined by Section 11.221.

(c) Authorizes TPWC to adopt rules to implement this section.

SECTION 4.03. Amends Subchapter B, Chapter 13, Parks and Wildlife Code, by adding Section 13.103, as follows:

Sec. 13.103. ADVERTISING. Authorizes TPWC by rule to assess and limit commercial advertising in state parks, natural areas, historic sites, or other sites under the jurisdiction of TPWD to preserve the integrity of the sites and to minimize distractions that may interfere with the enjoyment of the sites by visitors.

ARTICLE 5. FISCAL MATTERS REGARDING PARKS AND WILDLIFE DEPARTMENT

SECTION 5.01. Amends Subchapter D, Chapter 502, Transportation Code, by adding Section 502.1747, as follows:

Sec. 502.1747. VOLUNTARY CONTRIBUTION TO PARKS AND WILDLIFE DEPARTMENT. (a) Authorizes a person, when the person registers or renews the registration of a motor vehicle under this chapter, to contribute \$5 or more to TPWD.

(b) Requires the county assessor-collector to send any contribution made under this section to the comptroller of public accounts (comptroller) for credit to TPWD. Authorizes money received by TPWD under this section to be used only for the operation and maintenance of state parks, historic sites, or natural areas under the jurisdiction of TPWD.

ARTICLE 6. FISCAL MATTERS REGARDING PRESERVATION OF NATURAL RESOURCES

SECTION 6.01. Amends Section 33.603(f), Natural Resources Code, as follows:

(f) Authorizes the commissioner of the General Land Office (commissioner), notwithstanding Subsections (c) (relating to a coastal erosion response study or project) and (e) (relating to requirements for a qualified project partner), each biennium to undertake at least one erosion response project without requiring a qualified project partner to pay a portion of the shared project cost. Prohibits the total cost of the projects undertaken that do not have a cost share requirement from exceeding one-third, rather than one-half, of the total amount appropriated to the land office for coastal erosion planning and response, except that if any of the projects that do not have a cost share requirement are undertaken in response to erosion associated with a federally declared disaster:

(1) the total cost of the projects undertaken that do not have a cost share requirement and that are not undertaken in response to erosion associated with a federally declared disaster may not exceed one-third of the total amount appropriated to the land office for coastal erosion planning and response; and

(2) the total cost of all of the projects undertaken that do not have a cost share requirement, whether or not undertaken in response to erosion associated with a federally declared disaster, may not exceed one-half of the total amount appropriated to the land office for coastal erosion planning and response.

SECTION 6.02. Amends Sections 33.604(a) and (b), Natural Resources Code, as follows:

(a) Provides that the coastal erosion response account is an account in the general revenue fund that is authorized to be appropriated only to the commissioner and used only for the purpose of implementing this subchapter, rather than for the purpose of implementing this subchapter and administration of the coastal management program as provided in Subchapter F (Coastal Coordination).

(b) Provides that the account consists of:

- (1) all money appropriated for the purposes of this subchapter;
- (2) grants to this state from the United States for the purposes of this subchapter;
- (3) all money received by this state from the sale of dredged material;
- (4) penalties or costs collected under Section 61.0184 (Notice Requirements; Orders and Hearings) or 63.1814 (Notice Requirements; Orders and Hearings); and
- (5) fees deposited to the credit of the account in accordance with Section 33.614.

SECTION 6.03. Amends Section 33.605, Natural Resources Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes money in the account to be used for any action authorized by this subchapter, rather than to be used for any action authorized by this subchapter and the administration of the coastal management program as provided in Subchapter F.

(c) Authorizes fees deposited to the credit of the account in accordance with Section 33.604 (Coastal Erosion Response Account), notwithstanding Subsection (a), to be used only for erosion response projects that directly affect commercial vessels that dock at ports operated by port authorities or navigation districts in this state.

SECTION 6.04. Amends Section 33.608, Natural Resources Code, as follows:

Sec. 33.608. REPORT TO LEGISLATURE. (a) Creates this subsection from existing text. Makes no further changes.

(b) Requires that the report include a plan for coastal erosion response studies and projects that may be funded, wholly or partly, from money in the account and may be undertaken during the next 10 or more years.

SECTION 6.05. Amends Subchapter H, Chapter 33, Natural Resources Code, by adding Sections 33.614 and 33.615, as follows:

Sec. 33.614. COMMERCIAL VESSEL DOCKING FEE. (a) Requires each port authority or navigation district to impose a fee of \$2 for each foot of vessel length on each owner or operator of a commercial vessel with a draft of at least 18 feet each time the vessel docks at the port operated by the port authority or navigation district.

(b) Requires a port authority or navigation district that collects a fee under Subsection (a) to remit the amount of the fee to the comptroller.

(c) Entitles a port authority or navigation district that makes a timely payment to the comptroller of the amount of a fee collected under Subsection (a) to retain an amount equal to one percent of the amount of the fee collected to cover the port authority's or navigation district's administrative expenses.

(d) Requires the comptroller to deposit the amount of the fees collected to the credit of the account as provided by Section 33.604.

(e) Requires the comptroller to adopt rules necessary for the administration, collection, reporting, and payment of the fee.

Sec. 33.615. DEDICATION OF OUTER CONTINENTAL SHELF LANDS ACT REVENUE. Authorizes one-sixth of the revenue received by this state under Section 8(g), Outer Continental Shelf Lands Act (43 U.S.C. Section 1337(g)), being one-half of that portion of the revenue credited to the general revenue fund and not otherwise deposited to the credit of the permanent school fund pursuant to the Agreed Judgment in

Cause No. 395,483 in the 299th Judicial District Court of Travis County on file in the Travis County District Clerk's records at Volume 1396, Page 479, to be appropriated only to the commissioner for the purpose of implementing this subchapter.

SECTION 6.06. Amends Section 162.502(c), Tax Code, to provide that of the money deposited to the credit of the general revenue fund under Subsection (b)(2), 33-1/3 percent may be appropriated only to the commissioner of the General Land Office for the purpose of implementing Subchapter H, Chapter 33, Natural Resources Code, and 66-2/3 percent may be appropriated only to TPWD for any lawful purpose, rather than money deposited to the credit of the general revenue fund under Subsection (b)(2) is authorized to be appropriated only to TPWD for any lawful purpose.

SECTION 6.07. Provides that Section 33.614, Natural Resources Code, as added by this Act, applies only to a vessel that docks at a port on or after the effective date of this Act.

ARTICLE 7. FISCAL MATTERS REGARDING ENVIRONMENTAL PROTECTION

SECTION 7.01. Amends Section 386.051(b), Health and Safety Code, as follows:

(b) Requires the Texas Natural Resource Conservation Commission (TNRCC) and the comptroller, under the plan, to provide grants or other funding for:

(1) the diesel emissions reduction incentive program established under Subchapter C (Diesel Emissions Reduction Incentive Program), including for infrastructure projects established under that subchapter;

(2) the motor vehicle purchase or lease incentive program established under Subchapter D (Motor Vehicle Purchase or Lease Incentive Program);

(3) air quality research under Section 386.059, rather than the new technology research and development program established under Chapter 387 (New Technology Research and Development Program);

(4) the clean school bus program established under Chapter 390 (Clean School Bus Program); and

(5) the new technology implementation grant program established under Chapter 391 (Texas Clean Fleet Program).

SECTION 7.02. Amends Section 386.058(b), Health and Safety Code, to require the governor to appoint to the Texas Emissions Reduction Plan Advisory Board (advisory board) a representative of the trucking industry, a representative of the air conditioning manufacturing industry, a representative of the electric utility industry, a representative of regional transportation, and a representative of the nonprofit organization described by Section 386.059, rather than Section 386.252(a)(2).

SECTION 7.03. Amends Subchapter B, Chapter 386, Health and Safety Code, by adding Section 386.059, as follows:

Sec. 386.059. AIR QUALITY RESEARCH. (a) Requires TNRCC to contract with a nonprofit organization or institution of higher education to establish and administer a program to support research related to air quality.

(b) Prohibits the board of directors of a nonprofit organization establishing and administering the research program related to air quality under this section from having more than 11 members, requires it to include two persons with relevant scientific expertise to be nominated by TNRCC, and prohibits it from including more than four county judges selected from counties in the Houston-Galveston-Brazoria and Dallas-Fort Worth nonattainment areas. Authorizes the two persons with relevant scientific expertise to be nominated by TNRCC to be employees or

officers of TNRCC, provided that they do not participate in funding decisions affecting the granting of funds by TNRCC to a nonprofit organization on whose board they serve.

(c) Requires TNRCC to provide oversight as appropriate for grants provided under the program established under this section.

(d) Requires a nonprofit organization or institution of higher education to submit to TNRCC for approval a budget for the disposition of funds granted under the program established under this section.

(e) Requires a nonprofit organization or institution of higher education to be reimbursed for costs incurred in establishing and administering the research program related to air quality under this section. Prohibits reimbursable administrative costs of a nonprofit organization or institution of higher education from exceeding 10 percent of the program budget.

(f) Provides that a nonprofit organization that receives grants from TNRCC under this section is subject to Chapters 551 (Open Meetings) and 552 (Public Information), Government Code.

SECTION 7.04. Amends Section 386.108(a), Health and Safety Code, to require TNRCC to provide funding under Section 386.252(a), rather than Section 386.252(a)(1), for infrastructure projects.

SECTION 7.05. Reenacts Section 386.252, Health and Safety Code, as amended by Chapters 1125 (H.B. 1796) and 1232 (S.B. 1759), Acts of the 81st Legislature, Regular Session, 2009, and amends Subsection (a) and adds Subsection (a-1), as follows:

(a) Provides that of the money in the fund, 96.5 percent may be used only to implement and administer programs established under the plan and is required to be allocated as follows:

(1) not more than four percent is authorized to be used for the clean school bus program;

(2) not more than 10 percent is authorized to be used for on-road diesel purchase or lease incentives;

(3) a specified amount is authorized to be used for the new technology implementation grant program, from which a defined amount is authorized to be set aside for electricity storage projects related to renewable energy;

(4) five percent is required to be used for the clean fleet program;

(5) up to \$200,000 is allocated for a health effects study;

(6) up to \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 (Clean Air Act Fees) to supplement funding for air quality planning activities in affected counties;

(7) up to \$2 million is to be allocated annually to support research related to air quality as provided by Section 386.059;

(8) up to \$216,000 is allocated annually to TNRCC to contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station for the development and annual computation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the state implementation plan; and

(9) the balance of the money in the fund allocated by this subsection is allocated to the remaining programs of the diesel emissions reduction incentive program.

Deletes existing text providing that money in the fund may be used only to implement and administer programs established under the plan and is required to be allocated as follows:

(1) for the diesel emissions reduction incentive program, 87.5 percent of the money in the fund, of which:

(A) not more than four percent may be used for the clean school bus program;

(B) not more than 10 percent may be used for on-road diesel purchase or lease incentives; and

(C) a specified amount may be used for the new technology implementation grant program, from which a defined amount may be set aside for electricity storage projects related to renewable energy; five percent shall be used for the clean fleet program;

(2) for the new technology research and development program, nine percent of the money in the fund, of which:

(A) up to \$200,000 is allocated for a health effects study;

(B) \$500,000 is to be deposited in the state treasury to the credit of the clean air account created under Section 382.0622 to supplement funding for air quality planning activities in affected counties;

(C) not less than 20 percent is to be allocated each year to support research related to air quality as provided by Section 387.010 (Air Quality Research); and

(D) the balance is allocated each year to TNRCC to be used to:

(i) implement and administer the new technology research and development program for the purpose of identifying, testing, and evaluating new emissions-reducing technologies with potential for commercialization in this state and to facilitate their certification or verification; and

(ii) contract with the Energy Systems Laboratory at the Texas Engineering Experiment Station (laboratory) for \$216,000 annually for the development and annual computation of creditable statewide emissions reductions obtained through wind and other renewable energy resources for the state implementation plan; and

(3) two percent is allocated to TNRCC and 1.5 percent is allocated to the laboratory for administrative costs incurred by TNRCC and the laboratory.

(a-1) Creates this subsection from existing text. Provides that two percent of the money in the fund is allocated to TNRCC and 1.5 percent is allocated to the laboratory for administrative costs incurred by TNRCC and the laboratory.

SECTION 7.06. Amends Section 447.011(h), Government Code, to delete existing text authorizing the Texas Commission on Environmental Quality to use this information to fund the United States Environmental Protection Agency verification of a technology in accordance with Section 387.003 (New Technology Research and Development Program), Health and Safety Code.

SECTION 7.07. Repealer: Chapter 387 (New Technology Research and Development Program), Health and Safety Code.

SECTION 7.08. Provides that a grant issued under Chapter 387, Health and Safety Code, before the effective date of this Act is governed by Chapter 387, Health and Safety Code, as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 7.09. Provides that to the extent of any conflict, this article prevails over an Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

ARTICLE 8. EFFECTIVE DATE

SECTION 8.01. Effective date: September 1, 2011.