HOUSE
RESEARCH
ORGANIZATION bill analysis 4/14/2003

HB 3175
Pitts

SUBJECT: Allowing cash transfers from comptroller-managed funds outside the treasury

COMMITTEE: Appropriations — favorable, with amendment

VOTE: 20 ayes — Heflin, Berman, Branch, F. Brown, Crownover, J. Davis, Deshotel, Dukes, Gutierrez, Hamric, Hope, Hupp, E. Jones, Kolkhorst, McClendon, Menendez, Pickett, Pitts, Truitt, Wohlgemuth

0 nays

9 absent — Luna, B. Brown, Eiland, Ellis, Isett, Raymond, Solis, Stick, Turner

WITNESSES: For — None

Against — None

On — Lita Gonzalez, James LeBas, Comptroller of Public Accounts

BACKGROUND: Government Code, sec. 403.092 authorizes the comptroller of public accounts to borrow money for short-term cash flow management purposes by transferring surplus cash from undedicated treasury funds to the general revenue fund. The comptroller must return the same amount to the funds that was transferred, with interest. The comptroller also manages or has custody of dozens of accounts outside the treasury.

DIGEST: HB 3175, as amended, would amend sec. 403.092 to authorize the comptroller to transfer available cash into the general revenue fund from funds outside the treasury that are under comptroller management or in the comptroller's custody. The bill would specify that the comptroller must repay the funds the same amount transferred and maintain the funds' equity. The bill would preclude cash transferred into the general revenue fund from being included in the comptroller's Biennial Revenue Estimate (BRE) for appropriation purposes.

The bill also would appropriate to the comptroller sufficient general revenue to repay funds with interest for any cash transfers made during fiscal 2004-05.

HB 3175 would replace the term "surplus" cash with "available" cash, change the term "depository" interest to "earned" interest, and delete a reference to treasury funds.

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:

HB 3175 would give the comptroller an additional tool to effectively manage the state's money in good times and bad. The state of Texas typically pays out huge sums every August and September, mostly for public education. Cash on hand tends to decline until December, then rises as revenue from various taxes are collected and deposited. The comptroller has had interfund borrowing authority since the 1ate 1980s — a common practice in government finance — but used it last in 1995. Since then, the comptroller has maintained the balance of the general revenue fund by issuing tax and revenue anticipation notes (TRANs), typically one-year tax-exempt obligations sold on the bond market.

Favorable interest rates have allowed the comptroller to reinvest TRANs proceeds at a profit, but recent Federal Reserve Board rate reductions and the economic downturn are making TRANs unattractive, perhaps even a poor investment. The state issued $5.8 billion in TRANs for fiscal 2003 and has set aside general revenue to pay them off in September, so no fiscal 2003 appropriation for interfund borrowing from outside the treasury is necessary. Such an appropriation also might have incurred additional costs to the state budget. The BRE for fiscal 2004-05, however, counts TRANs repayment as a cost because, for the first time, the state might lose money on them.

HB 3175 would give the comptroller much needed flexibility to tap into funds under the agency's control but not within the treasury. The comptroller's staff have identified at least 26 funds totaling more than $1 billion that have no constitutional or statutory prohibition against interfund transfer. These include the system benefit trust fund, catastrophe reserve trust fund, university research fund, Texas excellence fund, Texas workers' compensation self-insurance security trust fund, cigarette tax recovery trust fund, and the smart jobs trust fund. Many of the funds identified maintain sizable and relatively stable cash balances infrequently accessed by agencies.

Borrowing would not be unilateral or arbitrary. Decisions to transfer cash from these funds would have to adhere to the same guidelines used for treasury funds: a cash deficiency must be imminent; the fund must contain cash, not bond proceeds or stocks; the relevant agency must be able to forego use of the money temporarily; and the transfer must be legal. The "hold harmless" provision requires the comptroller to repay borrowed funds with interest, as if the funds never had been transferred. If cash should have to be returned earlier than planned due to unforeseen contingencies, the comptroller would do so and simply borrow those amounts from elsewhere. If a fund were to be deemed inappropriate for this type borrowing, the Legislature could remove it from the comptroller's management and custody.

Interfund borrowing within or outside the treasury is not a gimmick to get around budgetary shortfalls. It does not generate new revenue nor allow additional spending. It is a fundamental tool that the state must have to manage its money effectively and meet its obligations promptly. The current fiscal situation only underscores the importance of increasing the comptroller's flexibility to manage the state's cash flow.

OPPONENTS SAY:

While cash management involves risk, the comptroller should avoid exposing the state to greater risks by subjecting more state funds to the volatility of the financial markets. Texas and many other states are painfully aware how quickly market conditions can change for the worse. Borrowing $1 billion or more in funds set aside for specific purposes, even temporarily, could be unwise given the current high degree of economic uncertainty.

OTHER OPPONENTS SAY:

HB 3175 would allow the comptroller to rely too heavily on current practice and agency discretion. The comptroller should have to use specific criteria for which funds are targeted, meet firm deadlines for repayment of transfers, and provide more safeguards for fund balances.

Any profits from TRANs should be set aside to provide a better cushion when the economy weakens and revenue declines, not used to subsidize general revenue.

NOTES:

Under current law, as modified by HB 3175, any available cash transferred from other funds to the general revenue fund to avoid a temporary cash deficiency is not available for appropriation by the Legislature. The committee amendment would add that the Legislature may appropriate such funds as necessary to return cash to the fund from which it was transferred. The amendment also would eliminate a fiscal 2003 appropriation to the comptroller covering cash returned to funds outside the treasury from general revenue.