

## **BILL ANALYSIS**

Senate Research Center  
76R14187 DLF-F

C.S.H.B. 1161  
By: Junell (Ratliff)  
Finance  
5/5/1999  
Committee Report (Substituted)

### **DIGEST**

On March 28, 1996, the attorney general filed suit against the tobacco industry on behalf of the State of Texas, which resulted in a settlement agreement in which the tobacco industry agreed to pay the state \$15 billion over the next 25 years. Subsequent to the settlement, several legal challenges were filed to ensure the deposit of the settlement proceeds into the state treasury, to preserve the authority of the legislature to appropriate the funds, and to ensure the allocation of some of the proceeds into counties and hospital districts with indigent care responsibilities. C.S.H.B. 1161 would implement the county and hospital district tobacco settlement. It establishes the permanent fund, mechanisms for managing the assets of the fund, and mechanisms for distributing tobacco proceeds to political subdivisions. The mechanisms established in the bill have been developed by the counties and hospital districts.

### **PURPOSE**

As proposed, C.S.H.B. 1161 establishes the tobacco settlement permanent trust account.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the comptroller of public accounts in SECTION 1.01 (Section 403.1041, Government Code) and the Texas Board of Health in SECTION 2.01 (Section 12.133(b) and 12.134(a), Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1.01. Amends Chapter 403G, Government Code, by adding Sections 403.1041, 403.1042, 403.1043, and 403.1044, as follows:

Sec. 403.1041. TOBACCO SETTLEMENT PERMANENT TRUST ACCOUNT. Defines "account," "advisory committee," "agreement," "department," and "political subdivision." Requires the comptroller to administer the tobacco settlement permanent trust account (account) and to manage the assets of the account, with the advice of and in consultation with the tobacco settlement permanent trust account investment advisory committee (advisory committee). Sets forth requirements for managing the assets of the account. Provides that the account is a trust account with the comptroller and is composed of certain money paid to the account. Requires the corpus of the account to remain in the account and may not be distributed for any purpose. Provides that the money and other assets in the account are not part of the general fund of the state. Authorizes the comptroller to appoint one or more financial institutions to serve as a custodian of the account's assets. Provides that Section 404.071 does not apply to the account. Authorizes the comptroller, with the advice of and in consultation with the advisory committee, to use the earnings of the account for any investment expenses, including to obtain the advice of appropriate investment consultation for managing the assets in the account. Requires the comptroller to make an annual distribution of the net earnings from the account to each eligible political subdivision as provided in the agreement regarding disposition of settlement proceeds, subject to Section 403.1044. Sets forth requirements for a report regarding the account. Requires the comptroller to adopt certain rules.

Sec. 403.1042. TOBACCO SETTLEMENT PERMANENT TRUST ACCOUNT

INVESTMENT ADVISORY COMMITTEE. Sets forth requirements for the advisory committee. Sets forth the members of the advisory committee. Requires a commissioners court that sets the tax rate for a hospital district to approve any person nominated by the hospital district to serve on the advisory committee. Requires the advisory committee to elect the officers of the advisory committee from among the members of the advisory committee. Provides that members of the advisory committee serve staggered six-year terms expiring on August 31 of each odd-numbered year. Sets forth requirements regarding appointment to the committee. Prohibits members of the advisory committee from being compensated and reimbursed for travel by the trust fund or the state. Requires the comptroller to provide administrative support and resources to the advisory committee as necessary to perform its duties. Provides that Chapter 2110 does not apply to the advisory committee.

Sec. 403.1043. RESTRICTIONS ON LOBBYING EXPENDITURES. Prohibits a political subdivision receiving a distribution under Section 403.1041(f) from using the distribution to pay for certain lobbying expenses. Provides that the persons or entities described by Subsection (a) are not eligible to receive the money or participate either directly or indirectly in the distribution made under Section 403.1041(f).

Sec. 403.1044. USE OF CERTAIN FUNDS. Defines “state hospital or clinic.” Requires a political subdivision that has received a distribution under Section 403.1041 to use the distribution as necessary to reimburse a state hospital or clinic for any certified unreimbursed health care expenditures under certain conditions. Sets forth requirements for a state hospital or clinic that has made unreimbursed health care expenditures described in Subsection (b). Prohibits the comptroller from making a subsequent annual distribution to a political subdivision until the state hospital or clinic notifies the comptroller that the amount certified under this section has been paid or that the debt has been settled and all claims against the political subdivision for the debt have been released, after receiving a certification of money owed under this section. Provides that a political subdivision is not required to pay the unreimbursed health care expenditures to the South Texas Hospital to the extent that those expenditures relate to the care and treatment of patients with tuberculosis.

SECTION 1.02. Provides that the initial tobacco settlement permanent trust account investment advisory committee (initial advisory committee) is composed of certain members. Sets forth the terms of the initial advisory committee members.

SECTION 1.03. Provides that not later than the 30th day after the effective date of this Act each appointing authority and the comptroller shall take certain actions.

## ARTICLE 2. DUTIES OF THE TEXAS DEPARTMENT OF HEALTH

SECTION 2.01. Amends Chapter 12, Health and Safety Code, by adding Subchapter J, as follows:

### SUBCHAPTER J. TOBACCO SETTLEMENT PROCEEDS

Sec. 12.131. DEFINITIONS. Defines “account,” “advisory committee,” “agreement,” and “political subdivisions.”

Sec. 12.132. CERTIFICATION TO COMPTROLLER. Requires the Department of Health (department) to collect information relating to the unreimbursed health care expenditures of each political subdivision and certify to the comptroller the percentage of each annual distribution to be paid from the account to each political subdivision.

Sec. 12.133. COLLECTION OF INFORMATION. Requires each political subdivision to submit to the department certain information. Requires the Texas Board of Health (board) to adopt certain rules governing the collection of information under Subsection (a), subject to the approval of the advisory committee.

Sec. 12.134. DISPUTES RELATING TO INFORMATION COLLECTED. Requires the board to adopt rules under which a political subdivision or agency of this state may dispute

information submitted by a political subdivision under Section 12.133, subject to the approval of the advisory committee. Authorizes the rules to provide for certain actions. Prohibits the monetary penalty under Subsection (b)(4) from exceeding 10 percent of the amount of the overstatement of unreimbursed health costs. Provides that a dispute under this section is a contested case for purposes of Chapter 2001, Government Code.

Sec. 12.135. EFFECT OF DISPUTE. Provides that a dispute filed under department rules adopted under Section 12.134 does not affect the percentage of the annual distribution of the earnings from the account to be paid to the political subdivision for the year for which the information that is the subject of the dispute was submitted.

Sec. 12.136. ADJUSTMENT FOLLOWING AUDIT. Requires the department to take certain action if the board finds that a political subdivision has overstated unreimbursed health care expenditures.

Sec. 12.137. TOBACCO SETTLEMENT PERMANENT TRUST ACCOUNT ADMINISTRATION ADVISORY COMMITTEE. Requires the tobacco settlement permanent trust account administration advisory committee (administration committee) to advise the board on the implementation of the department's duties under this subchapter. Sets forth the members of the advisory committee. Requires a commissioners court that sets the tax rate for a hospital district to approve any person nominated by the hospital district to serve on the administrative committee. Requires the administrative committee to elect the officers of the advisory committee from among the members of the administrative committee. Authorizes members to the administrative committee to act only on the affirmative votes of eight members of the committee. Provides that members of the administrative committee serve staggered six-year terms expiring on August 31 of each odd-numbered year. Requires the appointment to the advisory committee to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees. Prohibits members of the advisory committee from receiving compensation from the trust fund or the state agency on the advisory committee and reimbursement for travel expenses. Requires the department to provide administrative support and resources to the advisory committee as necessary for the advisory committee to perform the advisory committee's duties under this subchapter. Provides that Chapter 2110, Government Code, does not apply to the advisory committee.

Sec. 12.138. APPROVAL OF RULES. Requires certain rules adopted by the board to be submitted to the advisory committee and may not become effective before the rule is approved by the advisory committee. Requires the advisory committee to provide the board the specific reasons that the rule was disapproved, if the advisory committee disapproves a proposed rule.

Sec. 12.139. ANNUAL REVIEW. Sets forth requirements for an annual review.

SECTION 2.02. Provides that the initial tobacco settlement permanent trust account administrative advisory committee is composed of certain members. Sets forth the terms of the initial administrative advisory committee members.

SECTION 2.03. Provides that not later than the 30th day after the effective date of this Act each appointing authority and the commissioner of public health shall take certain actions.

SECTION 2.04. Defines "account," "agreement," and "lump sum trust account." Authorizes the Texas Department of Health to take certain action with respect to the pro rata lump sum distribution to be made in 2000 and 2001 under Paragraph 5.B of the agreement. Provides that Chapter 12J, Health and Safety Code, as added by the Act, applies to the information to be collected under this section in the same manner that it applies to information collected with respect to distributions to be made from the account. Requires the applicable percentage of the total distribution to be made to a political subdivision in the subsequent year to be reduced as appropriate, to the extent that, in accordance with Section 12.136, Health and Safety Code, as added by this Act, the Texas Board of Health finds an overstatement of unreimbursed health care expenditures in the information collected under this section for the pro rata lump sum distribution or if a monetary penalty is applied under

Section 12.134, Health and Safety Code. Provides that this section expires December 31, 2002.

### ARTICLE 3. EMERGENCY

SECTION 3.01. Emergency clause.

Effective date: upon passage.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1.01.

Amends Section 403.1041, Government Code, to require the comptroller to make an annual distribution of the net earnings from the account to each eligible political subdivision as provided in the agreement regarding disposition of settlement proceeds, subject to Section 403.1044. Adds new Section 403.1044, Government Code, regarding the use of certain funds.

Deletes proposed SECTION 1.02, amending Chapter 403G, Government Code, and redesignates existing SECTIONS.

SECTION 2.04.

Amends SECTION 2.04 to make conforming changes.