

1-1 By: Ogden S.B. No. 5
1-2 (In the Senate - Filed June 23, 2005; June 23, 2005, read
1-3 first time and referred to Committee on Finance; July 7, 2005,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 11, Nays 0, 1 present not voting;
1-6 July 7, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 5 By: Ogden

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to certain fiscal matters affecting governmental entities.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 ARTICLE 1. TRANSFERRING CERTAIN TOBACCO SETTLEMENT PROCEEDS INTO
1-13 DEDICATED GENERAL REVENUE ACCOUNTS

1-14 SECTION 1.01. Subchapter G, Chapter 403, Government Code,
1-15 is amended by adding Sections 403.109, 403.1091, 403.1092, and
1-16 403.1093 to read as follows:

1-17 Sec. 403.109. SECONDARY HEALTH ACCOUNT FOR HIGHER
1-18 EDUCATION. (a) In this section:

1-19 (1) "Earnings account" means the account described by
1-20 Subsection (d).

1-21 (2) "Secondary account" means the secondary health
1-22 account for higher education.

1-23 (b) The secondary account and the earnings account are
1-24 dedicated accounts in the general revenue fund.

1-25 (c) The secondary account consists of:

1-26 (1) money transferred to the account at the direction
1-27 of the legislature; and

1-28 (2) donations to the account.

1-29 (d) The earnings account consists of the earnings received
1-30 from investment of the assets in the secondary account. The
1-31 comptroller shall periodically transfer those earnings from the
1-32 secondary account to the earnings account.

1-33 (e) Money in the secondary account may be used only for a
1-34 purpose described by Subsection (d) or (f).

1-35 (f) The comptroller shall manage and invest assets in the
1-36 secondary account in authorized investments under Section 404.024.
1-37 Any expenses incurred by the comptroller in managing and investing
1-38 assets in the secondary account shall be paid from the account.

1-39 (g) Money in the earnings account may be appropriated only
1-40 for a purpose specified in and subject to any conditions and
1-41 reporting requirements prescribed by Subchapter A, Chapter 63,
1-42 Education Code, for the use of money from the permanent health fund
1-43 for higher education.

1-44 (h) An institution of higher education that has accepted a
1-45 gift under former Subchapter I, Chapter 51, Education Code, that
1-46 was conditioned on the institution's receipt of state matching
1-47 funds from the eminent scholars fund may use money the institution
1-48 receives under this section to provide the state matching funds and
1-49 treat the money as if it were a distribution to the institution from
1-50 the eminent scholars fund for purposes of the former Subchapter I.

1-51 (i) An institution of higher education that receives a
1-52 distribution from the earnings account shall include in the report
1-53 required by Section 63.004, Education Code:

1-54 (1) the total amount of money the institution received
1-55 from the account;

1-56 (2) the purpose for which the money was used; and

1-57 (3) any other information required by the Legislative
1-58 Budget Board.

1-59 (j) Section 404.071 does not apply to the secondary account
1-60 or the earnings account.

1-61 Sec. 403.1091. SECONDARY ACCOUNTS FOR EACH INSTITUTION OF
1-62 HIGHER EDUCATION. (a) In this section:

1-63 (1) "Earnings account" means an account described by

2-1 Subsection (e).

2-2 (2) "Secondary account" means the secondary accounts

2-3 described by Subsection (b).

2-4 (b) In addition to the permanent endowment funds created by

2-5 Section 63.101, Education Code, there is a secondary account for

2-6 the benefit of each institution of higher education or group of

2-7 related components of an institution of higher education listed in

2-8 Section 63.101(a), Education Code.

2-9 (c) Each secondary account and earnings account is a

2-10 dedicated account in the general revenue fund.

2-11 (d) A secondary account consists of:

2-12 (1) money transferred to the account at the direction

2-13 of the legislature; and

2-14 (2) donations to the account.

2-15 (e) An earnings account for an institution or group of

2-16 related components of an institution consists of the earnings

2-17 received from investment of the assets in the corresponding

2-18 secondary account for the institution or group of components. The

2-19 comptroller shall periodically transfer those earnings from the

2-20 secondary account to the earnings account.

2-21 (f) Money in a secondary account may be used only for a

2-22 purpose described by Subsection (e) or (g).

2-23 (g) The comptroller shall manage and invest assets in a

2-24 secondary account in authorized investments under Section 404.024.

2-25 Any expenses incurred by the comptroller in managing and investing

2-26 assets in a secondary account shall be paid from the account.

2-27 (h) Money in an earnings account may be appropriated only

2-28 for a purpose specified in and subject to any conditions and

2-29 reporting requirements prescribed by Subchapter B, Chapter 63,

2-30 Education Code, for the use of money from the corresponding

2-31 permanent endowment fund established by that subchapter.

2-32 (i) An institution of higher education that has accepted a

2-33 gift under former Subchapter I, Chapter 51, Education Code, that

2-34 was conditioned on the institution's receipt of state matching

2-35 funds from the eminent scholars fund may use money the institution

2-36 receives under this section to provide the state matching funds and

2-37 treat the money as if it were a distribution to the institution from

2-38 the eminent scholars fund for purposes of the former Subchapter I.

2-39 (j) An institution of higher education that receives an

2-40 appropriation from an earnings account shall include in the report

2-41 required by Section 63.103, Education Code:

2-42 (1) the total amount of money the institution received

2-43 from the account;

2-44 (2) the purpose for which the money was used; and

2-45 (3) any other information required by the Legislative

2-46 Budget Board.

2-47 (k) Section 404.071 does not apply to a secondary account or

2-48 an earnings account.

2-49 Sec. 403.1092. SECONDARY ACCOUNT FOR HIGHER EDUCATION

2-50 NURSING, ALLIED HEALTH, AND OTHER HEALTH-RELATED PROGRAMS. (a) In

2-51 this section:

2-52 (1) "Earnings account" means the account described by

2-53 Subsection (d).

2-54 (2) "Secondary account" means the secondary account

2-55 for higher education nursing, allied health, and other

2-56 health-related programs.

2-57 (b) The secondary account and the earnings account are

2-58 dedicated accounts in the general revenue fund.

2-59 (c) The secondary account consists of:

2-60 (1) money transferred to the account at the direction

2-61 of the legislature; and

2-62 (2) donations to the account.

2-63 (d) The earnings account consists of the earnings received

2-64 from investment of the assets in the secondary account. The

2-65 comptroller shall periodically transfer those earnings from the

2-66 secondary account to the earnings account.

2-67 (e) Money in the secondary account may be used only for a

2-68 purpose described by Subsection (d) or (f).

2-69 (f) The comptroller shall manage and invest assets in the

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

3-4 (g) Money in the earnings account may be appropriated only
 3-5 for a purpose specified in and subject to any conditions and
 3-6 reporting requirements prescribed by Subchapter C, Chapter 63,
 3-7 Education Code, for the use of money from the permanent fund for
 3-8 higher education nursing, allied health, and other health-related
 3-9 programs.

3-10 (h) The Texas Higher Education Coordinating Board shall
 3-11 include in the report required by Section 63.203, Education Code:

3-12 (1) the name of each institution that received a grant
 3-13 from the earnings account;

3-14 (2) the purpose for which the grant was used; and

3-15 (3) any additional information required by the
 3-16 Legislative Budget Board.

3-17 (i) Section 404.071 does not apply to the secondary account
 3-18 or the earnings account.

3-19 Sec. 403.1093. SECONDARY ACCOUNT FOR MINORITY HEALTH
 3-20 RESEARCH AND EDUCATION. (a) In this section:

3-21 (1) "Earnings account" means the account described by
 3-22 Subsection (d).

3-23 (2) "Secondary account" means the secondary account
 3-24 for minority health research and education.

3-25 (b) The secondary account and the earnings account are
 3-26 dedicated accounts in the general revenue fund.

3-27 (c) The secondary account consists of:

3-28 (1) money transferred to the account at the direction
 3-29 of the legislature; and

3-30 (2) donations to the account.

3-31 (d) The earnings account consists of the earnings received
 3-32 from investment of the assets in the secondary account. The
 3-33 comptroller shall periodically transfer those earnings from the
 3-34 secondary account to the earnings account.

3-35 (e) Money in the secondary account may be used only for a
 3-36 purpose described by Subsection (d) or (f).

3-37 (f) The comptroller shall manage and invest assets in the
 3-38 secondary account in authorized investments under Section 404.024.
 3-39 Any expenses incurred by the comptroller in managing and investing
 3-40 assets in the secondary account shall be paid from the account.

3-41 (g) Money in the earnings account may be appropriated only
 3-42 to the Texas Higher Education Coordinating Board for the purpose of
 3-43 providing grants as specified by Section 63.302(c), Education Code,
 3-44 for money from the permanent fund for minority health research and
 3-45 education.

3-46 (h) The Texas Higher Education Coordinating Board shall
 3-47 report regarding the money received under this section in the
 3-48 manner required by Section 63.302(f), Education Code, and shall
 3-49 include in the report:

3-50 (1) the total amount distributed under this section;

3-51 (2) the name of each institution that received a
 3-52 grant;

3-53 (3) the purpose of each grant, including a description
 3-54 of any partnership formed; and

3-55 (4) any additional information required by the
 3-56 Legislative Budget Board.

3-57 (i) Section 404.071 does not apply to the secondary account
 3-58 or the earnings account.

3-59 SECTION 1.02. Section 403.1069, Government Code, is amended
 3-60 to read as follows:

3-61 Sec. 403.1069. REPORTING REQUIREMENT. The Department of
 3-62 State Health Services [~~department~~] shall provide a report to the
 3-63 Legislative Budget Board on the permanent funds established under
 3-64 this subchapter from which the department may receive an
 3-65 appropriation of the available earnings [~~to the Legislative Budget~~
 3-66 Board] no later than November 1 of each year. The report shall
 3-67 include the total amount of money distributed from each fund, the
 3-68 purpose for which the money was used, and any additional
 3-69 information that may be requested by the Legislative Budget Board.

SECTION 1.03. (a) On November 1, 2006, all amounts held in the following funds shall be transferred, in the estimated amount listed, to the accounts established under Sections 403.109, 403.1091, 403.1092, and 403.1093, Government Code, as added by this 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 Southwestern Medical Center at Dallas	\$53,800,000
0814	Permanent Endowment Fund for Health Related Institutions - University of Texas Medical Branch at Galveston	\$26,900,000
0815	Permanent Endowment Fund for Health Related Institutions - University of Texas Health Science Center at Houston	\$26,900,000
0816	Permanent Endowment Fund for Health Related Institutions - University of Texas Health Science Center at Tyler	\$26,900,000
0817	Permanent Endowment Fund for Health Related Institutions - University of Texas at El Paso	\$26,900,000
0818	Permanent Endowment Fund for Health Related Institutions - Texas A&M University Health Science Center	\$25,600,000
0819	Permanent Endowment Fund for Health Related Institutions - University of North Texas Health Science Center at Fort Worth	\$25,400,000
0820	Permanent Endowment Fund for Health Related Institutions - Components of Texas Tech University Health Sciences Center in El Paso	\$26,500,000
0821	Permanent Endowment Fund for Health Related Institutions - Components of Texas Tech University Health Sciences Center other than El Paso	\$26,500,000
0822	Permanent Endowment Fund for Health Related Institutions - University of Texas Regional Academic Health Center	\$21,500,000
0823	Permanent Endowment Fund for Health Related Institutions - Baylor College of Medicine	\$24,400,000
0824	Permanent Fund for Higher Education Nursing, Allied Health and Other Health Related Programs	\$44,000,000
0825	Permanent Fund for Minority Health Research and Education	\$24,400,000
	Informational Total:	\$1,079,100,000

5-1 (b) Amounts transferred from the Permanent Health Fund for
5-2 Higher Education shall be deposited to the credit of the secondary
5-3 health account for higher education established under Section
5-4 403.109, Government Code, as added by this Act.

5-5 (c) Amounts transferred from the Permanent Endowment Fund
5-6 for Health Related Institutions - University of Texas Health
5-7 Science Center at San Antonio shall be deposited to the credit of
5-8 the secondary account established for the benefit of The University
5-9 of Texas Health Science Center at San Antonio under Section
5-10 403.1091, Government Code, as added by this Act.

5-11 (d) Amounts transferred from the Permanent Endowment Fund
5-12 for Health Related Institutions - University of Texas M.D. Anderson
5-13 Cancer Center shall be deposited to the credit of the secondary
5-14 account established for the benefit of The University of Texas M.D.
5-15 Anderson Cancer Center under Section 403.1091, Government Code, as
5-16 added by this Act.

5-17 (e) Amounts transferred from the Permanent Endowment Fund
5-18 for Health Related Institutions - University of Texas Southwestern
5-19 Medical Center at Dallas shall be deposited to the credit of the
5-20 secondary account established for the benefit of The University of
5-21 Texas Southwestern Medical Center at Dallas under Section 403.1091,
5-22 Government Code, as added by this Act.

5-23 (f) Amounts transferred from the Permanent Endowment Fund
5-24 for Health Related Institutions - University of Texas Medical
5-25 Branch at Galveston shall be deposited to the credit of the
5-26 secondary account established for the benefit of The University of
5-27 Texas Medical Branch at Galveston under Section 403.1091,
5-28 Government Code, as added by this Act.

5-29 (g) Amounts transferred from the Permanent Endowment Fund
5-30 for Health Related Institutions - University of Texas Health
5-31 Science Center at Houston shall be deposited to the credit of the
5-32 secondary account established for the benefit of The University of
5-33 Texas Health Science Center at Houston under Section 403.1091,
5-34 Government Code, as added by this Act.

5-35 (h) Amounts transferred from the Permanent Endowment Fund
5-36 for Health Related Institutions - University of Texas Health
5-37 Science Center at Tyler shall be deposited to the credit of the
5-38 secondary account established for the benefit of The University of
5-39 Texas Health Science Center at Tyler under Section 403.1091,
5-40 Government Code, as added by this Act.

5-41 (i) Amounts transferred from the Permanent Endowment Fund
5-42 for Health Related Institutions - University of Texas at El Paso
5-43 shall be deposited to the credit of the secondary account
5-44 established for the benefit of The University of Texas at El Paso
5-45 under Section 403.1091, Government Code, as added by this Act.

5-46 (j) Amounts transferred from the Permanent Endowment Fund
5-47 for Health Related Institutions - Texas A&M University Health
5-48 Science Center shall be deposited to the credit of the secondary
5-49 account established for the benefit of The Texas A&M University
5-50 Health Science Center under Section 403.1091, Government Code, as
5-51 added by this Act.

5-52 (k) Amounts transferred from the Permanent Endowment Fund
5-53 for Health Related Institutions - University of North Texas Health
5-54 Science Center at Fort Worth shall be deposited to the credit of the
5-55 secondary account established for the benefit of the University of
5-56 North Texas Health Science Center at Fort Worth under Section
5-57 403.1091, Government Code, as added by this Act.

5-58 (l) Amounts transferred from the Permanent Endowment Fund
5-59 for Health Related Institutions - Components of Texas Tech
5-60 University Health Sciences Center in El Paso shall be deposited to
5-61 the credit of the secondary account established for the benefit of
5-62 the components of Texas Tech University Health Sciences Center in
5-63 El Paso under Section 403.1091, Government Code, as added by this
5-64 Act.

5-65 (m) Amounts transferred from the Permanent Endowment Fund
5-66 for Health Related Institutions - Components of Texas Tech
5-67 University Health Sciences Center other than El Paso shall be
5-68 deposited to the credit of the secondary account established for
5-69 the benefit of the components of Texas Tech University Health

6-1 Sciences Center other than El Paso under Section 403.1091,
6-2 Government Code, as added by this Act.

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

6-9 (o) Amounts transferred from the Permanent Endowment Fund
6-10 for Health Related Institutions - Baylor College of Medicine shall
6-11 be deposited to the credit of the secondary account established for
6-12 the benefit of Baylor College of Medicine under Section 403.1091,
6-13 Government Code, as added by this Act.

6-14 (p) Amounts transferred from the Permanent Fund for Higher
6-15 Education Nursing, Allied Health, and Other Health Related Programs
6-16 shall be deposited to the credit of the secondary account for higher
6-17 education nursing, allied health, and other health-related
6-18 programs established under Section 403.1092, Government Code, as
6-19 added by this Act.

6-20 (q) Amounts transferred from the Permanent Fund for
6-21 Minority Health Research and Education shall be deposited to the
6-22 credit of the secondary account for minority health research and
6-23 education established under Section 403.1093, Government Code, as
6-24 added by this Act.

6-25 SECTION 1.04. (a) The transfers to accounts in the general
6-26 revenue fund made by this article may not result in a reduction in
6-27 the amount available for distribution from those accounts, and the
6-28 same amount that would have been distributed from the permanent
6-29 funds but for the transfers made by this article shall be
6-30 appropriated and distributed from the applicable accounts created
6-31 by this article. If the earnings from the secondary account that
6-32 are transferred to the earnings account are inadequate to make a
6-33 distribution of the same amount that would have been distributed
6-34 from the permanent funds, to the extent that the difference is
6-35 solely the result of an investment policy other than total return,
6-36 the comptroller of public accounts shall transfer the difference to
6-37 the applicable earnings account from the unobligated portion of
6-38 general revenue.

6-39 (b) The comptroller of public accounts shall determine the
6-40 amount of any loss to the Permanent Health Fund for Higher Education
6-41 and other funds administered by The University of Texas System as a
6-42 result of the transfer to general revenue under this article. On
6-43 August 31, 2007, the comptroller shall transfer from general
6-44 revenue to the applicable secondary account created by this Act, an
6-45 amount equal to the amount of the loss. In determining the amount
6-46 of the loss, the comptroller shall consider the difference in the
6-47 rate of return on investment of that secondary account and the rate
6-48 of return over the preceding three years on investment of the
6-49 Permanent University Fund.

6-50 (c) Notwithstanding any other provision of this article,
6-51 the total of distributions under Subsections (a) and (b) of this
6-52 section from the accounts created by this article, plus transfers
6-53 under Subsection (b) of this section, may not exceed \$65 million for
6-54 any fiscal year.

6-55 SECTION 1.05. This article takes effect September 1, 2005,
6-56 if this Act receives a vote of two-thirds of all the members elected
6-57 to each house, as provided by Section 39, Article III, Texas
6-58 Constitution. If this Act does not receive the vote necessary for
6-59 effect on that date, this article takes effect November 1, 2005.

6-60 ARTICLE 2. INVESTMENT OF STATE AND OTHER GOVERNMENTAL ENTITY FUNDS

6-61 SECTION 2.01. Section 404.024, Government Code, is amended
6-62 by amending Subsections (b) and (l) and adding Subsections (m) and
6-63 (n) to read as follows:

6-64 (b) State funds not deposited in state depositories shall be
6-65 invested by the comptroller in:

- 6-66 (1) direct security repurchase agreements;
- 6-67 (2) reverse security repurchase agreements;
- 6-68 (3) direct obligations of or obligations the principal
6-69 and interest of which are guaranteed by the United States;

- 7-1 (4) direct obligations of or obligations guaranteed by
7-2 agencies or instrumentalities of the United States government;
7-3 (5) bankers' acceptances that:
7-4 (A) are eligible for purchase by the Federal
7-5 Reserve System;
7-6 (B) do not exceed 270 days to maturity; and
7-7 (C) are issued by a bank whose other comparable
7-8 short-term obligations are rated in [that has received] the highest
7-9 short-term [credit] rating category, within which there may be
7-10 subcategories or gradations, including such subcategories or
7-11 gradations as "rating category" or "rated," indicating relative
7-12 standing by a nationally recognized statistical rating
7-13 organization, as defined by Rule 2a-7 (17 C.F.R. Section 270.2a-7),
7-14 promulgated under the Investment Company Act of 1940 (15 U.S.C.
7-15 Section 80a-1 et seq.) by the Securities and Exchange Commission
7-16 [investment rating firm];
7-17 (6) commercial paper that:
7-18 (A) does not exceed 270 days to maturity; and
7-19 (B) except as provided by Subsection (i), is
7-20 issued by an entity whose other comparable short-term obligations
7-21 are rated in [has received] the highest short-term [credit] rating
7-22 category by a nationally recognized statistical rating
7-23 organization [investment rating firm];
7-24 (7) contracts written by the treasury in which the
7-25 treasury grants the purchaser the right to purchase securities in
7-26 the treasury's marketable securities portfolio at a specified price
7-27 over a specified period and for which the treasury is paid a fee and
7-28 specifically prohibits naked-option or uncovered option trading;
7-29 (8) direct obligations of or obligations guaranteed by
7-30 the Inter-American Development Bank, the International Bank for
7-31 Reconstruction and Development (the World Bank), the African
7-32 Development Bank, the Asian Development Bank, and the International
7-33 Finance Corporation that have received the highest long-term
7-34 [credit] rating categories for debt obligations by a nationally
7-35 recognized statistical rating organization [investment rating
7-36 firm];
7-37 (9) bonds issued, assumed, or guaranteed by the State
7-38 of Israel;
7-39 (10) obligations of a state or an agency, county,
7-40 city, or other political subdivision of a state;
7-41 (11) mutual funds secured by obligations that are
7-42 described by Subdivisions (1) through (6), including pooled funds:
7-43 (A) established by the Texas Treasury
7-44 Safekeeping Trust Company;
7-45 (B) operated like a mutual fund; and
7-46 (C) with portfolios consisting only of
7-47 dollar-denominated securities; ~~and~~
7-48 (12) foreign currency for the sole purpose of
7-49 facilitating investment by state agencies that have the authority
7-50 to invest in foreign securities;
7-51 (13) asset-backed securities, as defined by the
7-52 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section
7-53 270.2a-7), that are rated at least A or its equivalent by a
7-54 nationally recognized statistical rating organization and that
7-55 have a weighted-average maturity of five years or less; and
7-56 (14) corporate debt obligations that are rated at
7-57 least A or its equivalent by a nationally recognized statistical
7-58 rating organization and mature in five years or less from the date
7-59 on which the obligations were "acquired," as defined by the
7-60 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section
7-61 270.2a-7).
7-62 (1) The comptroller may lend securities under procedures
7-63 established by the comptroller. The procedures must be consistent
7-64 with industry practice and must include a requirement to fully
7-65 secure the loan with cash, obligations described by Subsections
7-66 (b)(1)-(6), or a combination of cash and the described obligations.
7-67 Notwithstanding any provision to the contrary, cash may be
7-68 reinvested in the items permitted under Subsection (b) or mutual
7-69 funds secured by the items permitted under Subsection (b) [In this

8-1 subsection, "obligation" means an item described by Subsections
8-2 (b)(1)-(6)].

8-3 (m) In entering into a direct security repurchase agreement
8-4 or a reverse security repurchase agreement, the comptroller may
8-5 agree to accept cash on an overnight basis in lieu of the
8-6 securities, obligations, or participation certificates identified
8-7 in Section 404.001(3). Cash held by the state under this subsection
8-8 is not a deposit of state or public funds for the purposes of any
8-9 law, including this subchapter or Subchapter D, that requires a
8-10 deposit of state or public funds to be collateralized by eligible
8-11 securities.

8-12 (n) Notwithstanding any other law to the contrary, any
8-13 government investment pool created to function as a money market
8-14 mutual fund and managed by the comptroller or the Texas Treasury
8-15 Safekeeping Trust Company may invest the funds it receives in
8-16 investments that are "eligible securities," as defined by the
8-17 Securities and Exchange Commission in Rule 2a-7 (17 C.F.R. Section
8-18 270.2a-7), if it maintains a dollar-weighted average portfolio
8-19 maturity of 90 days or less, with the maturity of each portfolio
8-20 security calculated in accordance with Rule 2a-7 (17 C.F.R. Section
8-21 270.2a-7), and meets the diversification requirements of Rule 2a-7.

8-22 SECTION 2.02. Section 2256.011, Government Code, is amended
8-23 by amending Subsection (a) and adding Subsection (e) to read as
8-24 follows:

8-25 (a) A fully collateralized repurchase agreement is an
8-26 authorized investment under this subchapter if the repurchase
8-27 agreement:

- 8-28 (1) has a defined termination date;
8-29 (2) except as provided by Subsection (e), is secured
8-30 by obligations described by Section 2256.009(a)(1); [and]
8-31 (3) requires the securities being purchased by the
8-32 entity to be pledged to the entity, held in the entity's name, and
8-33 deposited at the time the investment is made with the entity or with
8-34 a third party selected and approved by the entity; and
8-35 (4) is placed through a primary government securities
8-36 dealer, as defined by the Federal Reserve, or a financial
8-37 institution doing business in this state.

8-38 (e) For purposes of this section, an entity may agree to
8-39 secure the agreement by accepting cash on an overnight basis in lieu
8-40 of the obligations identified in Section 2256.009(a)(1). Cash held
8-41 by an entity under this subsection is not a deposit of public funds
8-42 for purposes of any statute, including Chapter 2257, that requires
8-43 a deposit of public funds to be collateralized by eligible
8-44 securities.

8-45 SECTION 2.03. Section 2256.016, Government Code, is amended
8-46 by amending Subsections (a) and (f) and adding Subsection (i) to
8-47 read as follows:

8-48 (a) An entity may invest its funds and funds under its
8-49 control through an eligible investment pool if the governing body
8-50 of the entity by rule, order, ordinance, or resolution, as
8-51 appropriate, authorizes investment in the particular pool. An
8-52 investment pool created to function as a money market mutual fund
8-53 may invest the funds it receives from entities in investments that
8-54 are "eligible securities," as defined by the Securities and
8-55 Exchange Commission in Rule 2a-7 (17 C.F.R. Section 270.2a-7),
8-56 promulgated under the Investment Company Act of 1940 (15 U.S.C.
8-57 Section 80a-1 et seq.). Any other [An] investment pool shall invest
8-58 the funds it receives from entities in authorized investments
8-59 permitted by this subchapter.

8-60 (f) To be eligible to receive funds from and invest funds on
8-61 behalf of an entity under this chapter, a public funds investment
8-62 pool created to function as a money market mutual fund must:

- 8-63 (1) mark its portfolio to market daily, and, to the
8-64 extent reasonably possible, stabilize at a \$1 net asset value. If
8-65 the ratio of the market value of the portfolio divided by the book
8-66 value of the portfolio is less than 0.995 or greater than 1.005,
8-67 portfolio holdings shall be sold as necessary to maintain the ratio
8-68 between 0.995 and 1.005;

- 8-69 (2) maintain a dollar-weighted average portfolio

9-1 maturity of 90 days or less, with the maturity of each portfolio
 9-2 security calculated in accordance with Rule 2a-7 (17 C.F.R. Section
 9-3 270.2a-7); and

9-4 (3) meet the diversification requirements of Rule 2a-7
 9-5 (17 C.F.R. Section 270.2a-7) promulgated by the Securities and
 9-6 Exchange Commission.

9-7 (i) In this section, "stated maturity date" means the
 9-8 average life of a security with periodic principal payments, the
 9-9 number of days until the next interest rate reset date for variable
 9-10 rate securities, or the final maturity date for all other
 9-11 securities.

9-12 SECTION 2.04. This article takes effect immediately if this
 9-13 Act receives a vote of two-thirds of all the members elected to each
 9-14 house, as provided by Section 39, Article III, Texas Constitution.
 9-15 If this Act does not receive the vote necessary for immediate
 9-16 effect, this article takes effect November 1, 2005.

9-17 ARTICLE 3. COLLECTION OF DELINQUENT OBLIGATIONS TO STATE

9-18 SECTION 3.01. Subsection (c), Section 403.019, Government
 9-19 Code, is amended to read as follows:

9-20 (c) A contract under this section is not valid unless
 9-21 approved by the attorney general. The attorney general shall
 9-22 approve a contract if the attorney general determines that the
 9-23 contract complies with the requirements of this section, that the
 9-24 contract does not conflict with any contract formed under Section
 9-25 2107.003(b), and that the contract ~~and~~ is in the best interest of
 9-26 the state. No judicial action by any person on behalf of the state
 9-27 under a contract authorized and approved by this section may be
 9-28 brought unless approved by the attorney general.

9-29 SECTION 3.02. Section 2107.003, Government Code, is amended
 9-30 to read as follows:

9-31 Sec. 2107.003. COLLECTION BY ATTORNEY GENERAL,
 9-32 COMPTROLLER, OR OUTSIDE AGENT. (a) Except as provided by Section
 9-33 2107.004 ~~[Subsection (c)]~~, a state agency shall report an
 9-34 uncollected and delinquent obligation to ~~request~~ the attorney
 9-35 general for collection. The state agency must report the
 9-36 obligation on or before the 120th day after the date the obligation
 9-37 becomes past due or delinquent ~~[to collect an obligation before the~~
 9-38 ~~agency may employ, retain, or contract with a person other than a~~
 9-39 ~~full-time employee of the state agency to collect the obligation]~~.

9-40 (b) The attorney general:

9-41 (1) shall provide legal services for collection of the
 9-42 obligation;

9-43 (2) may authorize the requesting state agency to
 9-44 employ, retain, or contract, subject to approval by the attorney
 9-45 general, with one or more persons to collect the obligation; or

9-46 (3) if the attorney general determines it to be
 9-47 economical and in the best interest of the state, may contract with
 9-48 one or more persons ~~[a person other than a full-time employee of the~~
 9-49 ~~agency]~~ to collect the ~~[an]~~ obligation ~~[that the attorney general~~
 9-50 ~~cannot collect]~~.

9-51 (c) The comptroller may employ, retain, or contract with a
 9-52 person other than a full-time state employee to collect delinquent
 9-53 obligations that are owed the comptroller in the comptroller's
 9-54 official capacity, are not collected through normal collection
 9-55 procedures, and do not meet the guidelines adopted for collection
 9-56 by the attorney general. A proposed contract under this subsection
 9-57 shall be reviewed by the attorney general and may include a
 9-58 collection fee computed on the amounts collected under the
 9-59 contract.

9-60 (d) The agency contracting under Subsection (b) is entitled
 9-61 to recover from the obligor, in addition to the amount of the
 9-62 obligation, the costs incurred in undertaking the collection,
 9-63 including the costs of a contract under this section. The obligor
 9-64 is liable for costs of recovery under this section in an amount up
 9-65 to 30 percent of the sum of the amount of the obligation and any
 9-66 penalty and interest due on the obligation.

9-67 (e) A contract formed under Subsection (b) must provide for
 9-68 the compensation due to the contractor. The amount of the
 9-69 compensation shall be up to 30 percent of the sum of the collected

10-1 amount of:

- 10-2 (1) the obligation;
 10-3 (2) any penalty; and
 10-4 (3) any interest.

10-5 (f) A contract formed under Subsection (b) or (c) may permit
 10-6 or require the contractor to pursue a judicial action to collect the
 10-7 amount of the obligation in a proper court in or outside of this
 10-8 state.

10-9 (g) In a suit in a Texas state court brought by a contractor
 10-10 to collect an obligation under this section, the state is not:

- 10-11 (1) required to post security for costs;
 10-12 (2) liable for costs; and
 10-13 (3) liable for fees for:
 10-14 (A) service of process;
 10-15 (B) attorneys ad litem;
 10-16 (C) arbitration; or
 10-17 (D) mediation.

10-18 (h) An amount collected under a contract formed under
 10-19 Subsection (b), including the costs of recovery and court costs or
 10-20 other costs, shall be deposited in the fund or account to which the
 10-21 obligation was required to be deposited. The contracting agency
 10-22 shall pay the compensation due under the contract to the contractor
 10-23 and shall pay to the applicable court any court costs collected.

10-24 (i) The contracting agency shall require a person
 10-25 contracting under Subsection (b) to post a bond or other security in
 10-26 an amount the contracting agency determines is sufficient to cover
 10-27 all revenue or other property of the state that is expected to come
 10-28 into the possession or control of the contractor in the course of
 10-29 providing contract services.

10-30 (j) A person who contracts under Subsection (b) is an agent
 10-31 of this state for purposes of determining priority of a claim to be
 10-32 collected under the contract with respect to claims of other
 10-33 creditors. The contractor does not exercise any sovereign power of
 10-34 the state.

10-35 (k) The contracting state agency may provide a person
 10-36 contracting under Subsection (b) any necessary information,
 10-37 including confidential information, that the agency is not
 10-38 prohibited from sharing under an agreement with another state or
 10-39 with the United States and that is:

- 10-40 (1) in the custody of the agency holding the claim; and
 10-41 (2) necessary to the collection of the obligation.

10-42 (l) A person acting under a contract formed under Subsection
 10-43 (b) or (c) and each employee or agent of that person is subject to
 10-44 all prohibitions against the disclosure of confidential
 10-45 information obtained from the contracting agency, the reporting
 10-46 state agency, or their employees. A contractor or the contractor's
 10-47 employee or agent who discloses confidential information in
 10-48 violation of the prohibition is subject to the same penalties for
 10-49 that disclosure as would apply to the contracting agency or its
 10-50 employees.

10-51 (m) The contracting agency shall require a person who
 10-52 contracts under Subsection (b) to obtain and maintain insurance
 10-53 adequate to provide reasonable coverage for damages negligently,
 10-54 recklessly, or intentionally caused by the contractor or the
 10-55 contractor's employee or agent in the course of collecting an
 10-56 obligation under the contract and to protect this state from
 10-57 liability for those damages. The state is not liable for and may
 10-58 not indemnify a person acting under a contract under Subsection (b)
 10-59 for damages negligently, recklessly, or intentionally caused by the
 10-60 contractor or the contractor's employee or agent in the course of
 10-61 collecting an obligation under the contract.

10-62 (n) In addition to grounds for termination provided by the
 10-63 contract terms, the attorney general or the contracting agency, as
 10-64 applicable, may terminate a contract formed under Subsection (b) if
 10-65 the contractor or the contractor's employee or agent:

- 10-66 (1) violates the federal Fair Debt Collection
 10-67 Practices Act (15 U.S.C. Section 1692 et seq.);
 10-68 (2) discloses confidential information to a person not
 10-69 authorized to receive the information; or

11-1 (3) performs any act that results in a final judgment
 11-2 for damages against this state.

11-3 SECTION 3.03. Subsection (c), Section 2254.102, Government
 11-4 Code, is amended to read as follows:

11-5 (c) This subchapter does not apply to a contract:

11-6 (1) with an agency to collect an obligation under
 11-7 Section 2107.003(b); or

11-8 (2) for legal services entered into by an institution
 11-9 of higher education under Section 153.006, Education Code.

11-10 ARTICLE 4. STATE AND LOCAL SALES AND USE TAXES IN GENERAL

11-11 SECTION 4.01. Subsections (a) and (c), Section 151.011, Tax
 11-12 Code, are amended to read as follows:

11-13 (a) Except as provided by Subsection (c) [~~of this section~~],
 11-14 "use" means the exercise of a right or power incidental to the
 11-15 ownership of tangible personal property over tangible personal
 11-16 property, including tangible personal property other than printing
 11-17 [~~printed~~] material that has been processed, fabricated, or
 11-18 manufactured into other property or attached to or incorporated
 11-19 into other property transported into this state, and, except as
 11-20 provided by Section 151.056(b) [~~of this code~~], includes the
 11-21 incorporation of tangible personal property into real estate or
 11-22 into improvements of real estate whether or not the real estate is
 11-23 subsequently sold.

11-24 (c) "Use" does not include the sale of tangible personal
 11-25 property or a taxable service in the regular course of business, the
 11-26 transfer of a taxable service as an integral part of the transfer of
 11-27 tangible personal property in the regular course of business, or
 11-28 the transfer of tangible personal property as an integral part of
 11-29 the transfer of a taxable service in the regular course of business.
 11-30 "Use" also does not include the sale outside this state of raw
 11-31 materials that are processed, fabricated, or manufactured into
 11-32 printed materials outside this state if the printed materials are
 11-33 subsequently brought or delivered into this state.

11-34 SECTION 4.02. Section 321.203, Tax Code, is amended by
 11-35 amending Subsections (b) through (e) and adding Subsection (n) to
 11-36 read as follows:

11-37 (b) If a retailer has only one place of business in this
 11-38 state, all of the retailer's retail sales of taxable items
 11-39 [~~tangible personal property~~] are consummated at that place of
 11-40 business except as provided by Subsection (e).

11-41 (c) If a retailer has more than one place of business in this
 11-42 state, a sale of a taxable item [~~tangible personal property~~] by the
 11-43 retailer is consummated at the retailer's place of business:

11-44 (1) from which the retailer ships or delivers the item
 11-45 [~~property~~], if the retailer ships or delivers the item [~~property~~]
 11-46 to a point designated by the purchaser or lessee; or

11-47 (2) where the purchaser or lessee takes possession of
 11-48 and removes the item [~~property~~], if the purchaser or lessee takes
 11-49 possession of and removes the item [~~property~~] from a place of
 11-50 business of the retailer.

11-51 (d) If neither the possession of a taxable item [~~tangible~~
 11-52 ~~personal property~~] is taken at nor shipment or delivery of the item
 11-53 [~~property~~] is made from the retailer's place of business in this
 11-54 state, the sale is consummated at:

11-55 (1) the retailer's place of business in this state
 11-56 where the order is received; or

11-57 (2) if the order is not received at a place of business
 11-58 of the retailer, the place of business from which the retailer's
 11-59 salesman who took the order operates.

11-60 (e) A sale of a taxable item [~~tangible personal property~~] is
 11-61 consummated at the location in this state to which the item
 11-62 [~~property~~] is shipped or delivered or at which possession is taken
 11-63 by the customer if transfer of possession of the item [~~property~~]
 11-64 occurs at, or shipment or delivery of the item [~~property~~]
 11-65 originates from, a location in this state other than a place of
 11-66 business of the retailer and if:

11-67 (1) the retailer is an itinerant vendor who has no
 11-68 place of business;

11-69 (2) the retailer's place of business where the

purchase order is initially received or from which the retailer's salesman who took the order operates is outside this state; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Subsection (d), Section 151.103;

13-1 (2) Subsection (c), Section 151.202;

13-2 (3) Subsection (1), Section 321.203, Tax Code, as
13-3 added by Chapter 1310, Acts of the 78th Legislature, Regular
13-4 Session, 2003; and

13-5 (4) Subsection (1), Section 323.203.

13-6 SECTION 4.05. This article takes effect October 1, 2005, if
13-7 this Act receives a vote of two-thirds of all the members elected to
13-8 each house, as provided by Section 39, Article III, Texas
13-9 Constitution. If this Act does not receive the vote necessary for
13-10 effect on that date, this article takes effect November 1, 2005.

13-11 ARTICLE 5. EFFECTIVE DATE

13-12 SECTION 5.01. Except as otherwise provided by this Act,
13-13 this Act takes effect immediately if it receives a vote of
13-14 two-thirds of all the members elected to each house, as provided by
13-15 Section 39, Article III, Texas Constitution. If this Act does not
13-16 receive the vote necessary for immediate effect, except as
13-17 otherwise provided by this Act, this Act takes effect on the 91st
13-18 day after the last day of the legislative session.

13-19 * * * * *