

BILL ANALYSIS

C.S.H.B. 4903
By: Dorazio
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The 84th Texas Legislature enacted H.B. 483, which established the Texas Bullion Depository. The depository has additional capacity and an opportunity to provide a gold and silver backed currency. While many Texans choose to purchase gold and silver, there is almost no option for them to use it in everyday life. C.S.H.B. 4903 seeks to make the depository more accessible and usable for Texans by providing for the issuance of gold and silver specie and the establishment of a digital currency based on gold and silver.

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 rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 4903 amends the Government Code to require the comptroller of public accounts, to the extent the comptroller determines practicable and as authorized by Section 10, Article 1, U.S. Constitution, to establish and provide for the issuance of gold and silver specie and establish and issue a digital currency based on gold and silver that represents a particular fraction of a troy ounce of gold or silver, as applicable, held in trust as provided by the bill. The bill authorizes the comptroller to contract with a private vendor to establish the digital currency or perform other duties under the bill and requires the comptroller, in contracting with a private vendor, to give preference to a vendor whose principal place of business is in Texas to the extent consistent with state and federal law.

C.S.H.B. 4903 requires the comptroller, in establishing gold and silver specie, to authorize the Texas Bullion Depository as the state's exclusive issuer and ensure that the holder of the specie may use the specie as legal tender in payment of debt and readily transfer the specie to another person. Additionally, the bill requires the comptroller, in establishing the digital currency, to provide a means to ensure that a person who holds the digital currency may use the digital currency as legal tender in payment of debt and by electronic means readily transfer or assign the digital currency to another person.

C.S.H.B. 4903 requires the comptroller, serving as trustee, or another person the comptroller appoints to serve as trustee, to hold in trust on behalf of the digital currency holders all gold and silver specie and bullion owned or purchased for the purposes of issuing the digital currency. The bill requires the trustee to maintain enough gold and silver specie or bullion to provide for the redemption of all units of the digital currency issued but not redeemed. The bill requires the

trustee to establish a pooled depository account in the Texas Bullion Depository to hold in trust as trustee on behalf of the digital currency holders all gold and silver specie and bullion owned and allocated or purchased for purposes of issuing the digital currency.

C.S.H.B. 4903 authorizes the comptroller to establish a fee for the issuance or redemption of the digital currency to cover the comptroller's costs in administering the bill's provisions and an industry standard merchant fee for use. The comptroller must deposit the net fee proceeds after costs to the credit of the general revenue fund.

C.S.H.B. 4903 authorizes the comptroller to issue to a person the appropriate number of units and fractional units of the digital currency when the person, together with any fee charged by the comptroller, does the following:

- makes the appropriate payment to the comptroller for the comptroller to purchase gold or silver specie or bullion for the pooled depository account to be represented by the digital currency; or
- designates gold or silver specie or bullion held in a depository account with the Texas Bullion Depository to be transferred to the pooled depository account for the purpose of being represented by the digital currency.

C.S.H.B. 4903 requires the comptroller, on receiving such payment, to take the following actions:

- using the money received, purchase gold or silver specie or bullion in the number of fractional troy ounces equal to the number of units or fractional units of the digital currency to be issued to the person;
- deposit for the person the purchased gold or silver specie or bullion into the pooled depository account; and
- issue to the person a digital currency account with the Texas Bullion Depository, or, if applicable, add to an existing digital currency account held by the person with the depository, the number of units or fractional units of the digital currency equal to the amount of specie or bullion that the money received from the person would buy on the date the payment is received.

C.S.H.B. 4903 requires the comptroller, on receiving a person's designation of gold or silver specie or bullion to be transferred, to take the following actions:

- withdraw from the person's depository account with the Texas Bullion Depository the amount of gold or silver specie or bullion designated and deposit the specie or bullion for the person to the pooled depository account; and
- issue to the person a digital currency account with the Texas Bullion Depository, or, if applicable, add to an existing digital currency account held by the person with the depository, the number of units or fractional units of the digital currency equal to the amount of gold or silver specie or bullion that the pooled depository account received from the person on that date.

C.S.H.B. 4903 authorizes a person who holds digital currency to present to the comptroller any number of units or fractional units of the digital currency to redeem for U.S. dollars. The bill requires the comptroller, on receipt of a person's request for redemption, to take the following actions:

- sell from the gold or silver specie or bullion held in the pooled depository account a number of fractional troy ounces equal to the number of units or fractional units of the digital currency being redeemed; and
- provide to the person an amount of U.S. dollars equal to the amount received from the sale of the gold or silver specie or bullion, less any fee charged.

C.S.H.B. 4903 authorizes a person who holds digital currency to present to the comptroller any number of units or fractional units of the digital currency to redeem for an equal fractional number of troy ounces of gold or silver specie or bullion from the pooled depository account.

On receipt of such a request, the comptroller is required to withdraw the equivalent fractional number of troy ounces of gold or silver specie or bullion from the pooled depository account and, on the payment of a fee, deliver the gold or silver specie or bullion to the requestor as requested.

C.S.H.B. 4903 requires the comptroller to determine the value of a unit of the digital currency at the time of each transaction involving the issuance or redemption of the digital currency. The bill establishes that such value must be equal to the value of the appropriate fraction of a troy ounce of gold or silver, respectively, at the time of that transaction as published by the Texas Bullion Depository.

C.S.H.B. 4903 establishes that money received for the issuance of the digital currency, gold or silver specie or bullion purchased or deposited in the pooled depository account, and money received from the sale of gold or silver specie or bullion in that account in response to a request for redemption is held by the comptroller as trustee outside the state treasury on the behalf of persons who hold the digital currency and is not available for legislative appropriation.

C.S.H.B. 4903 authorizes the comptroller to adopt rules as necessary or convenient to implement the bill's provisions, including rules to ensure the security of gold or silver specie or bullion, digital currency, transactions, and related data and rules to prevent fraud. The bill defines "digital currency" as the digital representation of gold and silver specie and bullion held in the pooled depository account and assigns "bullion" and "specie" the meanings prescribed by provisions governing the Texas Bullion Depository, which are as follows:

- "bullion" means precious metals that are formed into uniform shapes and quantities such as ingots, bars, or plates, with uniform content and purity, as are suitable for or customarily used in the purchase, sale, storage, transfer, and delivery of bulk or wholesale transactions in precious metals; and
- "specie" means a precious metal stamped into coins of uniform shape, size, design, content, and purity, suitable for or customarily used as currency, as a medium of exchange, or as the medium for purchase, sale, storage, transfer, or delivery of precious metals in retail or wholesale transactions.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4903 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision not in the introduced requiring the comptroller to establish and provide for the issuance of gold and silver specie and revises the provision in the introduced requiring the comptroller to establish a digital currency that is backed by gold so as to instead require the comptroller to establish and issue a digital currency based on gold and silver. The substitute includes language not in the introduced establishing that these requirements apply only to the extent the comptroller determines practicable and further establishing that the required actions are as authorized by Section 10, Article 1, U.S. Constitution.

The introduced and the substitute both authorize the comptroller to contract with a private vendor, but the substitute includes a requirement not in the introduced for the comptroller to give preference to a vendor whose principal place of business is in Texas, to the extent consistent with state and federal law.

The substitute expands the required actions for the comptroller in establishing the digital currency as set out in the introduced to include providing a means to ensure that a person who holds the digital currency may use it as legal tender in payment of debt. Moreover, the substitute includes certain required actions for the comptroller in establishing gold and silver specie, which were not in the introduced.

Whereas the introduced required the comptroller serving as trustee or another person appointed by the comptroller to serve as trustee to hold in trust on the behalf of the digital currency holders all gold purchased to back the digital currency, the substitute requires instead that the comptroller or other appointed trustee hold in trust on behalf of the digital currency holders all gold and silver specie and bullion owned or purchased for the purposes of issuing the digital currency.

The substitute replaces the provision in the introduced authorizing the trustee to establish an account in the Texas Bullion Depository to hold gold purchased to back the digital currency and to hold the gold otherwise as convenient for the administration of the bill's provisions with a provision requiring the trustee to establish a pooled depository account in the depository to hold in trust as trustee on behalf of the digital currency holders all gold and silver specie and bullion owned and allocated or purchased for purposes of issuing the digital currency.

The substitute provides for the issuance of fractional units of digital currency, whereas the introduced did not. Additionally, whereas the introduced included a provision authorizing a person to purchase the digital currency from the state, the substitute authorizes the comptroller to issue the digital currency to a person when the person makes the appropriate payment for the comptroller to purchase gold or silver specie or bullion for the pooled depository account to be represented by the digital currency or designates gold or silver specie or bullion held in a depository account with the Texas Bullion Depository to be transferred to the pooled depository account for the purpose of being represented by the digital currency. Accordingly, the substitute includes provisions that were not in the introduced establishing required actions for the comptroller on receiving such a transfer designation. The substitute also revises the required actions, as set out in the introduced, for the comptroller on receiving payment as follows:

- includes a requirement to deposit into the pooled depository account the gold or silver specie or bullion purchased to back the currency issued; and
- replaces the requirement to issue the purchaser a number of units of the currency equal to the amount of gold purchased with the money received from the purchaser with a requirement to issue to the person a digital currency account with the depository, or, if applicable, add to an existing digital currency account held by the person with the depository, the number of units or fractional units of the digital currency equal to the amount of specie or bullion that the pooled depository account received from the person on that date.

Accounting for the changes with respect to the issuance of the digital currency, the substitute revises provisions in the introduced referencing only gold to replace those references with references to gold and silver specie or bullion.

The substitute revises the provision in the introduced providing for the redemption of the digital currency for money to specify that the money for which the currency may be redeemed is U.S. dollars.

Whereas the introduced authorized a person to redeem digital currency through the comptroller, a person with whom the comptroller has contracted, or a person serving as trustee, the substitute provides for redemption through only the comptroller. Accordingly, the substitute requires only the comptroller to determine the value of a unit of the digital currency at the time of each transaction, whereas the introduced also provided for such a determination by a person with whom the comptroller has contracted or a person serving as trustee.

The substitute omits the provision from the introduced authorizing the comptroller, a person with whom the comptroller has contracted, or a person serving as trustee to manage redemption of the digital currency for gold by the use of bars or coins of standard sizes and to pay fractional remainders in cash as is necessary to facilitate the transaction.

The introduced required the value of a unit of the digital currency at the time of a transaction to be equal to the value of the appropriate fraction of a troy ounce of gold at that time, whereas the substitute requires the unit's value to be equal to the value of the appropriate fraction of a troy ounce of gold or silver, respectively, at the time of the transaction as published by the Texas Bullion Depository.

The substitute revises the provisions of the introduced establishing that certain money and deposits are held in trust by the comptroller or a person appointed by the comptroller to serve as trustee and are not subject to legislative appropriation to reflect changes to the manner of issuing the digital currency and to remove the reference to a trustee other than the comptroller.

Both the introduced and the substitute authorized the comptroller to establish a fee for the issuance or redemption of the digital currency, but the substitute also authorizes the comptroller to establish an industry standard merchant fee for use. Whereas the introduced required the comptroller to deposit the fee proceeds to the credit of an account established in the general revenue fund that may be used to pay the costs, the substitute requires the comptroller to deposit the net fee proceeds after costs to the credit of the general revenue fund.

While both the introduced and the substitute provide for the adoption of rules to ensure the security of the digital currency, the substitute provides also for the adoption of rules to ensure the security of gold or silver specie or bullion, transactions, and related data.

The substitute includes definitions of "bullion" and "specie" that were not in the introduced and changes the definition of "digital currency" to reflect the changes made by the substitute in the nature of the currency and the assets backing it.

The substitute omits a provision in the introduced establishing that the comptroller has all authority necessary to enter into contracts to administer the bill's provisions and fulfill their purposes.