LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

Revision 1

May 21, 2005

TO: Honorable Tom Craddick, Speaker of the House, House of Representatives

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

IN RE: **SB1863** by Ogden (Relating to certain fiscal matters affecting governmental entities.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1863, Committee Report 2nd House, Substituted: a positive impact of $1,692,360,608 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.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2006	$532,602,678
2007	$1,159,757,930
2008	($149,256,300)
2009	$1,038,632,080
2010	($206,578,337)

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 Revenue Gain/(Loss) from *AVAILABLE SCHOOL FUND* 2	Probable Revenue Gain/(Loss) from *FOUNDATION SCHOOL FUND* 193
2006	$415,728,000	$125,695,678	($582,000)	($8,747,000)
2007	$1,010,037,000	$162,609,390	($599,460)	($12,925,000)
2008	($289,673,000)	$156,077,144	($617,444)	($15,708,000)
2009	$901,455,000	$156,879,047	($635,967)	($19,760,000)
2010	($342,030,000)	$157,614,709	($655,046)	($22,233,000)

Fiscal Year	Probable Revenue Gain/(Loss) from *HOTEL OCCUP TAX DEPOS ACC* 5003	Probable Savings/(Cost) from *GR DEDICATED ACCOUNTS* 994	Probable Revenue Gain/(Loss) from *QUALITY ASSURANCE* 5080	Probable Revenue Gain/(Loss) from *New GR-D - Telecommunications Infrastructure Fund 0345*
2006	$508,000	$465,247	$54,368,000	$33,333,000
2007	$636,000	$1,400,798	$54,393,000	$0
2008	$665,000	$860,893	$54,393,000	$0
2009	$694,000	$945,304	$54,393,000	$0
2010	$725,000	$1,022,742	$54,393,000	$0

Fiscal Year	Probable Revenue Gain/(Loss) from *New General Revenue Dedicated - HCS/CLASS QAF*	Probable Revenue Gain/(Loss) from *New General Revenue Dedicated - Nursing Home QAF*	Probable Savings/ (Cost) from *New General Revenue Dedicated - HCS/CLASS QAF*	Probable Savings/ (Cost) from *New General Revenue Dedicated - Nursing Home QAF*
2006	$24,462,000	$202,205,000	($9,618,458)	($60,800,115)
2007	$24,462,000	$203,927,000	($9,422,762)	($61,645,216)
2008	$24,462,000	$205,579,000	($9,422,762)	($62,144,600)
2009	$24,462,000	$207,237,000	($9,422,762)	($62,645,798)
2010	$24,462,000	$208,896,000	($9,422,762)	($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	$107,672,407	$81,997,774	($15,683,000)	$1,279,430
2007	$113,428,331	$117,119,400	($611,554,410)	$1,377,194
2008	$114,225,375	$115,445,239	$580,026,608	$1,542,457
2009	$115,025,314	$114,926,669	($620,988,994)	$1,774,587
2010	$115,825,705	$114,384,406	$617,113,736	$1,987,542

Fiscal Year	Probable Revenue Gain/(Loss) from *TEXAS MOBILITY FUND* 365	Probable Revenue Gain/(Loss) from *ECONOMIC STABILIZATION FUND* 599	Probable Savings/ (Cost) from *OTHER FUNDS* 997	Probable Savings/ (Cost) from *OTHER SPECIAL STATE FUNDS* 998
2006	($153,060,000)	($96,442,000)	$0	$38,771
2007	($101,630,000)	($146,751,000)	$3,000,000	$41,733
2008	$0	($180,310,000)	$1,000,000	$46,741
2009	$0	($229,104,000)	$1,000,000	$53,775
2010	$0	($266,792,000)	$1,000,000	$60,229

Fiscal Analysis

Article 1 of the bill 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. The registration fee for lobbyists employed by these non-profit organizations would remain at $100. The article would take effect December 1, 2005.

Article 2 would authorize the Commission on Jail Standards to set and collect a fee to cover the cost of a jail reinspection 1) following a determination of noncompliance with minimum standards, 2) at the request of the jail operator, and 3) 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 these reinspections. The article would take effect September 1, 2005.

Article 3 would implement the Legislative Budget Board's Staff Performance Report, "Recover Certain State Agency Overpayments to Vendors." The bill would require agencies with total expenditures exceeding $100 million in a biennium to participate in recovery audits on expenditures to third parties. The comptroller may exempt some agencies by rule.

Article IX, Section 8.03 of the current version of the General Appropriations Bill as passed by the House and Senate directs the comptroller to deposit 50 percent of recovered General Revenue Funds, General Revenue-Dedicated Funds, and Other Funds in the state treasury. The remaining 50 percent is retained by the agency for the original purpose of the appropriations and to pay the recovery audit firm. The bill would require the Comptroller to report results to the legislature.

Article 4 would amend Chapter 162 of the Tax Code regarding motor fuel taxes. The bill 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.

The bill 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.

Lastly, the bill would 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. This article would take effect September 1, 2005.

Article 5 would 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 no later than October 1, 2005.

The standard presumptive value provisions would not apply to even-exchange or gift transactions. If the amount paid in a sales transaction were greater than or equal to the presumptive value, the tax assessor-collector would compute and collect the tax due on the amount paid. If the amount paid in a sales transaction were less than the presumptive value, the tax assessor-collector would compute and collect the motor vehicle sales tax due on the presumptive value, unless the purchaser could establish a retail value by obtaining an appraisal. Appraisals would have to be on a form prescribed by the comptroller, and they would have to be obtained no later than the 20th day after purchase. Automobile dealers could charge a fee, set by the comptroller, for providing a certified appraisal.

Article 5 would also delay certain transfers of motor fuel tax revenue. The comptroller would not the make allocations of gasoline, diesel, and liquefied gas taxes to the State Highway Fund or County and Road District Highway Fund during the months of June, July, and August of each odd-numbered year. 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. This section would take effect July 1, 2005 if sufficient votes were received; otherwise, it would take effect September 1, 2005.

Article 5 also repeals Section 156.101 of the Tax Code, relating to the exception from the hotel occupancy tax for a permanent resident. Under current law, an individual or business with the right to use or possess a hotel room for at least 30 consecutive days without interruption of payment is not required to pay the hotel occupancy tax. This section of the bill amends Section 156.001 of the Tax Code by exempting tenants living in unfurnished apartments and condominium buildings from the hotel occupancy tax. The bill does not repeal the current permanent resident exception for participating counties and cities. This section would take effect July 1, 2005 if sufficient votes were received; otherwise, it would take effect October 1, 2005.

Article 6 would make the period of continuous coverage of certain individuals under the child health plan and Medicaid programs six months or until the individual's 19th birthday. It would also require HHSC to request a waiver or authorization from a federal agency if needed to implement the provisions of this article.

Article 7 includes various requirements for the Health and Human Services Commission (HHSC):

- Section 7.01 requires HHSC to establish an Office of Medical Technology.
- Section 7.02 authorizes HHSC to adopt Medicaid cost-effective reimbursement rates for nursing services and for group appointments.
- Section 7.03 authorizes Medicaid reimbursement for Internet medical consultations.
- Section 7.04 requires HHSC to develop and implement a comprehensive plan to reduce the use of hospital emergency room services by Medicaid recipients.
- Section 7.05 requires HHSC to develop a program proposal to provide higher Medicaid reimbursement rates to certain primary care case management providers.
- Section 7.06 allows the return to a pharmacy of certain unused drugs.
- Section 7.07 requires HHSC to explore and make efforts to implement feasible and cost-effective incentives to encourage persons to purchase health or long-term care insurance.
- Section 7.08 requires HHSC to request a waiver or authorization from a federal agency if needed to implement the provisions of Article 7.

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 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 bill would exclude state-owned veterans nursing facilities and certain facilities providing a continuum of long-term care services. 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 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 new provisions authorizing the executive commissioner of HHSC, 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). The bill would require the executive commissioner of HHSC 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 bill 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.

The bill would authorize money in the account, subject to legislative appropriation and state and federal law, to be appropriated only to HHSC to increase reimbursement rates paid under the HCS/CLASS waiver programs or to offset allowable expenses under the state Medicaid program. The bill would require HHSC, 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.

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 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 authorizes the board to provide an incentive payment to an employee or retiree who elects 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 retiree 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 10 would amend Chapter 201 of the Transportation Code to transfer revenues collected in state fiscal year 2006 from the issuance and renewal of driver's licenses and personal identification cards (including reinstatement fees), and driver record fees, from the Texas Mobility Fund 365 to the General Revenue Fund. The bill would also transfer revenues collected in state fiscal year 2007 from the issuance and renewal of driver's licenses and personal identification cards (including reinstatement fees) from Fund 365 to the General Revenue Fund. This section would be effective September 1, 2005.

Article 10 would also amend Chapter 57 of the Utilities Code to continue GR Account 345 - Telecommunications Infrastructure Fund 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 bill would require the assessment to be deposited to the General Revenue Fund. This section would take effect July 1, 2005 if sufficient votes were received; otherwise, it would take effect September 1, 2005.

Article 11 would:

- repeal the sales tax ½ percent timely filer discount for the sales tax and seller financed motor vehicle

sales tax;
- delay the phase-in of the motor vehicle sales tax for motor vehicle registration fee exchange between the state and counties;
- provide an oil production tax credit for taxpayers using enhanced efficiency production equipment;
- provide a natural gas tax exemption for production from wells that have been vented or flared for six month as opposed to the12 month requirement under current law;
- expand the use of accelerated depreciation under the franchise tax for oil and gas exploration; and
- amend sections of the Health and Safety Code, Insurance Code, Government Code, Local Government Code, Tax Code, and the Utilities Code to clarify administrative and technical issues relating to taxes and fees collected by the Comptroller. This article would take effect October 1, 2005.

Article 12 would make it a Class C misdemeanor for a person under 18 to purchase or attempt to purchase cigarettes or tobacco products. The article would regulate internet and mail-order sales of cigarettes and tobacco products. It would prohibit internet and mail order sales, unless the container is labeled "cigarettes" or "tobacco products' and the sale or delivery is made to a permit holder, manufacturer or importer of tobacco products, an office, employee or agent of the government acting in the scope of their official duties. The article would provide for both civil and criminal penalties.

Article 13 would add certain information to the application for a commercial driver's license or commercial driver learner's permit. The fee for a nonresident commercial driver's license would increase to $100.

Except as noted above, the bill would take effect immediately if it receives a vote of two-thirds of each house. Otherwise, bill would take effect on the 91st day after the last day of the legislative session.

Methodology

The estimate for **Article 1** is based on information provided by the Ethics Commission. The Commission estimates that 1,400 lobbyists would register at the $1,000 level during each year in which a regular session of the Texas Legislature is held, and 1,200 lobbyists would register at the $1,000 level in nonsession years. This change would result in a General Revenue Fund gain of $1,820,000 for the 2006- 2007 biennium.

The estimate for **Article 2** is based on information from the Commission on Jail Standards. The Commission estimates fee revenue would be $5,000 per year from counties and architects for facility reinspections and occupancy inspections. This change would result in a General Revenue Fund gain of $10,000 for the 2006-2007 biennium.

For **Article 3**, it is assumed that the recovery audit firm would produce a 0.04 percent recovery rate on all expenditures. It is assumed that recoveries from fiscal years 2003 to 2005 would be collected in fiscal year 2007, but subsequent years would recover expenditures from a single prior fiscal year. As each Federal Funds program has its own rules regarding recovered expenditures, it is estimated that there would be no savings or revenue gain from Federal Funds. Per Article IX, Section 8.03 of the General Appropriations Bill passed by the House, half of recovered funds would be returned to the state treasury for each fiscal year that is audited. In fiscal year 2007, recovered funds returned to the state treasury would be for three years, thus saving $9.6 million in General Revenue, $0.9 million in GR-Dedicated Funds and $3.0 million in Other Funds. It is assumed that the CPA could absorb the cost of administering this program within current appropriations.

Article 4 would provide a credit for diesel fuel used in manufacturing of goods for resale or in production of oil and gas. The Comptroller estimates this will result in a revenue loss of $582,000 to the Available School Fund and $1,747,000 to the State Highway Fund in fiscal year 2006. It is estimated the loss will grow by 3 percent each year thereafter.

The comptroller provided the **Article 5** estimates relating to the presumptive value of motor vehicles. They are based primarily on estimates of sales of motor vehicles between individuals.

The estimates for the motor fuel allocation delay in Article 5 are based the comptroller's estimate of motor fuel tax revenues. The numbers above presume an effective date of September 1, 2005. If the Act were to receive sufficient votes to be effective July 1, 2005, there would be an additional General Revenue gain of $364.4 million and an equal loss to the State Highway Fund in the current biennium; the gain in the 2006-07 biennium would be $217.5 million.

To calculate the gain from eliminating the permanent resident exception to the hotel occupancy tax in Article 5, data were collected from the comptroller's tax files on gross and taxable hotel receipts to estimate the value of exemptions from the hotel tax. It is estimated that 15 percent of hotel occupancy tax exemptions were due to the permanent resident exemption. The numbers above presume an effective date of October 1, 2005, and the revenue gain has been reduced to reflect 11 months of collections.

The estimated savings in **Article 6** for six-months continuous eligibility in CHIP is $73.2 million in All Funds, including $28.0 million General Revenue for 2006 and 2007. The estimate of savings related to six-month continuous eligibility in Medicaid is $605.1 million in All Funds, including $238.6 million General Revenue for 2006 and 2007. These savings are currently reflected in both the Senate and House version of the General Appropriations Bill.

In **Article 7**, Sections 7.01, 7.05, 7.06, 7.07, and 7.08 have no significant fiscal impact.

For Section 7.02, it is assumed that adoption of the reimbursement rates authorized under this section would not be cost-effective, as required by the bill, and therefore would not be implemented. No cost is included for this section.

For Section 7.03, it is assumed that reimbursement for online medical consultations would not be cost-effective, as required by the bill, and therefore would not be implemented. It is assumed that if HHSC chose to develop and implement a pilot program to test whether online medical consultations are a cost-effective alternative, this could be done within available resources. No cost is included for this section.

The hospital emergency room use reduction initiatives in Section 7.04 would result in an estimated net savings of $8.6 million in All Funds, including $3.2 million in General Revenue, in 2006 and 2007; estimated net savings in subsequent years would be $2.6 million in All Funds, including $0.9 million in General Revenue.

HHSC estimates a general staffing need of 5.0 FTEs to implement the provisions of Article 7. It is assumed that staffing costs would begin in April 2006; therefore only 2.0 FTEs would be needed in 2006. The estimated cost is $0.1 million in All Funds, including $0.06 million in General Revenue, in 2006 and $0.3 million in All Funds, including $0.1 million in General Revenue, in each subsequent year. The FTE changes are not reflected in the above tables.

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.

The comptroller's estimates of revenue relating to Article 8's provisions for a quality assurance fee on HCS and CLASS waiver programs are based on information from DADS. Revenues were estimated based on 6 percent of recommended appropriations in SB1 as introduced for these programs. Potential gains in federal Medicaid funds over the projection period were estimated by applying the appropriate match rate to estimated QAF revenues. According to the Department of Aging and Disability Services' (DADS), there are some questions regarding the state receiving federal approvals for a QAF levied on waiver programs.

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 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.

Article 9 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 adverse selection. The total anticipated 2006-07 All Funds savings is $16,100,751; including General Revenue Related savings of $10,143,473.

The estimate for **Article 10** is based on the comptroller's estimate of driver's licenses, personal identification cards, and driver record fees.

The estimates for the Telecommunication Infrastructure Fund and assessment in **Article 10** were based on data from assessment returns paid by telecommunication utilities and the 2006-07 Biennial Revenue Estimate.

The comptroller provided the estimates for **Article 11**. The comptroller estimates are based on the Biennial Revenue Estimate and various comptroller and Railroad Commission data sources.

Article 12 enforcement costs to the attorney general and the comptroller are not expected to be significant, and the revenue implication from penalties cannot be determined.

There is no significant fiscal impact in **Article 13**.

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

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts, 356 Texas Ethics Commission, 529 Health and Human Services Commission, 539 Department of Aging and Disability Services

LBB Staff: JOB, SD, WP, JI