

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1652  
By: Shapiro  
Education  
5/6/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Currently, Texas higher education institutions are subject to a plethora of laws, regulations, policies, and procedures mandated by the state and federal governments, regulatory agencies, and private-sector organizations. C.S.S.B. 1652 sets forth a guide for the administration, operation, governance, and financing of Texas higher education institutions.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. FINANCIAL MATTERS

SECTION 1.01. Amends Section 11.11(e), Tax Code, to provide that property that is held or dedicated for the support, maintenance, or benefit of an institution of higher education as defined by Section 61.003, Education Code, but is not rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state or institution or is not rented or leased to provide private residential housing to members of the public other than students and employees of the state or institution is not taxable. Provides that if a portion of property of an institution of higher education is used for public purposes and a portion is not used for those purposes, the portion of the property used for public purposes is exempt under this subsection. Provides that property bequeathed to an institution is exempt from the assessment of ad valorem taxes from the date of the decedent's death, unless a certain condition exists.

SECTION 1.02. Amends Section 2254.021(2), Government Code, to redefine "major consulting services contract."

SECTION 1.03. Amends Section 2254.028, Government Code, by adding Subsection (c) to provide that Subsection (a)(3) does not apply to a major consulting services contract to be entered into by an institution of higher education other than a public junior college if the institution includes in the invitation published under Section 2254.029 a finding by the chief executive officer of the institution that the consulting services are necessary and an explanation of that finding.

SECTION 1.04. Amends Sections 2254.031(b) and (d), Government Code, as follows:

(b) Requires a state agency that intends to renew a contract that is not a major consulting services contract to comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

(d) Makes a conforming change.

SECTION 1.05. Amends Section 54.5011, Education Code, as follows:

Sec. 54.5011. New heading: CHARGES AND FEES FOR CERTAIN PAYMENTS. (a)

Provides that this section applies to a payment of tuition, a fee, or another charge to an institution of higher education that fits certain criteria.

(b) Authorizes an institution of higher education to charge a certain fee or other amount in connection with a payment to which this section applies, in addition to the amount of the tuition, fee, or other charge being paid. Deletes text regarding a credit card fee.

(c) Requires a fee or other charge under this section to be in an amount reasonably related to the expense incurred by the institution in processing and handling the payment or payment transaction. Deletes text prohibiting a certain amount from being exceeded, and text requiring the institution to notify the student of any fee to be charged under this section.

SECTION 1.06. Amends Section 153.006, Education Code, as follows:

Sec. 153.006. SUPPORT OF CENTERS. (a) Authorizes an institution of higher education, in order to carry out the purposes of this chapter and to support the activities of centers described in this chapter, to the extent authorized by its governing board, to perform certain acts, including to enter into certain contracts for legal services with a competent lawyer or law firm.

(b) Authorizes the fees or other compensation paid in connection with a legal services contract authorized by Subsection (a) to be paid on a contingency fee basis, at an hourly rate, or on another basis the governing board of the institution considers appropriate.

SECTION 1.07. Amends Section 2254.102, Government Code, by adding Subsection (c), to provide that this subchapter does not apply to a contract for legal services entered into by an institution of higher education under Section 153.006, Education Code.

SECTION 1.08. Amends Section 404.097(d), Government Code, to authorize legal fees and expenses to be paid from the recovered funds under a contingent fee contract for legal services only under certain conditions.

SECTION 1.09. Amends Section 21.042, Property Code, by adding Subsection (f) to prohibit the special commissioners, in awarding compensation or assessing damages for a condemnation by an institution of higher education, as defined by Section 61.003, Education Code, from including in the compensation or damages any amount that compensates for, or is based on the present value of, an exemption from ad valorem taxation applicable to the property before its condemnation.

SECTION 1.10. Amends Section 55.004, Property Code, by adding Subsection (f), to provide that if the physician is employed in that capacity by an institution of higher education, as defined by Section 61.003 (Definitions), Education Code, and the lien does not include the amount of the physician's reasonable and necessary charges described by Subsection (c), the physician has a lien on the cause of action in the same manner as a hospital under this chapter. Provides that the lien is subject to provisions of this chapter applicable to a hospital lien. Authorizes the physician or the physician's employing institution to secure and enforce the lien in the manner provided by this chapter.

SECTION 1.11. Amends Subchapter A, Chapter 56, Education Code by adding Section 56.004, as follows:

Sec. 56.004. FILING FEES IN SUITS TO COLLECT DELINQUENT STUDENT LOANS. Requires the institution of higher education, if it brings suit to collect or enforce the repayment of a delinquent student loan, to pay in advance one-half of the applicable filing fee and other costs payable in advance to the clerk of the court, notwithstanding any other law. Requires the institution, if the defaulting borrower

prevails in the suit, to pay the remaining one-half of the filing fee and costs on the date of the final disposition of the suit. Sets forth the required actions should the institution prevail.

SECTION 1.12. Amends Section 403.072, Government Code, by adding Subsection (d) prohibit the comptroller, in its rules adopted under this section, from requiring an institution of higher education, as defined by Section 61.003 (Definitions), Education Code, that processes its own payroll to submit payroll information to the comptroller relating to individual employees of the institution that is not required by the comptroller to make any distribution of state money to the institution to cover the institution's payroll.

SECTION 1.13. Makes application of Section 56.004, Education Code, as added by this Act, prospective.

## ARTICLE 2. HUMAN RESOURCES

SECTION 2.01. Amends Section 609.001, Government Code by adding Subdivision (2-a) and amending Subdivision (8) to define "institution of higher education" and make a conforming change.

SECTION 2.02. Amends Section 609.002, Government Code, to include an institution of higher education, or a group of institutions of higher education, in the list of entities that create 457 or 401(k) plans, for which vendor can be a qualified vendor under certain circumstances. Makes a nonsubstantive change.

SECTION 2.03. Amends Section 609.003(b), Government Code, to require the approval of an investment product for a 401(k) plan of a political subdivision, or a group thereof; an institution of higher education; or a 457 plan of an institution of higher education to be in accordance with a contract between the plan administrator and a qualified vendor.

SECTION 2.04. Amends Section 609.007, Government Code, by adding Subsection (e), to authorize an institution of higher education to contract with an employee of the institution of higher education for the deferment of any part of the employee's compensation.

SECTION 2.05. Amends Chapter 609, Government Code, by adding Subchapter D, as follows:

### SUBCHAPTER D. DEFERRED COMPENSATION PLANS FOR EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION.

Sec. 609.701. DEFINITIONS. Defines "deferred compensation plan," "deferred compensation trust fund," and "investment product."

Sec. 609.702. CREATION OF PLAN. (a) Authorizes an institution of higher education to create and administer for its employees a 457 plan under this subchapter.

(b) Authorizes an institution of higher education to contract with other institutions of higher education to create a single deferred compensation plan for their employees under Subsection (a).

Sec. 609.703. DESIGNATION OF PLAN ADMINISTRATOR. (a) Requires an institution of higher education that creates a deferred compensation plan to designate a plan administrator for the plan.

(b) Requires institutions of higher education that create a single plan to designate jointly a plan administrator for the plan.

(c) Authorizes certain persons and entities to be a plan administrator.

Sec. 609.704. REMOVAL OF PLAN ADMINISTRATOR. Authorizes an institution of

higher education, or group of institutions of higher education, that designates a plan administrator to remove that plan administrator at any time unless specifically provided otherwise by the contract.

Sec. 609.705. OVERSIGHT COMMITTEE. (a) Authorizes an institution of higher education, or group of institutions of higher education, that creates a deferred compensation plan to direct and supervise the plan administrator's activities through an oversight committee.

(b) Requires the institution of higher education, or group of institutions of higher education, to determine the authority, activities, and composition of an oversight committee created under this section.

Sec. 609.706. AUTHORITY OF PLAN ADMINISTRATOR. (a) Requires a plan administrator to execute necessary contracts for the administration of the deferred compensation plan, subject to any prior approval by the institution of higher education, or group of institutions of higher education, that created the plan.

(b) Requires a plan administrator to develop and implement criteria and procedures for any matter not covered by this subchapter that the plan administrator considers appropriate for the operation of the deferred compensation plan.

Sec. 609.707. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME. Require the plan administrator to perform certain activities.

Sec. 609.708. PARTICIPATION OF INDEPENDENT CONTRACTORS. (a) Requires the plan administrator to determine whether a person who provides services as an independent contractor to an institution of higher education that created the plan is authorized to participate in the deferred compensation plan.

(b) Provides that for the purposes of this chapter and Subchapter A, an independent contractor is authorized to participate in a deferred compensation plan is treated as an employee of the institution of higher education creating the plan.

Sec. 609.709. CHANGING AMOUNT DEFERRED. Authorizes an employee to change the amount to be deferred by notifying the plan administrator of the change in accordance with the administrator's requirements.

Sec. 609.710. DISTRIBUTION. Requires a plan administrator to develop and implement certain procedures.

Sec. 609.711. FEE. (a) Authorizes an institution of higher education, or group of institutions of higher education, that creates a deferred compensation plan to assess a fee for the administration of the plan against each participating employee.

(b) Requires the institution of higher education, or group of institutions of higher education, to determine the method for computing and assessing the fee.

Sec. 609.712. EVALUATION AND APPROVAL OF QUALIFIED VENDOR. (a) Requires a plan administrator to develop and implement criteria and procedures for evaluating a vendor's application to become a qualified vendor.

(b) Prohibits a plan administrator from approving a vendor's application under certain circumstances.

(c) Requires the Texas Department of Insurance (TDI), upon written request, to certify in writing to a plan administrator whether an insurance company is

prohibited from being approved as a qualified vendor under Subsection (b)(3).  
Authorizes the plan administrator to rely on the certification.

Sec. 609.713. NUMBER OF VENDORS UNDER 457 PLAN. Requires the administrator of a 457 plan to determine the minimum and maximum number of vendors authorized to be qualified vendors for the plan at any given time.

Sec. 609.714. CONTRACT WITH QUALIFIED VENDOR. (a) Requires the plan administrator, after approving a vendor's application to become a qualified vendor, to execute a written contract with the vendor to participate in the deferred compensation plan.

(b) Requires a plan administrator to develop and implement criteria and procedures for evaluating a qualified vendor's investment products to determine whether those products are acceptable as qualified investment products.

(c) Authorizes a qualified vendor to offer to employees participating in a 457 plan only qualified investment products.

Sec. 609.715. REGULATION OF QUALIFIED VENDORS. Requires a plan administrator to develop and implement requirements for qualified vendors and their employees concerning certain matters.

Sec. 609.716. TRANSFER ON VENDOR'S FAILURE. Authorizes an institution of higher education, or group of institutions of higher education, that creates a deferred compensation plan to authorize or require as a part of the plan that the plan administrator immediately transfer to the deferred compensation trust fund all deferred amounts and investment income from a vendor who fails to satisfy the requirements of this subchapter or the plan administrator.

SECTION 2.06. Amends Section 51.964(a), Education Code, to reduce from one calendar year to 30 days the period of time a person must be retired before being employed by an institution of higher education as defined by Section 61.003 if the person retired under the Teacher Retirement System (Subtitle C, Title 8, Government Code) or the optional retirement program (Chapter 830, Government Code).

SECTION 2.07. Amends Section 659.018, Government Code, as follows:

Sec. 659.018. COMPENSATORY TIME: PLACE WHERE WORK PERFORMED. (a) Created from existing text.

(b) Prohibits the employee's personal residence, for purposes of Subsection (a), from being considered the employee's regular or temporarily assigned place of employment unless the employee is employed by an institution of higher education as defined by Section 61.003, Education Code, and is participating in a telecommuting program approved by the employee's supervisor.

SECTION 2.8. Amends Subchapter A, Chapter 51, Education Code, by adding Section 51.0065, as follows:

Sec. 51.0065. APPLICABILITY OF ACROSS-THE-BOARD SALARY INCREASE. Entitles an institution of higher education that has adopted a pay-for-performance program that is in effect when an across-the-board salary increase for state employees made by an appropriation act of the legislature takes effect to receive any appropriation made for purposes of the across-the-board salary increase, and authorizes the use of the amount appropriated for an across-the-board salary increase or for increases in compensation under the institution's pay-for-performance program.

SECTION 2.9. Amends Section 1601.102, Insurance Code, by amending Subsection (b) and

adding Subsections (f) and (g), as follows:

(b) Increases the minimum time of service with a system required for eligibility to participate in the uniform program as provided by Subsection (a) from three to 10 years.

(f) Sets forth the prerequisites for an individual to whom this subsection applies to be eligible to participate in the uniform program as provided by Subsection (a), notwithstanding Subsection (b).

(g) Sets forth to whom Subsection (f) applies.

SECTION 2.10. Amends Section 659.043, Government Code, by adding Subsection (c) to authorize a commissioned peace officer of a state institution of higher education to receive longevity pay under this subchapter in addition to hazardous duty pay under Subchapter L.

SECTION 2.11. Amends Section 659.046(f), Government Code, to provide that the amount of an employee's lifetime service credit does not include the period served in a hazardous duty position if the employee meets certain criteria. Makes a conforming change.

SECTION 2.12. Amends the heading to Section 51.961, Education Code, as added by Chapter 118, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 51.961. LEAVE PROVISIONS FOR EMPLOYEES OF UNIVERSITY SYSTEM OR COMPONENT INSTITUTION OF SYSTEM.

SECTION 2.13. Amends Sections 51.961(a) and (b), Education Code, as added by Chapter 118, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(a) Provides that in this section "governing board" and "university system" rather than "governing board," "university system," and "medical and dental unit" have the meaning assigned by Section 61.003.

(b) Authorizes the governing board of a university system to adopt a comprehensive leave policy that applies to employees of the university system or any component institution of the system.

SECTION 2.14. Amends Section 1601.101, Insurance Code, by adding Subsection (d), to provide that an individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual is serving a postdoctoral fellowship with an institution in a system.

SECTION 2.15. Provides that the changes in law made by this article to Sections 609.001, 609.002, 609.003, and 609.007, Government Code, and Subchapter D, Chapter 609, Government Code, as added by this article, take effect January 1, 2004.

SECTION 2.16. Provides that Section 1601.101(d), Insurance Code, as added by this article, takes effect September 1, 2003.

SECTION 2.17. Provides that the change in law made by this article to Section 659.046, Government Code, applies only to a determination of the amount of an employee's lifetime service credit that is made on or after the effective date of this Act. Provides that a determination of the amount of an employee's lifetime service credit made before the effective date of this Act is governed by the law in effect on the date the determination is made, and the former law is continued in effect for that purpose.

### ARTICLE 3. INFORMATION TECHNOLOGY

SECTION 3.01. Amends Section 2054.003(12), Government Code, to redefine "state agency."

SECTION 3.02. Amends Section 2054.077, Government Code, by adding Subsection (a-1), to define “state agency.”

SECTION 3.03. Amends Section 2054.2011, Government Code, by adding Subdivision (3), to define “state agency.”

#### ARTICLE 4. REGULATORY AND ADMINISTRATIVE MATTERS

SECTION 4.01. Amends Section 2166.302, Government Code, as follows:

Sec. 2166.302. **ADOPTION OF CONDITIONS.** (a) Requires TBPC to adopt uniform general conditions to be incorporated into all building construction contracts made by the state, including a contract for a project excluded from this chapter by Section 2166.003 other than a project constructed by and for an institution of higher education, but not including a contract for a project excluded from this chapter by Section 2166.004.

(b) Defines “institution of higher education.”

SECTION 4.02. Amends Section 51.782(i), Education Code, to require a construction manager-at-risk to publicly advertise, in the manner prescribed by the institution, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than general conditions work. Authorizes construction manager-at-risk to seek to perform major elements, rather than portions, of the work itself if the construction manager-at-risk submits its bid or proposals for that, rather than those portions, work in the same manner as all other trade contractors or subcontractors and if the board determines that the construction manager-at-risk’s bid or proposal provides that best value for the institution. Authorizes the board, if no satisfactory bid or proposal for a major element of the work is received in the time allowed, to negotiate directly with the construction manager-at-risk for performance of that work. Authorizes the board to negotiate directly with the manager-at-risk for the performance of minor elements of the work that are not included in major work packages.

SECTION 4.03. Amends Subchapter B, Chapter 502, Labor Code, by adding Section 502.025, as follows:

Sec. 502.025. **COVERAGE FOR OUT-OF-STATE EMPLOYEES.** (a) Provides that an employee who performs services outside the state is entitled to benefits under this chapter even if the person meets certain criteria.

(b) Provides that an employee who elects to pursue remedies provided by the state where the injury occurred is not entitled to benefits under this chapter.

SECTION 4.04. Amends Subchapter B, Chapter 503, Labor Code, by adding Section 503.025, as follows:

Sec. 503.025. **COVERAGE FOR OUT-OF-STATE EMPLOYEES.** (a) Provides that an employee who performs services outside the state is entitled to benefits under this chapter event if the person meets certain criteria.

(b) Provides that an employee who elects to pursue remedies provided by the state where the injury occurred is not entitled to benefits under this chapter.

SECTION 4.05. Amends Section 2007.002(1), Government Code, to redefine “governmental entity.”

SECTION 4.06. Amends Section 65.45, Education Code, to read as follows:

Sec. 65.45. New heading: **SCIENCE AND TECHNOLOGY DEVELOPMENT, MANAGEMENT, AND TRANSFER.** (a) Provides that the legislature finds that it is essential to the economic growth of the state that the potential for the development and

growth of high technology industry be promoted and expanded. Authorizes THECB, as a means of accomplishing this purpose, to enter into agreements with individuals, corporations, partnerships, associations, and local, state, or federal agencies for funding the discovery, development, and commercialization of new products, technology, and scientific information, including an agreement to manage a national laboratory engaged in any of those endeavors. Authorizes, at the discretion of the board, research facilities, funding, and personnel at the various component institutions of The University of Texas System to be utilized to achieve the purposes of this section. Deletes text regarding THECB being authorized to perform certain acts.

(b) Authorizes THECB, as a means of carrying out the purposes of this section, to, through one or more corporations incorporated by THECB or under any other cooperative arrangement, perform certain acts. Makes a conforming change.

(c) Authorizes THECB to cooperate in any manner THECB considers appropriate with similar programs operated by other state-supported institutions of higher education in this state or in other states. Deletes text prohibiting the Center for Technology Development and Transfer from receiving general revenue funds.

SECTION 4.07. Amends the heading to Section 551.121, Government Code, to read as follows:

Sec. 551.121. GOVERNING BOARD OF INSTITUTION OF HIGHER EDUCATION;  
BOARD FOR LEASE OF UNIVERSITY LANDS.

SECTION 4.08. Amends Sections 551.121(b), (c), and (e), Government Code, as follows:

(b) Provides that this chapter does not prohibit the governing board of an institution of higher education or the Board for Lease of University Lands (BLUL) from holding an open or closed meeting by telephone conference call.

(c) Authorizes a meeting held by telephone conference call to be held only if certain criteria is met.

(e) Requires the notice of a telephone conference call meeting of a governing board to specify as the location of the meeting the location where meetings of the governing board are usually held. Requires the notice, for a meeting of BLUL, to specify as the location of the meeting a suitable conference or meeting room at The University of Texas System office.

SECTION 4.09. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.1235, as follows:

Sec. 552.1235. EXCEPTION: IDENTITY OF PRIVATE DONOR TO INSTITUTION OF HIGHER EDUCATION. (a) Provides that the name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021.

(b) Provides that Subsection (a) does not except from required disclosure other information relating to gifts, grants, and donations described by Subsection (a), including the amount or value of an individual gift, grant, or donation.

(c) Defines “institution of higher education.”

SECTION 4.10. Amends Section 2161.123(a), Government Code, to require each state agency, including the Texas Building and Procurement Commission (TBPC), that is required to have a strategic plan under Chapter 2056, to include in its strategic plan a written plan for increasing the agency’s use of historically underutilized business in purchasing the public works contracting.



Requires the governing board of each university system or institution of higher education not included in a university system, other than a public junior college, to prepare a written plan for increasing the use of historically underutilized business in purchasing and public works contracting by the system or institution.

SECTION 4.11. Provides that Sections 502.025 and 503.025, Labor Code, as added by this article, apply only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. Provides that a claim based on a compensable injury that occurs before the effective date of this Act is governed by the law in effect on the date injury occurred, and the former law is continued in effect for that purpose.

SECTION 4.12. Provides that Section 552.1235, Government Code, as added by this article, applies to a request for information made before, on, or after the effective date of this Act.

## ARTICLE 5. REPORTING

SECTION 5.01. Amends Sections 51.680(b) and (c), Education Code, as follows:

(b) Authorizes an institution, rather than institutions, of higher education to file or post on the institution's website on the Internet in a manner available to the public policies amended to overcome any failure to meet the standards. Makes nonsubstantive changes.

(c) Provides that it is a policy of the state that each institution of higher education shall at all times after August 31, 1988, have a current copy of its intellectual property policies that meet the minimum standards set out in Subsection (a) on file with THECB or publicly posted on the institution's website on the Internet in a manner available to the public.

SECTION 5.02. Amends Section 403.021(a), Government Code, to redefine "state agency."

SECTION 5.03. Amends Subchapter B, Chapter 572, Government Code, by adding Section 572.0211, as follows:

Sec. 572.0211. EXEMPTION FOR CERTAIN APPOINTED STATE OFFICERS NOT REAPPOINTED. (a) Provides that a state officer who is a member of the governing board of an institution of higher education, except as provided by Subsection (b), is exempt from the filing requirement of Section 572.021 in the year in which the member's term expires if certain conditions exist.

(b) Requires the individual to file a financial statement as required by Section 572.021 for the preceding calendar year not later than August 1, if notwithstanding the expiration of the term of office the individual is serving as a member of the same governing board on July 1 of that year, whether the individual continues in office because a successor has not qualified for the next term of office or because the individual has been reappointed to the same governing board.

SECTION 5.04. Amends Section 2152.064, Government Code, by adding Subsection (f), to provide that this section does not apply to a university system or an institution of higher education as those terms are defined by Section 61.003, Education Code.

SECTION 5.05. Amends Section 2155.448, Government Code, by adding Subsection (d), to provide that this section does not apply to a university system or an institution of higher education as those terms are defined by Section 61.003, Education Code.

SECTION 5.06. Amends Section 2166.101(a), Government Code, to provide that this section applies to a state-owned building, including a building otherwise exempt from this chapter under Section 2166.003, except that this section does not apply to a building owned by an institution of

higher education as defined by Section 61.003, Education Code.

SECTION 5.07. Amends Section 2254.006, Government Code, as follows:

Sec. 2254.006. CONTRACT NOTIFICATION. Requires a state agency, other than, rather than including, an institution of higher education as defined by Section 61.003, Education Code, to provide written notice to the Legislative Budget Board of a contract for professional services, other than a contract for physician or optometric services, if the amount of the contract, including an amendment, modification, renewal, or extension of the contract, exceeds \$14,000.

SECTION 5.08. Repealer: Section 2166.101(f) (Compilation of Construction and Maintenance Information), Government Code.

#### ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Effective date: upon passage or September 1, 2003 except as otherwise provided by another provision of this Act.