

BILL ANALYSIS

C.S.H.B. 3540
By: Pitts
Appropriations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Committee Substitute House Bill 3540 sets forth certain statutory changes necessary to comply with assumptions made in the General Appropriations Act, respond to state fiscal concerns, and address certain fiscal matters. This bill substitute also implements selected Legislative Budget Board Staff Performance Report recommendations.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Employees Retirement System of Texas board of trustees in SECTION 2.03 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 8.01, SECTION 8.02 and SECTION 8.05 of this bill.

ANALYSIS

DELAYED ELIGIBILITY FOR MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM OF TEXAS

Committee Substitute House Bill 3540 amends the Government Code such that membership in the employee class of the retirement system shall begin on the 91st day after the first day a person is employed or holds office regardless of when that employment or office holding began. The substitute also repeals expiration dates for certain provisions in this section of code.

WAIVER OF AND SUPPLEMENTAL HEALTH COVERAGE FOR STATE EMPLOYEES

Committee Substitute House Bill 3540 addresses the manner in which full-time employees and annuitants may specifically waive participation in their basic health benefit coverage plans. Under a new section of the Insurance Code, full-time employees and annuitants may waive any coverage provided by that chapter in writing if they can properly demonstrate substantially equivalent coverage under a different health benefit plan or that they are eligible for benefits under the TRICARE Military Health System.

Committee Substitute House Bill 3540 requires the board of trustees of the Employees Retirement System of Texas to offer, as an optional coverage under the group benefits program, a supplemental health coverage program to certain eligible employees and annuitants, the cost of which may be paid in the same manner as the cost of other optional coverage and the purchase of which shall be contracted for by the board in accordance with certain sections of the Insurance Code. Additionally, Committee Substitute House Bill 3540 authorizes the board of trustees to adopt rules implementing this program and allow incentive payments (in lieu of the full state contribution) in an amount authorized by the General Appropriations Act for employees or annuitants electing to waive coverage under the basic plan. The board must inform employees and annuitants of their options under this section at the time of initial enrollment in the group benefits program and during subsequent open-enrollment periods. Employees or annuitants who elect to receive the incentive payment may use it only in the manner prescribed by the board of trustees for payment of other group coverage plans provided under the group benefits program. Committee Substitute House Bill 3540 also permits a reduction in the state contribution for an employee or annuitant's coverage reflective of the reduced cost of that coverage in the event that the employee or annuitant in question has elected to waive basic coverage.

COMPENSATION FOR CERTAIN STATE EMPLOYEES WHO RETURN TO STATE EMPLOYMENT

Committee Substitute House Bill 3540 excludes state employees who receive an annuity credited to them based wholly or partly on service as state officers or state employees in a public retirement system, as defined by the Government Code, from receiving longevity pay and benefit replacement pay. Committee Substitute House Bill 3540 also dictates that, for the purposes of computing annual vacation leave for such employees, years of total state employment shall include only the length of state employment after the date the state employee retired. Additionally, the substitute renders otherwise eligible employees and state-paid judges who leave state employment for at least 30 consecutive days ineligible to receive benefit replacement pay under most circumstances and defines circumstances under which a state employee is not considered to have left state employment.

EXTENDING STATE REIMBURSEMENT PROGRAM: PETROLEUM STORAGE TANKS

Committee Substitute House Bill 3540 amends the Water Code to extend the deadline for submitting certain site closure requests. Further, the substitute exempts owners and operators of underground or above ground storage tanks from which regulated substances are released from liability to the state if the site at which the release occurred has been admitted into the petroleum storage tank state-lead program. Committee Substitute House Bill 3540 also removes certain restrictions on payments made by the Texas Commission on Environmental Quality (TCEQ) out of the petroleum storage tank remediation account, including a cap on the payment of necessary expenses associated with administration of the account and the groundwater protection cleanup program. Committee Substitute House Bill 3540 requires the executive director of TCEQ to grant extensions to eligible owners and operators and allows for reimbursement for corrective actions performed under such extensions before August 31, 2007. The substitute also sets forth a provision under which certain sites subject to corrective action may be placed in the PST state-lead program. In addition, Committee Substitute House Bill 3540 extends the deadline to file a claim for reimbursement out of the PST remediation account to March 1, 2008, and the expiration date of the PST reimbursement program to September 1, 2008. Finally, the substitute amends the Water Code in order to maintain current levels of fees imposed on the bulk delivery of fuel through the end of fiscal year 2007.

RESTRICTIONS ON PROPERTY VALUATION AND STATE AID TO SCHOOL DISTRICTS

Committee Substitute House Bill 3540 amends the Tax Code to no longer require the chief appraiser to accept and approve or deny applications for residential homestead exemptions for the 2005 and subsequent tax years after the filing deadline has passed if the application is filed after the delinquency date for the taxes on the homestead. Also, the substitute limits the extension of filing deadlines for rendition statements and property reports to a maximum of 15 days. Additionally, Committee Substitute House Bill 3540 requires that motions of the chief appraiser or a property owner to direct changes in the appraisal roll correcting certain clerical errors affecting tax liability of a residence homestead be filed before the first anniversary of the appraisal record approval deadline by the appraisal review board for the year in which the tax is imposed. The substitute amends subsequent sections of the Tax Code to reflect the addition of this section and emphasizes that only motions filed on or after the effective date of this Act are affected by it.

Committee Substitute House Bill 3540 amends the Tax Code to provide, in some instances, for the awarding of attorney's fees to an appraisal district, appraisal review board, or chief appraiser that substantially prevails in an appeal filed on or after the effective date of this Act and based on a claim of excessive or unequal appraisal by a property owner. The amount of such an award would be determined by the court and would not be subject to the statutory limitations imposed on awards of attorney's fees to property owners already contained in that section.

Committee Substitute House Bill 3540 amends the Education Code with respect to the method used to calculate certain distributions to school districts out of the foundation school fund.

Committee Substitute House Bill 3540 amends a section of the Government Code relating to the determination of school district property values in order to require that requests by the

commissioner of education or a school district for audits of the total taxable value of property in a school district be filed with the Comptroller of Public Accounts of the State of Texas no later than the first anniversary of the date of the final certification of the annual study findings.

LOTTERY TICKET SALES

Committee Substitute House Bill 3540 requires the Texas Lottery Commission to study and recommend to the legislature methods by which lottery tickets may be sold in a more cost-effective and convenient manner.

JOINT PRESCRIPTION DRUG PURCHASING FOR STATE AGENCIES

Committee Substitute House Bill 3540 adds a requirement to the Government Code that the Health and Human Services Commission and each authorized health and human services agency enter into an agreement with one or more other states for the joint bulk purchasing of prescription drugs and other medications to be used in the Medicaid program, the state child health plan, or other program under the commission's authority. The substitute stipulates that this agreement may not be entered into until the commission determines that doing so is feasible and cost-effective, and, if appropriated money would be spent, the governor and the Legislative Budget Board grant prior approval. Further, the commission shall make a determination on feasibility and cost-effectiveness no later than January 15, 2006, and, if applicable, subsequently take action to enter into an agreement that takes effect March 1, 2006. Procedures that the commission must adopt in order to comply with this section shall ensure that this state receives all drugs and medications purchased with state funds as well as an equitable share of any resulting price benefits. Should a state agency determine that a waiver or authorization from a federal agency is necessary for the implementation of any provision of this article, Committee Substitute House Bill 3540 requires the affected agency to request the waiver or authorization and permits that agency to delay implementation until the waiver or authorization is granted.

QUALITY ASSURANCE FEES

Committee Substitute House Bill 3540 amends the Health and Safety Code by adding a subchapter imposing a quality assurance fee upon certain subject institutions. Committee Substitute House Bill 3540 lays out the method of computation, requirements, and a definition of terms utilized in determining the monthly fee amount and imposes the amount in addition to other fees imposed by this chapter of the Health and Safety Code. The substitute also provides that this quality assurance fee is an allowable cost for reimbursement under the state Medicaid program, and prohibits nursing facilities from listing the quality assurance fee as a separate charge on a patient's or resident's billing statement or otherwise directly or indirectly attempting to charge the fee to a patient or resident. Committee Substitute House Bill 3540 requires each institution subject to these provisions to pay the quality assurance fee and file with the Health and Human Services Commission a report stating the total patient days for the month as calculated under this subchapter no later than the 25th day after the last day of a month. Committee Substitute House Bill 3540 requires the executive commissioner of the Health and Human Services Commission to, as soon as is practicable, adopt rules for the administration of this Act, including rules related to the imposition of, collection of, and exceptions from the quality assurance fee. No administrative penalty assessed under this subchapter may exceed the greater of one-half of the amount of the outstanding fee or \$20,000.

Committee Substitute House Bill 3540 establishes a nursing home quality assurance fee dedicated account in the general revenue fund, into which interest earned on money in the account shall be credited and money collected by the comptroller under this subchapter shall be deposited. Subject to legislative appropriation and this subchapter, money in this account, along with federal matching money, shall be used to support or maintain an increase in Medicaid reimbursement for institutions and may be used, subject to a formula devised by the commission, to offset allowable expenses under the state Medicaid program or increase reimbursement rates paid to institutions under the state Medicaid program. Committee Substitute House Bill 3540 requires the commission to stop fee collection and return deposited but unspent fees to the institutions that paid them in the event that any portion of this subchapter is held invalid by the final order of a court not subject to appeal or the commission determines that compliance with this subchapter will not entitle the state to receive additional federal funds under the Medicaid

program. If the Centers for Medicare and Medicaid Services disapproves of the fee plan established under this subchapter, the substitute requires the commission to, as soon as is practicable, revise the associated state plan amendments and waiver requests as necessary to comply with federal regulations. Committee Substitute House Bill 3540 authorizes the executive commissioner of the Health and Human Services Commission by rule to adopt a definition, method of computation, or a rate different from those expressly provided or authorized by this subchapter to the extent necessary to accomplish the purposes of the subchapter.

Committee Substitute House Bill 3540 amends the Government Code to grant the executive commissioner of the Health and Human Services Commission the authority to, by rule, impose quality assurance fees on any health care provider or facility providing health care services and make determinations regarding the amount and manner of fee payment, revenues of subject providers or facilities, and record keeping. The substitute also requires the executive commissioner to seek federal approval of a quality assurance fee for the home and community-based services waiver program.

Committee Substitute House Bill 3540 repeals a section of the Health and Safety Code regarding the expiration and legislative review of certain provisions. The substitute amends another section to require the Health and Human Services Commission or the Department of Aging and Disability Services at the commission's direction to set quality assurance fees for each day at a certain amount, subject to necessary adjustments.

Committee Substitute House Bill 3540 requires the executive commissioner of the Health and Human Services Commission to set the initial quality assurance fee imposed by this Act based on available revenue and patient day information. This initial fee shall remain in effect until the commission obtains the information necessary to set the fee under the provisions added by this Act. The substitute also authorizes the commission's executive commissioner to adopt rules necessary to implement the subchapter added under this article. Should a state agency determine that a waiver or authorization from a federal agency is necessary for the implementation of any provision of this article, Committee Substitute House Bill 3540 requires the affected agency to request the waiver or authorization and permits that agency to delay implementation until the waiver or authorization is granted.

REDUCTION IN NUMBER OF LICENSE PLATES ISSUED

Committee Substitute House Bill 3540 amends the Transportation Code to require that, with respect to the registration period beginning on or after the effective date of this article, the Texas Department of Transportation issue only one license plate for attachment at the rear of the vehicle for which the plate is issued. Accordingly, language in the substitute entitles vehicle operators on public highways to display a single license plate if it is attached at the rear of the vehicle, or two license plates if both were assigned for the registration period as a set. The substitute also provides for conforming changes throughout the Transportation Code.

TRANSPORTATION FEES AND FISCAL MATTERS

Committee Substitute House Bill 3540 amends the Transportation Code to require the comptroller to transfer certain funds from the state highway fund to the general revenue fund and to establish a flat motor vehicle registration fee for vehicles weighing 6,000 pounds or less. The substitute also requires the comptroller to deposit the first \$68 million collected from certain fees into the general revenue fund and any additional amounts collected from such fees into the Texas mobility fund.

EFFECTIVE DATE

Except as otherwise provided below, this Act takes effect upon passage, or, if the Act does not receive the necessary vote, the Act takes effect on the 91st day after the last day of the legislative session.

Articles 3, 4, and 9 of this Act take effect September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

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Committee Substitute House Bill 3540 modifies the original Act by adding provisions relating to delayed eligibility for membership in the Employees Retirement System of Texas; the extension of the state petroleum tank reimbursement program and related fees; restrictions on property valuation and state aid to school districts; joint prescription drug purchasing for state agencies; quality assurance fees; a reduction in the number of license plates issued; and transportation fees and fiscal matters.

Committee Substitute House Bill 3540 modifies the original Act by changing the language of provisions relating to the waiver of and supplemental health coverage for state employees; compensation for certain state employees who return to state employment; and the effective date.

Committee Substitute House Bill 3540 modifies the original Act by removing certain provisions relating to legislative authority to determine amounts of state fund appropriations; state agency authorization to reduce expenditures; recovery of state agency overpayments to vendors; the Medicaid managed care delivery system; eligibility periods under the state Medicaid program and the children's health insurance program; the imposition of fees on long-term care and intermediate care facilities; and the recovery of direct and indirect costs incurred by the state in regulating industries and occupations.