HOUSE
RESEARCH
ORGANIZATION bill analysis | 4/20/1999 | HB 1161
Junell, Cuellar, Delisi, Cook

SUBJECT: Establishing the Tobacco Settlement Permanent Trust Account

COMMITTEE: Appropriations — favorable, without amendment

VOTE: 22 ayes — Junell, West, Coleman, Cuellar, Delisi, Eiland, Farrar, Giddings, Glaze, Gutierrez, Heflin, Hochberg, Janek, Luna, McReynolds, P. Moreno, Mowery, Pickett, Pitts, Staples, S. Turner, Van de Putte

0 nays

5 absent — Flores, Gallego, Hartnett, Puente, Tillery

WITNESSES: None

BACKGROUND: In March 1996, Attorney General Dan Morales filed a lawsuit on behalf of Texas against five major American tobacco companies. The lawsuit sought to recover billions of tax dollars the state had spent to treat Medicaid patients who suffered from tobacco-related illnesses. The suit accused the industry of violating both state and federal laws, including conspiracy, racketeering, wire fraud, mail fraud, consumer protection, and antitrust laws. In July 1998, Texas finalized the lawsuit's settlement, which awarded the state a total of $17.3 billion over the next 25 years. (*The State of Texas v. The American Tobacco Co., et al.,* No. 5-96CV-91, U.S. District Court, Eastern District of Texas)

Hospital districts and counties had intervened in the settlement, claiming that it would have barred them from obtaining damages of their own for all of the tobacco-related indigent health care they have provided. A separate settlement between the Attorney General's Office and the intervening counties and hospital districts agreed to direct $2.275 billion to a permanent trust account from which Texas counties and hospital districts would be reimbursed for costs of indigent health care. The $2.275 billion accrued to Texas because of the "most favored nation" provision in the tobacco settlement, which awarded Texas with increased payments comparable to Minnesota's subsequent settlement on somewhat more favorable terms.

On January 4, 1999, the tobacco industry paid the state $300 million that was distributed, in accordance with the agreement, on a per-capita basis to counties and hospital districts. Also according to the agreement, supplemental distributions of $100 million in January 2000 and $50 million in January 2001 are to be made to the counties and hospital districts while the corpus of the trust fund is growing. Future disbursements are to be based on each entity's unreimbursed indigent health-care expenditures.

DIGEST: HB 1161 would establish the Tobacco Settlement Permanent Trust Account, a lump-sum trust account, two 11-member advisory committees, and Texas Department of Health (TDH) responsibilities to collect and certify data on unreimbursed health-care expenses of political subdivisions. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

Trust account. The permanent trust account would include money paid into the account in accordance with the agreement between the state and the intervening counties and hospital districts, assets purchased with that money, the earnings of the account, and any other contributions. The corpus would have to remain in the account at all times. The account's money and other assets would not be part of the state's general funds. The comptroller, with advice from the advisory committee, could manage account investments and use the earnings of the account for any investment expense, and would have to issue an annual report to the Legislature and others regarding the characteristics and actions of the account.

On certification by TDH, the comptroller would have to distribute annually the net earnings of the account to each eligible political subdivision through a formula specified in the agreement between the state and the intervening counties and hospital districts.

Tobacco Settlement Permanent Trust Account Investment Advisory Committee. Within 30 days of the bill's enactment, the members of this advisory committee would have to be appointed and the comptroller would have to have set a time and a place for the first meeting. The first advisory committee would include one member appointed by each of the following for staggered terms:

- the Harris County Commissioners Court;
- the Dallas County Commissioners Court;
- the Tarrant County Hospital District;

- the El Paso County Hospital District;
- the Nueces County Commissioners Court;
- the Montgomery County Hospital District;
- the County Judges and Commissioners Association of Texas;
- the North and East Texas County Judges and Commissioners Association;
- the South Texas County Judges and Commissioners Association;
- the West Texas County Judges and Commissioners Association; and
- the comptroller, to represent a public hospital or hospital district not otherwise represented.

Subsequent advisory committee members would be selected from the following to fill specific slots as they became available:

- one member nominated by a public hospital or hospital district that did not receive one of the 12 largest distributions paid from the account;
- one member nominated by the political subdivision that in the preceding year received the largest annual distribution from the account;
- one member nominated by the political subdivision that received the second largest distribution;
- four members nominated by political subdivisions that received between the third and the twelfth largest distribution from the account and that did not already have a nominee on the committee; and
- one member from each of the following: the County Judges and Commissioners Association of Texas; the North and East Texas County Judges and Commissioners Association; the South Texas County Judges and Commissioners Association; and the West Texas County Judges and Commissioners Association.

The advisory committee members would serve six-year terms and could not receive compensation from the trust fund or the state. The committee would have to approve any rules adopted by the comptroller for implementing duties related to the account. If the committee disapproved of a proposed rule, it would have to provide specific reasons for disapproval. The committee also would be charged with providing guidance for the comptroller on managing the assets of the account, including its investment philosophy and the extent to which the account should be managed to maximize the growth of the corpus or of its earnings.

TDH data collection and certification. Each political subdivision would have to submit information relating to its unreimbursed health-care expenses to TDH. TDH would use this information and the formula specified in the agreement to certify to the comptroller the share of the annual distribution to be paid from the account to each political subdivision.

TDH activities and rulemaking would be subject to the approval of a Tobacco Settlement Permanent Trust Account Administration Advisory Committee, which initially would include members identical to those described for the investment advisory committee above, except that the board of health, instead of the comptroller, would appoint a member to represent public hospitals or hospital districts not otherwise represented on the committee. The advisory committee would appoint successor advisory committee members to fill specific slots with specific members.

TDH rules could provide for regular, randomly selected audits of the information. The rules also could provide for handling disputes relating to submitted information, including the imposition of a reasonable monetary penalty on a political subdivision found to have overstated its unreimbursed expenses. The penalty could not exceed 10 percent of the overstatement.

The bill would require TDH to report to the comptroller any finding that a political subdivision had overstated its unreimbursed health-care expenses and to reduce that political subdivision's percentage of subsequent annual distribution of account earnings, taking into account any monetary penalties. If a political subdivision were assessed the cost of an audit, TDH would have to report that amount to the comptroller, who then could withhold that amount from the annual distribution to the political subdivision.

Lump-sum trust account. This account would refer to the lump-sum trust account established under the agreement between the state and the hospital districts and counties. The bill would authorize TDH to collect and certify unreimbursed health-care expenditure data for the pro-rata lump-sum distributions to be made in 2000 and 2001 in accordance with the agreement.

SUPPORTERS SAY:

HB 1161 would codify the settlement agreement between the state and the counties and hospital districts that intervened in *Texas v. The American Tobacco Co., et al.* In accordance with that agreement, $300 million was deposited to the lump-sum account and distributed to counties and hospital districts in January 1999, and $150 million will be deposited and distributed over the next two years. The remaining $1.8 billion would be placed in a permanent fund for payments made by the tobacco industry through 2003, and the net earnings would be distributed to public hospitals and counties in perpetuity in proportion to their unreimbursed health-care expenses.

The state would assist in managing, investing, and distributing the money, but final control would rest with the hospital districts and counties that provide most of the indigent health care in Texas and that successfully litigated for a share of the tobacco settlement.

HB 1161 rightfully would assign most of the membership of both advisory committees to the top 12 providers of indigent health care in Texas, who together provide about 95 percent of all indigent health care in the state. Because small rural hospitals do not carry the large and often regional burden of financing indigent care that the larger hospitals carry, they should not be granted a specific seat on advisory committees that determine the management and distribution of these reimbursement funds. However, the smaller hospitals would not be prevented from participating in the advisory committees, because their representatives could be selected by the comptroller, the board of health, the advisory committee, or the county judges and commissioners associations to fill certain committee slots if deemed necessary.

OPPONENTS SAY:

At least one seat on the administration advisory committee should be allocated specifically for rural hospitals, because this committee would make important decisions on what constitutes unreimbursed health-care expenses and how this large sum of tobacco settlement money would be distributed.

Even though small rural hospitals do not provide the overall volume of care that the large urban public hospitals provide, they do provide a comparable percentage of indigent health care in relation to their total patient revenues, which can make financing difficult for other necessary hospital services. Also, rural hospitals’ indigent-care expenses and resources can be very different from those in larger hospitals. A specific seat on the advisory board would ensure that rural hospitals’ operations would be considered and that they could receive some financial assistance.

OTHER OPPONENTS SAY:

HB 1161 would leave many important details — such as the determination of what constitutes unreimbursed health-care expenses and how those expenses are audited, weighted, and distributed — to the advisory committees without specific legislative direction. This could result in an unfair distribution of tobacco settlement funds.

NOTES:

Also on the House calendar for today are two other bills that would create permanent funds out of tobacco settlement receipts received during fiscal 1998-99. HB 1676 by Junell et al. would create permanent funds for children and public health, trauma care, improvements to rural hospital facilities, and tobacco cessation and education programs. HB 1945 by Junell and Cuellar would establish permanent funds for higher education.

Article 12 of the House-passed version of HB 1 by Junell, the general appropriations bill for fiscal 2000-01, would earmark tobacco settlement funds for the endowments that HB 1676 and HB 1945 would create. It would not earmark funds for the tobacco settlement permanent trust account that HB 1161 would establish because those funds were part of a separate settlement intended to go directly to local entities.