HOUSE RESEARCH ORGANIZATION bill analysis — 7/10/2003 — HB 5 McCall (CSHB 5 by Heflin)

SUBJECT:	Returning funds borrowed from accounts outside the state treasury
COMMITTEE:	Appropriations — committee substitute recommended
VOTE:	22 ayes — Heflin, Luna, Berman, B. Brown, F. Brown, Crownover, J. Davis, Deshotel, Eiland, Ellis, Gutierrez, Hamric, Hope, Hupp, Isett, E. Jones, McClendon, Pickett, Pitts, Raymond, Truitt, Wohlgemuth 0 nays 7 absent — Branch, Dukes, Kolkhorst, Menendez, Solis, Stick, Turner
WITNESSES:	For — None Against — None On — James LeBas, Comptroller's Office

BACKGROUND: Government Code, sec. 403.092 allows the comptroller to borrow money for short-term cash flow management purposes by transferring surplus cash from undedicated treasury funds to general revenue. The comptroller must return to the funds the same amount as was transferred, with interest. The comptroller also manages or has custody of dozens of accounts outside the treasury.

During its regular session, the 78th Legislature enacted HB 3175 by Pitts and HB 2425 by McCall, authorizing the comptroller to transfer available cash into general revenue from funds outside the treasury that are under comptroller management or in the comptroller's custody. The bills specified that the comptroller must repay the funds the same amount transferred and must maintain the funds' equity, and they precluded cash transferred into general revenue from being included in the comptroller's biennial revenue estimate for appropriation purposes. The bills also appropriated to the comptroller sufficient general revenue to repay funds with interest for any cash transfers made during fiscal 2004-05.

Gov. Rick Perry vetoed HB 3175 and the portion of HB 2425 that related to the repayment of borrowed funds. In explaining his veto, the governor stated that the bills "exceed the amount necessary at this time to reimburse anticipated borrowing." The governor's veto did not extend to the provision that allows the comptroller to borrow from funds outside the treasury that are under comptroller management or in the comptroller's custody.

DIGEST:

CSHB 5 would require the comptroller, during fiscal 2004-05, to repay funds from outside the treasury in the same amount transferred, plus interest, within 14 days of borrowing the funds.

The bill would appropriate to the comptroller sufficient general revenue to repay borrowed funds, including up to $5 million for interest, for any cash transfers made during fiscal 2004-05.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day following the last day of the special legislative session.

SUPPORTERS SAY:

CSHB 5 would appropriate money to repay funds outside the treasury for any cash borrowed during fiscal 2004-05, enabling the comptroller to use this much-needed tool for cash management. It would limit the amount that could be borrowed by stipulating that interest could not exceed $5 million. During its regular session, the 78th Legislature gave the comptroller the flexibility to tap into funds under the agency's control, but the governor vetoed the funding to repay such funds. The fiscal 2004-05 budget could not be certified without the governor's vetoes of certain legislation, including the appropriation to repay the borrowed funds.

The anticipated $4.1 million appropriation made by CSHB 5 would not be likely to throw the budget out of balance. The governor vetoed HB 3175 and portions of HB 2425 because last-minute changes to the budget pushed the appropriations over the anticipated available revenue for fiscal 2004-05. These vetoes reduced biennial spending by $212 million, while other vetoes reduced spending by an additional $72 million. With those reductions, the comptroller's revised revenue estimate on June 27 found that the state has $98.6 million in unappropriated available revenue for the coming biennium. Because CSHB 5 would limit the repayment of interest to $5 million and the length of the borrowing to 14 days, the budget should contain sufficient money for this measure.

The comptroller likely would use the borrowing authority near the end of fiscal 2003 to cover an anticipated cash shortfall but could not repay the borrowed funds under current law. The state pays out huge sums every August and September, mostly for public education. Cash on hand tends to decline until December, then rises as revenue from various taxes is collected and deposited. The comptroller has maintained the general revenue balance by issuing tax and revenue anticipation notes (TRANs), typically one-year tax-exempt obligations sold on the bond market. This year, the comptroller will make payments and return borrowed funds in late August but will not receive the infusion of cash until the TRANs are issued in early September. The comptroller likely will borrow from funds outside the treasury to cover the state's cash flow during that time but will not be able to repay these funds unless the Legislature appropriates the necessary amount.

Authority to borrow from outside the treasury and a clear mechanism by which to replace the funds also would serve the state's interests in obtaining short-term financing. In fiscal 2004, the comptroller intends to issue between $7 billion and $8 billion in TRANs and hopes to obtain a favorable interest rate for the borrowed funds. Factors considered when determining the state's creditworthiness and the interest rate include the amount of cash on hand, or liquidity. The comptroller's staff has identified funds totaling about $1 billion that have no constitutional or statutory prohibition against interfund transfer and that would be viewed favorably when considering the state's liquidity.

Borrowing is not unilateral or arbitrary. Decisions to transfer cash from these funds must adhere to the same guidelines that apply to treasury funds. A cash deficiency must be imminent; the fund must contain cash, not bond proceeds or stocks; the relevant agency must be able to forgo use of the money temporarily; and the transfer must be legal. The "hold harmless" provision requires the comptroller to repay borrowed funds with interest, as if the funds never had been transferred.

If a major hurricane struck the Texas coast during the period when the borrowed funds were out of the catastrophe reserve trust fund, the money would be returned in a timely manner, ensuring that the full amount of this fund would go toward claims. In such a circumstance, the Texas Windstorm Insurance Association, the residual market for windstorm and hail coverage along the Texas coast, would pay the first $100 million in claims by assessing all property insurers, and the catastrophe reserve trust fund would pay the next $100 million. After that, reinsurance and additional disbursements from the catastrophe reserve trust fund would pay up to $800 million in claims before insurers would be assessed again. The 14-day restriction on borrowing would require that the funds be returned quickly enough for any hurricane claims to be paid.

OPPONENTS SAY:

The comptroller does not need additional flexibility in borrowing funds. Some of the largest funds identified in the previous legislation — the system benefit fund and the subsequent injury trust fund — were moved into the treasury by the 78th Legislature, enabling the comptroller to borrow from them without the appropriation proposed by CSHB 5. Other funds identified as sources of borrowing will cease to exist during fiscal 2004-05 for lack of funding, such as the Texas Excellence Fund, University Research Fund, and Smart Jobs Fund. Other funds should remain outside the treasury so that they cannot be borrowed with the ease of funds inside the treasury.

The catastrophe reserve trust fund is outside the treasury for a reason and should not be depleted during the hurricane season. As the largest fund that remains outside the treasury, the catastrophe reserve trust fund most likely would be tapped by the comptroller in August. Based on current cash-flow projections, the comptroller would borrow about $300 million from the fund for the two-week period at the end of the fiscal year. That would be at the height of the hurricane season, and the National Oceanic and Atmospheric Administration has predicted about a 50 percent probability of an above-normal hurricane season.

Borrowing that fund's current balance of $300 million would leave the state with no reserve if a major hurricane hit. Even though the first $100 million would be assessed against insurers, those companies have 30 days to pay the assessment. In case of a hurricane that was likely to cause damages in excess of $200 million, the Texas Windstorm Insurance Association would request the $100 million from the catastrophe reserve trust fund first, because the money would be available to pay for emergency shelter or temporary repairs in the wake of the storm. Without access to those funds, the people affected by the storm might have to wait 30 days until the funds from the assessment were available, or the Texas Windstorm Insurance Association might have to borrow the money from a bank, driving up the cost of a major hurricane.

When considering the legislation during the regular session, one attraction of borrowing from funds outside the treasury was that many of the funds maintained sizable and relatively stable cash balances infrequently tapped by agencies. That is no longer true, because the funds that remain outside the treasury are either too small to be a significant source of funds or they are not stable cash balances.

OTHER OPPONENTS SAY:

CSHB 5 would borrow from Peter to pay Paul, not a solid cash-management policy. One reason the state will face a cash crunch in August is because the Texas Constitution requires that the comptroller return borrowed funds to the rainy day fund at the end of a biennium. Borrowing money from the catastrophe reserve trust fund to repay the rainy day fund would not be worrisome in itself, except that the 78th Legislature drained the rainy day fund to cover the fiscal 2004-05 budget shortfall. It would be better to reduce the appropriations from the rainy day fund by the amount of cash the state lacks than to borrow to cover the shortfall in that account.

NOTES:

As filed, HB 5 would not have limited the borrowing authority to 14 days nor the appropriation of interest to $5 million.