LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

May 2, 2005

TO: Honorable Jim Pitts, Chair, House Committee on Appropriations

FROM: John S. O'Brien, Deputy Director, Legislative Budget Board

IN RE: **HB3540** by Pitts (Relating to certain fiscal matters affecting governmental entities.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3540, Committee Report 1st House, Substituted: a positive impact of $333,524,260 through the biennium ending August 31, 2007.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

The bill would make certain statutory changes needed to comply with assumptions made in the General Appropriations Bill as passed by the House and would implement selected Legislative Budget Board Staff Performance Report recommendations.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$155,002,060
2007	$178,522,200
2008	$181,371,660
2009	$186,226,239
2010	$191,550,960

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *GENERAL REVENUE FUND* 1	Probable Savings/ (Cost) from *FOUNDATION SCHOOL FUND* 193	Probable Savings/ (Cost) from *GR MATCH FOR MEDICAID* 758
2006	$136,813,000	$12,562,159	$0	$5,626,901
2007	$137,340,000	$13,647,920	$15,600,000	$11,934,280
2008	$136,000,000	$14,819,279	$16,224,000	$14,328,381
2009	$136,000,000	$16,159,181	$16,873,000	$17,194,058
2010	$136,000,000	$17,370,391	$17,548,000	$20,632,569

Fiscal Year	Probable Revenue Gain/(Loss) from *Vendor Drug Rebates-Sup Rebates* 8081	Probable Savings/(Cost) from *Vendor Drug Rebates-Sup Rebates* 8081	Probable Revenue Gain/(Loss) from *PETRO STO TANK REMED ACCT* 655	Probable Savings/(Cost) from *PETRO STO TANK REMED ACCT* 655
2006	$5,626,901	($5,626,901)	$39,839,000	$6,200,000
2007	$11,934,280	($11,934,280)	$65,638,000	($68,700,000)
2008	$14,328,381	($14,328,381)	$0	($69,100,000)
2009	$17,194,058	($17,194,058)	$0	($24,900,000)
2010	$20,632,569	($20,632,569)	$0	($12,300,000)

Fiscal Year	Probable Savings/(Cost) from *GR DEDICATED ACCOUNTS* 994	Probable Savings/(Cost) from *QUALITY ASSURANCE* 5080	Probable Revenue Gain/(Loss) from *New General Revenue Dedicated - Nursing Homes QAF*	Probable Savings/(Cost) from *New General Revenue Dedicated - Nursing Homes QAF*
2006	$1,286,531	$54,368,000	$202,205,000	($60,800,115)
2007	$1,397,469	$54,393,000	$203,927,000	($61,645,216)
2008	$1,518,465	$54,393,000	$205,579,000	($62,144,600)
2009	$1,657,972	$54,393,000	$207,237,000	($62,645,798)
2010	$1,784,700	$54,393,000	$208,896,000	($63,147,298)

Fiscal Year	Probable Revenue Gain/(Loss) from *FEDERAL FUNDS* 555	Probable Savings/(Cost) from *FEDERAL FUNDS* 555	Probable Revenue Gain/(Loss) from *STATE HIGHWAY FUND* 6	Probable Savings/(Cost) from *STATE HIGHWAY FUND* 6
2006	$92,828,865	($88,502,730)	$54,500,327	$8,902,517
2007	$98,389,093	($93,721,626)	$54,500,327	$9,312,836
2008	$99,186,137	($94,114,803)	$54,500,327	$9,744,513
2009	$99,986,076	($94,449,806)	$54,500,327	$10,226,351
2010	$100,786,467	($94,827,139)	$54,500,327	$10,672,340

Fiscal Year	Probable Revenue Gain/(Loss) from *TEXAS MOBILITY FUND* 365	Probable Savings/(Cost) from *OTHER SPECIAL STATE FUNDS* 998	Probable Revenue Gain/(Loss) from *Counties*	Probable Revenue Gain/(Loss) from *School Districts*
2006	($68,000,000)	$119,259	$3,000,000	$0
2007	($68,000,000)	$130,015	$3,000,000	($15,600,000)
2008	($68,000,000)	$140,896	$3,000,000	($16,224,000)
2009	($68,000,000)	$153,053	$3,000,000	($16,873,000)
2010	($68,000,000)	$163,880	$3,000,000	($17,548,000)

Fiscal Year	Change in Number of State Employees from FY 2005
2006	0.0
2007	54.0
2008	91.0
2009	80.0
2010	50.0

Fiscal Analysis

Article 1 would extend the 90-day waiting period for new or reemployed state employees to become members of the Employees Retirement System (ERS). Currently the waiting period is set to expire on September 1, 2005. The bill would extend it permanently.

Article 2 of the bill would implement the Legislative Budget Board's (LBB) Staff Performance Report, "Offer an Incentive to Employees Who Opt Out of the State Employee Health Insurance Program." The bill would modify the process an employee or annuitant would use to waive participation in the Employees Retirement System (ERS) health benefit plan. The bill would require the ERS board of trustees (board) to offer a TRICARE supplemental health coverage as an optional coverage. The bill authorizes the board to allow an incentive payment to an employee or annuitant who selects to opt out of the state's health coverage. The amount of the incentive payment is to be set in the General Appropriations Act. The employee or annuitant may use the incentive only to purchase optional coverage provided under the ERS group benefits plan, including TRICARE supplemental health coverage.

The bill authorizes a reduction in the state contribution for an employee or annuitant who waives participation in the state's health plan. The state is authorized to appropriate the amount specified in the General Appropriations Act for the incentive payment instead of the amount of the state contribution for "member-only" health coverage.

Article 3 of the bill would implement two LBB Staff Performance Reports, "Change Policies Governing Return to Work Retirees" and "Reduce the 12 Month Benefit Replacement Pay Eligibility Grace Period."

The bill would prohibit a state retiree from receiving longevity pay and benefit replacement pay. The bill would reduce the amount of vacation hours a state retiree who returns to work would accrue each month. The bill would also make any state employee who leaves state employment for at least 30 consecutive days ineligible to receive benefit replacement pay. The bill includes an exception for employees on leave without pay and certain employees whose positions typically include a break in service.

Article 4 would amend the Texas Water Code to extend certain deadlines related to corrective actions for releases from a petroleum storage tank and extends fee rates in effect for fiscal year 2004-2005 through fiscal year 2007. The bill would extend the September 1, 2005 deadline for the Texas Commission on Environmental Quality (TCEQ) to reimburse persons conducting corrective actions for releases from a Petroleum Storage Tank (PST) site to September 2, 2007, if an applicant has made a good faith effort to complete such actions by the original September 1, 2005 deadline. In cases where an extension has been granted because of good faith efforts made, the bill also would allow that such sites be placed in the PST "state-lead" program if corrective actions cannot be completed by September 1, 2007. The bill also would extend the deadline to file PST reimbursement claims from March 1, 2006 to March 1, 2008 and specify that the TCEQ cannot use funds from the PST Remediation Account No. 655 to pay such reimbursement claims after September 1, 2008.

The bill would maintain the rate of the petroleum product delivery fee imposed at the fiscal year 2005 level of one-half of one cent per gallon for fiscal years 2006 and 2007. Under current law, the fee for 2006 would effectively drop to one quarter of one-cent per gallon; for 2007, it would effectively drop to one-tenth of one cent per gallon.

Article 4 would take effect on September 1, 2005.

Article 5 would implement the recommendations included in the LBB Staff Performance Report, "Restrict Late Property Value Adjustments." The bill includes provisions to reduce demands on the Foundation School Fund for late property value adjustments and tighten the timeframe for property value determinations.

Specifically, the bill would: Reduce the deadline for filing late homestead exemptions from one year after the taxes become delinquent to the actual date taxes become delinquent so that final certification includes homestead exemptions filed late; Eliminate the automatic extension provision for rendition statements; Change the time limit for corrections to appraisal rolls that affect tax liability (other than corrections to homestead exemptions) from five years to one year after appraisal review board approval for residential property and eliminate these corrections for non-residential property; Require taxpayers who litigate a non-residential appraisal valued over $1 million and ultimately are not successful to pay the attorney fees resulting from the case for the appraisal district; Require payments to school districts for changes in property values that result from a significant lawsuit settlement made after the related appropriation year expires to be paid out evenly over five years, rather than all at once; and Limit audits of a school district's total taxable value and audits of related revisions to the annual property study to one year after the final certification of property values. Currently, school districts can request an audit up to three years after the final certification. The current statute authorizing payments to school districts for changes to historical property values in excess of 5% of the school district's property value would remain unchanged.

Article 6 of the bill would require the Texas Lottery Commission to study and recommend to the legislature methods by which lottery tickets could be sold in a more cost-effective and convenient manner than the methods currently used.

Article 7 would implement a recommendation in the Legislative Budget Board's Staff Performance Report, "Consider Establishing a Multi State Medicaid Drug Purchasing Pool." The bill would authorize the Health and Human Services Commission (HHSC) to enter into agreements with other states for the joint bulk purchasing of prescription drugs for the Medicaid program. If HHSC finds such an agreement is feasible and cost-effective, the bill would require HHSC to enter into an agreement effective March 1, 2006.

Article 8 would implement a Staff Performance Report, "Expand the Use of the Long-Term Care Quality Assurance Fee." The bill 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 bill would require HHSC to establish a quality assurance fee for each day in an amount that will produce annual revenues of not more than six percent of the institution's total annual gross receipts in this state. The bill would exclude state-owned veterans nursing facilities and nursing facilities in a continuing care retirement facility. The bill 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.

The bill 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 bill 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 bill would authorize HHSC, 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.

The bill would add a new section to authorize the executive commissioner of HHSC, by rule, to impose a quality assurance fee on any health care provider or facility providing health care services. The bill would require the executive commissioner of HHSC to seek federal approval of a quality assurance fee for the home and community-based services waiver program.

The bill would repeal the expiration of the assessment of the quality assurance fee to ICF-MRs. This repeal would result in the continuation of the collection of revenue in General Revenue-Dedicated Account 5080 - Quality Assurance.

Article 9 would amend the Transportation Code to require the Department of Transportation (TxDOT) to issue only one license plate for attachment at the rear of the vehicle for which the plate is issued. The bill would allow a vehicle that displays two license plates to be operated on a public highway if TxDOT assigned both plates for the registration period as a set of plates. This article takes effect September 1, 2005.

Article 10 would amend the Transportation Code relating to motor vehicle registration fees, the deposit location of motor vehicle inspection fees, and revenues for the Texas Mobility Fund. The bill would establish a flat motor vehicle registration fee of $58.80 for vehicles less than 6,000 lbs (passenger cars, municipal buses, private buses, commercial motor vehicles) and light trucks. The bill would transfer an amount of $68.0 million each year in non-constitutionally dedicated funds from the State Highway Fund to the General Revenue Fund. The bill would also retain the first $68.0 million in motor vehicle inspection fees received each year in the General Revenue Fund and would deposit any additional revenues received from that revenue stream above that amount to the credit of the Texas Mobility Fund.

Article 11 provides that the effective date of the Act shall be immediate if sufficient votes are received, or on the 91st day after the last day of the legislative session.

Methodology

Article I would extend the waiting period for membership in ERS. The ERS retirement contributions in the General Appropriations Act as passed by the House reflect $16 million in All Funds ($10.2 million in General Revenue Related Funds) savings from not making contributions to ERS for newly hired employees at a 6.0 percent contribution rate. The long-term savings from implementing this permanently, as reflected in this fiscal note, are lower due to the increase in normal cost and a reduced payroll base to amortize the unfunded liability. The ERS actuary estimates the cost of an actuarially sound contribution would increase by the rate of 0.011%, though that increase would apply to a smaller payroll base; which results in a reduced contribution. The savings shown is the reduction in an actuarially sound contribution.

Article 2 of the bill authorizes a reduction in the state contribution for an employee or annuitant who waives participation in the state's health plan. Article IX, Section 13.16, of the General Appropriations Bill passed by the House provides a $60 per month state contribution for each employee or annuitant who opt out of the state's health coverage.

The savings estimate assumes: 2,992 employees/annuitants currently enrolled in the state's health plan would opt out; the HealthSelect premium will increase each year; the employee/annuitant population will remain constant; and savings are reduced 20 percent for selection. The total anticipated 2006-07 All Funds savings is $16,100,751; including General Revenue Related savings of $10,143,473. This is an additional 2006- 07 All Funds savings of $7,722,423 and General Revenue Related savings of $4,865,127 above amounts assumed in the General Appropriations Bill as passed by the House.

Article 3 would result in 2006-07 All Funds savings of $19,294,222, which includes General Revenue Related savings of $12,155,360. All but $176,622 in All Funds in 2006-07 ($111,272 General Revenue savings) of Article 3 savings are assumed in Article IX of the current General Appropriations Bill as passed by the House.

The savings assumes a growth in state retirees that return to work of 358 per year. The trend is based on the number of return-to-work retirees employed from 1999 to 2003. The increase in the number of return-to-work retirees that occurred in 2004 was not included in the trend. The base amount used to calculate the future population of return-to-work retires was 3,830; equal to the number employed in May 2004. The saving estimate also assumes that 89 percent of return-to-work retirees are eligible for benefit replacement pay and 66 percent are eligible for longevity pay.

Reducing the benefit replacement pay grace period to 30 days would create an additional 2006-07 All Funds savings of $176,622 above amounts assumed in the General Appropriations Bill as passed by the House. These savings are based on a sample of data from the first half of fiscal year 2004. It is assumed that individuals during that period who returned to state employment after 30 days and terminated for a reason other than retirement would have been ineligible for benefit replacement pay.

Article 4 would result in a savings in fiscal year 2006 of $6.2 million to the PST Remediation Account No. 655 because extending the program would make it less imperative that cleanup sites be closed out as quickly as under current law. Extending the PST program through fiscal year 2008 and providing for applicants demonstrating good faith to move to the state-lead program would result in increased costs to the PST program in fiscal years 2007-2010.

Costs for the PST program in fiscal year 2007 would include costs to continue the reimbursement program of $54.3 million and costs for the state lead program established by the bill of $7.0 million. Administrative costs related to the program in fiscal year 2007 would be $7.4 million and would be paid out of funds transferred from the Waste Management Account No. 549. For purposes of this estimate, all costs are shown out of the PST Remediation Account No. 655. Costs of the PST program in fiscal year 2008 would include $42.0 million for the reimbursement program, $19.7 million for the state lead program, and $7.4 million for administration. Costs in fiscal year 2009 would include $17.7 million for the state lead program and $7.2 million in administrative costs. In fiscal year 2010, costs of the program would include $9.2 million for state lead and $3.0 million for administration.

Under current law, the number of FTEs required to operate the PST reimbursement program would begin to decline significantly in fiscal year 2007. Because the bill would continue the PST program, this estimate assumes that that decline would not occur, and that a significant number of FTEs would be required to operate the program through fiscal year 2010, as indicated in the table above.

The provisions of the bill relating to extending the current rate of the petroleum products deliver fee at one-half of one cent per gallon would result in an increase in revenues to the PST Remediation Account No. 655of $39.8 million in fiscal year 2006 and $65.6 million in fiscal year 2007. This revenue estimate was provided by the Comptroller of Public Accounts.

In **Article 5**, Sections 5.05-5.07 which allow the State to pay local school districts for property value changes equal to or greater than five percent of the total taxable value over five years is not anticipated to have a significant fiscal implication. According to TEA, property value changes in excess of five percent as a result of litigation are rare. As a consequence, no significant cost savings to the State or reduction in revenue to local school districts for this provision is anticipated.

Section 5.08 which limits audits of a school district's total taxable value and audits of related revisions to the annual property value study to one year after the final certification of property values would result in cost savings to the Foundation School Fund beginning in fiscal year 2007. This provision would also reduce revenue to local school districts by the same amount. Based on analysis by the Comptroller's office, recent School District Property Value Study data indicates that approximately 60 percent of school district audits are requested in the first year following certification. A reduction in the filing period from three to one year could result in approximately half of the remaining audits being filed within the proposed one-year period. An annual growth rate of four percent was applied to the amount of state savings and school district losses, as rising property values would result in larger audited values over the projected time period. The resulting savings to the Foundation School Fund are $15,600,000 for FY 07; $16,224,000 for FY 2008; $16,873,000 for FY 2009; and $17,548,000 for FY 2010.

The other provisions in article 5 would result in additional costs savings to the Foundation School Fund beginning in fiscal year 2008 and increased revenue to local school districts beginning in fiscal year 2007. The amount of the cost savings would depend upon several factors including the amount of corrections to appraisal rolls disallowed by the bill; and the reduction in litigation.

It is assumed that the Lottery Commission could conduct the study required by **Article 6** using current resources. There is no significant fiscal impact from this requirement.

Regarding **Article 7,** HHSC's Medicaid Preferred Drug List consultants estimated that the Texas Medicaid Vendor Drug Program would receive 3 percent of the Average Manufactured Price (AMP) in additional supplemental rebates. To estimate the savings from the additional 3 percent rebate, Medicaid drug utilization from the 2nd quarter of the fiscal year 2004 was used. Expenditures for fiscal year 2006 were reduced to reflect the impact from federal Medicare Modernization Act, which establishes Medicare Part D coverage for beneficiaries eligible for both programs - Medicaid and Medicare.

Estimated savings for fiscal year 2006 are adjusted to reflect that the bulk-purchasing program would be in operation only for 6 months. The state share of the additional supplemental rebates anticipated to receive from the bulk purchasing agreements with other states in fiscal year 2006 is estimated to be $5,626,901, and $11,934,280 in fiscal year 2007. Federal share of the additional supplemental rebates would be returned to the federal government. It is assumed that HHSC would absorb the cost of administering this program within current appropriations. It is assumed that the increase in supplemental rebates would be appropriated and spent in lieu of GR Match for Medicaid, resulting in a net positive impact to General Revenue Related Funds.

For **Article 8,** the comptroller estimates annual gross revenue from a quality assurance fee (QAF) on nursing homes to be $202.2 million in fiscal year 2006 (based on a transitional rate of $6.15 per bed), increasing to $208.9 million in fiscal year 2010. The comptroller's estimate of QAF revenue was based on historical nursing home gross receipts and occupied beds as reported by the Department of Aging and Disability Services (DADS); and DADS Medicaid nursing home reimbursement rates and estimated Texas private nursing home costs from a 2003 GE financial survey. The comptroller excluded potential revenues from facilities that would be exempt from the QAF.

It is assumed that funds would be appropriated for nursing home Medicaid reimbursement rate adjustments to account for the designation of the QAF as an allowable cost. Based on Health and Human Services Commission's estimates, the annual rate offset cost would be approximately $60.8 million from the General Revenue-Dedicated Nursing Home QAF Account and $93.8 million in Federal Funds in fiscal year 2006, and $61.6 million in General Revenue-Dedicated Nursing Home QAF Account and $98.4 million in Federal Funds in fiscal year 2007. This is based on an assessment model that includes exemption of certain facilities and a two-tier QAF rate.

Repealing the expiration of the quality assurance fee on ICF-MRs in **Article 8** would result in a gain to the General Revenue-Dedicated Account 5080 - Quality Assurance of $108,761,000 for the biennium. The comptroller’s estimate of revenues was obtained from the Department of Aging and Disability Services' (DADS) legislative appropriations request. The comptroller's revenue estimates for fiscal years 2008 through 2010 were based on fiscal year 2007 figures. The comptroller's estimate does not appear to include interest earned on collected revenue.

DADS estimates that certain exceptional items which are included in the General Appropriations Bill as passed by the House would increase revenues in the 2006-07 biennium by approximately $2,656,000. The continuation of the quality assurance fee on ICF-MRs is assumed in the current General Appropriations Bill, as passed by both the House and Senate. Funds are appropriated from the account to DADS for ICF-MRs and state schools, contingent upon passage of legislation that would continue the assessment. Expenditure of these funds for appropriated purposes would draw matching federal funds in accordance with the Federal Medical Assistance Percentage rate.

The estimate of revenue for Article 8 does not include revenue from other quality assurance fees that could be assessed under Section 531.078. The assessment of a quality assurance fee on other health care providers or facilities could result in a revenue gain but the comptroller could not estimate the fiscal impact because it is not known which particular health care providers or facilities would pay the fee.

Regarding the issuance and display of license plates in **Article 9**, the Department of Transportation estimates net savings in Fund 006 of approximately $5,000,000 each year for reduced license plate manufacturing costs; however, it is assumed that any savings realized from the implementation of the bill would be used for other eligible transportation related expenditures.

For **Article 10**, the comptroller estimates that provisions in the bill would produce a $136 million gain to the General Revenue Fund each year as follows: $68 million from the non-constitutionally dedicated revenues from the State Highway Fund 06, and the first $68 million collected from vehicle inspection fees. Vehicle inspection fees collected in excess of $68 million would be credited to the Texas Mobility Fund. The comptroller also estimates that Fund 06 would have net gain of $54.8 million each year due to additional registration fee revenue. The comptroller estimates that the Texas Mobility Fund would lose $68 million each year, which could affect bonding authority from the fund.

The bill would create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either within or outside of the Treasury, or create a dedicated revenue source. Therefore, the fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

Local Government Impact

Article 5 woud limit audits of a school district's total taxable value and audits of related revisions to the annual property value study to one year after the final certification of property values. This would result in cost savings to the Foundation School Fund beginning in fiscal year 2007 and would reduce revenue to local school districts by the same amount.

Article 9 would have no significant impact on local government. Counties would lose revenue due to a decrease in the number of replacement plates issued. TXDOT estimates a 20 percent drop in the number of replacement plates. Counties retain $2.50 of the $5.00 fee collected. However, county tax offices will realize some savings from reduced mailing costs due to lower postage costs to mail a single license plate.

Related to Article 10, for the purposes of this analysis it is assumed that counties would retain an additional amount of approximately $3 million each year from establishing a flat motor vehicle registration fee of $58.80 for vehicles less than 6,000 lbs (passenger cars, municipal buses, private buses, commercial motor vehicles) and light trucks.

Source Agencies: 304 Comptroller of Public Accounts, 327 Employees Retirement System, 362 Texas Lottery Commission, 529 Health and Human Services Commission, 539 Department of Aging and Disability Services, 582 Commission on Environmental Quality, 601 Department of Transportation, 701 Central Education Agency

LBB Staff: JOB, SD, CT, WP, TL, JI, MW