

BILL ANALYSIS

S.B. 2567
By: Duncan
Appropriations
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The comptroller of public accounts relies on statutory authority and rulemaking power as the sole administrator of the treasury and the state's many financial 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 effective 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 necessary financial support.

S.B. 2567 amends current law relating to state fiscal matters by making adjustments and adding provisions to facilitate the administration of the state's financial resources. The bill establishes provisions relating to the issuance of bonds to assist The University of Texas Medical Branch at Galveston in the recovery from Hurricane Ike, the composition of the board of directors of the nonprofit corporation under contract with The University of Texas System board of regents for investment of funds under control of the board of regents, audits of certain special water authorities by the state auditor, the creation of the American Recovery and Reinvestment Act fund, the change in name of the State Pension Review Board to the State Pension and Investment Review Board and other board related provisions, and other provisions regarding state fiscal matters.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the State Pension and Investment Review Board in SECTIONS 20, 24, and 29 of this bill.

ANALYSIS

S.B. 2567 amends the Education Code to authorize The University of Texas System board of regents, in addition to the other authority granted by state law and subject to other provisions of the bill, to acquire, purchase, construct, improve, renovate, enlarge, or equip property, buildings, structures, facilities, roads, or related infrastructure for The University of Texas Medical Branch at Galveston for any purpose reasonably necessary to assist the institution to recover from any damage or other impact caused by Hurricane Ike, to be financed by the issuance of bonds in accordance with the provisions relating to higher education revenue bonds and facilities, including bonds issued in accordance with a systemwide revenue financing program and secured as provided by that program, in an aggregate principal amount not to exceed \$150 million.

S.B. 2567 authorizes the board of regents to pledge irrevocably to the payment of the bonds all or any part of the revenue funds of an institution, branch, or entity of The University of Texas System, including student tuition charges. The bill prohibits the amount of a pledge from being reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding. The bill authorizes the board of regents, if sufficient funds are not available to the board to meet its obligations as provided by the bill, to transfer funds among institutions, branches, and entities of The University of Texas System to ensure the most

equitable and efficient allocation of available resources for each institution, branch, or entity to carry out its duties and purposes. The bill establishes that any transfer of funds to the board of regents pursuant to an appropriation of state funds to the board or The University of Texas Medical Branch at Galveston for the purpose of reimbursing the board for all or part of the debt service on bonds issued under the bill's provisions is subject to the prior approval of the Legislative Budget Board. The bill requires the Legislative Budget Board, in determining whether to approve a transfer of state funds for that purpose, to consider whether the commissioners court of the county in which the medical branch is located has entered into an agreement with the board under which the county agrees to reimburse the board for all or part of any otherwise unreimbursed costs incurred by the medical branch to provide health care services to individuals who are residents of the county and whose net family income is not more than 100 percent of the federal poverty level, or whether the county in which the medical branch is located or a hospital district that includes that county imposes a property tax for health care purposes. The bill makes conforming changes to provisions on construction funds and development of physical plants and on new construction and repair and rehabilitation projects.

S.B. 2567 requires three members of The University of Texas System board of regents, rather than at least three members of the board and the chancellor of The University of Texas System, to be appointed as directors on the board of a nonprofit corporation with which The University of Texas System board of regents may enter into a contract for the corporation to invest funds under the control and management of the board of regents as designated by the board of regents. The bill requires the board of regents to appoint four other directors with substantial background and expertise in investments who are not members of the board of regents or employees of The University of Texas System or The Texas A&M University System, employees of a component institution in such systems, or employees or contractors of the corporation. The bill requires The University of Texas System board of regents to appoint two members of the board of directors of the corporation submitted to The University of Texas System board of regents by The Texas A&M University System board of regents, rather than requiring The University of Texas System board of regents to select one or more of the members of the board of directors of the corporation from a list of candidates with substantial background and expertise in investments that is submitted to The University of Texas System board of regents by The Texas A&M University System board of regents. The bill requires the composition of the board of directors of the corporation to comply with the change in law made by the bill's provisions regarding the composition of the board of directors not later than January 1, 2010.

S.B. 2567 requires the corporation to provide to the Legislative Budget Board and the governor written notice of the terms of any payment to or agreement to pay a director, officer, or employee of the corporation a bonus, reward, or other incentive payment based on the performance of the director, officer, or employee, including the performance of an investment made or recommended by the director, officer, or employee. The bill requires the notice to be provided not later than seven days after the earlier of the date The University of Texas System board of regents makes the payment or enters into the agreement. The bill establishes that The University of Texas System board of regents is not required to provide notice after payments are made under an agreement if notice of the agreement is provided not later than seven days after The University of Texas System board of regents enters into the agreement.

S.B. 2567 amends the Government Code to authorize the state auditor to conduct audits of special water authorities, as specified in the audit plan.

S.B. 2567 requires the state auditor to conduct comprehensive financially related audits, including audits of the operations and performance, of the Brazos River Authority and the Lower Colorado River Authority. The bill requires the river authorities to cooperate and provide assistance and access to all necessary records, confidential or nonconfidential, to the state auditor in conducting the audit, as applicable. The bill requires the state auditor, not later than January 1, 2011, to prepare a written report for each audit and to file the required report in accordance with applicable state law. The bill requires the river authorities to reimburse the state auditor for

the cost of performing the audits, as applicable.

S.B. 2567 creates the American Recovery and Reinvestment Act fund (ARRA fund) as a special fund in the state treasury outside the general revenue fund. The bill requires a state agency that receives money under the American Recovery and Reinvestment Act of 2009 (ARRA), notwithstanding any state law to the contrary and except as otherwise provided by federal law, to deposit such money in the ARRA fund as the comptroller of public accounts determines is necessary to hold and account for ARRA funds. The bill authorizes additional funds to be deposited into the ARRA fund as appropriated by the legislature, required by federal law, or as the comptroller determines is necessary to account for ARRA-related funds. The bill authorizes funds deposited into the ARRA fund to be used only for the purposes identified in the ARRA to stimulate the economy, including aid for unemployment, welfare, education, health, and infrastructure. The bill requires agencies to transfer amounts between the ARRA fund and other accounts and funds as the comptroller determines is necessary to properly account for ARRA funds. The bill establishes that its provisions regarding the ARRA fund do not affect the authority of the comptroller to establish and use accounts necessary to manage and account for revenues and expenditures. The bill exempts interest earned on funds deposited into the ARRA fund from provisions relating to the disposition of interest on investments of money in funds and accounts in the charge of the comptroller and requires the interest to be retained in the fund. The bill authorizes the comptroller to issue guidelines for state agencies regarding the implementation of the bill's ARRA fund provisions.

S.B. 2567 redefines "compensation" under provisions providing that the comptroller is not authorized to deduct the amount of a state employee's indebtedness to a state agency from any amount of compensation owed by the agency to the employee, the employee's successor, or the assignee of the employee or successor. The bill defines "compensation" as base salary or wages, longevity pay, hazardous duty pay, benefit replacement pay, or an emolument provided in lieu of base salary or wages, rather than base salary or wages, longevity or hazardous duty pay, benefit replacement pay, a payment for the balance of vacation and sick leave under state law, a payment for the accrued balance of vacation time under state law, or an emolument provided in lieu of base salary or wages.

S.B. 2567 reenacts Section 495.025(c), Government Code, as added by Chapter 100 (S.B. 1580), Acts of the 80th Legislature, Regular Session, 2007, to require the Texas Department of Criminal Justice (TDCJ) to transfer 50 percent of all commissions paid to the TDCJ by a vendor under a contract for the provision of an inmate pay telephone service to the compensation to victims of crime fund established by the Crime Victims' Compensation Act and the other 50 percent to the credit of the undedicated portion of the general revenue fund, except that TDCJ is required to transfer the first \$10 million of such commissions collected in any given year to the compensation to victims of crime fund. The bill reenacts such subsection to establish that such requirements do not reduce any appropriation to the TDCJ. The bill rededicates money dedicated by such reenacted provisions to the compensation to victims of crime fund, notwithstanding certain provisions.

S.B. 2567 entitles a statewide employee who, at any time during the employee's lifetime, has accrued six months of continuous state employment and who resigns, is dismissed, or otherwise separates from state employment by a state agency other than an institution of higher education to be paid for the accrued balance of the employee's vacation time as of the date of separation, if the individual is not reemployed by the state in a position under which the employee accrues vacation leave one calendar month, rather than during the 30-day period, immediately following the date of separation from state employment.

S.B. 2567 changes the name of the State Pension Review Board to the State Pension and Investment Review Board and makes conforming changes. The bill revises the composition of the board and qualifications for board membership. The bill makes a conforming change relating to the staggered terms of office to reflect the change in the size of the board's

membership.

S.B. 2567 removes provisions authorizing the fees for conducting training sessions, schools, or other educational activities for trustees and administrators of public retirement systems to be based on whether or not the trustees, administrators, or systems contribute to the State Pension Review Board fund and requiring the net proceeds of those fees to be deposited in the fund. The bill removes a provision prohibiting a rule adopted by the board for the conduct of its business from being enforced against a public retirement system if compliance with the rule would cause the system to incur a major expense. The bill requires the board to adopt by rule actuarial guidelines for use by public retirement systems. The bill adds to the general duties of the board the continuous review of the investment practices of public retirement systems and other entities subject to board investment oversight, intensive studies of potential or existing problems that threaten or inhibit the financial condition or actuarial soundness of public funds managed or invested by an entity subject to board investment oversight, and the review and documentation of whether the board believes an entity subject to its oversight is investing funds in compliance with the entity's investment strategy and applicable law governing the entity's investments. The bill authorizes the board to inspect the books, records, or accounts of a public retirement system or another entity subject to its investment oversight during business hours of the system only to the extent that such inspection is necessary to perform the board's functions.

S.B. 2567 sets forth provisions relating to the State Pension and Investment Review Board's oversight over the investment of public funds by the comptroller and certain public retirement systems, investment of the permanent university fund by The University of Texas System board of regents or any entity acting on behalf of the board of regents, and investment of the permanent school fund by the State Board of Education or any entity acting on behalf of the State Board of Education. The bill establishes certain reporting requirements for entities subject to the board's oversight, including a requirement to file with the board and post to the entity's Internet website an annual report containing information that the board determines is necessary to perform its duties and to develop and file a copy of the entity's investment strategy, and the consequences of failing to timely submit reports and responses to requests.

S.B. 2567 makes a contract with an investment manager or other service provider by an entity investing public funds subject to the board's review regarding the fees charged and the services provided for those fees. The bill sets forth disclosure requirements relating to potential conflicts of interest for board members, investment managers, and contractors involved in the investment of public funds. The bill prohibits a governing board member or employee of an entity investing public funds from accepting gifts with a value greater than the specified limit and prohibits a former member of such an entity from entering into contracts to provide services to that entity before the second anniversary of that person's ceasing to be a member of that entity's governing body. The bill establishes a civil penalty for a person who commits fraud, theft, embezzlement, fraudulent conversion, unlawful appropriation, or misapplication of property in relation to a service provided by the person to an entity subject to the board's investment oversight, authorizes the attorney general to bring an action to recover the civil penalty imposed, and establishes that the penalty is in addition to any other remedy provided by law. The bill sets forth provisions relating to the investigation of a complaint against a person who provides management or investment services to an entity, the assistance of the attorney general in conducting an investigation, and the board's requirement to adopt certain rules and procedures. The bill defines "public retirement system" for the purposes of board investment oversight.

S.B. 2567 authorizes the board to require a public retirement system with total assets the book value of which, as of the last day of the preceding plan year, is at least \$100 million to conduct an actuarial experience study but prohibits the board from requiring a public retirement system to conduct more than one actuarial experience study every five years. The bill authorizes the board to adopt rules to implement these provisions. The bill defines "plan year" to mean the 12-month accounting period of the affected pension plan of a public retirement system subject to a required actuarial experience study.

S.B. 2567 authorizes public information required to be reported annually to the board to be posted on the retirement system's Internet website or on the website of the board.

S.B. 2567 makes conforming changes to the Revised Statutes and Vernon's Texas Civil Statutes.

S.B. 2567 establishes that a reference in law to the State Pension Review Board means the State Pension and Investment Review Board, and that a reference in law to the State Pension Review Board fund means the State Pension and Investment Review Board fund. The bill establishes that an appropriation for the use and benefit of the State Pension Review Board is available for the use and benefit of the State Pension and Investment Review Board. The bill makes its provisions applicable to the oversight of funds by the board, regardless of whether the investment of those funds was made before, on, or after the effective date of the bill.

S.B. 2567 requires the governor, as soon as practicable on or after the bill's effective date, to appoint five members to the State Pension and Investment Review Board as follows: two members for a term expiring January 31, 2011; two members for a term expiring January 31, 2013; and one member for a term expiring January 31, 2015. The bill requires the lieutenant governor, as soon as practicable on or after the bill's effective date, to appoint one member to the State Pension and Investment Review Board for a term expiring January 31, 2013, and the speaker of the house of representatives, as soon as practicable on or after such date, to appoint one member to the State Pension and Investment Review Board for a term expiring January 31, 2015. The bill establishes that the term of a board member serving immediately before the bill's effective date expires at the time five or more of the members appointed to the board under the bill's provisions qualify for office and, until the expiration of a member's term, the member has the same powers and duties that the member had immediately before that date.

S.B. 2567 establishes that the bill does not make an appropriation, and that a provision in the bill that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

S.B. 2567 repeals Sections 801.113(a), (b), (c), (d), and (f), Government Code.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect August 31, 2009.