

BILL ANALYSIS

Senate Research Center

H.B. 2233
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Finance
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

As the sole administrator of the treasury and the state's many financial resources, the office of the comptroller of public accounts (comptroller) relies on statutory authority and rulemaking power to manage those resources. As the dynamics of financial markets and our economic systems continue to evolve, the tools available to the comptroller often require adjustment to maximize the effectiveness of the agency's resource control. Being the sole administrator of the state's financial resources also places the comptroller in the unique position of working in concert with other state governmental entities that rely on the comptroller's expertise to adequately provide the necessary financial support.

H.B. 2233 makes adjustments in various portions of the Texas statutes to facilitate the administration of the state's financial resources.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 12 (Section 659.007, Government Code) and SECTION 39 (Section 74.601, Property Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 103.0031(e), Code of Criminal Procedure, to require that a private attorney or vendor receive 30 percent of the total amount collected, not to exceed the amount added as the collection fee, and the remainder of the amount collected to be allocated in accordance with this chapter and Chapter 133, Local Government Code, if a county or municipality has entered into a contract under Subsection (a) and a person pays an amount that is less than the aggregate total to be collected under Subsections (a) and (b). Deletes existing text requiring the allocation to the comptroller of public accounts (comptroller) and the county or municipality to be reduced proportionately.

SECTION 2. Amends Section 43.002(a), Education Code, to require the Texas Education Agency (TEA), rather than the comptroller, on the first working day of each month in a state fiscal year, to transfer from the permanent school fund to the available school fund a certain amount.

SECTION 3. Amends Section 63.202, Education Code, by amending Subsection (b) and adding Subsection (h), as follows:

(b) Provides that Subsection (h) is an exception to this subsection.

(h) Requires expenses of managing and administering the assets of the permanent health fund for higher education (fund) to be paid from the fund.

SECTION 4. Amends Section 63.302, Education Code, by amending Subsection (b) and adding Subsection (h), as follows:

(b) Makes a conforming change.

(h) Makes a conforming change.

SECTION 5. Amends Sections 25.0015(b) and (c), Government Code, as follows:

(b) Requires amounts paid under this subsection to be paid in equal quarterly, rather than monthly, installments.

(c) Makes a conforming change.

SECTION 6. Amends Section 25.00211(b), Government Code, to make a conforming change.

SECTION 7. Amends Section 26.007(b), Government Code, to make a conforming change.

SECTION 8. Amends Section 74.061, Government Code, by amending Subsection (d) and adding Subsection (d-1), as follows:

(d) Deletes existing text requiring a retired judge or justice, for services actually performed while assigned under this chapter, to receive from county funds and money appropriated by the legislature the same amount of salary, compensation, and expenses that the regular judge is entitled to receive from the county and from the state for those services.

(d-1) Requires the amount certified under this section by the presiding judge as the state's share to be paid from an item in the Judiciary Section, Comptroller's Department of the General Appropriations Act, rather than the Judicial Section--Comptroller's Department of the General Appropriations Act.

SECTION 9. Amends Sections 403.071(g) and (h), Government Code, as follows:

(g) Deletes existing text authorizing a state agency to contract in writing for the comptroller to audit claims presented by the state agency after the comptroller prepares warrants or uses the electronic funds transfer system to pay the claims. Makes conforming changes.

(h) Makes conforming changes.

SECTION 10. Amends Section 404.024, Government Code, by adding Subsection (m), to authorize the comptroller, in entering into a direct security repurchase agreement or a reverse security repurchase agreement, to agree to accept cash on an overnight basis in lieu of the securities, obligations, or participation certificates identified in Section 404.001(3). Provides that cash held by the state under this subsection is not a deposit of state or public funds for the purposes of any law, including this subchapter or Subchapter D, that requires a deposit of state or public funds to be collateralized by eligible securities.

SECTION 11. Amends Section 404.124(c), Government Code, to require the underwriter of any notes issued under this section, if the cash management committee determines that competitive bids are appropriate, to be selected by the method of sale that is most advantageous to the state under the circumstances, including a sale using an Internet auction site, rather than by the solicitation of sealed bids.

SECTION 12. Amends Subchapter A, Chapter 659, Government Code, by adding Section 659.007, as follows:

Sec. 659.007. EARNINGS STATEMENT. Defines "state agency." Authorizes a state agency to provide a written or electronic earnings statement to an officer or employee of the agency. Authorizes the comptroller to adopt rules and establish procedures concerning the earnings statements provided by state agencies that under Subchapter C, Chapter 2101, are required to use the uniform statewide payroll system.

SECTION 13. Reenacts and amends Sections 659.004(a) and (d), Government Code, as amended by Sections 32 and 104, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(a) Makes no further changes to this subsection.

(d) Makes no further changes to this subsection.

SECTION 14. Amends Section 659.044(e), Government Code, to amend the existing amounts of an employee's longevity pay under this subsection.

SECTION 15. Amends Section 659.225(a)(3), Government Code, to redefine "merit salary increase."

SECTION 16. Amends Sections 659.256(c) and (f), Government Code, as follows:

(c) Requires that, when an employee is promoted within, rather than to a position in a higher salary group in, Salary Schedule A of the General Appropriations Act or from Salary Schedule B or C of the General Appropriations Act to Salary Schedule A of the General Appropriations Act, the employee receive a salary rate that is at least 3.4 percent, rather than one step, higher than the employee's salary rate before promotion. Deletes existing text relating to the step rates to be used when an employee is promoted from a position in Salary Schedule B or C of the General Appropriations Act or a position in Salary Schedule A of the General Appropriations Act.

(f) Prohibits an employee from receiving more than the maximum rate of the employee's new salary group, even if the increase is less than one step in a salary group that is divided into steps, rather than Salary Schedule A of the General Appropriations Act, or 3.4 percent in a salary group that is not divided into steps, rather than Salary Schedule B of the General Appropriations Act.

SECTION 17. Amends Section 659.257(c), Government Code, to make conforming changes.

SECTION 18. Amends Section 660.024(a), Government Code, to authorize the advance written approval required under this section to be communicated electronically. Deletes existing text requiring a copy of the written approval to be submitted with the travel voucher to the comptroller in accordance with Section 660.027.

SECTION 19. Amends Sections 660.027(b), (d), and (e), Government Code, as follows:

(b) Amends the requirements for validity of a voucher submitted under Subsection (a).

(d) Amends the specific information by which the voucher is required to be supported.

(e) Authorizes the comptroller to require a state agency to provide to the comptroller the description, information, and documentation required under Subsection (d) in a specific manner.

SECTION 20. Amends Section 1431.001(2), Government Code, to redefine "eligible countywide district."

SECTION 21. Amends Section 2256.011, Government Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Provides that Subsection (e) is an exception to this subsection.

(e) Authorizes an entity to agree to secure the agreement by accepting cash on an overnight basis in lieu of the obligations identified in Section 2256.009(a)(1). Provides that cash held by an entity under this subsection is not a deposit of public funds for purposes of any statute, including Chapter 2257, that requires a deposit of public funds to be collateralized by eligible securities.

SECTION 22. Amends Section 2303.003(8), Government Code, to redefine "qualified hotel project."

SECTION 23. Amends Section 2303.401, Government Code, to define "certified job."

SECTION 24. Amends the heading to Section 2303.504, Government Code, as effective September 1, 2005, to read as follows:

Sec. 2303.504. STATE TAX REFUNDS AND CREDITS; REPORT.

SECTION 25. Amends Sections 2304.504(a) and (c), Government Code, as effective September 1, 2005, as follows:

(a) Provides that, subject to Section 2303.516, an enterprise project is entitled to a franchise tax credit under Subchapter P or Q, Chapter 171, Tax Code.

(c) Makes a conforming change.

SECTION 26. Amends Section 2303.5055(b), Government Code, to authorize a municipality having a population of more than 500,000 and that borders the United Mexican States to agree to guarantee from hotel occupancy taxes the bonds or other obligations of a municipally sponsored local government corporation created under the Texas Transportation Corporation Act, Chapter 431, Transportation Code, rather than Article 15281, V.T.C.S.

SECTION 27. Amends Sections 2303.516(b) and (d), Government Code, as follows:

(b) Authorizes the comptroller, rather than the Texas Economic Development Bank (bank), to determine that the business or project is not entitled to a refund or credit of state taxes under Section 2303.504(a), rather than 2303.504, upon making certain findings. Makes conforming changes.

(d) Amends the specific certifications and verifications required for a qualified business to obtain a state benefit earned through a specific enterprise project designation.

SECTION 28. Amends Section 2303.517, Government Code, to make a conforming change.

SECTION 29. Amends Section 302.001, Local Government Code, by amending Subdivision (1) and adding Subdivision (3), to redefine "energy savings performance contract" and to define "usage measure."

SECTION 30. Amends Section 302.002(b), Local Government Code, to require each energy or water usage measure to comply with current local, state, and federal construction, plumbing, and environmental codes and regulations.

SECTION 31. Amends Section 302.003, Local Government Code, to authorize the governing body of the local government to also require a separate bond to cover the value of the guaranteed increased revenues from the contract and to make a conforming change.

SECTION 32. Amends Section 302.004, Local Government Code, to make conforming changes.

SECTION 33. Amends Section 302.005(b), Local Government Code, to make conforming changes.

SECTION 34. Amends Section 430.003, Local Government Code, as follows:

Sec. 430.003. New heading: EXEMPTIONS OF CERTAIN PROPERTY FROM INFRASTRUCTURE FEES. Prohibits any county, municipality, or utility district from collecting from a state agency or public or private institution of higher education, including a public junior college as defined by Section 61.003, Education Code, any fee charged for the development of maintenance programs of facilities for the control of excess water or storm water. Provides that this section does not apply to a municipality with a population of less than 25,000.

SECTION 35. Amends Section 433(a), Probate Code, to require any heir, devisee, legatee, or their assigns of an estate whose funds were paid to the state treasurer under this chapter before September 1, 1991, to initiate suit under this section not later than September 1, 2009.

SECTION 36. Amends Section 74.101(a), Property Code, to authorize the comptroller to require the report to be in a particular format, including an electronic format that can be read by a computer if the holder is reporting 10 or more items of property.

SECTION 37. Amends Section 74.401, Property Code, by adding Subsection (f), to authorize the comptroller to sell as a gift, novelty, or collectible item, but not as an investment, a stock, bond, certificate, or similar instrument that is nonredeemable and nontransferable because it has been canceled or issued by a company that has been dissolved or terminated and the existence of which has not been revised or reinstated. Authorizes the comptroller to sell an instrument under this subsection at a public sale or in another manner determined to be appropriate by the comptroller, including an online sale. Requires the comptroller, before selling an instrument under this subsection, to stamp the face of the instrument with a prominent mark indicating that the instrument has been canceled. Requires the comptroller, at the time of the sale and of the delivery of the instrument to the purchaser, to provide written notice to the purchaser as required by this subsection. Sets forth specific requirements for the information to be included on the notice and for the printing of the notice.

SECTION 38. Amends Section 74.507(b), Property Code, to make a nonsubstantive change.

SECTION 39. Amends Section 74.601, Property Code, by adding Subsection (g), to authorize the comptroller, if an owner does not assert a claim for unclaimed funds reported to the comptroller and the owner is reported to be the state or a state agency, to deposit the unclaimed funds to the credit of the general revenue fund. Authorizes the comptroller to establish procedures and adopt rules as necessary to implement this section.

SECTION 40. Amends Section 151.304(b), Tax Code, to redefine "occasional sale."

SECTION 41. Amends Sections 151.429(a) and (b), Tax Code, as follows:

(a) Provides that an enterprise project is eligible for a refund in the amount provided by this section of the taxes imposed by this chapter on purchases of taxable items, rather than on specific items or purchases.

(b) Provides that a capital investment at the qualified business site of \$40,000 to \$399,999, will result in a refund of taxes under this section of up to \$2,500 per job with a maximum refund of \$25,000 for the creation or retention of 10 certified jobs. Makes conforming changes.

SECTION 42. Amends Sections 151.429(c) and (g), Tax Code, as follows:

(c) Prohibits the total amount that may be refunded to an enterprise project under this section from exceeding the amount determined by multiplying \$250,000 by the number of state fiscal years during which the enterprise project created or retained one or more certified jobs for qualified employees.

(g) Provides that the refund provided by this section is conditioned on the enterprise project maintaining for a three-year period at least the same number of certified jobs as existed on the date the comptroller initially certified the hiring commitments for the project under Section 2303.516(d), Government Code, rather than maintaining at least the same level of employment of qualified employees as existed at the time it qualified for a refund for a period of three years from that date. Makes conforming changes.

SECTION 43. Amends Section 151.429(e), Tax Code, by adding Subdivision (4-a), to define "certified job."

SECTION 44. (a) Amends Subchapter L, Chapter 151, Tax Code, by adding Section 151.715, as follows:

Sec. 151.715. COLLECTION OF AMOUNTS IN EXCESS OF TAX IMPOSED; CIVIL PENALTY. Prohibits a person from collecting as a tax imposed by this chapter any amount that exceeds the tax actually imposed by this chapter on the sale of a taxable item or any amount on the sale of an item that is exempt from the tax imposed by this chapter. Requires the comptroller to send a written notice to a person who violates this section that directs the person to cease collecting amounts described by this section. Requires the person, if the person continues collection an amount described by this section after receiving two written notices from the comptroller, to pay a penalty of \$1,000 for each sale on which the person collects an amount described by that subsection. Provides that the penalty provided by this section is assessed without regard to whether the person against whom the penalty is assessed remits to the comptroller the excess amounts collected.

(b) Makes application of Section 151.715, Tax Code, as added by this section, prospective.

SECTION 45. (a) Amends Subchapter E, Chapter 152, Tax Code, by adding Section 152.094, as follows:

Sec. 152.094. MOTOR VEHICLES USED IN TELEVISION, MOTION PICTURE, VIDEO, OR AUDIO PRODUCTIONS. Defines "nonbroadcast, industrial, or educational recorded material." Provides that the taxes imposed by this chapter do not apply to the purchase, rental, or use of a motor vehicle used exclusively in connection with the production for consideration of a television film, commercial, or program, nonbroadcast, industrial, or educational recorded material, a motion picture, or a video or audio recording, a copy of which is sold or offered for ultimate sale, licensed, distributed, broadcast, or otherwise commercially exhibited. Provides that the tax that would have been remitted on gross rental receipts without the exemption provided by this section is considered to have been remitted for the purpose of computing the minimum gross rental receipts tax imposed by Section 152.026.

(b) Amends Subchapter C, Chapter 156, Tax Code, by adding Section 156.105, as follows:

Sec. 156.105. EXCEPTION--PERSONS INVOLVED IN TELEVISION, MOTION PICTURE, VIDEO, OR AUDIO PRODUCTIONS. Defines "nonbroadcast, industrial, or educational recorded material." Provides that, subject to this section, this chapter does not impose a tax on certain persons. Requires a person otherwise excepted under this section to pay the tax imposed by this chapter and entitles that person to a refund of the amount of the tax paid in accordance with Section 156.154.

(c) Amends Section 156.154(a), Tax Code, to require a person entitled under Section 156.105 to a refund of taxes paid under this chapter to file a refund claim with the comptroller.

(d) Makes application of the change in law made by this section prospective.

(e) Provides that this section takes effect July 1, 2005, if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. Provides that, if this Act does not receive the vote necessary for effect on that date, this section takes effect October 1, 2005.

SECTION 46. Amends Sections 162.001(20) and (43), Tax Code, to redefine "distributor" and "motor fuel transporter."

SECTION 47. Amends Section 162.004(b), Tax Code, to delete existing text requiring that the shipping document issued by the terminal operator or operator of a bulk plant contain the license number of the purchaser.

SECTION 48. Amends Section 162.016(a), Tax Code, to delete existing text requiring that the shipping document include the federal employer identification number, or the social security number if the employer identification number is not available, of the carrier transporting the motor fuel and the federal employer identification number, license number, and physical address of the purchaser of the motor fuel.

SECTION 49. Amends Section 162.113(d), Tax Code, to require the supplier or permissive supplier to take certain actions, rather than to provide that the supplier or permissive supplier has the right to take certain actions.

SECTION 50. Amends Section 162.115, Tax Code, by adding Subsection (m-1), to require a license holder, in addition to the records specifically required by this section, to keep any other record required by the comptroller.

SECTION 51. Amends Sections 162.116(a) and (d), Tax Code, as follows:

(a) Amends the specific information required to be included in the monthly return and supplements of each supplier and permissive supplier.

(d) Prohibits the comptroller from requiring a supplier to remit from a payment or credit in reduction of a customer's account any tax for which the supplier or permissive supplier was allowed to take a credit.

SECTION 52. Amends Section 162.118, Tax Code, to amend the specific information required to be included on the monthly return and supplements of each distributor.

SECTION 53. Amends Section 162.123, Tax Code, to amend the specific information required to be included on the monthly return and supplements of each blender.

SECTION 54. Amends Section 162.127, Tax Code, by adding Subsection (g), to require the comptroller to issue a refund warrant to a distributor not later than the 60th day after the date the comptroller receives a valid refund claim from the distributor. Provides that, if the comptroller does not issue a refund warrant by that date, the amount of the refund draws interest at the rate provided by Section 111.060 beginning on the 61st day after the date the comptroller receives the valid refund claim and ending on the date the comptroller issues the refund warrant.

SECTION 55. Amends Section 162.206, Tax Code, by amending Subsection (c) and adding Subsections (c-1) and (h-1), as follows:

(c) Prohibits a person from making a tax-free purchase and a licensed supplier or distributor from making a tax-free sale to a purchaser of any dyed diesel fuel under this section using a signed statement for the first sale or purchase and for any subsequent sale or purchase in a calendar month for specific gallon amounts.

(c-1) Provides that the monthly limitations prescribed by Subsection (c) apply regardless of whether the dyed diesel fuel is purchased in a single transaction during that month or in multiple transactions during that month.

(h-1) Provides that, for purposes of this section, the purchaser is considered to have furnished the signed statement to the licensed supplier or distributor if the supplier or distributor verifies that the purchaser has an end-user number issued by the comptroller. Requires the licensed supplier or distributor to use the comptroller's Internet website or other materials provided or produced by the comptroller to verify this information.

SECTION 56. Amends Section 162.214(d), Tax Code, to make a conforming change.

SECTION 57. Amends Section 162.216, Tax Code, by adding Subsection (m-1), to make a conforming change.

SECTION 58. Amends Sections 162.217(a) and (d), Tax Code, to make conforming changes.

SECTION 59. Amends Section 162.219, Tax Code, to make conforming changes.

SECTION 60. Amends Section 162.224, Tax Code, to make conforming changes.

SECTION 61. Amends Section 162.229, Tax Code, to make conforming changes.

SECTION 62. Amends Section 162.230(d), Tax Code, to authorize a distributor that determines taxes were erroneously reported and remitted or that paid more taxes than were due to this state because of a mistake of fact or law to take a credit on the monthly tax report on which the error has occurred and tax payment made to the comptroller.

SECTION 63. Amends Sections 162.404(c) and (d), Tax Code, as follows:

(c) Provides that the prohibition under Section 162.403(32) does not apply to the tax-free sale or distribution of diesel fuel authorized by Section 162.204(a)(1), rather than 162.204(1).

(d) Makes a conforming change.

SECTION 64. Amends Section 171.721(2), Tax Code, to redefine "strategic investment area."

SECTION 65. Amends Section 351.001(2), Tax Code, to redefine "convention center facilities" or "convention center complex."

SECTION 66. Amends Section 351.102(a), to make a conforming change.

SECTION 67. Amends Section 623.052(b), Transportation Code, to make a conforming change.

SECTION 68. Repealer: Section 2303.516(c) (Monitoring Qualified Business or Enterprise Project Commitments), Government Code.

SECTION 69. Repealer: Section 162.016(h) (Importation and Exportation of Motor Fuel), Tax Code.

SECTION 70. (a) Effective date: upon passage or the 91st day after adjournment, except as provided by Subsection (b) of this section or as otherwise provided by this Act.

(b) Provides that the changes in law made by this Act to Section 43.002, Education Code, Sections 659.255, 659.256, and 659.257, Government Code, and Section 151.715, Tax Code, take effect September 1, 2005.