

BILL ANALYSIS

C.S.H.B. 2021
By: Bonnen
Appropriations
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2020, the federal government passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which allocated \$2.2 trillion to state and local governments to help deal with the ongoing impact of the COVID-19 pandemic. Of this \$2.2 trillion, the State of Texas was allocated slightly more than \$11 billion. The U.S. Treasury managed the initial distribution of these funds to jurisdictions in Texas with populations above 500,000, while the governor's office was tasked with distributing funds to smaller jurisdictions. Concerns have been raised about the lack of legislative involvement in the distribution of federal funds received outside of the regular budgetary process. C.S.H.B. 2021 seeks to provide for greater legislative oversight of future allocations of certain federal dollars by establishing the board on administration of federal funds.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2021 amends the Government Code to exercise the legislature's constitutional authority to require the prior approval of the expenditure or the emergency transfer of any funds appropriated to state agencies and to safeguard the power of the purse and protect public money by providing a mechanism for the appropriate allocation and transfer of certain federal money.

C.S.H.B. 2021, accordingly, establishes the board on administration of federal funds, which is composed of the following members:

- the lieutenant governor;
- the speaker of the house of representatives;
- the chairs and vice-chairs of the senate and house standing committees with jurisdiction over appropriations; and
- two other members from each chamber.

The bill requires the relevant appointing authorities to appoint the board members as soon as practicable after the bill's effective date and provides for the board's administration and operation.

C.S.H.B. 2021 authorizes the board to propose to do the following regarding applicable federal money:

- accept or reject, allocate to one or more state agencies, and establish uses for money provided by the federal government and appropriated by the legislature; or

- reject money provided by the federal government that has been appropriated to a state agency contingent on the receipt of the money from the federal government, or accept that money and do either of the following:
 - transfer the authority to spend, obligate the expenditure of, or distribute the money to a different state agency; or
 - instruct the agency to use the money for a purpose different from or in addition to the purpose for which the appropriation to the agency was originally made.

The bill prohibits the board from making a proposal during a regular or special legislative session or a proposal regarding an appropriation made for a period during a state fiscal year that ended before the date the proposal is made. To the extent of a conflict between the bill's provisions relating to a proposal to accept or reject federal money and any other state law, the bill's provisions prevail.

C.S.H.B. 2021 requires a proposal from the board to provide sufficient detail to allow for a public hearing on the proposal and requires the board to direct the secretary of state to publish each proposal in the Texas Register along with the methods and opportunities for submitting public comment on the proposal. After the proposal is published, the board must conduct a public hearing on the proposal.

C.S.H.B. 2021 authorizes the board to take one of the following actions on a proposal not later than the 10th day after the date the board holds the public hearing:

- adopt the proposal;
- amend the proposal;
- amend and adopt the proposal; or
- reject the proposal.

The bill sets out the authorized amendments the board may make to a proposal and prohibits the board from adopting a proposal at that hearing that does any of the following:

- expressly postpones the time that an appropriation is distributed or otherwise made available to a state agency for a period that exceeds 180 days;
- reduces or eliminates an appropriation for the salary of an elected state official or a member of a board or commission appointed by the governor; or
- reduces or eliminates an appropriation to a state agency that receives appropriations under a provision of a General Appropriations Act that makes an appropriation to the legislative branch.

An affirmative vote of a majority of both the board members from the house, including the speaker, and a majority of the board members from the senate, excluding the lieutenant governor, are required for the adoption of a proposal.

C.S.H.B. 2021 requires the board to submit any adopted proposal to the governor. The bill establishes a 10-day deadline for the governor to approve or reject the proposal after it is submitted. A proposal takes effect only if approved by the governor and if the governor does not approve or reject the proposal by the 10-day deadline the proposal is considered approved. If the governor approves the proposal, the board must notify the comptroller of public accounts and the affected state agencies and file a copy of the proposal with the secretary of state for publication in the Texas Register. The bill sets out provisions relating to the expiration, enforcement, and supersession of an approved proposal.

C.S.H.B. 2021 applies only to the following federal money:

- federal contract or grant money made available to the state as a result of the public health emergency declared by the U.S. secretary of health and human services under the Public Health Service Act (42 U.S.C. Section 247d) on January 31, 2020, including money made available under:
 - Section 5001, Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (42 U.S.C. Section 801);

- Section 313, Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Div. M, Pub. L. No. 116-260, 134 Stat. 1182 (2020), reprinted in note, 20 U.S.C. Section 3401);
- Section 2001, American Rescue Plan Act of 2021 (Pub. L. No. 117-2, 135 Stat. 4 (2021), reprinted in note, 20 U.S.C. Section 3401); or
- 42 U.S.C. Sections 602 and 604;
- any additional federal funding appropriated to the state for federal fiscal years 2022 and 2023 that is designated as being an emergency requirement pursuant to the federal Balanced Budget and Emergency Deficit Control Act of 1985; and
- federal money made available under federal legislation enacted after the 87th Legislature, Regular Session, 2021, adjourns that addresses investments in infrastructure, capital projects, and economic and workforce development.

The bill's provisions expressly do not apply to current and future allocations made to the state under the federal Congressional Budget and Impoundment Control Act of 1974 or a federal grant of \$10 million or less in total allocation from a single grant source in a single award.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2021 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the federal money to which the bill's provisions apply from any federal contract or grant funds made available to the state after the effective date of the General Appropriations Act, the availability of which could not have been reasonably anticipated or included in the act before final passage, to only certain federal contract or grant money made available to the state for the limited purposes prescribed by the bill. Accordingly, the substitute also revises the actions the board may propose to take to clarify what proposals the board may make.

With respect to the board's membership, the substitute expands the membership to include two additional members from each chamber of the legislature, appointed by the chamber's respective presiding officer. Accordingly, the substitute also includes provisions not in the original that do the following:

- specify that those additional members serve at the pleasure of the applicable appointive officer;
- provide that a vacancy is filled in the same manner as the original appointment; and
- require the appointments to the board to be made as soon as practicable after the bill's effective date.

With respect to board meetings, the substitute gives the option for board meetings to be held by videoconference, whereas the original provided only for in-person meetings. The substitute also changes the original's meeting notice provisions to clarify that notice must be provided for each board meeting, not just for hearings on board proposals. Additionally, the substitute changes the manner by which notice must be provided to require the board to provide public notice in the same manner as is required for a regular legislative committee hearing and sets out certain meeting notice content requirements absent from the original.

Whereas the original required the board to direct the secretary of state to publish each proposal the board makes in the Texas Register, the substitute also requires the publication of the methods and opportunities for submitting public comment on the proposal.

The substitute clarifies the timeline for the board to act on a proposal following a public hearing.

The substitute clarifies that when determining majority vote thresholds of members of each chamber for certain actions, the lieutenant governor is not considered a member of the senate, whereas the original did not make such a distinction.

The substitute changes the process for an adopted board proposal to take effect. Whereas the original provided for no outside involvement from other state entities or officials in approving the board's actions, the substitute requires the governor to approve or reject a proposal. The substitute provides that a proposal does not take effect without the governor's approval.

The substitute includes provisions establishing the purpose of the bill, whereas the original did not.