

By: Ogden

S.B. No. 5

A BILL TO BE ENTITLED

1 AN ACT

2 relating to certain fiscal matters affecting governmental
3 entities.

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

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

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

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

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

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

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

18 (c) The secondary account consists of:

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

21 (2) donations to the account.

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

1 secondary account to the earnings account.

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

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

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

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

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

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

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

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

1 (j) Section 404.071 does not apply to the secondary account
2 or the earnings account.

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

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

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

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

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

16 (d) A secondary account consists of:

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

19 (2) donations to the account.

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

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

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

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

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

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

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

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

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

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

27 Sec. 403.1092. SECONDARY ACCOUNT FOR HIGHER EDUCATION

1 NURSING, ALLIED HEALTH, AND OTHER HEALTH-RELATED PROGRAMS. (a) In
2 this section:

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

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

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

10 (c) The secondary account consists of:

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

13 (2) donations to the account.

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

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

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

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

1 higher education nursing, allied health, and other health-related
2 programs.

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

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

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

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

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

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

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

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

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

20 (c) The secondary account consists of:

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

23 (2) donations to the account.

24 (d) The earnings account consists of the earnings received
25 from investment of the assets in the secondary account. The
26 comptroller shall periodically transfer those earnings from the
27 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 to the Texas Higher Education Coordinating Board for the purpose of
9 providing grants as specified by Section 63.302(c), Education Code,
10 for money from the permanent fund for minority health research and
11 education.

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

16 (1) the total amount distributed under this section;

17 (2) the name of each institution that received a
18 grant;

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

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

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

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

27 Sec. 403.1069. REPORTING REQUIREMENT. The Department of

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

9 SECTION 1.03. (a) On November 1, 2006, all amounts held in
 10 the following funds shall be transferred, in the estimated amount
 11 listed, to the accounts established under Sections 403.109,
 12 403.1091, 403.1092, and 403.1093, Government Code, as added by this
 13 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 Science Center at San Antonio | \$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 | |

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

| | | | |
|----|------|-------------------------------|-----------------|
| 1 | | Health Related Institutions - | |
| 2 | | Components of Texas Tech | |
| 3 | | University Health Science | |
| 4 | | Center in El Paso | \$26,500,000 |
| 5 | 0821 | Permanent Endowment Fund for | |
| 6 | | Health Related Institutions - | |
| 7 | | Components of Texas Tech | |
| 8 | | University Health Science | |
| 9 | | Center other than El Paso | \$26,500,000 |
| 10 | 0822 | Permanent Endowment Fund for | |
| 11 | | Health Related Institutions - | |
| 12 | | University of Texas Regional | |
| 13 | | Academic Health Center | \$21,500,000 |
| 14 | 0823 | Permanent Endowment Fund for | |
| 15 | | Health Related Institutions - | |
| 16 | | Baylor College of Medicine | \$24,400,000 |
| 17 | 0824 | Permanent Fund for Higher | |
| 18 | | Education Nursing, Allied | |
| 19 | | Health and Other Health | |
| 20 | | Related Programs | \$44,000,000 |
| 21 | 0825 | Permanent Fund for Minority | |
| 22 | | Health Research and Education | \$24,400,000 |
| 23 | | Informational Total: | \$1,079,100,000 |

24 (b) Amounts transferred from the Permanent Health Fund for
 25 Higher Education shall be deposited to the credit of the secondary
 26 health account for higher education established under Section
 27 403.109, Government Code, as added by this Act.

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

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

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

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

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

1 secondary account established for the benefit of The University of
2 Texas Health Science Center at Houston under Section 403.1091,
3 Government Code, as added by this Act.

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

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

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

21 (k) Amounts transferred from the Permanent Endowment Fund
22 for Health Related Institutions - University of North Texas Health
23 Science Center at Fort Worth shall be deposited to the credit of the
24 secondary account established for the benefit of the University of
25 North Texas Health Science Center at Fort Worth under Section
26 403.1091, Government Code, as added by this Act.

27 (l) Amounts transferred from the Permanent Endowment Fund

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

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

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

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

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

1 education nursing, allied health, and other health-related
2 programs established under Section 403.1092, Government Code, as
3 added by this Act.

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

9 SECTION 1.04. (a) The transfers to accounts in the general
10 revenue fund made by this article may not result in a reduction in
11 the amount available for distribution from those accounts, and the
12 same amount that would have been distributed from the permanent
13 funds but for the transfers made by this article shall be
14 appropriated and distributed from the applicable accounts created
15 by this article. If the earnings from the secondary account that
16 are transferred to the earnings account are inadequate to make a
17 distribution of the same amount that would have been distributed
18 from the permanent funds, to the extent that the difference is
19 solely the result of an investment policy other than total return,
20 the comptroller shall transfer the difference to the applicable
21 earnings account from the unobligated portion of 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. Part 270.2a-7),
12 promulgated under the Investment Company Act of 1940 by the
13 Securities and Exchange Commission ~~[investment rating firm];~~

14 (6) commercial paper that:

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

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

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

26 (8) direct obligations of or obligations guaranteed by
27 the Inter-American Development Bank, the International Bank for

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

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

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

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

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

15 (B) operated like a mutual fund; and

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

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

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

26 (14) corporate debt obligations that are rated at
27 least A or its equivalent by a nationally recognized statistical

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

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

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

24 (n) Notwithstanding any other law to the contrary, any
25 government investment pool created to function as a money market
26 mutual fund and managed by the comptroller or the Texas Treasury
27 Safekeeping Trust Company may invest the funds it receives in

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

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

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

13 (1) has a defined termination date;

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

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

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

23 (e) For purposes of this section, an entity may agree to
24 secure the agreement by accepting cash on an overnight basis in lieu
25 of the obligations identified in Section 2256.009(a)(1). Cash held
26 by an entity under this subsection is not a deposit of public funds
27 for purposes of any statute, including Chapter 2257, that requires

1 a deposit of public funds to be collateralized by eligible
2 securities.

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

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

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

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

26 (2) maintain a dollar-weighted average portfolio
27 maturity of 90 days or less, with the maturity of each portfolio

1 security calculated in accordance with Rule 2a-7 (17 C.F.R. Part
2 270.2a-7); and

3 (3) meet the diversification requirements of Rule 2a-7
4 (17 C.F.R. Part 270.2a-7) promulgated by the Securities and
5 Exchange Commission.

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

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

16 ARTICLE 3. COLLECTION OF DELINQUENT OBLIGATIONS TO STATE

17 SECTION 3.01. Section 403.019(c), Government Code, is
18 amended to read as follows:

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

1 SECTION 3.02. Section 2107.003, Government Code, is amended
2 to read as follows:

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

12 (b) The attorney general:

13 (1) shall provide legal services for collection of the
14 obligation;

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

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

23 (c) The comptroller may employ, retain, or contract with a
24 person other than a full-time state employee to collect delinquent
25 obligations that are owed the comptroller in the comptroller's
26 official capacity, are not collected through normal collection
27 procedures, and do not meet the guidelines adopted for collection

1 by the attorney general. A proposed contract under this subsection
2 shall be reviewed by the attorney general and may include a
3 collection fee computed on the amounts collected under the
4 contract.

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

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

- 16 (1) the obligation;
17 (2) any penalty; and
18 (3) any interest.

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

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

- 25 (1) required to post security for costs;
26 (2) liable for costs; and
27 (3) liable for fees for:

1 (A) service of process;

2 (B) attorneys ad litem;

3 (C) arbitration; or

4 (D) mediation.

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

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

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

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

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

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

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

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

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

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

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

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

5 SECTION 3.03. Section 2254.102(c), Government Code, is
6 amended to read as follows:

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

8 (1) with an agency to collect an obligation under
9 Section 2107.003(b); or

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

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

13 SECTION 4.01. Sections 151.011(a) and (c), Tax Code, are
14 amended to read as follows:

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

26 (c) "Use" does not include the sale of tangible personal
27 property or a taxable service in the regular course of business, the

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

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

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

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

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

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

26 (d) If neither the possession of a taxable item [~~tangible~~
27 ~~personal property~~] is taken at nor shipment or delivery of the item

1 ~~[property]~~ is made from the retailer's place of business in this
2 state, the sale is 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 salesman who took the order operates.

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

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

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

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

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

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

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

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

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

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

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

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

23 (d) If neither the possession of a taxable item [~~tangible~~
24 ~~personal property~~] is taken at nor shipment or delivery of the item
25 [~~property~~] is made from the retailer's place of business in this
26 state, the sale is 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 salesman who took the order operates.

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

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

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

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

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

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

27 (2) if the order is not received at a place of business

1 of the retailer, the place of business from which the retailer's
2 agent who took the order operates.

3 SECTION 4.04. The following sections of the Tax Code are
4 repealed:

5 (1) Section 151.103(d);

6 (2) Section 151.202(c);

7 (3) Section 321.203(1), Tax Code, as added by Chapter
8 1310, Acts of the 78th Legislature, Regular Session, 2003; and

9 (4) Section 323.203(1).

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

15 ARTICLE 5. MOTOR VEHICLE SALES AND USE TAX

16 SECTION 5.01. Section 152.002, Tax Code, is amended by
17 adding Subsection (f) to read as follows:

18 (f) Notwithstanding Subsection (a), the total consideration
19 of a used motor vehicle is the amount on which the tax is computed as
20 provided by Section 152.0412.

21 SECTION 5.02. Section 152.041(a), Tax Code, is amended to
22 read as follows:

23 (a) The tax assessor-collector of the county in which an
24 application for registration or for a Texas certificate of title is
25 made shall collect taxes imposed by this chapter, subject to
26 Section 152.0412, unless another person is required by this chapter
27 to collect the taxes.

1 SECTION 5.03. Subchapter C, Chapter 152, Tax Code, is
2 amended by adding Section 152.0412 to read as follows:

3 Sec. 152.0412. STANDARD PRESUMPTIVE VALUE; USE BY TAX
4 ASSESSOR-COLLECTOR. (a) In this section, "standard presumptive
5 value" means the average retail value of a motor vehicle as
6 determined by the Texas Department of Transportation, based on a
7 nationally recognized motor vehicle industry reporting service.

8 (b) If the amount paid for a motor vehicle subject to the tax
9 imposed by this chapter is equal to or greater than the standard
10 presumptive value of the vehicle, a county tax assessor-collector
11 shall compute the tax on the amount paid.

12 (c) If the amount paid for a motor vehicle subject to the tax
13 imposed by this chapter is less than the standard presumptive value
14 of the vehicle, a county tax assessor-collector shall compute the
15 tax on the standard presumptive value unless the purchaser
16 establishes the retail value of the vehicle as provided by
17 Subsection (d).

18 (d) A county tax assessor-collector shall compute the tax
19 imposed by this chapter on the retail value of a motor vehicle if:

20 (1) the retail value is shown on an appraisal
21 certified by an adjuster licensed under Chapter 4101, Insurance
22 Code, or by a motor vehicle dealer operating under Subchapter B,
23 Chapter 503, Transportation Code;

24 (2) the appraisal is on a form prescribed by the
25 comptroller for that purpose; and

26 (3) the purchaser of the vehicle obtains the appraisal
27 not later than the 20th day after the date of purchase.

1 (e) On request, a motor vehicle dealer operating under
2 Subchapter B, Chapter 503, Transportation Code, shall provide a
3 certified appraisal of the retail value of a motor vehicle. The
4 comptroller by rule shall establish a fee that a dealer may charge
5 for providing the certified appraisal. The county tax
6 assessor-collector shall retain a copy of a certified appraisal
7 received under this section for a period prescribed by the
8 comptroller.

9 (f) The Texas Department of Transportation shall maintain
10 information on the standard presumptive values of motor vehicles as
11 part of the department's registration and title system. The
12 department shall update the information at least quarterly each
13 calendar year.

14 (g) This section does not apply to a transaction described
15 by Section 152.024 or 152.025.

16 SECTION 5.04. Not later than December 1, 2005, the Texas
17 Department of Transportation shall:

18 (1) establish standard presumptive values for motor
19 vehicles as provided by Section 152.0412, Tax Code, as added by this
20 article;

21 (2) modify the department's registration and title
22 system as needed to include that information and administer that
23 section; and

24 (3) make that information available through the system
25 to all county tax assessor-collectors.

26 SECTION 5.05. (a) Except as provided by Subsection (b) of
27 this section, this article takes effect September 1, 2005, if this

1 Act receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for effect on that
4 date, this article takes effect November 1, 2005.

5 (b) Section 152.0412, Tax Code, as added by this article,
6 takes effect December 1, 2005.

7 ARTICLE 6. EFFECTIVE DATE

8 SECTION 6.01. Except as otherwise provided by this Act,
9 this Act takes effect immediately if it receives a vote of
10 two-thirds of all the members elected to each house, as provided by
11 Section 39, Article III, Texas Constitution. If this Act does not
12 receive the vote necessary for immediate effect, except as
13 otherwise provided by this Act, this Act takes effect on the 91st
14 day after the last day of the legislative session.