

BILL ANALYSIS

Senate Research Center

C.S.S.B. 5
By: Ogden
Finance
7/7/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 5 relates to certain fiscal matters affecting governmental entities, including requiring the transfer of certain tobacco settlement proceeds held by institutions of higher education into dedicated general revenue accounts, and clarifying that cash held on an overnight basis by the state treasury in lieu of securities and obligations does not constitute a deposit of state public funds requiring collateral. The bill also requires the Office of the Attorney General to provide legal services for the collection of uncollected and delinquent obligation, or contract with private debt collectors for the collection, clarifies administrative and technical issues relating to taxes and fees collected by the comptroller of public accounts, and establishes a standard presumptive value for determining the proper amount of motor vehicle sales tax due on certain motor vehicle sales transactions.

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. TRANSFERRING CERTAIN TOBACCO SETTLEMENT PROCEEDS INTO DEDICATED GENERAL REVENUE ACCOUNTS

SECTION 1.01. Amends Subchapter G, Chapter 403, Government Code, by adding Sections 403.109 and 403.1091-403.1093, as follows:

Sec. 403.109. SECONDARY HEALTH ACCOUNT FOR HIGHER EDUCATION. (a)
Defines "earnings account" and "secondary account."

(b) Provides that the secondary account and the earnings account are dedicated accounts in the general revenue fund.

(c) Sets forth the composition of the secondary account.

(d) Provides that the earnings account consists of the earnings received from investment of the assets in the secondary account. Requires the comptroller of public accounts (comptroller) to periodically transfer those earnings from the secondary account to the earnings account.

(e) Authorizes money in the secondary account to be used only for a purpose described by Subsection (d) or (f).

(f) Requires the comptroller to manage and invest assets in the secondary account in authorized investments under Section 404.024. Requires any expenses incurred by the comptroller in managing and investing assets in the secondary account to be paid from the account.

(g) Authorizes money in the earnings account to be appropriated only for a purpose specified in and subject to any conditions and reporting requirements prescribed by Subchapter A, Chapter 63 (Permanent Funds for Health-Related

Institutions of Higher Education), Education Code, for the use of money from the permanent health fund for higher education.

(h) Authorizes an institution of higher education that has accepted a gift under former Subchapter I, Chapter 51 (Provisions Generally Applicable to Higher Education), Education Code, that was conditioned on the institution's receipt of state matching funds from the eminent scholars fund to use money the institution receives under this section to provide the state matching funds and treat the money as if it were a distribution to the institution from the eminent scholars fund for purposes of the former Subchapter I.

(i) Requires an institution of higher education that receives a distribution from the earnings account to include certain information in the report required by Section 63.004 (Reporting Requirements), Education Code.

(j) Provides that Section 404.071 (Disposition of Interest on Investments) does not apply to the secondary account or the earnings account.

Sec. 403.1091. SECONDARY ACCOUNTS FOR EACH INSTITUTION OF HIGHER EDUCATION. (a) Defines "earnings account" and "secondary account."

(b) Provides that, in addition to the permanent endowment funds created by Section 63.101 (Creation of Funds), Education Code, there is a secondary account for the benefit of each institution of higher education or group of related components of an institution of higher education listed in Section 63.101(a), Education Code.

(c) Provides that each secondary account and earnings account is a dedicated account in the general revenue fund.

(d) Sets forth the composition of a secondary account.

(e) Provides that an earnings account for an institution or group of related components of an institution consists of the earnings received from investment of the assets in the corresponding secondary account for the institution or group of components. Requires the comptroller to periodically transfer those earnings from the secondary account to the earnings account.

(f) Authorizes money in a secondary account to be used only for a purpose described by Subsection (e) or (g).

(g) Requires the comptroller to manage and invest assets in a secondary account in authorized investments under Section 404.024 (Authorized Investments). Requires any expenses incurred by the comptroller in managing and investing assets in a secondary account to be paid from the account.

(h) Authorizes money in an earnings account to be appropriated only for a purpose specified in and subject to any conditions and reporting requirements prescribed by Subchapter B, Chapter 63, Education Code, for the use of money from the corresponding permanent endowment fund established by that subchapter.

(i) Authorizes an institution of higher education that has accepted a gift under former Subchapter I, Chapter 51, Education Code, that was conditioned on the institution's receipt of state matching funds from the eminent scholars fund to use money the institution receives under this section to provide the state matching funds and treat the money as if it were a distribution to the institution from the eminent scholars fund for purposes of the former Subchapter I.

(j) Requires an institution of higher education that receives an appropriation from an earnings account to include certain information in the report required by Section 63.103 (Reporting Requirement), Education Code

(k) Provides that Section 404.071 does not apply to a secondary account or an earnings account.

Sec. 403.1092. SECONDARY ACCOUNT FOR HIGHER EDUCATION NURSING, ALLIED HEALTH, AND OTHER HEALTH-RELATED PROGRAMS. (a) Defines "earnings account" and "secondary account."

(b) Provides that the secondary account and the earnings account are dedicated accounts in the general revenue fund.

(c) Sets forth the composition of the secondary account.

(d) Provides that the earnings account consists of the earnings received from investment of the assets in the secondary account. Requires the comptroller to periodically transfer those earnings from the secondary account to the earnings account.

(e) Authorizes money in the secondary account to be used only for a purpose described by Subsection (d) or (f).

(f) Requires the comptroller to manage and invest assets in the secondary account in authorized investments under Section 404.024. Requires any expenses incurred by the comptroller in managing and investing assets in the secondary account to be paid from the account.

(g) Authorizes money in the earnings account to be appropriated only for a purpose specified in and subject to any conditions and reporting requirements prescribed by Subchapter C, Chapter 63, Education Code, for the use of money from the permanent fund for higher education nursing, allied health, and other health-related programs.

(h) Requires the Texas Higher Education Coordinating Board to include certain information in the report required by Section 63.203 (Reporting Requirements), Education Code.

(i) Provides that Section 404.071 does not apply to the secondary account or the earnings account.

Sec. 403.1093. SECONDARY ACCOUNT FOR MINORITY HEALTH RESEARCH AND EDUCATION. (a) Defines "earnings account" and "secondary account."

(b) Provides that the secondary account and the earnings account are dedicated accounts in the general revenue fund.

(c) Sets forth the composition of the secondary account.

(d) Provides that the earnings account consists of the earnings received from investment of the assets in the secondary account. Requires the comptroller to periodically transfer those earnings from the secondary account to the earnings account.

(e) Authorizes money in the secondary account to be used only for a purpose described by Subsection (d) or (f).

(f) Requires the comptroller to manage and invest assets in the secondary account in authorized investments under Section 404.024. Requires any expenses incurred

by the comptroller in managing and investing assets in the secondary account to be paid from the account.

(g) Authorizes money in the earnings account to be appropriated only to the Texas Higher Education Coordinating Board for the purpose of providing grants as specified by Section 63.302(c), Education Code, for money from the permanent fund for minority health research and education.

(h) Requires the Texas Higher Education Coordinating Board to report regarding the money received under this section in the manner required by Section 63.302(f), Education Code, and to include certain information in the report.

(i) Provides that Section 404.071 does not apply to the secondary account or the earnings account.

SECTION 1.02. Amends Section 403.1069, Government Code, as follows:

Sec. 403.1069. **REPORTING REQUIREMENT.** Requires the Department of State Health Services (DSHS) to provide a report to the Legislative Budget Board (LBB) on the permanent funds established under this subchapter from which the department is authorized to receive an appropriation of the available earnings no later than November 1 of each year.

SECTION 1.03. (a) Requires all amounts held in certain funds to be transferred, on November 1, 2006, in the estimated amount listed, to the accounts established under Sections 403.109, 403.1091, 403.1092, and 403.1093, Government Code, as added by this Act, as specified by this section.

(b) - (q) Requires all amounts held in specific funds to be transferred on November 1, 2006, to certain secondary accounts.

SECTION 1.04. (a) Prohibits the transfers to accounts in the general revenue fund made by this article from resulting in a reduction in the amount available for distribution from those accounts, and the same amount that would have been distributed from the permanent funds but for the transfers made by this article are required to be appropriated and distributed from the applicable accounts created by this article. Requires the comptroller, if the earnings from the secondary account that are transferred to the earnings account are inadequate to make a distribution of the same amount that would have been distributed from the permanent funds, to the extent that the difference is solely the result of an investment policy other than total return, to transfer the difference to the applicable earnings account from the unobligated portion of general revenue.

(b) Requires the comptroller to determine the amount of any loss to the Permanent Health Fund for Higher Education and other funds administered by The University of Texas System as a result of the transfer to general revenue under this article. Requires the comptroller, on August 31, 2007, to transfer from general revenue to the applicable secondary account created by this Act, an amount equal to the amount of the loss. Requires the comptroller, in determining the amount of the loss, to consider the difference in the rate of return on investment of that secondary account and the rate of return over the preceding three years on investment of the Permanent University Fund.

(c) Prohibits, notwithstanding any other provision of this article, the total of distributions under Subsections (a) and (b) of this section from the accounts created by this article, plus transfers under Subsection (b) of this section, from exceeding \$65 million for any fiscal year.

SECTION 1.05. Effective date, this article: September 1, 2005, or November 1, 2005.

ARTICLE 2. INVESTMENT OF STATE AND OTHER GOVERNMENTAL ENTITY FUNDS

SECTION 2.01. Amends Section 404.024, Government Code, by amending Subsections (b) and (l) and adding Subsection (m) and (n), as follows:

(b) Requires state funds not deposited in state depositories to be invested by the comptroller in certain agreements, obligations, and accounts.

(l) Makes conforming changes. Authorizes cash, notwithstanding any provision to the contrary, to be reinvested in the items permitted under Subsection (b) or mutual funds secured by the items permitted in Subsection (b).

(m) Authorizes the comptroller, in entering into a direct security repurchase agreement or a reverse security repurchase agreement, to agree to accept cash on an overnight basis in lieu of the securities, obligations, or participation certificates identified in Section 404.001(3). Provides that cash held by the state under this subsection is not a deposit of state or public funds for the purposes of any law, including this subchapter or Subchapter D, that requires a deposit of state or public funds to be collateralized by eligible securities.

(n) Authorizes, notwithstanding any other law to the contrary, any government investment pool created to function as a money market mutual fund and managed by the comptroller or the Texas Treasury Safekeeping Trust Company to invest the funds it receives in investments that are "eligible securities," as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Part 270.2a-7), if it maintains a dollar-weighted average portfolio maturity of 90 days or less, with the maturity of each portfolio security calculated in accordance with Rule 2a-7 (17 C.F.R. Part 270.2a-7), and meets the diversification requirements of Rule 2a-7.

SECTION 2.02. Amends Section 2256.011, Government Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Provides an exception to this subsection as created by Subsection (e).

(e) Authorizes an entity, for purposes of this section, to agree to secure the agreement by accepting cash on an overnight basis in lieu of the obligations identified in Section 2256.009(a)(1). Provides that cash held by an entity under this subsection is not a deposit of public funds for purposes of any statute, including Chapter 2257, that requires a deposit of public funds to be collateralized by eligible securities.

SECTION 2.03. Amends Section 2256.016, Government Code, by amending Subsections (a) and (f) and adding Subsection (i), as follows:

(a) Authorizes an investment pool created to function as a money market mutual fund to invest the funds it receives from entities in investments that are "eligible securities," as defined by the Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Part 270.2a-7), promulgated under the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.). Requires any other investment pool to invest the funds it receives from entities in authorized investments permitted by this subchapter.

(f) Requires a public funds investment pool created to function as a money market mutual fund to maintain a dollar-weighted average portfolio maturity of 90 days or less, with the maturity of each portfolio security calculated in accordance with Rule 2a-7 (17 C.F.R. Part 270.2a-7) and meet the diversification requirements of Rule 2a-7 (17 C.F.R. Part 270.2a-7) promulgated by the Securities and Exchange Commission, to be eligible to receive funds from and invest funds on behalf of an entity under this chapter.

(i) Defines "stated maturity date."

SECTION 2.04. Effective date, this article: upon passage or November 1, 2005.

ARTICLE 3. COLLECTION OF DELINQUENT OBLIGATIONS TO STATE

SECTION 3.01. Amends Section 403.019(c), Government Code, to require the attorney general to approve a contract if the attorney general determines that the contract complies with the

requirements of this section, that the contract does not conflict with any contract formed under Section 2107.003(b), and that the contract is in the best interest of the state.

SECTION 3.02. Amends Section 2107.003, Government Code, as follows:

Sec. 2107.003. New heading: COLLECTION BY ATTORNEY GENERAL, COMPTROLLER, OR OUTSIDE AGENT. (a) Requires a state agency, except as provided by Section 2107.004, to report an uncollected and delinquent obligation to the attorney general for collection. Requires the state agency to report the obligation on or before the 120th day after the date the obligation becomes past due or delinquent. Deletes existing text relating to an agency collecting an obligation.

(b) Sets forth certain authorities and duties of the attorney general.

(c) Makes no changes to this subsection.

(d) Entitles the agency contracting under Subsection (b) to recover from the obligor, in addition to the amount of the obligation, the costs incurred in undertaking the collection, including the costs of a contract under this section. Provides that the obligor is liable for costs of recovery under this section in an amount equal to 30 percent of the sum of the amount of the obligation and any penalty and interest due on the obligation.

(e) Requires a contract formed under Subsection (b) to provide for the compensation due to the contractor. Requires the amount of the compensation to be a certain amount.

(f) Authorizes a contract formed under Subsection (b) or (c) to permit or require the contractor to pursue a judicial action to collect the amount of the obligation in a proper court in or outside of this state.

(g) Provides that, in a suit in a Texas state court brought by a contractor to collect an obligation under this section, the state is not required to post security for costs and is not liable for certain costs.

(h) Requires an amount collected under a contract formed under Subsection (b), including the costs of recovery and court costs or other costs, to be deposited in the fund or account to which the obligation was required to be deposited. Requires the contracting agency to pay the compensation due under the contract to the contractor and to pay to the applicable court any court costs collected.

(i) Requires the contracting agency to require a person contracting under Subsection (b) to post a bond or other security in an amount the contracting agency determines is sufficient to cover all revenue or other property of the state that is expected to come into the possession or control of the contractor in the course of providing contract services.

(j) Provides that a person who contracts under Subsection (b) is an agent of this state for purposes of determining priority of a claim to be collected under the contract with respect to claims of other creditors. Provides that the contractor does not exercise any sovereign power of the state.

(k) Authorizes the contracting state agency to provide a person contracting under Subsection (b) any necessary information, including confidential information, that the agency is not prohibited from sharing under an agreement with another state or with the United States and that is in the custody of the agency holding the claim, and is necessary to the collection of the obligation.

(l) Provides that a person acting under a contract formed under Subsection (b) or (c) and each employee or agent of that person is subject to all prohibitions against the disclosure of confidential information obtained from the contracting agency,

the reporting state agency, or their employees. Provides that a contractor or the contractor's employee or agent who discloses confidential information in violation of the prohibition is subject to the same penalties for that disclosure as would apply to the contracting agency or its employees.

(m) Requires the contracting agency to require a person who contracts under Subsection (b) to obtain and maintain insurance adequate to provide reasonable coverage for damages negligently, recklessly, or intentionally caused by the contractor or the contractor's employee or agent in the course of collecting an obligation under the contract and to protect this state from liability for those damages. Provides that the state is not liable for and prohibited from indemnifying a person acting under a contract under Subsection (b) for damages negligently, recklessly, or intentionally caused by the contractor or the contractor's employee or agent in the course of collecting an obligation under the contract.

(n) Authorizes the attorney general or the contracting agency, as applicable, in addition to grounds for termination provided by the contract terms, to terminate a contract formed under Subsection (b) if the contractor or the contractor's employee or agent performs certain actions.

SECTION 3.03. Amends Section 2254.102(c), Government Code, to provide that this subchapter (Contingent Fee Contract for Legal Services) does not apply to a contract with an agency to collect an obligation under Section 2107.003(b).

ARTICLE 4. STATE AND LOCAL SALES AND USE TAXES IN GENERAL

SECTION 4.01. Amends Sections 151.011(a) and (c), Tax Code, to redefine "use."

SECTION 4.02. Amends Section 321.203, Tax Code, by amending Subsections (b)-(e) and adding Subsection (n), as follows:

(b) Provides that if a retailer has only one place of business in this state, all of the retailer's retail sales of taxable items, rather than tangible personal property, are consummated at that place of business except as provided by Subsection (e). Makes a conforming change.

(c)-(e) Makes conforming changes.

(n) Provides that a sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site. Provides that, however, if the job site includes areas in multiple municipalities, the sale is consummated at a certain location.

SECTION 4.03. Amends Section 323.023, Tax Code, by amending Subsections (b)-(e) to make conforming changes and adding Subsection (m), as follows:

(m) Provides that a sale of a service described by Section 151.0047 to remodel, repair, or restore nonresidential real property is consummated at the location of the job site. Provides that, however, if the job site includes areas in multiple municipalities, the sale is consummated at a certain location.

SECTION 4.04. Repealer: (1) Section 151.103(d) (relating to a retailer's collection of a local use tax), Tax Code.

(2) Section 151.202(c) (relating to a person who desires to a person who desires to be a seller collecting a local use tax), Tax Code.

(3) Section 321.203(l), Tax Code, as added by Chapter 1310, Acts of the 78th Legislature, Regular Session, 2003.

(4) Section 323.203(1) (relating to the consummation of the sale of a taxable service), Tax Code.

SECTION 4.05. Effective date, this article: October 1, 2005, or November 1, 2005.

ARTICLE 5. EFFECTIVE DATE

SECTION 5.01. Effective date: upon passage or the 91st day after adjournment, except as otherwise provided by this Act.