

## **BILL ANALYSIS**

C.S.S.B. 1652  
By: Shapiro  
Higher Education  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, Texas higher education institutions are subject to a plethora of laws, regulations, policies, and procedures mandated by the state and federal governments, regulatory agencies, and private-sector organizations. S.B. 1652 sets forth a guide for the administration, operation, governance, and financing of Texas higher education institutions.

### **RULEMAKING AUTHORITY**

While this bill does not expressly delegate any additional rulemaking authority, the bill impacts existing rulemaking authority in Section 1.12 and Section 3.02 of the bill

### **ANALYSIS**

#### **ARTICLE 1. FINANCIAL MATTERS**

**SECTION 1.01.** Amends Section 11.11(e), Tax Code, to provide that property that is held or dedicated for the support, maintenance, or benefit of an institution of higher education as defined by Section 61.003, Education Code, but is not rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state or institution or is not rented or leased to provide private residential housing to members of the public other than students and employees of the state or institution is not taxable. Provides that if a portion of property of an institution of higher education is used for public purposes and a portion is not used for those purposes, the portion of the property used for public purposes is exempt under this subsection. Provides that property bequeathed to an institution is exempt from the assessment of ad valorem taxes from the date of the decedent's death, unless a certain condition exists.

**SECTION 1.02.** Amends Section 2254.021(2), Government Code, to redefine "major consulting services contract."

**SECTION 1.03.** Amends Section 2254.028, Government Code, by adding Subsection (c) to provide that Subsection (a)(3) does not apply to a major consulting services contract to be entered into by an institution of higher education other than a public junior college if the institution includes in the invitation published under Section 2254.029 a finding by the chief executive officer of the institution that the consulting services are necessary and an explanation of that finding.

**SECTION 1.04.** Amends Sections 2254.031(b) and (d), Government Code, as follows:

(b) Requires a state agency that intends to renew a contract that is not a major consulting services contract to comply with Sections 2254.028 and 2254.029 if the original contract and the renewal contract have a reasonably foreseeable value totaling more than \$15,000, or \$25,000 for an institution of higher education other than a public junior college.

(d) Makes a conforming change.

SECTION 1.05. Amends Section 54.5011, Education Code, as follows:

Sec. 54.5011. New heading: CHARGES AND FEES FOR CERTAIN PAYMENTS. (a) Provides that this section applies to a payment of tuition, a fee, or another charge to an institution of higher education that fits certain criteria.

(b) Authorizes an institution of higher education to charge a certain fee or other amount in connection with a payment to which this section applies, in addition to the amount of the tuition, fee, or other charge being paid. Deletes text regarding a credit card fee.

(c) Requires a fee or other charge under this section to be in an amount reasonably related to the expense incurred by the institution in processing and handling the payment or payment transaction. Deletes text prohibiting a certain amount from being exceeded, and text requiring the institution to notify the student of any fee to be charged under this section.

SECTION 1.06. Amends Section 153.006, Education Code, as follows:

Sec. 153.006. SUPPORT OF CENTERS. (a) Authorizes an institution of higher education, in order to carry out the purposes of this chapter and to support the activities of centers described in this chapter, to the extent authorized by its governing board, to perform certain acts, including to enter into certain contracts for legal services with a competent lawyer or law firm.

(b) Authorizes the fees or other compensation paid in connection with a legal services contract authorized by Subsection (a) to be paid on a contingency fee basis, at an hourly rate, or on another basis the governing board of the institution considers appropriate.

SECTION 1.07. Amends Section 2254.102, Government Code, by adding Subsection (c), to provide that this subchapter does not apply to a contract for legal services entered into by an institution of higher education under Section 153.006, Education Code.

SECTION 1.08. Amends Section 404.097(d), Government Code, to authorize legal fees and expenses to be paid from the recovered funds under a contingent fee contract for legal services only under certain conditions.

SECTION 1.09. Amends Section 21.042, Property Code, by adding Subsection (f) to prohibit the special commissioners, in awarding compensation or assessing damages for a condemnation by an institution of higher education, as defined by Section 61.003, Education Code, from including in the compensation or damages any amount that compensates for, or is based on the present value of, an exemption from ad valorem taxation applicable to the property before its condemnation.

SECTION 1.10. Amends Section 55.004, Property Code, by adding Subsection (f), to provide that if the physician is employed in that capacity by an institution of higher education, as defined by Section 61.003 (Definitions), Education Code, and the lien does not include the amount of the physician's reasonable and necessary charges described by Subsection (c), the physician has a lien on the cause of action in the same manner as a hospital under this chapter. Provides that the lien is subject to provisions of this chapter applicable to a hospital lien. Authorizes the physician or the physician's employing institution to secure and enforce the lien in the manner provided by this chapter.

SECTION 1.11. Amends Subchapter A, Chapter 56, Education Code by adding Section 56.004, as follows:

Sec. 56.004. FILING FEES IN SUITS TO COLLECT DELINQUENT STUDENT LOANS. Requires the institution of higher education, if it brings suit to collect or enforce the repayment of a delinquent student loan, to pay in advance one-half of the applicable filing fee and other costs payable in

advance to the clerk of the court, notwithstanding any other law. Requires the institution, if the defaulting borrower prevails in the suit, to pay the remaining one-half of the filing fee and costs on the date of the final disposition of the suit. Sets forth the required actions should the institution prevail.

SECTION 1.12. Amends Section 403.072, Government Code, by adding Subsection (d) prohibit the comptroller, in its rules adopted under this section, from requiring an institution of higher education, as defined by Section 61.003 (Definitions), Education Code, that processes its own payroll to submit payroll information to the comptroller relating to individual employees of the institution that is not required by the comptroller to make any distribution of state money to the institution to cover the institution's payroll.

SECTION 1.13. Makes application of Section 56.004, Education Code, as added by this Act, prospective.

## ARTICLE 2. HUMAN RESOURCES

SECTION 2.01. Amends Section 609.001, Government Code by adding Subdivision (2-a) and amending Subdivision (8) to define "institution of higher education" and make a conforming change.

SECTION 2.02. Amends Section 609.002, Government Code, to include an institution of higher education, or a group of institutions of higher education, in the list of entities that create 457 or 401(k) plans, for which vendor can be a qualified vendor under certain circumstances. Makes a nonsubstantive change.

SECTION 2.03. Amends Section 609.003(b), Government Code, to require the approval of an investment product for a 401(k) plan of a political subdivision, or a group thereof; an institution of higher education; or a 457 plan of an institution of higher education to be in accordance with a contract between the plan administrator and a qualified vendor.

SECTION 2.04. Amends Section 609.007, Government Code, by adding Subsection (e), to authorize an institution of higher education to contract with an employee of the institution of higher education for the deferment of any part of the employee's compensation.

SECTION 2.05. Amends Chapter 609, Government Code, by adding Subchapter D, as follows:

### SUBCHAPTER D. DEFERRED COMPENSATION PLANS FOR EMPLOYEES OF INSTITUTIONS OF HIGHER EDUCATION.

Sec. 609.701. DEFINITIONS. Defines "deferred compensation plan," "deferred compensation trust fund," and "investment product."

Sec. 609.702. CREATION OF PLAN. (a) Authorizes an institution of higher education to create and administer for its employees a 457 plan under this subchapter.

(b) Authorizes an institution of higher education to contract with other institutions of higher education to create a single deferred compensation plan for their employees under Subsection (a).

Sec. 609.703. DESIGNATION OF PLAN ADMINISTRATOR. (a) Requires an institution of higher education that creates a deferred compensation plan to designate a plan administrator for the plan.

(b) Requires institutions of higher education that create a single plan to designate jointly a plan administrator for the plan.

(c) Authorizes certain persons and entities to be a plan administrator.

Sec. 609.704. REMOVAL OF PLAN ADMINISTRATOR. Authorizes an institution of higher education, or group of institutions of higher education, that designates a plan administrator to remove that plan administrator at any time unless specifically provided otherwise by the contract.

Sec. 609.705. OVERSIGHT COMMITTEE. (a) Authorizes an institution of higher education, or group of institutions of higher education, that creates a deferred compensation plan to direct and supervise the plan administrator's activities through an oversight committee.

(b) Requires the institution of higher education, or group of institutions of higher education, to determine the authority, activities, and composition of an oversight committee created under this section.

Sec. 609.706. AUTHORITY OF PLAN ADMINISTRATOR. (a) Requires a plan administrator to execute necessary contracts for the administration of the deferred compensation plan, subject to any prior approval by the institution of higher education, or group of institutions of higher education, that created the plan.

(b) Requires a plan administrator to develop and implement criteria and procedures for any matter not covered by this subchapter that the plan administrator considers appropriate for the operation of the deferred compensation plan.

Sec. 609.707. INVESTMENT AND TRANSFER OF DEFERRED AMOUNTS AND INCOME. Require the plan administrator to perform certain activities.

Sec. 609.708. PARTICIPATION OF INDEPENDENT CONTRACTORS. (a) Requires the plan administrator to determine whether a person who provides services as an independent contractor to an institution of higher education that created the plan is authorized to participate in the deferred compensation plan.

(b) Provides that for the purposes of this chapter and Subchapter A, an independent contractor is authorized to participate in a deferred compensation plan is treated as an employee of the institution of higher education creating the plan.

Sec. 609.709. CHANGING AMOUNT DEFERRED. Authorizes an employee to change the amount to be deferred by notifying the plan administrator of the change in accordance with the administrator's requirements.

Sec. 609.710. DISTRIBUTION. Requires a plan administrator to develop and implement certain procedures.

Sec. 609.711. FEE. (a) Authorizes an institution of higher education, or group of institutions of higher education, that creates a deferred compensation plan to assess a fee for the administration of the plan against each participating employee.

(b) Requires the institution of higher education, or group of institutions of higher education, to determine the method for computing and assessing the fee.

Sec. 609.712. EVALUATION AND APPROVAL OF QUALIFIED VENDOR. (a) Requires a plan administrator to develop and implement criteria and procedures for evaluating a vendor's application to become a qualified vendor.

(b) Prohibits a plan administrator from approving a vendor's application under certain circumstances.

(c) Requires the Texas Department of Insurance (TDI), upon written request, to certify in writing to a plan administrator whether an insurance company is prohibited from being approved as a qualified vendor under Subsection (b)(3). Authorizes the plan administrator to rely on the certification.

Sec. 609.713. NUMBER OF VENDORS UNDER 457 PLAN. Requires the administrator of a 457 plan to determine the minimum and maximum number of vendors authorized to be qualified vendors for the plan at any given time.

Sec. 609.714. CONTRACT WITH QUALIFIED VENDOR. (a) Requires the plan administrator, after approving a vendor's application to become a qualified vendor, to execute a written contract with the vendor to participate in the deferred compensation plan.

(b) Requires a plan administrator to develop and implement criteria and procedures for evaluating a qualified vendor's investment products to determine whether those products are acceptable as qualified investment products.

(c) Authorizes a qualified vendor to offer to employees participating in a 457 plan only qualified investment products.

Sec. 609.715. REGULATION OF QUALIFIED VENDORS. Requires a plan administrator to develop and implement requirements for qualified vendors and their employees concerning certain matters.

Sec. 609.716. TRANSFER ON VENDOR'S FAILURE. Authorizes an institution of higher education, or group of institutions of higher education, that creates a deferred compensation plan to authorize or require as a part of the plan that the plan administrator immediately transfer to the deferred compensation trust fund all deferred amounts and investment income from a vendor who fails to satisfy the requirements of this subchapter or the plan administrator.

SECTION 2.06. Amends Section 51.964(a), Education Code, to reduce from one calendar year to 30 days the period of time a person must be retired before being employed by an institution of higher education as defined by Section 61.003 if the person retired under the Teacher Retirement System (Subtitle C, Title 8, Government Code) or the optional retirement program (Chapter 830, Government Code).

SECTION 2.07. Amends Subchapter A, Chapter 51, Education Code, by adding Section 51.0065, as follows:

Sec. 51.0065. APPLICABILITY OF ACROSS-THE-BOARD SALARY INCREASE. Entitles an institution of higher education that has adopted a pay-for-performance program that is in effect when an across-the-board salary increase for state employees made by an appropriation act of the legislature takes effect to receive any appropriation made for purposes of the across-the-board salary increase, and authorizes the use of the amount appropriated for an across-the-board salary increase or for increases in compensation under the institution's pay-for-performance program.

SECTION 2.08. Amends Section 1601.102, Insurance Code, by amending Subsection (b) and adding Subsections (f) and (g), as follows:

(b) Increases the minimum time of service with a system required for eligibility to participate in the uniform program as provided by Subsection (a) from three to 10 years.

(f) Sets forth the prerequisites for an individual to whom this subsection applies to be eligible to participate in the uniform program as provided by Subsection (a), notwithstanding Subsection (b).

(g) Sets forth to whom Subsection (f) applies.

SECTION 2.09. Amends the heading to Section 51.961, Education Code, as added by Chapter 118, Acts of the 77th Legislature, Regular Session, 2001, to read as follows:

Sec. 51.961. LEAVE PROVISIONS FOR EMPLOYEES OF UNIVERSITY SYSTEM OR COMPONENT INSTITUTION OF SYSTEM.

SECTION 2.10. Amends Sections 51.961(a) and (b), Education Code, as added by Chapter 118, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(a) Provides that in this section "governing board" and "university system" rather than "governing board," "university system," and "medical and dental unit" have the meaning assigned by Section 61.003.

(b) Authorizes the governing board of a university system to adopt a comprehensive leave policy that applies to employees of the university system or any component institution of the system.

SECTION 2.11. Amends Section 1601.101, Insurance Code, by adding Subsection (d), to provide that an individual is eligible to participate in the uniform program as provided by Subsection (a) if the individual is serving a postdoctoral fellowship with an institution in a system.

SECTION 2.12. Provides that the changes in law made by this article to Sections 609.001, 609.002, 609.003, and 609.007, Government Code, and Subchapter D, Chapter 609, Government Code, as added by this article, take effect January 1, 2004.

SECTION 2.13. Provides that Section 1601.101(d), Insurance Code, as added by this article, takes effect September 1, 2003.

### ARTICLE 3. INFORMATION TECHNOLOGY

SECTION 3.01. Amends Section 2054.100, Government Code, as follows:

Provides that a biennial operating plan of an institution of higher education consists of operational projects and infrastructure development projects.

SECTION 3.02. Amends Section 2054.121, Government Code, as follows:

Creates the Information Technology Council for Higher Education and requires the Department of Information Resources to develop rules in consultation with the Council.

### ARTICLE 4. REGULATORY AND ADMINISTRATIVE MATTERS

SECTION 4.01. Amends Section 51.782(i), Education Code, to require a construction manager-at-risk to publicly advertise, in the manner prescribed by the institution, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than general conditions work. Authorizes construction manager-at-risk to seek to perform major elements, rather than portions, of the work itself if the construction manager-at-risk submits its bid or proposals for that, rather than those portions, work in the same manner as all other trade contractors or subcontractors and if the board determines that the construction manager-at-risk's bid or proposal provides that best value for the institution. Authorizes the board, if no satisfactory bid or proposal for a major element of the work is received in the time allowed, to negotiate directly with the construction manager-at-risk for performance of that work. Authorizes the board to negotiate directly with the manager-at-risk for the performance of minor elements of the work that are not included in major work packages.

SECTION 4.02. Amends Subchapter B, Chapter 502, Labor Code, by adding Section 502.025, as follows:

Sec. 502.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) Provides that an employee who performs services outside the state is entitled to benefits under this chapter even if the person meets certain criteria.

(b) Provides that an employee who elects to pursue remedies provided by the state where the injury occurred is not entitled to benefits under this chapter.

SECTION 4.03. Amends Subchapter B, Chapter 503, Labor Code, by adding Section 503.025, as follows:

Sec. 503.025. COVERAGE FOR OUT-OF-STATE EMPLOYEES. (a) Provides that an employee who performs services outside the state is entitled to benefits under this chapter event if the person meets certain criteria.

(b) Provides that an employee who elects to pursue remedies provided by the state where the injury occurred is not entitled to benefits under this chapter.

SECTION 4.04. Amends Section 65.45, Education Code, to read as follows:

Sec. 65.45. New heading: SCIENCE AND TECHNOLOGY DEVELOPMENT, MANAGEMENT, AND TRANSFER. (a) Provides that the legislature finds that it is essential to the economic growth of the state that the potential for the development and growth of high technology industry be promoted and expanded. Authorizes The University of Texas board of regents, as a means of accomplishing this purpose, to enter into agreements with individuals, corporations, partnerships, associations, and local, state, or federal agencies for funding the discovery, development, and commercialization of new products, technology, and scientific information, including an agreement to manage a national laboratory engaged in any of those endeavors. Authorizes, at the discretion of the board, research facilities, funding, and personnel at the various component institutions of The University of Texas System to be utilized to achieve the purposes of this section. Deletes text regarding THECB being authorized to perform certain acts.

(b) Authorizes The University of Texas board of regents, as a means of carrying out the purposes of this section, to, through one or more corporations incorporated by The University of Texas board of regents or under any other cooperative arrangement, perform certain acts. Makes a conforming change.

(c) Authorizes The University of Texas board of regents to cooperate in any manner the board of regents considers appropriate with similar programs operated by other state-supported institutions of higher education in this state or in other states. Deletes text prohibiting the Center for Technology Development and Transfer from receiving general revenue funds.

SECTION 4.05. Amends the heading to Section 551.121, Government Code, to read as follows:

Sec. 551.121. GOVERNING BOARD OF INSTITUTION OF HIGHER EDUCATION; BOARD FOR LEASE OF UNIVERSITY LANDS.

SECTION 4.06. Amends Sections 551.121(b), (c), and (e), Government Code, as follows:

(b) Provides that this chapter does not prohibit the governing board of an institution of higher education or the Board for Lease of University Lands (BLUL) from holding an open or closed meeting by telephone conference call.

(c) Authorizes a meeting held by telephone conference call to be held only if certain criteria is met.

(e) Requires the notice of a telephone conference call meeting of a governing board to specify as the location of the meeting the location where meetings of the governing board are usually held. Requires the notice, for a meeting of BLUL, to specify as the location of the meeting a suitable conference or meeting room at The University of Texas System office.

SECTION 4.07. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.1235, as follows:

Sec. 552.1235. EXCEPTION: IDENTITY OF PRIVATE DONOR TO INSTITUTION OF HIGHER EDUCATION. (a) Provides that the name or other information that would tend to disclose the identity of a person, other than a governmental body, who makes a gift, grant, or donation of money or property to an institution of higher education or to another person with the intent that the money or property be transferred to an institution of higher education is excepted from the requirements of Section 552.021.

(b) Provides that Subsection (a) does not except from required disclosure other information relating to gifts, grants, and donations described by Subsection (a), including the amount or value of an individual gift, grant, or donation.

(c) Defines "institution of higher education."

SECTION 4.08. Amends Section 2161.123(a), Government Code, to require each state agency, including the Texas Building and Procurement Commission (TBPC), that is required to have a strategic plan under Chapter 2056, to include in its strategic plan a written plan for increasing the agency's use of historically underutilized business in purchasing the public works contracting. Requires the governing board of each university system or institution of higher education not included in a university system, other than a public junior college, to prepare a written plan for increasing the use of historically underutilized business in purchasing and public works contracting by the system or institution.

SECTION 4.09. Amends Section 85.51, Education Code, as follows:

Section 85.51. AUTHORITY TO LEASE (a) Provides that the board may lease for oil, gas, sulphur, mineral ore, and other mineral developments, all lands and mineral interests under its control, owned or in the future acquired by the state for the use of the university system.

(b) Provides that the board shall offer oil and gas leases at public auction, by sealed bid, by negotiated agreement, or through any other means that the board considers to be in the best interests of the university system.

SECTION 4.10. Amends Subchapter B, Chapter 85, Education Code, by adding Section 85.18, as follows:

Section 85.18. MANDATORY VENUE. (a) Provides that venue for a suit filed against the board or a member of the board in the member's official capacity is in Brazos County.

(b) Provides that venue for a suit filed against The Texas A&M University System, any component of The Texas A&M University System, or any officer or employee of The Texas A&M University System is in the county in which the primary office of the chief executive officer of the system or component, as applicable, is located.

(c) Provides that this section does not waive any defense to or immunity from suit or liability that may be asserted by an entity or individual described by this section.

(d) Provides that in case of a conflict between this section and any other law, this section controls.

(e) Provides that the changes in law made by the adoption of this section apply only to an action brought on or after September 1, 2003.

SECTION 4.11. Provides that Sections 502.025 and 503.025, Labor Code, as added by this article, apply only to a claim for workers' compensation benefits based on a compensable injury that occurs on or after the effective date of this Act. Provides that a claim based on a compensable injury that occurs before the effective date of this Act is governed by the law in effect on the date injury occurred, and the former law is continued in effect for that purpose.

SECTION 4.12 Provides that Section 552.1235, Government Code, as added by this article, applies to a request for information made before, on, or after the effective date of this Act.

## ARTICLE 5. REPORTING

SECTION 5.01. Amends Sections 51.680(b) and (c), Education Code, as follows:

(b) Authorizes an institution, rather than institutions, of higher education to file or post on the institution's website on the Internet in a manner available to the public policies amended to overcome any failure to meet the standards. Makes nonsubstantive changes.

(c) Provides that it is a policy of the state that each institution of higher education shall at all times after August 31, 1988, have a current copy of its intellectual property policies that meet the minimum standards set out in Subsection (a) on file with THECB or publicly posted on the institution's website on the Internet in a manner available to the public.

SECTION 5.02. Amends Section 2152.064, Government Code, by adding Subsection (f), to provide that this section does not apply to a university system or an institution of higher education as those terms are defined by Section 61.003, Education Code.

SECTION 5.03. Amends Section 2155.448, Government Code, by adding Subsection (d), to provide that this section does not apply to a university system or an institution of higher education as those terms are defined by Section 61.003, Education Code.

SECTION 5.04. Amends Section 2166.101(a), Government Code, to provide that this section applies to a state-owned building, including a building otherwise exempt from this chapter under Section 2166.003, except that this section does not apply to a building owned by an institution of higher education as defined by Section 61.003, Education Code.

SECTION 5.05. Repealer: Section 2166.101(f) (Compilation of Construction and Maintenance Information), Government Code.

## ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Effective date: upon passage or September 1, 2003 except as otherwise provided by another provision of this Act.

### **EFFECTIVE DATE**

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each

house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2003.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

CSSB 1652 modifies the original bill to create the Information Technology Council for Higher Education and requires the Department of Information Resources to develop rules in consultation with the Council. The original bill removed institutions of higher education from Department of Information Resources oversight. The substitute removes the section of the bill that permits accumulation of compensatory time regardless of where work is performed for employees of institutions of higher education. The substitute removes the section of the bill that allows employees of institutions of higher education to collect both hazardous duty pay and longevity pay, if eligible. The substitute removes the section of the bill that exempts institutions of higher education from required use of the Building and Procurement Commission's Uniform General Conditions on construction projects. The substitute adds language that provides that The Texas A&M University Board of Regents may lease its small mineral interests to maximize its return on those leases. The substitute adds language that provides that venue for a suit filed against the Texas A&M System, any component of the Texas A&M University System, or any officer or employee of the Texas A&M University System is in the county in which the primary office of the Chief Executive Officer of the component is located. Venue for a suit filed against the Texas A&M Board of Regents, or any member of the Texas A&M Board of Regents in the member's official capacity will be in Brazos County.