

BILL ANALYSIS

C.S.S.B. 69
By: Nelson
Appropriations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that the manner for determining the allocation of certain oil and gas production tax revenue for transfer to the state highway fund and the economic stabilization fund (ESF), as well as the investment of money in the ESF, could be updated to increase efficiency and maximize returns on the investment of the ESF balance. C.S.S.B. 69 seeks to provide for such an update.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 69 amends the Government Code to remove provisions providing for the biennial determination and adoption of a sufficient balance of the economic stabilization fund (ESF) by a select committee appointed by the speaker of the house of representatives and the lieutenant governor to be submitted to the legislature for approval, the use of that adopted balance in making adjustments to the constitutional allocations of certain oil and gas production tax revenue to the ESF and the state highway fund, and the investment of the ESF balance that exceeds the sufficient balance.

C.S.S.B. 69 requires the comptroller of public accounts, for purposes of adjusting the constitutional allocations to the ESF and the state highway fund, instead to determine and adopt for the state fiscal biennium an amount equal to seven percent of the certified general revenue-related appropriations made for that state fiscal biennium. If the comptroller determines the sum of the unappropriated ESF balance on the preceding August 31 and certain projected transfers to the fund to be less than that adopted amount for a given biennium, the comptroller is required to reduce the allocation of the oil and gas production tax revenue to the state highway fund and increase the allocation to the ESF in an equal amount until the adopted amount would be achieved by the transfer to the ESF or the total amount available to be allocated is allocated to the ESF, whichever occurs first. The provisions providing for the adjustment of the constitutional allocations apply only to the applicable allocations of money to the ESF and state highway fund beginning with the 2022 state fiscal year.

C.S.S.B. 69 revises provisions governing the investment of certain ESF balances to reflect the following:

- an authorization for the comptroller, for purposes of investing the assets of the ESF, to acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor exercising reasonable care, skill, and caution would acquire, exchange, sell, supervise, manage, or retain in light of the purposes, terms, distribution requirements, and other circumstances then prevailing for the ESF, taking into consideration the investment of all ESF assets rather than a single investment;
- a requirement for at least one-quarter of the ESF balance to be invested in a manner that ensures the liquidity of that amount;
- an authorization for the comptroller to pool ESF assets with other state assets for purposes of investment;
- a requirement for the comptroller to adjust the investment of the ESF money periodically as necessary to ensure that at all times at least one-quarter of the ESF balance is invested in a manner that ensures the liquidity of that amount and that the ESF balance is sufficient to meet ESF cash flow requirements; and
- a requirement for the comptroller to include the fair market value of the ESF investments in calculating the amount of the ESF for purposes of adjusting the constitutional allocations of certain oil and gas production tax revenue to the ESF and state highway fund.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 69 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute limits the balance of the ESF factored into the calculation used to determine whether to divert certain oil and gas production tax revenue from the state highway fund to the ESF in order to ensure a sufficient balance to only the unappropriated ESF balance.

The substitute does not revise provisions relating to the investment of certain ESF balances to authorize the comptroller to invest a percentage of the ESF balance in an investment portfolio. The substitute revises those provisions to authorize the comptroller instead, for the purpose of investing ESF assets, to acquire, exchange, sell, supervise, manage, or retain any kind of investment that a prudent investor exercising reasonable care, skill, and caution would acquire, exchange, sell, supervise, manage, or retain in light of the purposes, terms, distribution requirements, and other circumstances then prevailing for the fund, taking into consideration the investment of all ESF assets rather than a single investment.

The substitute does not include a prohibition against the balance of the investment portfolio exceeding three-quarters of the balance of the ESF, but does include a requirement for at least one-quarter of the ESF balance to be invested in a manner that ensures the liquidity of that amount.

The substitute includes an authorization for the comptroller to pool ESF assets with other state assets for purposes of investment.