

By: Ogden

S.B. No. 5

A BILL TO BE ENTITLED

AN ACT

relating to certain fiscal matters affecting governmental entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TRANSFERRING CERTAIN TOBACCO SETTLEMENT PROCEEDS INTO
DEDICATED GENERAL REVENUE ACCOUNTS

SECTION 1.01. Subchapter G, Chapter 403, Government Code,
is amended by adding Sections 403.109, 403.1091, 403.1092, and
403.1093 to read as follows:

Sec. 403.109. SECONDARY HEALTH ACCOUNT FOR HIGHER
EDUCATION. (a) In this section:

(1) "Earnings account" means the account described by
Subsection (d).

(2) "Secondary account" means the secondary health
account for higher education.

(b) The secondary account and the earnings account are
dedicated accounts in the general revenue fund.

(c) The secondary account consists of:

(1) money transferred to the account at the direction
of the legislature; and

(2) donations to the account.

(d) The earnings account consists of the earnings received
from investment of the assets in the secondary account. The
comptroller shall periodically transfer those earnings from the
secondary account to the earnings account.

1 (e) Money in the secondary account may be used only for a
2 purpose described by Subsection (d) or (f).

3 (f) The comptroller shall manage and invest assets in the
4 secondary account in authorized investments under Section 404.024.
5 Any expenses incurred by the comptroller in managing and investing
6 assets in the secondary account shall be paid from the account.

7 (g) Money in the earnings account may be appropriated only
8 for a purpose specified in and subject to any conditions and
9 reporting requirements prescribed by Subchapter A, Chapter 63,
10 Education Code, for the use of money from the permanent health fund
11 for higher education.

12 (h) An institution of higher education that has accepted a
13 gift under former Subchapter I, Chapter 51, Education Code, that
14 was conditioned on the institution's receipt of state matching
15 funds from the eminent scholars fund may use money the institution
16 receives under this section to provide the state matching funds and
17 treat the money as if it were a distribution to the institution from
18 the eminent scholars fund for purposes of the former Subchapter I.

19 (i) An institution of higher education that receives a
20 distribution from the earnings account shall include in the report
21 required by Section 63.004, Education Code:

22 (1) the total amount of money the institution received
23 from the account;

24 (2) the purpose for which the money was used; and

25 (3) any other information required by the Legislative
26 Budget Board.

27 (j) Section 404.071 does not apply to the secondary account

1 or the earnings account.

2 Sec. 403.1091. SECONDARY ACCOUNTS FOR EACH INSTITUTION OF
3 HIGHER EDUCATION. (a) In this section:

4 (1) "Earnings account" means an account described by
5 Subsection (e).

6 (2) "Secondary account" means the secondary accounts
7 described by Subsection (b).

8 (b) In addition to the permanent endowment funds created by
9 Section 63.101, Education Code, there is a secondary account for
10 the benefit of each institution of higher education or group of
11 related components of an institution of higher education listed in
12 Section 63.101(a), Education Code.

13 (c) Each secondary account and earnings account is a
14 dedicated account in the general revenue fund.

15 (d) A secondary account consists of:

16 (1) money transferred to the account at the direction
17 of the legislature; and

18 (2) donations to the account.

19 (e) An earnings account for an institution or group of
20 related components of an institution consists of the earnings
21 received from investment of the assets in the corresponding
22 secondary account for the institution or group of components. The
23 comptroller shall periodically transfer those earnings from the
24 secondary account to the earnings account.

25 (f) Money in a secondary account may be used only for a
26 purpose described by Subsection (e) or (g).

27 (g) The comptroller shall manage and invest assets in a

1 secondary account in authorized investments under Section 404.024.
2 Any expenses incurred by the comptroller in managing and investing
3 assets in a secondary account shall be paid from the account.

4 (h) Money in an earnings account may be appropriated only
5 for a purpose specified in and subject to any conditions and
6 reporting requirements prescribed by Subchapter B, Chapter 63,
7 Education Code, for the use of money from the corresponding
8 permanent endowment fund established by that subchapter.

9 (i) An institution of higher education that has accepted a
10 gift under former Subchapter I, Chapter 51, Education Code, that
11 was conditioned on the institution's receipt of state matching
12 funds from the eminent scholars fund may use money the institution
13 receives under this section to provide the state matching funds and
14 treat the money as if it were a distribution to the institution from
15 the eminent scholars fund for purposes of the former Subchapter I.

16 (j) An institution of higher education that receives an
17 appropriation from an earnings account shall include in the report
18 required by Section 63.103, Education Code:

19 (1) the total amount of money the institution received
20 from the account;

21 (2) the purpose for which the money was used; and

22 (3) any other information required by the Legislative
23 Budget Board.

24 (k) Section 404.071 does not apply to a secondary account or
25 an earnings account.

26 Sec. 403.1092. SECONDARY ACCOUNT FOR HIGHER EDUCATION
27 NURSING, ALLIED HEALTH, AND OTHER HEALTH-RELATED PROGRAMS. (a) In

1 this section:

2 (1) "Earnings account" means the account described by
3 Subsection (d).

4 (2) "Secondary account" means the secondary account
5 for higher education nursing, allied health, and other
6 health-related programs.

7 (b) The secondary account and the earnings account are
8 dedicated accounts in the general revenue fund.

9 (c) The secondary account consists of:

10 (1) money transferred to the account at the direction
11 of the legislature; and

12 (2) donations to the account.

13 (d) The earnings account consists of the earnings received
14 from investment of the assets in the secondary account. The
15 comptroller shall periodically transfer those earnings from the
16 secondary account to the earnings account.

17 (e) Money in the secondary account may be used only for a
18 purpose described by Subsection (d) or (f).

19 (f) The comptroller shall manage and invest assets in the
20 secondary account in authorized investments under Section 404.024.
21 Any expenses incurred by the comptroller in managing and investing
22 assets in the secondary account shall be paid from the account.

23 (g) Money in the earnings account may be appropriated only
24 for a purpose specified in and subject to any conditions and
25 reporting requirements prescribed by Subchapter C, Chapter 63,
26 Education Code, for the use of money from the permanent fund for
27 higher education nursing, allied health, and other health-related

1 programs.

2 (h) The Texas Higher Education Coordinating Board shall
3 include in the report required by Section 63.203, Education Code:

4 (1) the name of each institution that received a grant
5 from the earnings account;

6 (2) the purpose for which the grant was used; and

7 (3) any additional information required by the
8 Legislative Budget Board.

9 (i) Section 404.071 does not apply to the secondary account
10 or the earnings account.

11 Sec. 403.1093. SECONDARY ACCOUNT FOR MINORITY HEALTH
12 RESEARCH AND EDUCATION. (a) In this section:

13 (1) "Earnings account" means the account described by
14 Subsection (d).

15 (2) "Secondary account" means the secondary account
16 for minority health research and education.

17 (b) The secondary account and the earnings account are
18 dedicated accounts in the general revenue fund.

19 (c) The secondary account consists of:

20 (1) money transferred to the account at the direction
21 of the legislature; and

22 (2) donations to the account.

23 (d) The earnings account consists of the earnings received
24 from investment of the assets in the secondary account. The
25 comptroller shall periodically transfer those earnings from the
26 secondary account to the earnings account.

27 (e) Money in the secondary account may be used only for a

1 purpose described by Subsection (d) or (f).

2 (f) The comptroller shall manage and invest assets in the
3 secondary account in authorized investments under Section 404.024.
4 Any expenses incurred by the comptroller in managing and investing
5 assets in the secondary account shall be paid from the account.

6 (g) Money in the earnings account may be appropriated only
7 to the Texas Higher Education Coordinating Board for the purpose of
8 providing grants as specified by Section 63.302(c), Education Code,
9 for money from the permanent fund for minority health research and
10 education.

11 (h) The Texas Higher Education Coordinating Board shall
12 report regarding the money received under this section in the
13 manner required by Section 63.302(f), Education Code, and shall
14 include in the report:

15 (1) the total amount distributed under this section;
16 (2) the name of each institution that received a
17 grant;

18 (3) the purpose of each grant, including a description
19 of any partnership formed; and

20 (4) any additional information required by the
21 Legislative Budget Board.

22 (i) Section 404.071 does not apply to the secondary account
23 or the earnings account.

24 SECTION 1.02. Section 403.1069, Government Code, is amended
25 to read as follows:

26 Sec. 403.1069. REPORTING REQUIREMENT. The Department of
27 State Health Services [~~department~~] shall provide a report to the

1 Legislative Budget Board on the permanent funds established under
 2 this subchapter from which the department may receive an
 3 appropriation of the available earnings [~~to the Legislative Budget~~
 4 ~~Board~~] no later than November 1 of each year. The report shall
 5 include the total amount of money distributed from each fund, the
 6 purpose for which the money was used, and any additional
 7 information that may be requested by the Legislative Budget Board.

8 SECTION 1.03. (a) On November 1, 2006, all amounts held in
 9 the following funds shall be transferred, in the estimated amount
 10 listed, to the accounts established under Sections 403.109,
 11 403.1091, 403.1092, and 403.1093, Government Code, as added by this
 12 Act, as specified by this section:

Fund Number	Fund Name	Amount
0810	Permanent Health Fund for Higher Education	\$376,600,000
0811	Permanent Endowment Fund for Health Related Institutions - University of Texas Health	\$215,200,000
0812	Permanent Endowment Fund for Health Related Institutions - University of Texas M.D. Anderson Cancer Center	\$107,600,000
0813	Permanent Endowment Fund for Health Related Institutions - University of Texas Southwestern Medical	

1		Center at Dallas	\$53,800,000
2	0814	Permanent Endowment Fund for	
3		Health Related Institutions -	
4		University of Texas Medical	
5		Branch at Galveston	\$26,900,000
6	0815	Permanent Endowment Fund for	
7		Health Related Institutions -	
8		University of Texas Health	
9		Science Center at Houston	\$26,900,000
10	0816	Permanent Endowment Fund for	
11		Health Related Institutions -	
12		University of Texas Health	
13		Science Center at Tyler	\$26,900,000
14	0817	Permanent Endowment Fund for	
15		Health Related Institutions -	
16		University of Texas at El Paso	\$26,900,000
17	0818	Permanent Endowment Fund for	
18		Health Related Institutions -	
19		Texas A&M University Health	
20		Science Center	\$25,600,000
21	0819	Permanent Endowment Fund for	
22		Health Related Institutions -	
23		University of North Texas	
24		Health Science Center at	
25		Fort Worth	\$25,400,000
26	0820	Permanent Endowment Fund for	
27		Health Related Institutions -	

1		Components of Texas Tech	
2		University Health Sciences	
3		Center in El Paso	\$26,500,000
4	0821	Permanent Endowment Fund for	
5		Health Related Institutions -	
6		Components of Texas Tech	
7		University Health Sciences	
8		Center other than El Paso	\$26,500,000
9	0822	Permanent Endowment Fund for	
10		Health Related Institutions -	
11		University of Texas Regional	
12		Academic Health Center	\$21,500,000
13	0823	Permanent Endowment Fund for	
14		Health Related Institutions -	
15		Baylor College of Medicine	\$24,400,000
16	0824	Permanent Fund for Higher	
17		Education Nursing, Allied	
18		Health and Other Health	
19		Related Programs	\$44,000,000
20	0825	Permanent Fund for Minority	
21		Health Research and Education	\$24,400,000
22		Informational Total:	\$1,079,100,000

23 (b) Amounts transferred from the Permanent Health Fund for
 24 Higher Education shall be deposited to the credit of the secondary
 25 health account for higher education established under Section
 26 403.109, Government Code, as added by this Act.

27 (c) Amounts transferred from the Permanent Endowment Fund

1 for Health Related Institutions - University of Texas Health
2 Science Center at San Antonio shall be deposited to the credit of
3 the secondary account established for the benefit of The University
4 of Texas Health Science Center at San Antonio under Section
5 403.1091, Government Code, as added by this Act.

6 (d) Amounts transferred from the Permanent Endowment Fund
7 for Health Related Institutions - University of Texas M.D. Anderson
8 Cancer Center shall be deposited to the credit of the secondary
9 account established for the benefit of The University of Texas M.D.
10 Anderson Cancer Center under Section 403.1091, Government Code, as
11 added by this Act.

12 (e) Amounts transferred from the Permanent Endowment Fund
13 for Health Related Institutions - University of Texas Southwestern
14 Medical Center at Dallas shall be deposited to the credit of the
15 secondary account established for the benefit of The University of
16 Texas Southwestern Medical Center at Dallas under Section 403.1091,
17 Government Code, as added by this Act.

18 (f) Amounts transferred from the Permanent Endowment Fund
19 for Health Related Institutions - University of Texas Medical
20 Branch at Galveston shall be deposited to the credit of the
21 secondary account established for the benefit of The University of
22 Texas Medical Branch at Galveston under Section 403.1091,
23 Government Code, as added by this Act.

24 (g) Amounts transferred from the Permanent Endowment Fund
25 for Health Related Institutions - University of Texas Health
26 Science Center at Houston shall be deposited to the credit of the
27 secondary account established for the benefit of The University of

1 Texas Health Science Center at Houston under Section 403.1091,
2 Government Code, as added by this Act.

3 (h) Amounts transferred from the Permanent Endowment Fund
4 for Health Related Institutions - University of Texas Health
5 Science Center at Tyler shall be deposited to the credit of the
6 secondary account established for the benefit of The University of
7 Texas Health Science Center at Tyler under Section 403.1091,
8 Government Code, as added by this Act.

9 (i) Amounts transferred from the Permanent Endowment Fund
10 for Health Related Institutions - University of Texas at El Paso
11 shall be deposited to the credit of the secondary account
12 established for the benefit of The University of Texas at El Paso
13 under Section 403.1091, Government Code, as added by this Act.

14 (j) Amounts transferred from the Permanent Endowment Fund
15 for Health Related Institutions - Texas A&M University Health
16 Science Center shall be deposited to the credit of the secondary
17 account established for the benefit of The Texas A&M University
18 Health Science Center under Section 403.1091, Government Code, as
19 added by this Act.

20 (k) Amounts transferred from the Permanent Endowment Fund
21 for Health Related Institutions - University of North Texas Health
22 Science Center at Fort Worth shall be deposited to the credit of the
23 secondary account established for the benefit of the University of
24 North Texas Health Science Center at Fort Worth under Section
25 403.1091, Government Code, as added by this Act.

26 (l) Amounts transferred from the Permanent Endowment Fund
27 for Health Related Institutions - Components of Texas Tech

1 University Health Sciences Center in El Paso shall be deposited to
2 the credit of the secondary account established for the benefit of
3 the components of Texas Tech University Health Sciences Center in
4 El Paso under Section 403.1091, Government Code, as added by this
5 Act.

6 (m) Amounts transferred from the Permanent Endowment Fund
7 for Health Related Institutions - Components of Texas Tech
8 University Health Sciences Center other than El Paso shall be
9 deposited to the credit of the secondary account established for
10 the benefit of the components of Texas Tech University Health
11 Sciences Center other than El Paso under Section 403.1091,
12 Government Code, as added by this Act.

13 (n) Amounts transferred from the Permanent Endowment Fund
14 for Health Related Institutions - University of Texas Regional
15 Academic Health Center shall be deposited to the credit of the
16 secondary account established for the benefit of The University of
17 Texas Regional Academic Health Center under Section 403.1091,
18 Government Code, as added by this Act.

19 (o) Amounts transferred from the Permanent Endowment Fund
20 for Health Related Institutions - Baylor College of Medicine shall
21 be deposited to the credit of the secondary account established for
22 the benefit of Baylor College of Medicine under Section 403.1091,
23 Government Code, as added by this Act.

24 (p) Amounts transferred from the Permanent Fund for Higher
25 Education Nursing, Allied Health, and Other Health Related Programs
26 shall be deposited to the credit of the secondary account for higher
27 education nursing, allied health, and other health-related

1 programs established under Section 403.1092, Government Code, as
2 added by this Act.

3 (q) Amounts transferred from the Permanent Fund for
4 Minority Health Research and Education shall be deposited to the
5 credit of the secondary account for minority health research and
6 education established under Section 403.1093, Government Code, as
7 added by this Act.

8 SECTION 1.04. (a) The transfers to accounts in the general
9 revenue fund made by this article may not result in a reduction in
10 the amount available for distribution from those accounts, and the
11 same amount that would have been distributed from the permanent
12 funds but for the transfers made by this article shall be
13 appropriated and distributed from the applicable accounts created
14 by this article. If the earnings from the secondary account that
15 are transferred to the earnings account are inadequate to make a
16 distribution of the same amount that would have been distributed
17 from the permanent funds, to the extent that the difference is
18 solely the result of an investment policy other than total return,
19 the comptroller of public accounts shall transfer the difference to
20 the applicable earnings account from the unobligated portion of
21 general revenue.

22 (b) The comptroller of public accounts shall determine the
23 amount of any loss to the Permanent Health Fund for Higher Education
24 and other funds administered by The University of Texas System as a
25 result of the transfer to general revenue under this article. On
26 August 31, 2007, the comptroller shall transfer from general
27 revenue to the applicable secondary account created by this Act, an

1 amount equal to the amount of the loss. In determining the amount
2 of the loss, the comptroller shall consider the difference in the
3 rate of return on investment of that secondary account and the rate
4 of return over the preceding three years on investment of the
5 Permanent University Fund.

6 (c) Notwithstanding any other provision of this article,
7 the total of distributions under Subsections (a) and (b) of this
8 section from the accounts created by this article, plus transfers
9 under Subsection (b) of this section, may not exceed \$65 million for
10 any fiscal year.

11 SECTION 1.05. This article takes effect September 1, 2005,
12 if this Act receives a vote of two-thirds of all the members elected
13 to each house, as provided by Section 39, Article III, Texas
14 Constitution. If this Act does not receive the vote necessary for
15 effect on that date, this article takes effect November 1, 2005.

16 ARTICLE 2. INVESTMENT OF STATE AND OTHER GOVERNMENTAL ENTITY FUNDS

17 SECTION 2.01. Section 404.024, Government Code, is amended
18 by amending Subsections (b) and (l) and adding Subsections (m) and
19 (n) to read as follows:

20 (b) State funds not deposited in state depositories shall be
21 invested by the comptroller in:

- 22 (1) direct security repurchase agreements;
23 (2) reverse security repurchase agreements;
24 (3) direct obligations of or obligations the principal
25 and interest of which are guaranteed by the United States;
26 (4) direct obligations of or obligations guaranteed by
27 agencies or instrumentalities of the United States government;

1 (5) bankers' acceptances that:

2 (A) are eligible for purchase by the Federal
3 Reserve System;

4 (B) do not exceed 270 days to maturity; and

5 (C) are issued by a bank whose other comparable
6 short-term obligations are rated in ~~[that has received]~~ the highest
7 short-term ~~[credit]~~ rating category, within which there may be
8 subcategories or gradations, including such subcategories or
9 gradations as "rating category" or "rated," indicating relative
10 standing by a nationally recognized statistical rating
11 organization, as defined by Rule 2a-7 (17 C.F.R. Section 270.2a-7),
12 promulgated under the Investment Company Act of 1940 (15 U.S.C.
13 Section 80a-1 et seq.) by the Securities and Exchange Commission
14 ~~[investment rating firm];~~

15 (6) commercial paper that:

16 (A) does not exceed 270 days to maturity; and

17 (B) except as provided by Subsection (i), is
18 issued by an entity whose other comparable short-term obligations
19 are rated in ~~[has received]~~ the highest short-term ~~[credit]~~ rating
20 category by a nationally recognized statistical rating
21 organization ~~[investment rating firm];~~

22 (7) contracts written by the treasury in which the
23 treasury grants the purchaser the right to purchase securities in
24 the treasury's marketable securities portfolio at a specified price
25 over a specified period and for which the treasury is paid a fee and
26 specifically prohibits naked-option or uncovered option trading;

27 (8) direct obligations of or obligations guaranteed by

1 the Inter-American Development Bank, the International Bank for
2 Reconstruction and Development (the World Bank), the African
3 Development Bank, the Asian Development Bank, and the International
4 Finance Corporation that have received the highest long-term
5 ~~[credit]~~ rating categories for debt obligations by a nationally
6 recognized statistical rating organization ~~[investment-rating~~
7 ~~firm]~~;

8 (9) bonds issued, assumed, or guaranteed by the State
9 of Israel;

10 (10) obligations of a state or an agency, county,
11 city, or other political subdivision of a state;

12 (11) mutual funds secured by obligations that are
13 described by Subdivisions (1) through (6), including pooled funds:

14 (A) established by the Texas Treasury
15 Safekeeping Trust Company;

16 (B) operated like a mutual fund; and

17 (C) with portfolios consisting only of
18 dollar-denominated securities; ~~and~~

19 (12) foreign currency for the sole purpose of
20 facilitating investment by state agencies that have the authority
21 to invest in foreign securities;

22 (13) asset-backed securities, as defined by the
23 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section
24 270.2a-7), that are rated at least A or its equivalent by a
25 nationally recognized statistical rating organization and that
26 have a weighted-average maturity of five years or less; and

27 (14) corporate debt obligations that are rated at

1 least A or its equivalent by a nationally recognized statistical
2 rating organization and mature in five years or less from the date
3 on which the obligations were "acquired," as defined by the
4 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section
5 270.2a-7).

6 (1) The comptroller may lend securities under procedures
7 established by the comptroller. The procedures must be consistent
8 with industry practice and must include a requirement to fully
9 secure the loan with cash, obligations described by Subsections
10 (b)(1)-(6), or a combination of cash and the described obligations.
11 Notwithstanding any provision to the contrary, cash may be
12 reinvested in the items permitted under Subsection (b) or mutual
13 funds secured by the items permitted under Subsection (b) [~~In this~~
14 subsection, "obligation" means an item described by Subsections
15 (b)(1)-(6)].

16 (m) In entering into a direct security repurchase agreement
17 or a reverse security repurchase agreement, the comptroller may
18 agree to accept cash on an overnight basis in lieu of the
19 securities, obligations, or participation certificates identified
20 in Section 404.001(3). Cash held by the state under this subsection
21 is not a deposit of state or public funds for the purposes of any
22 law, including this subchapter or Subchapter D, that requires a
23 deposit of state or public funds to be collateralized by eligible
24 securities.

25 (n) Notwithstanding any other law to the contrary, any
26 government investment pool created to function as a money market
27 mutual fund and managed by the comptroller or the Texas Treasury

1 Safekeeping Trust Company may invest the funds it receives in
2 investments that are "eligible securities," as defined by the
3 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section
4 270.2a-7), if it maintains a dollar-weighted average portfolio
5 maturity of 90 days or less, with the maturity of each portfolio
6 security calculated in accordance with Rule 2a-7 (17 C.F.R. Section
7 270.2a-7), and meets the diversification requirements of Rule 2a-7.

8 SECTION 2.02. Section 2256.011, Government Code, is amended
9 by amending Subsection (a) and adding Subsection (e) to read as
10 follows:

11 (a) A fully collateralized repurchase agreement is an
12 authorized investment under this subchapter if the repurchase
13 agreement:

14 (1) has a defined termination date;

15 (2) except as provided by Subsection (e), is secured
16 by obligations described by Section 2256.009(a)(1); ~~and~~

17 (3) requires the securities being purchased by the
18 entity to be pledged to the entity, held in the entity's name, and
19 deposited at the time the investment is made with the entity or with
20 a third party selected and approved by the entity; and

21 (4) is placed through a primary government securities
22 dealer, as defined by the Federal Reserve, or a financial
23 institution doing business in this state.

24 (e) For purposes of this section, an entity may agree to
25 secure the agreement by accepting cash on an overnight basis in lieu
26 of the obligations identified in Section 2256.009(a)(1). Cash held
27 by an entity under this subsection is not a deposit of public funds

1 for purposes of any statute, including Chapter 2257, that requires
2 a deposit of public funds to be collateralized by eligible
3 securities.

4 SECTION 2.03. Section 2256.016, Government Code, is amended
5 by amending Subsections (a) and (f) and adding Subsection (i) to
6 read as follows:

7 (a) An entity may invest its funds and funds under its
8 control through an eligible investment pool if the governing body
9 of the entity by rule, order, ordinance, or resolution, as
10 appropriate, authorizes investment in the particular pool. An
11 investment pool created to function as a money market mutual fund
12 may invest the funds it receives from entities in investments that
13 are "eligible securities," as defined by the Securities and
14 Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7),
15 promulgated under the Investment Company Act of 1940 (15 U.S.C.
16 Section 80a-1 et seq.). Any other [~~An~~] investment pool shall invest
17 the funds it receives from entities in authorized investments
18 permitted by this subchapter.

19 (f) To be eligible to receive funds from and invest funds on
20 behalf of an entity under this chapter, a public funds investment
21 pool created to function as a money market mutual fund must:

22 (1) mark its portfolio to market daily, and, to the
23 extent reasonably possible, stabilize at a \$1 net asset value. If
24 the ratio of the market value of the portfolio divided by the book
25 value of the portfolio is less than 0.995 or greater than 1.005,
26 portfolio holdings shall be sold as necessary to maintain the ratio
27 between 0.995 and 1.005;

1 (2) maintain a dollar-weighted average portfolio
2 maturity of 90 days or less, with the maturity of each portfolio
3 security calculated in accordance with Rule 2a-7 (17 C.F.R. Section
4 270.2a-7); and

5 (3) meet the diversification requirements of Rule 2a-7
6 (17 C.F.R. Section 270.2a-7) promulgated by the Securities and
7 Exchange Commission.

8 (i) In this section, "stated maturity date" means the
9 average life of a security with periodic principal payments, the
10 number of days until the next interest rate reset date for variable
11 rate securities, or the final maturity date for all other
12 securities.

13 SECTION 2.04. This article takes effect immediately if this
14 Act receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for immediate
17 effect, this article takes effect November 1, 2005.

18 ARTICLE 3. COLLECTION OF DELINQUENT OBLIGATIONS TO STATE

19 SECTION 3.01. Subsection (c), Section 403.019, Government
20 Code, is amended to read as follows:

21 (c) A contract under this section is not valid unless
22 approved by the attorney general. The attorney general shall
23 approve a contract if the attorney general determines that the
24 contract complies with the requirements of this section, that the
25 contract does not conflict with any contract formed under Section
26 2107.003(b), and that the contract ~~and~~ is in the best interest of
27 the state. No judicial action by any person on behalf of the state

1 under a contract authorized and approved by this section may be
2 brought unless approved by the attorney general.

3 SECTION 3.02. Section 2107.003, Government Code, is amended
4 to read as follows:

5 Sec. 2107.003. COLLECTION BY ATTORNEY GENERAL,
6 COMPTROLLER, OR OUTSIDE AGENT. (a) Except as provided by Section
7 2107.004 [~~Subsection (c)~~], a state agency shall report an
8 uncollected and delinquent obligation to [~~request~~] the attorney
9 general for collection. The state agency must report the
10 obligation on or before the 120th day after the date the obligation
11 becomes past due or delinquent [~~to collect an obligation before the~~
12 ~~agency may employ, retain, or contract with a person other than a~~
13 ~~full-time employee of the state agency to collect the obligation~~].

14 (b) The attorney general:

15 (1) shall provide legal services for collection of the
16 obligation;

17 (2) may authorize the requesting state agency to
18 employ, retain, or contract, subject to approval by the attorney
19 general, with one or more persons to collect the obligation; or

20 (3) if the attorney general determines it to be
21 economical and in the best interest of the state, may contract with
22 one or more persons [~~a person other than a full-time employee of the~~
23 ~~agency~~] to collect the [~~an~~] obligation [~~that the attorney general~~
24 ~~cannot collect~~].

25 (c) The comptroller may employ, retain, or contract with a
26 person other than a full-time state employee to collect delinquent
27 obligations that are owed the comptroller in the comptroller's

1 official capacity, are not collected through normal collection
2 procedures, and do not meet the guidelines adopted for collection
3 by the attorney general. A proposed contract under this subsection
4 shall be reviewed by the attorney general and may include a
5 collection fee computed on the amounts collected under the
6 contract.

7 (d) The agency contracting under Subsection (b) is entitled
8 to recover from the obligor, in addition to the amount of the
9 obligation, the costs incurred in undertaking the collection,
10 including the costs of a contract under this section. The obligor
11 is liable for costs of recovery under this section in an amount up
12 to 30 percent of the sum of the amount of the obligation and any
13 penalty and interest due on the obligation.

14 (e) A contract formed under Subsection (b) must provide for
15 the compensation due to the contractor. The amount of the
16 compensation shall be up to 30 percent of the sum of the collected
17 amount of:

- 18 (1) the obligation;
19 (2) any penalty; and
20 (3) any interest.

21 (f) A contract formed under Subsection (b) or (c) may permit
22 or require the contractor to pursue a judicial action to collect the
23 amount of the obligation in a proper court in or outside of this
24 state.

25 (g) In a suit in a Texas state court brought by a contractor
26 to collect an obligation under this section, the state is not:

- 27 (1) required to post security for costs;

1 (2) liable for costs; and

2 (3) liable for fees for:

3 (A) service of process;

4 (B) attorneys ad litem;

5 (C) arbitration; or

6 (D) mediation.

7 (h) An amount collected under a contract formed under
8 Subsection (b), including the costs of recovery and court costs or
9 other costs, shall be deposited in the fund or account to which the
10 obligation was required to be deposited. The contracting agency
11 shall pay the compensation due under the contract to the contractor
12 and shall pay to the applicable court any court costs collected.

13 (i) The contracting agency shall require a person
14 contracting under Subsection (b) to post a bond or other security in
15 an amount the contracting agency determines is sufficient to cover
16 all revenue or other property of the state that is expected to come
17 into the possession or control of the contractor in the course of
18 providing contract services.

19 (j) A person who contracts under Subsection (b) is an agent
20 of this state for purposes of determining priority of a claim to be
21 collected under the contract with respect to claims of other
22 creditors. The contractor does not exercise any sovereign power of
23 the state.

24 (k) The contracting state agency may provide a person
25 contracting under Subsection (b) any necessary information,
26 including confidential information, that the agency is not
27 prohibited from sharing under an agreement with another state or

1 with the United States and that is:

2 (1) in the custody of the agency holding the claim; and

3 (2) necessary to the collection of the obligation.

4 (1) A person acting under a contract formed under Subsection
5 (b) or (c) and each employee or agent of that person is subject to
6 all prohibitions against the disclosure of confidential
7 information obtained from the contracting agency, the reporting
8 state agency, or their employees. A contractor or the contractor's
9 employee or agent who discloses confidential information in
10 violation of the prohibition is subject to the same penalties for
11 that disclosure as would apply to the contracting agency or its
12 employees.

13 (m) The contracting agency shall require a person who
14 contracts under Subsection (b) to obtain and maintain insurance
15 adequate to provide reasonable coverage for damages negligently,
16 recklessly, or intentionally caused by the contractor or the
17 contractor's employee or agent in the course of collecting an
18 obligation under the contract and to protect this state from
19 liability for those damages. The state is not liable for and may
20 not indemnify a person acting under a contract under Subsection (b)
21 for damages negligently, recklessly, or intentionally caused by the
22 contractor or the contractor's employee or agent in the course of
23 collecting an obligation under the contract.

24 (n) In addition to grounds for termination provided by the
25 contract terms, the attorney general or the contracting agency, as
26 applicable, may terminate a contract formed under Subsection (b) if
27 the contractor or the contractor's employee or agent:

1 (1) violates the federal Fair Debt Collection
2 Practices Act (15 U.S.C. Section 1692 et seq.);

3 (2) discloses confidential information to a person not
4 authorized to receive the information; or

5 (3) performs any act that results in a final judgment
6 for damages against this state.

7 SECTION 3.03. Subsection (c), Section 2254.102, Government
8 Code, is amended to read as follows:

9 (c) This subchapter does not apply to a contract:

10 (1) with an agency to collect an obligation under
11 Section 2107.003(b); or

12 (2) for legal services entered into by an institution
13 of higher education under Section 153.006, Education Code.

14 ARTICLE 4. STATE AND LOCAL SALES AND USE TAXES IN GENERAL

15 SECTION 4.01. Subsections (a) and (c), Section 151.011, Tax
16 Code, are amended to read as follows:

17 (a) Except as provided by Subsection (c) [~~of this section~~],
18 "use" means the exercise of a right or power incidental to the
19 ownership of tangible personal property over tangible personal
20 property, including tangible personal property other than printing
21 [~~printed~~] material that has been processed, fabricated, or
22 manufactured into other property or attached to or incorporated
23 into other property transported into this state, and, except as
24 provided by Section 151.056(b) [~~of this code~~], includes the
25 incorporation of tangible personal property into real estate or
26 into improvements of real estate whether or not the real estate is
27 subsequently sold.

1 (c) "Use" does not include the sale of tangible personal
2 property or a taxable service in the regular course of business, the
3 transfer of a taxable service as an integral part of the transfer of
4 tangible personal property in the regular course of business, or
5 the transfer of tangible personal property as an integral part of
6 the transfer of a taxable service in the regular course of business.
7 "Use" also does not include the sale outside this state of raw
8 materials that are processed, fabricated, or manufactured into
9 printed materials outside this state if the printed materials are
10 subsequently brought or delivered into this state.

11 SECTION 4.02. Section 321.203, Tax Code, is amended by
12 amending Subsections (b) through (e) and adding Subsection (n) to
13 read as follows:

14 (b) If a retailer has only one place of business in this
15 state, all of the retailer's retail sales of taxable items
16 [~~tangible personal property~~] are consummated at that place of
17 business except as provided by Subsection (e).

18 (c) If a retailer has more than one place of business in this
19 state, a sale of a taxable item [~~tangible personal property~~] by the
20 retailer is consummated at the retailer's place of business:

21 (1) from which the retailer ships or delivers the item
22 [~~property~~], if the retailer ships or delivers the item [~~property~~]
23 to a point designated by the purchaser or lessee; or

24 (2) where the purchaser or lessee takes possession of
25 and removes the item [~~property~~], if the purchaser or lessee takes
26 possession of and removes the item [~~property~~] from a place of
27 business of the retailer.

1 (d) If neither the possession of a taxable item [~~tangible~~
2 ~~personal property~~] is taken at nor shipment or delivery of the item
3 [~~property~~] is made from the retailer's place of business in this
4 state, the sale is consummated at:

5 (1) the retailer's place of business in this state
6 where the order is received; or

7 (2) if the order is not received at a place of business
8 of the retailer, the place of business from which the retailer's
9 salesman who took the order operates.

10 (e) A sale of a taxable item [~~tangible personal property~~] is
11 consummated at the location in this state to which the item
12 [~~property~~] is shipped or delivered or at which possession is taken
13 by the customer if transfer of possession of the item [~~property~~]
14 occurs at, or shipment or delivery of the item [~~property~~]
15 originates from, a location in this state other than a place of
16 business of the retailer and if:

17 (1) the retailer is an itinerant vendor who has no
18 place of business;

19 (2) the retailer's place of business where the
20 purchase order is initially received or from which the retailer's
21 salesman who took the order operates is outside this state; or

22 (3) the purchaser places the order directly with the
23 retailer's supplier and the item [~~property~~] is shipped or delivered
24 directly to the purchaser by the supplier.

25 (n) A sale of a service described by Section 151.0047 to
26 remodel, repair, or restore nonresidential real property is
27 consummated at the location of the job site. However, if the job

1 site includes areas in multiple municipalities, the sale is
2 consummated at:

3 (1) the retailer's place of business in this state
4 where the order is received; or

5 (2) if the order is not received at a place of business
6 of the retailer, the place of business from which the retailer's
7 agent who took the order operates.

8 SECTION 4.03. Section 323.203, Tax Code, is amended by
9 amending Subsections (b) through (e) and adding Subsection (m) to
10 read as follows:

11 (b) If a retailer has only one place of business in this
12 state, all of the retailer's retail sales of taxable items
13 [~~tangible personal property~~] are consummated at that place of
14 business except as provided by Subsection (e).

15 (c) If a retailer has more than one place of business in this
16 state, a sale of a taxable item [~~tangible personal property~~] by the
17 retailer is consummated at the retailer's place of business:

18 (1) from which the retailer ships or delivers the item
19 [~~property~~], if the retailer ships or delivers the item [~~property~~]
20 to a point designated by the purchaser or lessee; or

21 (2) where the purchaser or lessee takes possession of
22 and removes the item [~~property~~], if the purchaser or lessee takes
23 possession of and removes the item [~~property~~] from a place of
24 business of the retailer.

25 (d) If neither the possession of a taxable item [~~tangible~~
26 ~~personal property~~] is taken at nor shipment or delivery of the item
27 [~~property~~] is made from the retailer's place of business in this

1 state, the sale is consummated at:

2 (1) the retailer's place of business in this state
3 where the order is received; or

4 (2) if the order is not received at a place of business
5 of the retailer, the place of business from which the retailer's
6 salesman who took the order operates.

7 (e) A sale of a taxable item [~~tangible personal property~~] is
8 consummated at the location in this state to which the item
9 [~~property~~] is shipped or delivered or at which possession is taken
10 by the customer if transfer of possession of the item [~~property~~]
11 occurs at, or shipment or delivery of the item [~~property~~]
12 originates from, a location in this state other than a place of
13 business of the retailer and if:

14 (1) the retailer is an itinerant vendor who has no
15 place of business;

16 (2) the retailer's place of business where the
17 purchase order is initially received or from which the retailer's
18 salesman who took the order operates is outside this state; or

19 (3) the purchaser places the order directly with the
20 retailer's supplier and the item [~~property~~] is shipped or delivered
21 directly to the purchaser by the supplier.

22 (m) A sale of a service described by Section 151.0047 to
23 remodel, repair, or restore nonresidential real property is
24 consummated at the location of the job site. However, if the job
25 site includes areas in multiple municipalities, the sale is
26 consummated at:

27 (1) the retailer's place of business in this state

1 where the order is received; or

2 (2) if the order is not received at a place of business
3 of the retailer, the place of business from which the retailer's
4 agent who took the order operates.

5 SECTION 4.04. The following sections of the Tax Code are
6 repealed:

7 (1) Subsection (d), Section 151.103;

8 (2) Subsection (c), Section 151.202;

9 (3) Subsection (1), Section 321.203, Tax Code, as
10 added by Chapter 1310, Acts of the 78th Legislature, Regular
11 Session, 2003; and

12 (4) Subsection (1), Section 323.203.

13 SECTION 4.05. This article takes effect October 1, 2005, if
14 this Act receives a vote of two-thirds of all the members elected to
15 each house, as provided by Section 39, Article III, Texas
16 Constitution. If this Act does not receive the vote necessary for
17 effect on that date, this article takes effect November 1, 2005.

18 ARTICLE 5. EFFECTIVE DATE

19 SECTION 5.01. Except as otherwise provided by this Act,
20 this Act takes effect immediately if it receives a vote of
21 two-thirds of all the members elected to each house, as provided by
22 Section 39, Article III, Texas Constitution. If this Act does not
23 receive the vote necessary for immediate effect, except as
24 otherwise provided by this Act, this Act takes effect on the 91st
25 day after the last day of the legislative session.