LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 26, 2011

TO: Honorable Steve Ogden, Chair, Senate Committee on Finance

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

IN RE: **SB1811** by Duncan (relating to state fiscal matters; providing penalties.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for SB1811, Committee Report 1st House, Substituted: a positive impact of $4,074,222,405 through the biennium ending August 31, 2013.

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
2012	$307,785,186
2013	$3,766,437,219
2014	($411,660,531)
2015	$105,241,019
2016	$106,255,719

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *General Revenue Fund* 1	Probable Revenue Gain/(Loss) from *Available School Fund* 2	Probable Revenue Gain/(Loss) from *Petro Sto Tank Remed Acct* 655	Probable Revenue Gain/(Loss) from *New General Revenue Dedicated - Jud. Court Training Fund*
2012	$355,708,972	$0	$25,833,000	$11,716,000
2013	$1,681,267,004	($67,169,000)	$28,396,000	$10,660,000
2014	($199,991,746)	$67,169,000	$28,569,000	$10,660,000
2015	$152,854,804	$0	$28,724,000	$10,660,000
2016	$153,843,504	$0	$28,896,000	$10,660,000

Fiscal Year	Probable Revenue Gain/(Loss) from *State Highway Fund* 6	Probable Revenue Gain/(Loss) from *Property Tax Relief Fund* 304	Probable Revenue Gain/(Loss) from *Jud & Court Training Fd* 540	Probable Revenue Gain/(Loss) from *Cities*
2012	$0	$29,306,000	($11,716,000)	$20,499,000
2013	($201,508,000)	$36,732,000	($10,660,000)	$21,720,000
2014	$201,508,000	($837,122,000)	($10,660,000)	$22,963,000
2015	$0	$33,934,000	($10,660,000)	$23,102,000
2016	$0	$31,487,000	($10,660,000)	$23,246,000

Fiscal Year	Probable Revenue Gain/(Loss) from *Counties*	Probable Revenue Gain/(Loss) from *Insurance Trust Fund* 973	Probable Revenue Gain/(Loss) from *Hotel Occup Tax Depos Acc* 5003	Probable Revenue Gain/(Loss) from *Transit Authorities*
2012	$4,480,000	$81,399,999	$367,000	$6,100,000
2013	$5,799,000	$81,200,001	$462,000	$6,100,000
2014	$7,143,000	$81,200,001	$485,000	$6,100,000
2015	$7,293,000	$81,200,001	$509,000	$6,100,000
2016	$7,448,000	$81,200,001	$535,000	$6,100,000

Fiscal Year	Probable Savings/ (Cost) from *General Revenue Fund* 1	Probable Savings/ (Cost) from *Appropriated Receipts* 666	Probable Savings/ (Cost) from *Foundation School Fund* 193	Probable Savings/ (Cost) from *GR Dedicated Accounts* 994
2012	($48,290,786)	($750,000)	$0	($2,037,712)
2013	($48,122,785)	($275,000)	$2,200,000,000	($2,032,706)
2014	($279,322,785)	$0	$0	($2,032,706)
2015	($48,122,785)	$0	$0	($2,032,706)
2016	($48,122,785)	$0	$0	($2,032,706)

Fiscal Year	Probable Savings/ (Cost) from *Other Special State Funds* 998	Probable Savings/ (Cost) from *State Highway Fund* 6	Probable Savings/ (Cost) from *Federal Funds* 555
2012	($9,569,872)	($10,850,382)	($11,413,511)
2013	($9,546,359)	($10,823,723)	($11,385,468)
2014	($9,546,359)	($10,823,723)	($11,385,468)
2015	($9,546,359)	($10,823,723)	($11,385,468)
2016	($9,546,359)	($10,823,723)	($11,385,468)

This analysis assumes an effective date of September 1, 2011. With a vote of two-thirds of all members, certain provisions of the bill would become effective before September 1, 2011, resulting in additional revenue in fiscal year 2011.

Fiscal Year	Change in Number of State Employees from FY 2011
2012	9.0
2013	9.0
2014	9.0
2015	9.0
2016	9.0

Fiscal Analysis

Article 1 would defer the Foundation School Program (FSP) payment to school districts scheduled for August of fiscal year 2013 to not earlier than September 5th of the following fiscal year.

Article 2 would direct the General Land Office to offer certain state property for sale not later than August 31, 2013. The bill directs all proceeds from the sale of identified properties to be deposited to the credit of the general revenue fund.

Article 3 would partially implement recommendations from the report, "Strengthen Sales Tax Enforcement Related to Customs Brokers and Increase the Charge for Export Stamps," in the Legislative Budget Board's (LBB) Government Effectiveness and Efficiency Report submitted to the Eighty-Second Legislature, 2011. The bill would amend Chapter 151, Tax Code relating to customs brokers. The bill would eliminate the requirement that the comptroller provide an alternate method to show documentation of exemption of tangible personal property when the website for such documentation is unavailable. The bill would provide that the comptroller may suspend or revoke a customs broker license if the licensee does not comply with statute or issues false documentation. The bill would require that export documentation include a declaration that the customs broker or authorized employee inspected the property and the original receipt for the property. The bill would increase the charge for each export stamp from $1.60 to $2.10 and require the increase to be used for enforcement of the laws relating to customs brokers.

Article 4 would partially implement recommendations from the report, "Phase out Economic Development Tax Refunds," in the Legislative Budget Board's (LBB) Government Effectiveness and Efficiency Report submitted to the Eighty-Second Legislature, 2011. This bill would repeal Subchapter F of Chapter 111 of the Tax Code, regarding tax refunds for certain ad valorem taxpayers in reinvestment zones.

Article 5 of the bill would repeal the permanent resident exception to the state hotel occupancy tax, making all persons, regardless of length of stay, liable for the hotel occupancy tax. This provision would take effect July 1, 2011 if the bill received the requisite two-thirds vote of each chamber; otherwise, it would take effect October 1, 2011.

Article 6 would implement the recommendation in the report, "Reduce the Unclaimed Property Dormancy Period for Certain Property Types" in the Legislative Budget Board's Government Effectiveness and Efficiency Report, submitted to the Eighty-second Legislature, 2011. It would decrease the unclaimed property dormancy period for utility deposits from three years to one year; money orders from seven years to three years; and bank deposits, savings accounts, and matured certificates of deposits from five years to three years. The bill would increase the maximum service, maintenance, or other charge from 50 cents to $1 that money order companies can assess before the property is defined as abandoned under the Property Code.

Article 6 would move the deadline for businesses to transfer unclaimed property to the Comptroller from November 1 to July 1. As a result, three unclaimed property transfers would occur in the 2012-13 biennium. There would be two transfers in all future biennia, but with a new July 1st transfer deadline.

Article 6 would also authorize the Comptroller to sell unclaimed securities upon receipt from the companies that hold them, as well as from time to time. Current law does not specifically permit the Comptroller to sell securities upon receipt.

Article 7 of the bill would change the classification of the Judicial and Court Personnel Training Fund No. 540 from Other Funds to a dedicated account within the General Revenue Fund.

Article 8 of the bill would amend the Government Code to allow the Process Server Review Board to recommend to the Supreme Court fees to be charged for the certification and renewal of certification of process servers. The Supreme Court would have to approve the fees before the fees could be collected. The proposed amendment also provides that the Office of Court Administration may collect the fees and that the fees collected shall be sent to the Comptroller for deposit into the General Revenue Fund. The bill would allow fees collected to be appropriated for the support of regulatory programs for process servers and guardians.

Article 9 would reauthorize the fee on the delivery of certain petroleum products.

Article 10 would impact the collection of certain motor fuel taxes. The bill would amend various chapters of the Tax Code to require tax remittances on motor fuel taxes and delay the transfer of motor fuels taxes from general revenue to the State Highway Fund that would normally occur in August 2013. The revenue would be deposited in September 2013.

Article 11 would impact collections of mixed beverage taxes and takes and fees on certain alcoholic beverages. The bill would amend various chapters of the Alcoholic Beverage Code to require tax remittances for the month of September to be paid in August for certain taxes in odd-numbered years.

Article 12 would reduce the cigarette tax distributors’ discount from three percent to one percent.

Article 13 would amend Chapter 155 of the Tax Code, regarding cigars and tobacco products taxes. The bill would add a definition for a little cigar, remove weight as a determinant of the tax rate for any cigar and set the tax rate on a little cigar to the same rate imposed on a cigarette. Article 13 would allocate certain revenue from the tax on little cigars to the property tax relief fund.

Article 14 would amend Tax Code to redefine sale for resale. This provision would take effect immediately if the bill received the requisite two-thirds vote of each chamber; otherwise, it would take effect September 1, 2011.

Article 15 of the bill would amend the Code of Criminal Procedure Article 103.0033 by transferring audit responsibilities for the court-related Collection Improvement Program (CIP) from the Comptroller of Public Accounts (CPA) to the Office of Court Administration (OCA).

Article 16 would amend Chapter 171 of the Tax Code, regarding the franchise tax, by revising the dates when payments are due from certain taxable entities. The comptroller would be required to deposit revenue received from tax prepayments to the credit of the general revenue fund.

Article 17 would impact collections of sales and use taxes. The bill would amend various chapters of the Tax Code to require tax remittances on sales and use tax.

Article 18 would amend Chapter 151 of the Tax Code, regarding the sales and use tax. The bill would redesignate Section 151.433, regarding reports by wholesaler and distributors of beer, wine, and malt liquor, as Section 151.461 in new Subchapter I-1, regarding reports by persons involved in the manufacture and distribution of alcoholic beverages, and add new subsections with that subchapter. Article 18 would expand who would be required by the Comptroller's Office to file a monthly report on alcoholic beverage sales to retailers. Article 18 would provide the Comptroller the authority to inspect and conduct audits to ensure compliance; impose civil and criminal penalties for violations; bring forth a suit to enforce these provisions; and adopt rules to implement these provisions. The bill would amend Chapter 111 of the Tax Code, regarding collection procedures for state taxes, to require the Comptroller's Office to disclose information from the sales reports required under Section 151.462 of this Code.

Article 19 would expand the use of three tobacco settlement funds to pay the principal or interest on a bond issued on behalf of the Cancer Prevention and Research Institute of Texas, including: the Permanent Fund for Health and Tobacco Education and Enforcement; the Permanent Fund for Children and Public Health; and the Permanent Fund for Emergency medical Services and Trauma Care. Article 19 provisions would take immediate effect upon receiving two-thirds vote in both houses; otherwise, the provisions would take effect September, 1, 2011.

Article 20 would require the ERS board to assess an enrollment fee on each state and higher education employer whose employees participate in the ERS group benefits program. The amount of the fee would be determined by the General Appropriations Act. The ERS board would deposit the enrollment fees to the credit of the employee’s life, accident, and health insurance and benefits fund.

Article 21 sets the effective date of this bill as September 1, 2011 except as otherwise provided.

Methodology

For Article 1 of the bill, the effect of deferring the August FSP payment in fiscal year 2013 to September of the following fiscal year is that a total of 23 monthly FSP payments would be dispersed during the 2012-13 biennium. Under current law funding of the FSP, this deferral would result in a one-time savings of $2.2 billion in fiscal year 2013. However, any statutory reduction to school districts' FSP entitlements would decrease the savings gained from this deferral. For example, under CSHB 1 (as passed by the Senate Finance Committee) FSP spending levels, the one-time savings from the deferral would be reduced to $2.0 billion in fiscal year 2013.

Article 2 of the bill would result in a gain of $38.5 million to the General Revenue Fund in the 2012-13 biennium. This analysis assumes property sale values for lands identified in Article 2 based on current General Land Office (GLO) property evaluation appraisals. GLO reports that the properties would be re-appraised prior to being placed for sale to determine their market value at the time of offer and anticipates some appraisal adjustments. The Texas Public Finance Authority (TPFA) reports that properties identified as 9 and 11 in Section 2.01 could be sold no sooner than September 30, 2011 to avoid a conflict with existing bond restrictions. Additionally, properties identified as 1 and 4 in Section 2.01 are subject to outstanding bond debt that would be required to be paid off upon sale of the property; an adjustment is included for this in the tables above. Current uses of the Service Station, Parking Garages B and G, and the Marlin Robert E. Lee Group Home and Wortham Twin Circle Group Home result in annual revenue for the owner agencies. The annual revenue loss from sale of these properties is included in the tables shown above. Disposition costs related to the sale of the identified properties cannot be determined and are not included in the tables above. Disposition costs vary from property to property and are typically no more than 10 percent of the final property sales value.

Article 3 of the bill would result in a gain of $1 million to the General Revenue Fund in the 2012-13 biennium. For Article 3 of the bill, the revenue gain was estimated by the Comptroller by multiplying the estimate of the number of export certificates by the increase in the fee. The bill would have no administrative cost.

Article 4 of the bill would result in a gain of $10 million in General Revenue Related Funds in the 2012-13 biennium. For Article 4 of the bill, the Comptroller estimated fiscal impact from the proposed repeal based on refunds that have been made under the provisions of Subchapter F. There is no estimated fiscal impact for 2012 as the current statute and provisions of the bill would result in refunds being made through fiscal 2012. State savings would begin in fiscal 2013.

The Comptroller estimates that Article 5 would generate $9.9 million in General Revenue and General Revenue-Dedicated Funds during fiscal years 2012-13 assuming an effective date of October 1, 2011.

For Article 6, there would be a one-time gain of $78 million in fiscal year 2013 from reducing various unclaimed property dormancy periods. The Comptroller based this estimate on data for the affected property types. The increase in service, maintenance, and other fees that may be assessed by money order issuers would not have a significant fiscal impact because the dormancy period decrease from seven years to three years would offset any potential reduction in unclaimed property receipts.

The Comptroller estimates that moving the unclaimed property transfer deadline to July 1 from November 1 would result in a one-time gain of $200 million in fiscal year 2012.

For Article 7, this analysis projects probable revenue gain to General Revenue-Dedicated Funds from the reclassification of the Judicial and Court Personnel Training Fund No. 540 from Other Funds to a General Revenue-Dedicated account of $11.7 million in fiscal year 2012 and $10.6 million in each fiscal year thereafter. Projected revenues to the Judicial and Court Personnel Training Fund are based on amounts included in the Comptroller’s 2012–13 Biennial Revenue Estimate. Additionally, this estimate assumes $1.1 million in unexpended balances available in the Judicial and Court Personnel Training Fund at the end of fiscal year 2011.

Article 8 would result in a net revenue gain of $1.6 million to the General Revenue Fund in the 2012-13 biennium. This analysis assumes that all new process servers will pay a 3-year certification fee upon issuance of their initial certificate. In addition, in the first year of implementation, all currently-certified process servers will pay a pro-rated fee based on the number of months remaining before their scheduled renewal date. Projections are based on historical numbers of certificates issued since the program's inception in 2005. The higher amount of revenue projected for fiscal year 2012 is due to pro-rated fees in the first year of implementation. The higher amounts beginning in 2016 are based on projected growth in the number of certificates issued based on historical trends. Costs to certify process servers includes one administrative staff person, professional fees for computer programming, computer equipment and modular furniture for the staff, a lockbox function to receive fees and deposit them into the State Treasury and other operating expenses.

Article 9 would result in a gain of $55.3 million in General Revenue Related Funds in the 2012-13 biennium. The Comptroller's estimate of the fiscal impact of Article 9 assumes the continuation of the fee would not have a significant effect on the number of withdrawals from bulk petroleum facilities. An allowance was made for the service charge allocated to General Revenue.

For the the 2012-13 biennium, Article 10 of the bill would result in a net revenue gain of $268.7 million in General Revenue Related Funds, and Article 11 would result in a gain of $17.6 million in General Revenue Funds. The fiscal impacts of Articles 10 and 11 were based on the Comptroller’s 2012-13 Biennial Revenue Estimate. The provisions of this bill would impact revenue collections only in fiscal year 2013 and 2014.

Article 12 would result in a revenue gain of $46.5 million in General Revenue Related Funds in the 2012-13 biennium. The fiscal impact of Article 12 was based on the Comptroller’s 2012-13 Biennial Revenue Estimate. The proposed cigarette stamping allowance change would increase the revenue from each stamp by roughly three cents. First year revenue collections were adjusted for collection lags.

Article 13 would result in a net revenue gain of $25.1 million in General Revenue Related Funds in the 2012-13 biennium. The Comptroller reports that the provisions of Article 13 would significantly increase the tax rate for "little cigars"--from the current 2 or 15 cents per pack to $1.41 per pack--and this will result in a reduction of taxable consumption in Texas. In addition, the efforts by state and federal governments to reduce Internet cigarette sales that avoid state taxation generally do not apply to cigars, and this analysis assumed some consumers will use the Internet to purchase cigars. First year revenue collections were adjusted for collection lags.

Article 14 would result in gain of $200 million in General Revenue Funds in the 2012-13 biennium. Article 14 relates to a recent court decision that expanded the interpretation of items that may be purchased as a nontaxable sale for resale to include items purchased by contractors for use or consumption in performing services under federal contract. The bill would preclude the court decision from being further expanded to apply to contracts with exempt entities other than the federal government. The Comptroller used data on refund claims pursuant to the court decision to estimate the annual state sales tax reduction to be expected were the decision applied to contracts with exempt entities other than the federal government, and the implications for units of local government were estimated proportionally. The tables shown above assume an effective date of September 1, 2011.

Article 15 would result in a net revenue gain of $9 million in General Revenue Funds in the 2012-13 biennium. Article 15 of the bill would transfer the auditing of the court-related Collection Improvement Program (CIP) function from the Comptroller of Public Accounts (CPA) to the Office of Court Administration (OCA). When the mandatory CIP was created by legislation in 2005, the CPA received appropriations for eight full-time equivalents (FTEs) to fulfill the related auditing functions. It is assumed that eight FTEs, Auditor IV positions, would be needed at OCA at a salary cost of $54,498 per FTE per fiscal year, with a total salary cost of $435,984 to General Revenue per year. Additional expenses include travel, at a cost of $80,000 per year; other operating expenses, at a cost of $13,840-$14,640 per year; and equipment costs for computers at a cost $19,824 in fiscal year 2012 with a four-year replacement schedule. In addition, benefits would cost $121,465 per fiscal year. The estimated cost to OCA for the auditing function is approximately $671,913 in fiscal year 2012 and $651,289 in subsequent fiscal years.

The CPA reports that redirecting the existing staff currently performing court collections audits to taxpayer audits would result in additional General Revenue to the state of: $5.1 million fiscal year 2012; $5.2 million in fiscal year 2013; $5.4 million in fiscal year 2014; $5.5 million in fiscal year 2015; and $5.7 million in fiscal year 2016. Since existing CPA staff will be redirected to taxpayer audits, for purposes of this analysis, it is assumed that the OCA would require additional funding and FTEs, as previously described, to assume the auditing function currently performed by CPA staff.

For the 2012-13 biennium, Article 16 would result in a revenue gain of $871.2 million of General Revenue Funds, and Article 17 would result in a revenue gain of $231.2 million in General Revenue Funds. The fiscal impacts of Articles 16 and 17 were based on the Comptroller’s 2012-13 Biennial Revenue Estimate. The provisions of this bill would impact revenue collections only in fiscal year 2013 and 2014. The analysis for Article 17 assumes a one-time payment would apply only to state sales taxes.

Article 18 would result in a revenue gain of $25.8 million in General Revenue Funds for the 2012-13 biennium. The Comptroller of Public Accounts (CPA) estimates the bill's provisions in Article 18 would increase collections from the mixed beverage tax due to an increase in the effectiveness of the audit selection process. Gains would be reflected in both revenue realized per audit and an increase in the percentage of mixed beverage audits yielding revenue. Additionally, in response to enhanced reporting requirements, there would be a revenue gain due to greater voluntary tax compliance. Cities and counties could also expect positive revenue gains. This analysis shows the estimated gains to cities and counties if they were to be appropriated their current share of total mixed beverage revenue. The number of potential violations and the amount of penalties levied are unknown, the fiscal impact relating to penalty provisions cannot be determined.

The provisions included in Article 19 related to expanding the use of three tobacco settlement funds to pay the principal or interest on a bond issued on behalf of the Cancer Prevention and Research Institute of Texas do not specify a required funding level and are subject to appropriation. Article 19 has no significant fiscal impact.

For Article 20 of the bill, the estimate assumes one percent of the employer's total payroll would be charged to state and higher education employers as an enrollment fee. The fee would result in a gain of $81.2 million per year to the ERS Employees Life, Accident, Health Insurance and Benefits Trust Account and an equivalent cost to agencies.

Local Government Impact

Regarding article 1 of the bill, school districts would have to wait until September to receive their final monthly payment for the prior school year and districts would need to manage their cash flow requirements to reflect the delay in payments. The fiscal implication is not expected to be significant.

The transition of any of the properties identified in Article 2 from government use to private use would allow local government entities in the related areas to begin collecting property tax on the value of the properties. The amount of local tax collection increases cannot be determined as it would depend on various local property tax rates and the final appraised value of the property resulting from a non-governmental use.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 303 Facilities Commission, 304 Comptroller of Public Accounts, 305 General Land Office and Veterans' Land Board, 320 Texas Workforce Commission, 327 Employees Retirement System, 347 Public Finance Authority, 405 Department of Public Safety, 458 Alcoholic Beverage Commission, 529 Health and Human Services Commission, 601 Department of Transportation, 696 Department of Criminal Justice, 701 Central Education Agency, 802 Parks and Wildlife Department

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