

SUBJECT: Establishing permanent funds for higher education health institutions

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 24 ayes — Junell, West, Coleman, Cuellar, Delisi, Eiland, Farrar, Gallego, Giddings, Glaze, Gutierrez, Hochberg, Janek, Luna, McReynolds, P. Moreno, Mowery, Pickett, Pitts, Puente, Staples, Tillery, S. Turner, Van de Putte

0 nays

3 absent — Flores, Hartnett, Heflin

WITNESSES: For — Lisa McGiffert, Consumers Union.

Against — None

On — Beverley Byers-Pevitts, Texas Woman’s University; Carl Lewis, Nueces County Attorney; John Mendelsohn, M.D. Anderson Cancer Center

BACKGROUND: On March 28, 1996, Attorney General Dan Morales filed a lawsuit on the behalf of Texas against five major American tobacco companies: R.J. Reynolds, Philip Morris, Lorillard, Brown and Williamson, and U.S. Tobacco. The lawsuit sought the recovery of billions of tax dollars spent to treat Medicaid patients who suffered from tobacco-related illnesses. The industry was accused of violating both state and federal laws, including conspiracy, racketeering, wire fraud, mail fraud, consumer protection, and antitrust laws.

On July 24, 1998, Texas finalized the lawsuit's settlement against the tobacco industry, which awarded the state a total of \$17.3 billion over the next 25 years. (*The State of Texas v. The American Tobacco Co., et al.*, No. 5-96CV-91, U.S. District Court, Eastern District of Texas)

In February 1998, a memorandum of understanding was executed among Morales, Senate Finance Committee Chairman Bill Ratliff and House Appropriations Committee Chairman Rob Junell in which Rep. Junell and Sen. Ratliff agreed to introduce necessary legislation to distribute the tobacco settlement receipts to fund the Children's Health Insurance Program (CHIP), a

pilot project on tobacco cessation, and endowments and permanent funds for children's health care, M.D. Anderson Cancer Center, medical schools and health-related higher education.

As of January 8, 1999, payments totaling \$1.096 billion have been deposited to the state general revenue fund. Up to \$1.8 billion in receipts from the state's settlement with the tobacco industry is expected to be available for spending in fiscal 1998-99 and 2000-01.

DIGEST: CSHB 1945 would establish 14 permanent health funds capitalized by more than \$1 billion, adding a new Chapter 63 to the Education Code on Permanent Funds for Health-Related Institutions of Higher Education.

The bill would establish a \$400-million permanent health fund for higher education and a \$46-million permanent fund for higher education nursing and allied health programs. It also would create 12 separate permanent endowment funds totaling \$555 million for health-related institutions. The \$1 billion corpus of all funds could not be expended.

All funds created by CSHB 1945 would be held in the state treasury outside the general revenue fund and would include legislative appropriations, gifts, grants, and interest from their investments. Gifts and grants could be solicited by benefactors or administrators of the funds and would be subject to the same rules as interest income in the fund, as well as any conditions specified by donors.

All monies in or earned by the funds would be exempted from statutes (§403.095 and § 404.071 Government Code) returning monies to the general revenue fund. The administrator of each fund would invest the fund in a manner that preserved purchasing power of the fund's assets and annual disbursements.

The funds also could be used to pay any amount of money that the federal government decided to recoup from the states.

Permanent Fund for Higher Education (\$400 million)

The University of Texas System board of regents would administer the fund for programs that benefit medical research, health education, or treatment programs at 10 health-related institutions:

- UT Health Science Center at San Antonio;
- UT M.D. Anderson Cancer Center;
- UT Southwestern Medical Center at Dallas;
- UT Medical Branch at Galveston;
- UT Health Science Center at Houston;
- UT Health Science Center at Tyler;
- Texas A&M University Health Science Center;
- University of North Texas Health Science Center at Fort Worth;
- Texas Tech University Health Sciences Center; and
- Baylor College of Medicine, only if a contract with the Texas Higher Education Coordinating Board was in effect and the institution complied with the same reporting requirements to the Comptroller's Office as the other institutions.

Sixty percent of the fund's earnings would be distributed in equal amounts to each institution. The remaining 40 percent would be distributed in equal amounts based on three funding criteria: instructional expenditures, research expenditures, and unsponsored charity care. The comptroller would distribute the revenue quarterly based upon the Legislative Budget Board's determination of each school's spending on the three criteria.

Endowments for individual institutions (\$555 million)

CSHB 1945 would create separate permanent endowment funds for research and other programs benefitting public health at each of the following institutions:

- UT Health Science Center at San Antonio (\$200 million);
- M.D. Anderson Cancer Center (\$100 million);
- UT Southwestern Medical Center at Dallas (\$50 million);
- UT Medical Branch at Galveston (\$25 million);
- UT Health Science Center at Houston (\$25 million);
- UT Health Science Center at Tyler (\$25 million);
- UT at El Paso (\$25 million);
- Texas A&M University Health Science Center (\$25 million);
- University of North Texas Health Science Center at Fort Worth (\$25 million);
- Texas Tech University Health Sciences Center in El Paso (\$25 million)
- other components of Texas Tech Health Sciences Center (\$25 million);
- and

- UT regional academic health center serving Cameron, Hidalgo, Starr, and Willacy counties (\$5 million).

The comptroller could contract with the individual governing board of the institution to administer the fund.

The investment returns of the fund for the UT Health Science Center at San Antonio could be used to establish and maintain a children's cancer center. Investment returns for the health science center at UT El Paso and El Paso components of the Texas Tech center could be used for an Institute of Public Health in El Paso. Investment returns of the Texas Tech centers in locations other than El Paso could be used for programs outside El Paso.

Permanent Fund for Nursing and Allied Health Programs (\$46 million)

CSHB 1945 would create a \$46-million permanent endowment fund to benefit schools that offered upper-level academic classes and training in the field of nursing or allied health education that were not funded by the other funds created by CSHB 1945. The Higher Education Coordinating Board would adopt rules for awarding grants to qualifying institutions. The comptroller or governing board of one of the schools eligible to receive funds would administer the fund.

CSHB 1945 would take effect August 31, 1999.

SUPPORTERS SAY:

CSHB 1945 would establish the higher education endowments that were outlined in the memorandum of understanding drafted by state leaders on disposition of funds from the tobacco lawsuit settlement. The endowments established by CSHB 1945 would ensure a perpetual source of funding for research, education, and treatment programs that would help all Texas citizens. Texas has an excellent system of health-related institutions of higher education that provide not only medical education, but a variety of scientific research programs. When the state provides more money for these institutions, it helps them to use that funding to attract more grants and donations.

These health-related institutions also are a major factor in providing health care to underserved, uninsured, and indigent Texans. They provided more than \$800 million in uncompensated charity care in fiscal 1998. This kind of care is increasingly important as more and more Texans (about one in four) find

themselves without health insurance.

The *Journal of the American Medical Association* recently reported that financial pressure from the transition to managed care is increasingly hampering the mission of academic health centers across the nation. For many years, medical care for the indigent involved “cost shifting” from paying patients. In the era of managed care, this is increasingly less possible, meaning the state’s teaching hospitals have less ability to fund and provide care for the Texas poor.

Managed care is forcing health care experts nationwide to find alternative ways to continue potentially life-saving research programs and to help the indigent. CSHB 1945 embodies just such an alternative.

It makes good sense to use the tobacco settlement to set up permanent funding mechanisms for health care programs to benefit all Texans, using the excellent system of health-care institutions the higher education system already has in place. The settlement was aimed at recovery the costs to taxpayers for tobacco-related illnesses of Medicaid patients, many of whom are served by these teaching hospitals.

Smoking contributes to cardiovascular disease, a \$9 billion annual drain of Texas’ health care dollars. One-third of all cancers are caused by smoking, i.e., lung, pancreas, prostate, head, neck, bladder and esophagus cancer. Research at the institutions funded by CSHB 1945 could lead to new ways to treat or prevent these diseases.

The bill would allow research, education, and treatment programs to focus on groups traditionally targeted by tobacco companies, including teenagers and minorities. Research and health programs developed by these institutions could be culturally diverse, looking into causes of smoking addiction, medications that break addiction, behavior modification training, and the development of new public policy initiatives to reduce addiction and the beginning of smoking.

There are several ways CSHB 1945 would help populations in various Texas regions. For example, through endowments to Texas Tech University and the University of Texas at El Paso, HB 1945 would fund the Border Health Institute created by HB 2025 by Pickett, et al. or similar enabling legislation.

It also could fund a children's cancer center at the UT San Antonio, which would serve the South Texas area.

The \$46-million grant endowment for general academic institutions would be earmarked for institutions not directly financed by other endowment funding in HB 1945. This would allow some funding for every region of the state. Nothing in the bill would prevent future decisions by the Legislature to add institutions to the permanent funds or even set up new separate funds.

Texas' health-related institutions already collaborate to prevent duplication of efforts and to coordinate research and other programs. While there has been some controversy about the location of a new children's cancer center in San Antonio, no one can argue that childhood cancer is a serious problem that deserves as much funding as possible.

HB 1945 would base distribution of 40 percent of the \$400 million Permanent Fund for Higher Education spending on three areas — instructional expenditures, research expenditures, and unsponsored charity care spending of the health-care institutions. By including charity care for the indigent, the bill would reach out to help many people from communities that specifically were targeted by the tobacco companies. Appropriations riders could create performance measures to ensure that all programs funded by the endowments are inclusive.

HB 1945 only reflects one part the first round of appropriations from the tobacco settlement. The settlement calls for a 25-year payment plan. The Legislature can still fund areas such as junior and technical colleges not funded in HB 1945 during the next biennium.

The bill specifically allows for the possibility that the federal government may claim some of the tobacco money. Officials who operate the health-related institutions are highly qualified and are well aware of the possibility and would manage funds accordingly.

**OPPONENTS
SAY:**

Endowments set up to benefit individual institutions could waste money by funding research programs that duplicate each other's efforts. For example, the proposed children's cancer research center in San Antonio is less than 200 miles away from the Texas Children's Cancer Center in Houston.

There are serious geographic and demographic flaws in this proposal. Many of the institutions benefitting from these endowments do not have a history of serving minority communities. With the exception of a \$5-million endowment, South Texas is left out of this round of tobacco settlement appropriations. Areas south of San Antonio are underfunded in comparison to the rest of the state. Many South Texas residents belong to population groups specifically targeted by tobacco companies. At a minimum, HB 1945 should include provisions to reach out to these communities. Furthermore, there is nothing in the bill that specifically would earmark this funding for tobacco research or prevention programs.

Any inequities that may have occurred in the appropriations process in previous years would be permanently incorporated into the funding blueprint in HB 1945. Some 40 percent of the \$400 million Permanent Fund for Higher Education would be allocated to ten health-related institutions based on previous biennial spending in three areas: instructional expenditures, research expenditures, and unsponsored charity care.

If an institution has not traditionally received substantial appropriations in one of these areas, and therefore has not spent much in the area, it would receive proportionally less money than other institutions. This would be a disadvantage to any institution traditionally funded at a lower level. The plan would make no provision for funding any new institution that might be established in the future.

The tobacco settlement is not final. Final decisions on attorneys fees have not been made. The federal government still could claim as much as 40 percent of the settlement proceeds to recover federal health care costs. Texas health-care institutions listed in this legislation might make commitments to important projects only to find out later that the money to pay for them is not available.

OTHER
OPPONENTS
SAY:

HB 1945 should include specific language to ensure accountability to the public for the ways this money is spent and exactly how the funding would benefit Texans. Requiring accountability reports from each institution could help ensure coordination in research and health programs at the different institutions, reducing duplication of efforts.

The endowment funding grants for nursing and allied health programs exclude junior colleges and technical institutes. These institutions provide valuable and

affordable education for students in these fields and should be included.

NOTES: Compared to the original version, the committee substitute would:

- ! create the \$46-million fund for nursing and allied health education;
- ! instruct fund administrators to preserve the purchasing power of the fund's assets and annual disbursements when investing;
- ! exempt the funds from statutes (§403.095 and § 404.071 Government Code) returning monies to the general revenue fund;
- ! require the Legislative Budget Board to determine each institution's portion of the permanent fund for higher education; and
- ! take effect August 31, 1999.

Also on the calendar for today are two other bills that would create permanent funds out of tobacco settlement receipts received in fiscal 1998-99. HB 1161 by Junell, et al. would create a permanent fund and advisory committees to handle the investment, management and distribution of tobacco settlement receipts specifically earmarked for reimbursing counties and public hospitals for indigent health care. HB 1676 by Junell et al. would create permanent funds for children and public health, trauma care, improvements to rural hospital facilities, and tobacco cessation and education programs.

The House-passed version of the general appropriations act, HB 1 by Junell, contains an Article 12, which earmarks spending of almost \$1.8 million in tobacco settlement receipts, about 82.5 percent of which is expected to be appropriated in fiscal 1998-99 to establish permanent endowment funds for health care and health-related higher education, including:

- ! \$400 million for a permanent fund for higher education;
- ! \$200 million for a pilot project to reduce smoking;
- ! \$150 million for a permanent fund for Children and Public Health;
- ! \$100 million for EMS and trauma care;
- ! \$50 million for health care facility capital funds; and
- ! and about \$600 million for funds for M.D. Anderson Cancer Center and health-related institutions of higher education.

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HB 2025 by Pickett, et al., which would create the Border Health Institute in El Paso funded by the school-specific endowments created by HB 1945, passed the House on April 15 and has been referred to the Senate Border Affairs Committee.