

**SUBJECT:** Amending operations and administration of the Texas Bullion Depository

**COMMITTEE:** Pensions, Investments, and Financial Services — committee substitute recommended

**VOTE:** 11 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Leach, Longoria, Stephenson, Wu

0 nays

**WITNESSES:** For — (*Registered, but did not testify*: Mark Terry, TEPSA)

Against — None

On — Tom Smelker, Comptroller of Public Accounts (*Registered, but did not testify*: David Cruz, Comptroller of Public Accounts; Stephanie Newberg, Texas Department of Banking)

**BACKGROUND:** The Texas Bullion Depository (TXBD), within the Office of the Comptroller of Public Accounts, serves as the custodian, guardian, and administrator of certain bullion that might be transferred to or acquired by the state, an agency, or a political subdivision.

Government Code sec. 2116.001(9) defines a "depository agent" as a person licensed to serve as an intermediary between the depository and a retail customer in making a transaction in precious metals bullion or specie.

Government Code sec. 2116.051 requires TXBD to use private, independently managed firms and institutions licensed as depository agents as intermediaries to conduct retail transactions in bullion and specie on behalf of the depository with current and prospective depository account holders.

Government Code sec. 2116.023 makes a purported confiscation, requisition, seizure, or other attempt to control the ownership, disposition,

or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account of no force or effect if effected by an authority other than an authority of the state.

Certain parties claim that through the implementation process, the comptroller's office has recognized the need to update existing statute to ensure TXBD continues to be administered efficiently and prudently.

**DIGEST:** CSHB 2458 would remove licensed depository agents from statute, allow advertising and promotion by the depository, revise confidentiality of depository records, and make certain other changes to the Texas Bullion Depository (TXBD).

**Depository Agents.** The bill would remove all statutory references to licensed depository agents. Instead of the requirement that TXBD use depository agent licensees, the bill would allow the depository to use private, independently managed financial institutions to provide retail locations for the provision of depository services to the public.

**Advertising.** The bill would allow the depository to advertise and promote the depository in any available media and issue, sell, or license for sale promotional items approved by the administrator to further promote the depository. The depository would be authorized to set commercially reasonable prices for items licensed or sold.

The bill would require the depository to refer any matter relating to a confiscation, requisition, seizure or other attempt to control ownership, disposition, or proceeds of a withdrawal, transfer, liquidation, or settlement of a depository account to the attorney general for resolution.

**Confidentiality of records.** The bill would make confidential records relating to individual depository accounts or depository account holders, including current, former, or prospective depository account holders, that are in the custody of the depository or a vendor performing services related to the depository. Notwithstanding this confidentiality, depository account information could be disclosed:

- to a depository account holder regarding the depository account holder's account;
- to a state or federal agency as required by applicable law;
- to a vendor providing services to the depository;
- in response to a subpoena issued under law;
- if compiled as collective information that did not include any identifying information about a person; or
- as otherwise permitted by the depository account agreement applicable to a depository account holder's account.

The bill would except the following information of the depository from the requirement in statute that public information be available to the public at a minimum during the normal business hours of the governmental body:

- records and other information related to the security of the depository;
- records related to the method of setting the depository's fees, service charges, penalties, and other charges or payments; and
- commercial or financial information that would cause substantial competitive harm to the depository, including operational or other information that would give advantage to competitors or bidders.

**Other changes.** The bill would require the comptroller to adopt rules necessary to carry out the governance of TXBD.

The bill would remove the requirement that the comptroller seek the advice and consent of the governor, lieutenant governor, and Senate when appointing the bullion depository administrator. The bill would authorize the bullion depository administrator to hire employees as necessary and appropriate to the efficient administration of the depository. The comptroller would be allowed to employ security officers to provide needed security services for the depository and could commission the officers as peace officers.

CSHB 2458 would change the comptroller's ability to restrict the forms in which deposits of precious metals may be made by removing a provision constraining the deposits to forms that conveniently lend themselves to measurement and accounting in units of troy ounces and standard fractions of troy ounces.

The bill would change the demand requirements for withdrawing or transferring a bullion deposit from a suitable check or draft to a written demand. It also would authorize the comptroller to prescribe, rather than requiring the comptroller to adopt, the forms, standards, and processes through which an order for delivery on demand may be made, presented and honored. The bill would increase the time the depository has to make a delivery to 10 days after the date of presentment from five.

The bill would authorize the depository to provide notice of an amendment to the depository contract electronically.

CSHB 2458 would authorize the comptroller to waive any fees, service charges, or penalties established under the TXBD statute.

The 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 September 1, 2019.