

SUBJECT: Revising the comptroller's administrative procedures

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 8 ayes — Wilson, McCall, Pitts, Hilderbran, Luna, Paxton, Ritter, Woolley
0 nays
1 absent — J. Keffer

WITNESSES: None

DIGEST: CSHB 2425 would revise various provisions relating to the comptroller's administrative operations and would make other conforming changes. Two of the most significant policy changes would involve the Texas Tomorrow Fund and treasury revenue anticipation notes.

The Prepaid Higher Education Tuition Board could suspend new enrollment in the prepaid tuition program if necessary to maintain the program's actuarial soundness. The bill would remove the requirement that the board offer prepaid tuition plans for junior college, senior college, junior-senior college, and private college. Instead, the board could offer any of those plans at its sole discretion.

The bill would define the payment methodology for the senior college plan. A university would have to accept, upon enrollment of a prepaid tuition plan beneficiary, the lesser of the amount of tuition and fees charged by the institution or the weighted average tuition and fees of all public senior colleges and universities, as determined by the board. Each institution would have to submit information required by the board to calculate the weighted average by June 1 of each year. These changes would apply to each academic term that began after the bill's effective date, except for any term before the fall 2003 semester.

The comptroller currently may issue revenue anticipation notes to even out payments and receipts during the fiscal year, though the amount of these notes is limited to 25 percent of the anticipated revenue for the year. CSHB 2425

would remove that limit and would allow the cash management committee to set a limit.

Other changes proposed by CSHB 2425 include:

Treasury cash management. The comptroller currently may transfer funds, except constitutionally dedicated funds, to ensure efficient cash management in the state treasury and avoid a temporary cash deficiency. CSHB 2425 would allow the comptroller to use “available” rather than “surplus” cash for that purpose. Also, the comptroller could use all funds in the custody of or managed by the comptroller, rather than funds in the state treasury. The bill also would authorize the Legislature explicitly to appropriate funds back to the original account as the only exception to the prohibition on appropriation of those funds by the Legislature.

Compensation for wrongful imprisonment. In applying for compensation for wrongful imprisonment, a claimant would have to file a certification of actual innocence of the crime for which the claimant was sentenced, signed by the county prosecuting attorney, in addition to the application, copy of the pardon, and statement verifying the length of incarceration. These changes would take effect September 1, 2003.

Community supervision fees. The clerk of a court that collected a fee associated with community supervision of an offender would have to send the fee monies to the comptroller by the end of the month following the quarter in which the fee was collected. The clerk would not have to file any comptroller-required report regarding a fee that was not collected. These changes would take effect September 1, 2003.

Energy savings contracts. State agencies, local governments, school districts and higher education institutions may enter into contracts for energy- or water-saving measures. The bill would redefine these as energy savings performance contracts and would require such a contract to guarantee that the savings offset the cost of the measures taken. The contracting entity could require a separate performance bond to cover the guaranteed savings, in addition to the installation bond now required. The contract award process would have to conform with requirements in the Government Code, rather than being required to allow competitive bidding. A state agency could enter

into an energy conservation contract only if the contract had been approved by the State Energy Conservation Office.

Transportation energy programs. The state energy office, which may use oil overcharge restitution funds for certain projects relating to mass transit, no longer could fund projects related to traffic-light synchronization, fleet management, car-care clinics, vanpooling or ridesharing efforts, driver training in energy conservation awareness, or transportation services for the elderly or disabled. The program could fund projects related to commuting solutions, however.

Replacement warrants. The comptroller issues warrants (vouchers that authorize payment or receipt of money) and can issue replacement warrants, but may not do so if the warrant has been paid, unless the comptroller has received a refund. CSHB 2425 also would except situations in which the comptroller was satisfied that the state agency on whose behalf the original warrant was issued had taken reasonable steps to obtain a refund. The comptroller could not issue a replacement warrant to debtors to the state, including delinquent child-support payors or people in default on student loans.

Interest on overdue payments. The state accounts accrual of interest on the date the payment becomes overdue at the rate of 1 percent each month. The bill would set the interest rate on September 1 each year. The rate would be the sum of 1 percent and the prime rate on the first day of July of the preceding fiscal year. These changes would apply to interest on a payment that became overdue on or after September 1, 2004.

Tobacco-settlement fund investment advisory committee membership. An investment advisory committee advises the comptroller on managing the assets of the tobacco-settlement permanent trust account. Members are nominated by various groups but appointed by the advisory committee. The bill would amend the nomination process to allow the various groups to appoint representatives directly. This would apply to member positions as they became open and were filled.

Government investment pools. The Texas Treasury Safekeeping Trust Co., a wholly-owned subsidiary of the comptroller's office, manages state investments. CSHB 2425 would allow the trust to pool funds or lend

securities. In general, this would allow the trust to operate an investment vehicle similar to a mutual fund.

Investment strategies. The comptroller's investments are limited to certain securities, such as direct obligations of the U.S. government, some commercial paper, Israeli bonds, and some mutual funds. The bill would allow the comptroller to invest in some of the pooled funds established by the Texas Treasury Safekeeping Trust. The comptroller also could lend securities, consistent with industry practice, if the loans were secured with cash or obligations, such as bonds.

Fees. The Texas Treasury Safekeeping Trust charges fees on funds deposited with the trust. CSHB 2425 would allow the trust to deduct the fee from deposits or require a participant to pay the fee out of funds not on deposit.

State Energy Conservation Office. CSHB 2425 would place this office under the comptroller's direction and control and explicitly would allow the office to act in any capacity authorized by state or federal law. Under current law, a state agency need not spend money for an energy or water conservation program unless money is available. The bill would require an agency to implement such a plan. It would repeal the office's authority to recommend model energy and water conservation building codes to cities.

Merit pay and salaries for state employees. Salary ranges for state employees depend on whether an employee is scheduled or exempt. If an employee moves from an exempt position to a salaried position, that employee is not eligible for a merit raise for six months. CSHB 2425 would prohibit a merit raise that would cause the employee's salary to exceed the scheduled range. It would require each state agency to establish a procedure for determining eligibility of an employee for a merit raise or a one-time payment and requirements for substantiating eligibility.

The bill also would limit the salary for a person who transferred within an agency to a classified position in the same salary group. The new salary would be limited to one step above the previous salary for salary groups divided into steps, or 103.4 percent of the previous salary for groups that were not divided. Also, the employee's salary could not exceed the maximum rate for the appropriate salary group immediately following the transfer, even if the

position had received an exception to the limit.

Judicial Retirement System. The Judicial Retirement System is a retirement plan for certain judges, justices, and commissioners who pay a fee of \$10 to be members. The bill would require that the fee be paid with the member's first contribution to the system each fiscal year. If the fee were not paid at that time, the board of trustees could deduct the fee from the contribution or from any benefit to which the member would be entitled.

Annual reports. Each state agency must submit an annual report to the governor, comptroller, Legislative Reference Library, state auditor, and Legislative Budget Board in a manner and on the date set by the comptroller. The bill would remove the comptroller from the list of recipients and would change the due date to December 31 of each year. These changes would take effect September 1, 2003.

Council on Competitive Government. The state evaluates services offered by agencies and determines if they could be provided better by a service selected through competition, with the state agency required to participate in the competitive bidding. CSHB 2425 would allow local governments also to compete in the bidding process. If a local government bought a good or service from an agency that had competed, the local government would have satisfied any state law requiring competitive purchasing procedures.

Abandoned property. The comptroller could estimate the liability of an owner of abandoned property using the best information available if the property records were incomplete or unavailable. A claim for abandoned property would have to be paid or returned to the owner or an approved beneficiary. These changes would apply to an examination of property that began on or after September 1, 2003.

Tax payments under protest. The bill would limit the procedure for handling protested payments of taxes to the general process and would repeal other procedures in place for certain insurers. These changes would take effect September 1, 2003.

Repeal. The bill would repeal certain programs and requirements, including:

- the comptroller's required membership on the Texas Interagency Council for the Homeless;
- the community reinvestment workgroup report to the Legislature required under Finance Code, sec. 395.103;
- the study of workforce development projects and the small business incubator program in Government Code, ch. 403;
- oil vouchers, diesel fuel conservation projects, energy resource optimization programs, traffic-light synchronization programs, and certain provisions relating to the LoanStar revolving loan program and oil overcharge payments in Government Code, ch. 2305; and
- reporting requirements for the use of revenues from the county and road district highway fund.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

The changes proposed in CSHB 2425 would improve operations of the Comptroller's Office. Most of these changes, while not technical, would not be substantial policy changes.

Prepaid tuition for higher education. CSHB 2425 would hold harmless the Texas Tomorrow Fund if financial markets continue to underperform or the tuition environment changes substantially because of tuition deregulation.

Allowing the board to suspend new enrollment if necessary to maintain the program's actuarial soundness would ensure that future legislatures would not face a hefty bill that would have to be paid with general revenue, whether or not the state moved to a deregulated market. Because the contracts promise that the plan will pay tuition in the future, the program relies on generating profits from the plans' investments. That has not been possible in the current market, when all of the state's funds have seen declining growth. The board should have the flexibility to suspend enrollment in times when the market cannot support the returns needed for the program. The bill would not close the fund permanently to new enrollees, as the board could reopen it at any time when it would be actuarially safe to do so.

The bill also would offer the plan some security against rising tuition in a deregulated market. The plans already sold were based on financial assumptions about regulated tuition. Deregulation could drive up the price of tuition to a level the plans could not pay. The bill would hedge against this growth by allowing the plan to pay the weighted average cost of tuition from a group of universities. Universities would not be affected adversely by this, because the financial benefits of a deregulated market would overshadow limits on the tuition paid by the small percentage of students who use the Texas Tomorrow Fund.

Treasury revenue anticipation notes (TRANs). The comptroller issues TRANs at the beginning of the fiscal year, when the state makes large payments to school districts. Over the year, it collects tax revenue, which is used to pay back the TRANs. The limit to 25 percent of general revenue was not a problem in the past, because tax revenues consistently came in higher than expected, leaving a surplus that could be used for part of the school payments the following year. As the difference between expected and actual tax revenues has narrowed, the state may need to issue more TRANs because there is no surplus. The amount of TRANs still would be less than the amount of tax revenue anticipated in the coming year. The decision to raise the amount would be made by the comptroller's cash management committee, which includes the governor, lieutenant governor, House speaker, and comptroller, not just one official.

**OPPONENTS
SAY:**

Prepaid tuition for higher education. CSHB 2425 could close the Texas Tomorrow Fund for new enrollees. The fund is in a precarious position and, if granted this new authority, the board most likely would close enrollment. It would be unfair to Texans to offer this solution to the high and rising costs of higher education, then take it away when it is needed most. Proposed tuition deregulation would cause tuition rates to rise, and families would have one less option for how to pay for college. If the fund were authorized to hedge against rising tuition, enrollment should not be suspended. When the Texas Tomorrow Fund was created, the state offered to assume the risks of rising tuition in the interests of promising Texas families a way to pay for college. The state should not renege on that promise by closing the program and shifting risk to the universities. The House removed a similar provision from HB 3015 by Morrison, which would deregulate higher education tuition.

Treasury revenue anticipation notes (TRANS). The state should not lift the 25 percent limit on the issuance of TRANS, because this limit ensures sound fiscal management. The state pays a premium to borrow money for the year, so borrowing 25 percent actually costs more than that. If the state borrowed a significant portion of the anticipated general revenue and some unforeseen economic event occurred that caused revenue to drop sharply, the state could be exposed to unacceptable levels of risk. TRANS are an important tool, but the state should not increase its exposure to the risk they carry.

NOTES:

The committee substitute added many elements to the bill as filed, most significantly the provisions relating to prepaid tuition for higher education.

The companion bill, SB 1371 by Duncan, has been referred to the Senate Finance Committee.