

## **BILL ANALYSIS**

Senate Research Center  
86R23821 CJC-D

C.S.S.B. 69  
By: Nelson  
Finance  
4/4/2019  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

#### Purpose

- To streamline and maximize the investment returns on the economic stabilization fund (ESF), and to create an avenue to pay for state needs.

#### Background

- Proposition 1 from 2013 created a mechanism by which a portion of revenue that would otherwise go into the ESF would automatically transfer to the State Highway Fund, as long as a sufficient balance is met. Under current law, that figure is determined by the Committee to Establish the Sufficient Balance in the Economic Stabilization Fund.
- Until 2013, the comptroller of public accounts of the State of Texas (comptroller) could only deposit ESF funds in the treasury pool—which yields less than the rate of inflation. Under current law, the comptroller is only able to invest the portion of the ESF above the sufficient balance.

#### Bill Provisions

- Abolishes the ESF sufficient balance committee;
- Sets 7 percent of general revenue as the sufficient balance;
- Restores the ESF cap to its original formula by removing federal dollars from the calculation;
- Allows 75 percent of the ESF balance to be invested under prudent investor standards;
- Directs ESF investment revenue into a newly established Legacy Fund to address long-term needs as authorized by the legislature.
- There is an accompanying Joint Resolution authorizing the comptroller to transfer ESF investment income to the Legacy Fund. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 69 amends current law relating to the allocations of money for transfer to the state highway fund and the economic stabilization fund and the investment of money in the economic stabilization fund.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Subchapter H, Chapter 316, Government Code, to read as follows:

#### **SUBCHAPTER H. ALLOCATION OF TRANSFERS TO ECONOMIC STABILIZATION FUND AND STATE HIGHWAY FUND**

SECTION 2. Amends Sections 316.092 and 316.093, Government Code, as follows:

Sec. 316.092. New heading: DETERMINATION OF THRESHOLD FOR CONSTITUTIONAL TRANSFER TO STATE HIGHWAY FUND. (a) Requires the comptroller of public accounts of the State of Texas (comptroller), rather than the select

committee, for the purposes of adjusting the allocations of transfers in accordance with Section 49-g(c-2) (relating to a procedure for allocation if certain oil and gas tax revenues), Article III, Texas Constitution, and Section 316.093 for a state fiscal biennium, to determine and adopt for next state fiscal biennium an amount equal to seven percent of the certified general revenue-related appropriations made for that state fiscal biennium. Deletes existing text requiring the speaker of the house of representatives and the lieutenant governor to appoint a select committee and for the select committee to determine a sufficient balance of the fund using certain considerations. Deletes existing text requiring the comptroller to provide the select committee with a projection of the amounts to be transferred to the fund not later than December 1 of each even-numbered year preceding the year in which this section expires. Deletes existing text requiring approval of the sufficient balance of the fund through a concurrent resolution.

(b) Redesignates existing Subsection (e) as this subsection and makes no further changes.

Sec. 316.093. ADJUSTMENT OF CONSTITUTIONAL ALLOCATIONS TO FUND AND STATE HIGHWAY FUND. (a) Requires the comptroller, before making transfers for a state fiscal year in accordance with Section 49-g(c) (relating to a requirement to transfer certain and oil gas tax revenue), Article III, Texas Constitution, to determine whether the sum of the balance of the fund on the preceding August 31, any projected transfer to the fund under Section 49-g(b) (relating to a procedure for allocating a certain amount of general revenue) of that article, and any projected transfer to the fund under Section 49-g(c) of that article in accordance with the allocations for the transfer as provided by Section 49-g(c-1) of that article is less than the amount determined under Section 316.092 for that state fiscal biennium, rather than rather the sufficient balance adopted under Section 316.092.

(b) Requires the comptroller, if the sum described by Subsection (a) is less than the amount determined under, rather than less than the sufficient balance adopted under, Section 316.092 for that state fiscal biennium to reduce the allocation to the state highway fund provided by Section 49-g(c), Article III, Texas Constitution, and increase the allocation to the economic stabilization fund, in an equal amount, until the amount determined under Section 316.092 for that state fiscal biennium would be achieved by the transfer to the fund or the total amount of the sum described by Section 49-g(c), Article III, Texas Constitution, is allocated to the fund, whichever occurs first. Makes a conforming change.

(c) Deletes existing text relating to instances in which a sufficient balance has not been adopted. Creates this subsection from text of existing Subsection (e).

(d) Redesignates text of existing Subsection (f) as this subsection. Provides that Subsections (a) and (b) and this subsection, rather than (a)-(c) and this subsection, expire December 31, 2024.

SECTION 3. Amends Section 404.0241, Government Code, as follows:

Sec. 404.0241. INVESTMENT OF CERTAIN ECONOMIC STABILIZATION FUND BALANCES. (a) Authorizes the comptroller to invest a percentage of the balance of the economic stabilization fund in an investment portfolio managed in accordance with the investment standard described by Section 404.024(j) (relating to the comptroller's judgment in the management of funds), rather than requiring the comptroller to invest a percentage of the economic stabilization fund balance in a state fiscal biennium that exceeds the amount of the sufficient balance of the fund adopted under Section 316.092 for that biennium in accordance with the investment standard described by Section 404.024(j). Provides that the comptroller's investment of that percentage of the fund balance, rather than that percentage of excess balance, is not subject to any other limitation or other requirement provided by Section 404.024 (Authorized Investments).

(b) Prohibits the balance of the investment portfolio from exceeding three-quarters of the balance of the economic stabilization fund.

(c) Creates this subsection from existing text. Requires the comptroller to adjust the investment portfolio, rather than the economic stabilization fund money, periodically as necessary to ensure that:

(1) at all times at least one-quarter of the balance of the economic stabilization fund is invested in a manner that ensures the liquidity of that amount; and

(2) the balance of the economic stabilization fund is sufficient to meet the cash flow requirements of the fund.

(d) Redesignates existing Subsection (c) as Subsection (d) and makes no further changes.

Deletes existing text providing that this section expires on the date Section 316.092 expires.

SECTION 4. Provides that Sections 316.093(a) and (b), Government Code, as amended by this Act, apply only to the allocation of money to the economic stabilization fund and the state highway fund under Section 49-g(c-1), Article III, Texas Constitution, beginning with the state fiscal year beginning September 1, 2021. Provides that the allocation of money to the economic stabilization fund and the state highway fund under Section 49-g(c-1), Article III, Texas Constitution, for the state fiscal years beginning September 1, 2019, and September 1, 2020, is governed by Sections 316.093(a) and (b), Government Code, as those sections existed immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 5. Effective date: September 1, 2019.