

BILL ANALYSIS

C.S.S.B. 2230
By: Schwertner
Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2015, the state legislature created a state-administered precious metals bullion depository known as the Texas Bullion Depository. The depository is administered by the comptroller of public accounts, who oversees the depository and certifies that the operator meets the standards established for the program. Current estimates anticipate that the deposits of precious metals including gold, silver, platinum, and palladium in the depository will increase significantly in the near future as a result of attracting new business from commercial clients who currently store precious metals out of state. As envisioned by the enabling legislation, the comptroller partnered to build and operate the depository with a contractor who owns the land and facility where the depository is located. However, the comptroller does not currently have a lease on the depository facility. Instead, use of the facility is provided by the contractor as part of its contract with the comptroller to operate the depository. The contractor has indicated that it is exploring the possibility of selling the facility to a third party and entering into a lease-back arrangement. Given that this arrangement would continue to secure use of the facility during the term of the current contract, now is an appropriate time to consider the long-term needs of the depository. Ongoing access to a special purpose facility with the necessary security infrastructure such as the current facility is essential to the permanence of the depository. C.S.S.B. 2230 seeks to address this issue by authorizing the comptroller to acquire real property to operate the depository, including by purchasing the existing facility.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 2230 amends the Government Code to authorize the board of directors of the Texas Public Finance Authority (TPFA) to issue and sell bonds in the name of TPFA to finance the acquisition or construction of buildings to be used to operate the Texas Bullion Depository, including the acquisition of real property for that purpose. The bill requires the comptroller of public accounts to accomplish its statutory authority as if the property or building acquired or constructed were funded by legislative appropriation and requires the board of TPFA and the comptroller to adopt a memorandum of understanding that defines the division of authority between the two regarding the property or building. The bill requires the comptroller, to accomplish the bond financing of the acquisition or construction of property or a building, to contract with TPFA to purchase the property or building from TPFA under a lease-to-purchase agreement or other comparable financing agreement, as determined by the board of TPFA and the comptroller to be in the best interest of the state.

C.S.S.B. 2230 authorizes the comptroller to acquire by purchase, lease, donation, or other means real property necessary for one or more buildings to operate the depository and authorizes the comptroller to do the following:

- acquire a building that is subject to a lease by a private tenant and continue or renew a lease for the building if the comptroller determines that doing so is advantageous to the state;
- renegotiate the terms of the lease to obtain terms that are more favorable to the state; and
- lease at fair market value any portion of the acquired property to a private tenant for commercial activities.

The bill sets out the authorized uses of money received by the comptroller under the lease.

C.S.S.B. 2230 requires the comptroller, subject to the lease-to-purchase agreement or other comparable financing agreement, to obtain in the name of the state title to any real property acquired or building constructed for the depository and to retain control of that real property. The bill authorizes the comptroller to borrow money in the amount and under the circumstances authorized by the legislature and to request TPFA, on the comptroller's behalf, to issue and sell bonds to acquire real property or construct a building to operate the depository. The bill authorizes TPFA to issue and sell bonds for those purposes in any manner and on such terms it determines to be in the best interest of the comptroller, subject to certain requirements regarding the examination and registration of public securities.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 2230 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The engrossed required the comptroller, on completion of the acquisition of property or construction of a building, to contract with TPFA to purchase the property or building from TPFA under a lease-to-purchase agreement, whereas the substitute requires the comptroller to contract with TPFA to purchase the property or building from TPFA under a lease-to-purchase agreement or other comparable financing agreement as determined by the board of TPFA and the comptroller to be in the best interest of the state, in order to accomplish the bond financing of the acquisition or construction of property or a building.

The engrossed required the comptroller to obtain in the name of the state title to any real property acquired or building constructed for the depository and to retain control of that real property at all times. The substitute specifies that the requirement is subject to either agreement but does not include the specification present in the engrossed that the comptroller must retain control of the real property at all times.

The engrossed authorized TPFA to sell the bonds to acquire real property or construct a building to operate the depository in any manner TPFA determines to be in the best interest of the comptroller, whereas the substitute authorizes TPFA to issue and sell bonds for those purposes in any manner and on such terms TPFA determines to be in the best interest of the comptroller. The substitute subjects that authorization to certain requirements regarding the examination and registration of public securities and does not include the prohibition present in the engrossed against TPFA selling a bond that has not been approved by the attorney general and registered with the comptroller.