

## **BILL ANALYSIS**

C.S.S.B. 1863  
By: Ogden  
Appropriations  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Committee Substitute Senate Bill 1863 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 and makes adjustments to current law in order to facilitate the administration of the state's financial resources.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts (comptroller) in SECTION 3.01, 3.02, 5A.03 and 11.14 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 7.02, 7.03, 8.01, 8.02, and 8.05 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Employees Retirement System of Texas board of trustees in SECTION 9.03 of this bill.

### **ANALYSIS**

Committee Substitute Senate Bill 1863 would increase the annual lobby registration fee to \$1,000 from \$300 for lobbyists other than those employed by a tax-exempt organization under 501(c)(3) or 501(c)(4), Internal Revenue Code of 1986. The registration fee for lobbyists employed by these non-profit organizations would remain at \$100.

Committee Substitute Senate Bill 1863 would authorize the Commission on Jail Standards to set and collect a fee to cover the cost of a jail inspection following a determination of noncompliance with minimum standards, at the request of the jail operator, and before the jail operator has taken actions to ensure compliance with jail standards. Fees would be deposited in a special account within the General Revenue Fund and could be appropriated only to pay the Commission's costs for performing services under Section 511.0091, Government Code.

Committee Substitute Senate Bill 1863 would require agencies with total expenditures exceeding \$100 million in a biennium to participate in recovery audits on expenditures to third parties. The comptroller of public accounts may exempt some agencies by rule. The substitute would require the comptroller to report results to the Governor, State Auditor's Office and Legislative Budget Board. Committee Substitute Senate Bill 1863 also describes requirements that must be adhered to by agencies entering into such contracts.

Committee Substitute Senate Bill 1863 would amend Chapter 162 of the Tax Code regarding motor fuels taxes. The substitute would clarify that when distributors default on tax payments to suppliers or permissive suppliers, the suppliers would not owe additional tax from accounts for which an accelerated bad debt deduction had been taken as a result of the default. Committee Substitute Senate Bill 1863 would also provide that under certain circumstances, a seller of motor fuels could verify end user numbers of exempt purchasers by other means than the acceptance of a signed statement. The licensed seller would be required to use the comptroller's web site or other materials provided or produced by the comptroller to verify the information. Committee Substitute Senate Bill 1863 would also allow a license holder to take credit for diesel

fuel used in the manufacturing of tangible personal property for resale (including feedstock) or in the production of oil or gas or to increase production of oil or gas.

Committee Substitute Senate Bill 1863 would amend the Tax Code in order to establish a standard presumptive value for determining the proper amount of motor vehicle sales tax due on certain motor vehicle sales transactions. The Texas Department of Transportation (TxDOT) would determine the presumptive value based on a nationally recognized motor vehicle industry reporting service. TxDOT would maintain information on presumptive values as part of its registration and title system, update the values quarterly, and make the values available to county tax assessor-collectors.

Committee Substitute Senate Bill 1863 would amend Chapter 162 of the Tax Code, relating to the allocation of motor fuels taxes. For the gasoline, diesel fuel, and liquefied gas taxes, during the months of June, July, and August of each odd-numbered year, the comptroller would not make allocations to the State Highway Fund 6, nor to the County and Road District Highway Fund. Rather, the comptroller would allocate the revenue that would otherwise have been allocated during the previous three months between September 5 and September 11 of each odd numbered year.

Committee Substitute Senate Bill 1863 would amend certain chapters of the Tax Code to exempt from the hotel occupancy tax that part of an apartment or condominium building consisting of unfurnished dwelling units leased to tenants; The substitute would also repeal the exception to the state hotel occupancy tax for permanent residents.

Committee Substitute Senate Bill 1863 amends the Health and Safety Code and the Human Resources Code to make the period of continuous coverage of certain individuals under the Children's Health Insurance Program and the Medicaid program six months or until the individual's 19th birthday. The bill requires the commission to request a waiver, if necessary, to implement the continuous coverage period.

Committee Substitute Senate Bill 1863 amends the Government Code to require the Health and Human Services Commission to establish an Office of Medical Technology to explore and evaluate new developments in medical technology and propose implementation in the Medicaid program if appropriate and cost-effective.

Committee Substitute Senate Bill 1863 amends the Government Code to authorize the Health and Human Services Commission to adopt Medicaid reimbursement rates for nursing services determined to provide a cost-effective alternative to hospitalization and, if cost-effective, for group appointments with providers for certain diseases and conditions specified by rule.

Committee Substitute Senate Bill 1863 amends the Government Code to authorize Medicaid reimbursement for a medical consultation provided by a physician or other health care provider using the Internet, as a cost-effective alternative to an in-person consultation, if an appropriate procedure code is developed by the Centers for Medicare and Medicaid Services. The bill substitute further authorizes a pilot program to test whether such consultations are a cost-effective alternative to in-person consultation and, if found to be cost-effective, authorizes expansion or statewide implementation of the pilot program. The pilot program is not a prerequisite to statewide implementation of reimbursement for online medical consultations.

Committee Substitute Senate Bill 1863 amends the Government Code to require the Health and Human Services Commission to develop and implement a comprehensive plan to reduce the use of hospital emergency room services by Medicaid recipients, and describes various features that may be included in that plan.

Committee Substitute Senate Bill 1863 amends the Government Code to require the Health and Human Services Commission to develop a proposal for a program to provide higher reimbursement rates to primary care case management providers under Medicaid who treat recipients with chronic health conditions in accordance with evidence-based, nationally accepted best practices and standards of care. The bill substitute also sets forth parameters of the proposed program, requires the commission to report to various standing committees of the

senate and the House of Representatives certain information regarding that program, and sets an expiration date for the section.

Committee Substitute Senate Bill 1863 amends the Occupations Code to allow the return to a pharmacy of certain unused drugs that are not sealed in the manufacturer's original packaging, but are sealed in unopened tamper-evident packaging and are either individually packaged or packaged in unit-dose packaging, unless federal law requires the drugs to be sealed in the manufacturer's original packaging.

Committee Substitute Senate Bill 1863 requires the Health and Human Services Commission to explore its authority under federal law to offer, as well as the cost and feasibility of offering, certain specified incentives to encourage persons to purchase health or long-term care insurance. The bill substitute further requires the commission to consider whether there are other feasible incentives. If any incentives are deemed feasible and cost-effective, the substitute requires the commission to make efforts to implement those options to the extent they are authorized by federal law, request any necessary waivers, and report any needed legislative changes to the 80th Legislature.

Committee Substitute Senate Bill 1863 would impose a quality assurance fee on each institution for which a license fee must be paid under Section 242.034, with certain exceptions. The substitute would require the Health and Human Services Commission to establish a quality assurance fee for each patient day so that the fee does not produce annual revenues greater than six percent of the total annual gross receipts in this state. The substitute would exclude state-owned veterans nursing facilities and certain facilities providing a continuum of long-term care services. The substitute provides that the quality assurance fee would be payable monthly, would be in addition to other fees imposed under Chapter 242, and would be an allowable cost for reimbursement under the state Medicaid program.

Committee Substitute Senate Bill 1863 would require the Comptroller of Public Accounts (comptroller) to deposit money collected in a nursing home quality assurance fee account, a dedicated account in the General Revenue Fund. The substitute would require, subject to legislative appropriation and this subchapter, money in the account together with federal matching money to be used to support or maintain an increase in Medicaid reimbursement for institutions. The substitute would authorize the Health and Human Services Commission, subject to legislative appropriation, to use money in the nursing home quality assurance fee account, together with any federal money available to match that money, to offset allowable expenses under the state Medicaid program, or increase reimbursement rates paid under the Medicaid program to institutions.

Committee Substitute Senate Bill 1863 would add new provisions authorizing the executive commissioner of the Health and Human Services Commission, by rule, to impose a quality assurance fee on persons providing services under a home and community services (HCS) waiver or a community living assistance and support services waiver (CLASS).

Committee Substitute Senate Bill 1863 would require the executive commissioner of the Health and Human Services Commission to establish the fee at an amount that will produce annual revenues of not more than six percent of the gross receipts of a person from services the person provides under the waiver. The substitute would require fees collected under this section to be deposited in a waiver program quality assurance fee account, a dedicated account in the General Revenue Fund that is exempt from the application of Section 403.095, Government Code, relating to the use of dedicated revenue.

Committee Substitute Senate Bill 1863 would authorize money in the account, subject to legislative appropriation and state and federal law, to be appropriated only to the Health and Human Services Commission to increase reimbursement rates paid under the HCS/CLASS waiver programs or to offset allowable expenses under the state Medicaid program. The substitute would require the Health and Human Services Commission, subject to legislative appropriation and state and federal law, to use money from the waiver program quality assurance fee account, together with any federal money available to match money from the account, to increase reimbursement rates paid under the home and community services waiver program or the community living assistance and support services waiver program.

Committee Substitute Senate Bill 1863 would repeal the expiration of the assessment of the quality assurance fee to ICF-MRs.

Committee Substitute Senate Bill 1863 addresses the manner in which full-time employees and annuitants may specifically waive participation in their basic health benefit coverage plans. Under a 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 Senate Bill 1863 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 Senate Bill 1863 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 Senate Bill 1863 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.

Committee Substitute Senate Bill 1863 would amend Chapter 201 of the Transportation Code to require the comptroller to deposit certain monies to the credit of the general revenue fund instead of to the credit of the Texas mobility fund in state fiscal years 2006 and 2007.

Committee Substitute Senate Bill 1863 would amend Chapter 57 of the Utilities Code to include taxable telecommunication receipts of cable companies and to continue GR Account 345-Telecommunications Infrastructure until September 1, 2011. The bill would repeal portions of the statute imposing a ceiling on the assessment. Certificated telecommunications utilities would be allowed to recover the assessment from the utilities' customers once the balance in the account exceeded \$1.5 billion from assessment deposits. The comptroller would have to publish, in the Texas Register, the date that assessment deposits totaled \$1.5 billion. Utilities would file, with Public Utility Commission by February 15 of each year, confidential affidavits attesting to the amount of assessment paid and the amount of assessment recovered from customers. This bill substitute would require the assessment to be deposited to the general revenue fund.

Committee Substitute Senate Bill 1863 allows the comptroller to manage certain Texas preservation trust fund assets.

Committee Substitute Senate Bill 1863 removes certain information that identifies a taxpayer from a letter, memo, and ruling by a governmental body with tax authority.

Committee Substitute Senate Bill 1863 requires county development, county assistance, hospital, and emergency services districts to submit a district map to the comptroller along with election results after a local sales tax election.

Committee Substitute Senate Bill 1863 clarifies that credits may be taken against the amount of insurance premium taxes and that the insurance gross premiums tax on life, health, and accident insurance is imposed on policies. Committee Substitute Senate Bill 1863 defines taxable premium receipts and includes all types of consideration received for an insurance policy. Committee Substitute Senate Bill 1863 clarifies that the insurance premium tax is due on all title insurance premiums. Committee Substitute Senate Bill 1863 clarifies that money received by an insurer for coverage under a children's health benefit plan is not subject to the insurance retaliatory tax.

Committee Substitute Senate Bill 1863 confirms that credits may be asserted in a redetermination, and mandates equal time for both parties in redetermination proceedings.

Committee Substitute Senate Bill 1863 provides that an extension in the statute of limitations for assessing a responsible individual for trust fund taxes by one year from the date extension ends or bankruptcy concludes.

Committee Substitute Senate Bill 1863 provides that, unless otherwise authorized, a restriction or condition placed on a check by a maker in payment of taxes that attempts to limit the amount of taxes, penalties or interest owed, is void. Committee Substitute Senate Bill 1863 provides credits to taxpayers for overpayments and requires the comptroller to amend audits expeditiously to reflect payments and overpayments of taxes.

Committee Substitute Senate Bill 1863 amends the definition of *Asale for resale* as it applies to rentals and leases. Committee Substitute Senate Bill 1863 clarifies language which uses the phrase *Printed material* in a clause that refers to components of a manufactured product. Committee Substitute Senate Bill 1863 clarifies an exemption for tangible personal property.

Committee Substitute Senate Bill 1863 allows purchasers to claim exemption directly when purchasing equipment exclusively used in the production of timber.

Committee Substitute Senate Bill 1863 reschedules the amount of motor vehicle sales tax collected in a county. Changes are also made on the amount of motor vehicle registration fees retained by counties.

Committee Substitute Senate Bill 1863 clarifies that consolidated reporting is prohibited for franchise taxes. This incorporates federal regulations standards for tangible personal property determinations.

Committee Substitute Senate Bill 1863 raises the upper dollar limit of the security bond required for a mixed beverage permit.

Committee Substitute Senate Bill 1863 clarifies existing law allowing corporations to depreciate oil and gas properties using alternative methods of depreciation. It also allows a marketing gas well to flare for 6 months, repealing the current 12 month standard. It amends the gas production tax statute to return the treatment of tax reimbursement. The bill provides an oil production tax credit for taxpayers using enhanced efficiency production equipment.

Committee Substitute Senate Bill 1863 makes uniform the collection of city, county and special purpose district sales taxes on sales of goods and taxable services. It defines the amount of the tax due in connection with the comptroller's certification to municipal sales taxes. It also conforms the startup-date for a County District Sales tax with most other local option sales taxes.

Committee Substitute Senate Bill 1863 eliminates outdated language calling for the money retained by the comptroller from city and county sales tax allocations to be used to pay insurance premiums for comptrollers bonds.

Committee Substitute Senate Bill 1863 amends chapter headings relating to assessment on utility gross receipts.

Committee Substitute Senate Bill 1863 clarifies that telecommunications utilities are subject to the utility gross receipts assessment.

Committee Substitute Senate Bill 1863 repeals, references, specifies and clarifies certain sections of the Tax Code.

Committee Substitute Senate Bill 1863 makes it a Class C misdemeanor for a person under 18, with an exception, to purchase or attempt to purchase cigarettes or tobacco products. The bill regulates and provides civil and criminal penalties for internet and mail-order sales of cigarettes and tobacco products.

Committee Substitute Senate Bill 1863 amends certain provisions of the Transportation Code pertaining to commercial driver's licenses with respect to the requirements of an application, fee, and expiration date.

**EFFECTIVE DATE**

Except as otherwise provided by this Act, 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 except as otherwise provided by this Act.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

Committee Substitute Senate Bill 1863 modifies the original Act by adding provisions relating to the establishment of an Office of Medical Technology within the Health and Human Services Commission; Medicaid reimbursement programs; hospital emergency room services reduction; pharmacy drug returns; health insurance purchase incentives; motor vehicle sales and use taxes; motor fuels taxes; hotel occupancy taxes; the Texas Mobility Fund; the Telecommunications Infrastructure Fund; the administration of the state's financial resources and fiscal management; Texas preservation trust fund assets; taxpayer protection; sales of cigarette and tobacco products and penalties for their illegal purchase; and commercial driver's licenses.

Committee Substitute Senate Bill 1863 modifies the original Act by changing the language of provisions relating to the waiver of and supplemental health coverage for state employees and eligibility for medical assistance and children's health insurance programs.

Committee Substitute Senate Bill 1863 modifies the original Act by removing certain provisions relating to the authority of the legislature to take certain actions with respect to appropriated funds and fiscal matters pertaining to the regulation of oil-related and gas-related activities.