

GOVERNMENT CODE

CHAPTER 404. STATE TREASURY OPERATIONS OF COMPTROLLER
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 404.001. DEFINITIONS. In this chapter:

(1) Repealed by Acts 1997, 75th Leg., ch. 891, Sec. 3.22(2), eff. Sept. 1, 1997.

(2) "Demand deposit" means a deposit that is payable on demand.

(3) "Direct security repurchase agreement" means an agreement under which the state buys, holds for a specified time, and then sells back any of the following securities, obligations, or participation certificates:

(A) United States government securities;

(B) direct obligations of or obligations the principal and interest of which are guaranteed by the United States; or

(C) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government.

(4) "Market value" means the fair and reasonable prevailing price at which a security is being sold on the open market at the time of the appraisalment of the security by the comptroller.

(5) "Reverse security repurchase agreement" means an agreement under which the state sells and after a specified time buys back any of the securities, obligations, or participation certificates listed in Paragraphs (A) through (C), Subdivision (3).

(6) "State depository" means an institution designated as a state depository under Subchapter C.

(7) "Time deposit" means a deposit for which there is in force a contract providing that neither the whole nor a part of the deposit may be withdrawn by check or otherwise before the expiration of the period of notice that must be given in writing in advance of a withdrawal.

(8) "Treasury" means state funds subject to the custody and control of the comptroller and available for appropriation by the legislature.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.05(a), eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 78, Sec. 1, eff. May 11, 1989; Acts 1993, 73rd Leg., ch. 939, Sec. 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 891, Sec. 3.22(2), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.27, eff. Sept. 1, 1997.

Sec. 404.0011. TRANSFER OF TREASURER'S POWERS AND DUTIES. (a) The powers and duties of the state treasurer under this chapter or other law are transferred to the comptroller.

(b) A reference in law to the state treasurer is a reference to the comptroller.

(c) If the state treasurer and the comptroller or their respective designees are both ex officio members of a committee or governing body under law, the transfer of the powers and duties under this section does not give the comptroller more than one vote or position on the committee or governing body. If the state treasurer and the comptroller both have the power to appoint members to a committee under law, the transfer of the powers and duties under this section does not allow the comptroller to exercise the power of appointment given to the treasurer under law in addition to the power of appointment given to the comptroller under law. If the state treasurer and the comptroller both have the power to appoint members to a governing body under law, the comptroller may exercise the power of appointment given to the treasurer under law in addition to the power of appointment given to the comptroller under law only if the members of the governing body serve six-year terms and the composition of the governing body is subject to Section 30a, Article XVI, Texas Constitution.

(d) The comptroller may contract with a private entity to perform an activity transferred under this section as long as the activity is not solely a sovereign function of the state.

Added by Acts 1995, 74th Leg., ch. 992, Sec. 1, eff. Sept. 1, 1996.

SUBCHAPTER B. STATE DEPOSITORY BOARD

Sec. 404.013. RULES. The comptroller may adopt and enforce rules governing the establishment and conduct of state depositories and the investment of state funds in the depositories that the public interest requires and that are not inconsistent with the law governing the depositories.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 939, Sec. 2, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 891, Sec. 3.03, eff. Sept. 1, 1997.

SUBCHAPTER C. STATE DEPOSITORIES AND INVESTMENT OF STATE FUNDS

Sec. 404.021. ELIGIBLE INSTITUTIONS. (a) Any state or national bank doing business in the state may be designated by the comptroller as a state depository. Designation of a bank as a depository includes all of the bank's branches within the state.

(b) Any savings and loan association doing business in the state may be designated by the comptroller as a state depository.

(c) Any state or federal credit union doing business in the state may be designated by the comptroller as a state depository.

(d) Deposits of eligible institutions designated as state depositories must be covered by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 78, Sec. 2, eff. May 11, 1989; Acts 1995, 74th Leg., ch. 426, Sec. 1, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 891, Sec. 3.04, eff. Sept. 1, 1997.

Sec. 404.0211. CONFLICT OF INTEREST. A bank is not disqualified from serving as a depository for funds of a state agency if:

(1) an officer or employee of the agency who does not have the duty to select the agency's depository is an officer, director, or shareholder of the bank; or

(2) one or more officers or employees of the agency who have the duty to select the agency's depository are officers or directors of the bank or own or have a beneficial interest, individually or collectively, in 10 percent or less of the outstanding capital stock of the bank, if:

(A) a majority of the members of the board, commission, or other body of the agency vote to select the bank as a depository; and

(B) the interested officer or employee does not vote or take part in the proceedings.

Added by Acts 1993, 73rd Leg., ch. 268, Sec. 19, eff. Sept. 1, 1993.

Sec. 404.0212. DEPOSITORY RATING UNDER CERTAIN FEDERAL LAW. (a) In this section, "regulated financial institution" has the meaning assigned by 12 U.S.C. Section 2902.

(b) A regulated financial institution that accepts a deposit from the comptroller shall report to the comptroller the rating assigned to the financial institution under 12 U.S.C. Section 2906.

(c) A regulated financial institution shall make a report required by this section:

(1) annually, not later than August 1 of each year; and

(2) not later than the 30th day after the date the financial institution is notified that the assigned rating has been changed.

(d) The comptroller may not select as a depository a regulated financial institution for which the entire institution has been assigned a rating below "outstanding record of meeting community credit needs" or "satisfactory record of meeting community credit needs" under 12 U.S.C. Section 2906. However, the comptroller shall establish criteria to determine whether a financial institution doing business in this state and other states has a satisfactory record of meeting community credit needs in this state.

(e) On receipt of notice that the rating of a financial institution is changed to a rating below that required by this section, the comptroller shall take immediate action to transfer all state funds subject to the custody or control of the comptroller that are on deposit with the institution to a qualified financial institution.

(f) The depository contract between a regulated financial institution and the comptroller must authorize the withdrawal without penalty of the state funds subject to the custody or control of the comptroller that are on deposit with the institution if the rating of the institution is changed to a rating below that required by Subsection (d).

Added by Acts 1995, 74th Leg., ch. 426, Sec. 2, eff. June 9, 1995. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.05, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.29, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 847, Sec. 1, eff. Sept. 1, 1999.

Sec. 404.022. APPLICATIONS. (a) The comptroller, not later than the first business day in June of each odd-numbered year, shall mail to each eligible institution a letter stating the conditions with which applicants for designation as a state depository must comply. The comptroller shall keep on file in the comptroller's office and make available for inspection by any person a list of institutions to which letters have been sent.

(b) The application for designation as a state depository must include a statement:

(1) of the amount of the applicant's paid capital stock and permanent surplus, if any;

(2) of the maximum amount of state time deposits the applicant will accept;

(3) of the applicant's condition according to the most recent financial statement on the date the application is submitted; and

(4) that the books and accounts of the institution, if it is designated as a state depository, will be open at all times for inspection by the comptroller or a representative of the comptroller.

(c) An application shall be mailed to the comptroller at Austin and must be received before noon on the first business day of August of the year in which the letter is sent. An application received after that time may be considered at the option of the comptroller. The comptroller may charge a processing fee of \$25 for each application and shall deposit the fees to the credit of the general revenue fund.

(d) On receipt of an application under this section, the comptroller shall endorse on the application the date of its receipt. The comptroller shall prepare a list of the names of the applicants and the amount for which each has applied.

(e) The comptroller may approve those applicants that are acceptable and may reject those whose management or condition, in the opinion of the comptroller, does not warrant the placing of state funds in their possession.

(f) The designation as a state depository is effective for a period of not more than two years.

(g) As soon as practicable after the comptroller has made its designations, the comptroller shall inform applicants whether they have been designated as state depositories.

(h) The comptroller may execute a simplified version of a depository agreement with an eligible institution desiring to hold \$98,000 or less in state deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 3, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 891, Sec. 3.06, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.30, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 847, Sec. 2, eff. Sept. 1, 1999.

Sec. 404.0221. ELIGIBLE COLLATERAL. (a) In this section, "public agency" means a board, authority, agency, department, commission, political subdivision, municipal corporation, district, public corporation, body politic, instrumentality of this state, or any other type of political or governmental entity of this state.

(b) For the purposes of Section 404.022, collateral eligible to be pledged with the comptroller to secure state deposits includes:

(1) direct obligations of or obligations the principal and interest of which are guaranteed by the United States government;

(2) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government, including letters of credit; and

(3) a general or special obligation issued by a public agency and approved by the attorney general that is payable from taxes, revenues, or both.

(c) If pledged collateral consists of securities with a declining principal balance, the market value of the collateral pledged may not be less than 125 percent of the amount of the state deposits to be secured.

(d) Eligible collateral includes only:

(1) a security with fixed, stated rates; or

(2) a letter of credit described by Subsection (b)(2)

for a stated amount.

(e) A loss sustained by a depository that has secured its deposits by collateral may be enforced against the collateral.

(f) The comptroller may reject at any time collateral tendered by a state depository without assigning a reason for the rejection, and the comptroller's action is final and not subject to review.

(g) Collateral is not required for deposits to the extent that the deposits are insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund.

Added by Acts 1995, 74th Leg., ch. 426, Sec. 4, eff. June 9, 1995. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 7.31, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 159, Sec. 1, eff. Sept. 1, 2003.

Sec. 404.023. DESIGNATION. The comptroller shall designate one or more state depository banks that have main offices or branches in centrally located cities in this state to be used for clearing checks and other obligations due the state.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.07, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 344, Sec. 5.003, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 847, Sec. 3, eff. Sept. 1, 1999.

Sec. 404.024. AUTHORIZED INVESTMENTS. (a) The comptroller may determine and designate the amount of state funds to be deposited in time deposits in state depositories. The percentage of state funds to be deposited in state depositories shall be based on the interest rates available in competing investments, the demand for funds from Texas banks, and the state's liquidity requirements.

(b) State funds not deposited in state depositories shall be invested by the comptroller in:

(1) direct security repurchase agreements;
(2) reverse security repurchase agreements;
(3) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;

(4) direct obligations of or obligations guaranteed by agencies or instrumentalities of the United States government;

(5) bankers' acceptances that:
(A) are eligible for purchase by the Federal Reserve System;

(B) do not exceed 270 days to maturity; and
(C) are issued by a bank that has received the highest short-term credit rating by a nationally recognized investment rating firm;

(6) commercial paper that:
(A) does not exceed 270 days to maturity; and
(B) except as provided by Subsection (i), has received the highest short-term credit rating by a nationally recognized investment rating firm;

(7) contracts written by the treasury in which the treasury grants the purchaser the right to purchase securities in the treasury's marketable securities portfolio at a specified price over a specified period and for which the treasury is paid a fee and specifically prohibits naked-option or uncovered option trading;

(8) direct obligations of or obligations guaranteed by the Inter-American Development Bank, the International Bank for Reconstruction and Development (the World Bank), the African Development Bank, the Asian Development Bank, and the International Finance Corporation that have received the highest credit rating by a nationally recognized investment rating firm;

(9) bonds issued, assumed, or guaranteed by the State of Israel;

(10) obligations of a state or an agency, county, city, or other political subdivision of a state;

(11) mutual funds secured by obligations that are described by Subdivisions (1) through (6), including pooled funds:

(A) established by the Texas Treasury Safekeeping Trust Company;

(B) operated like a mutual fund; and
(C) with portfolios consisting only of dollar-denominated securities; and

(12) foreign currency for the sole purpose of facilitating investment by state agencies that have the authority to invest in foreign securities.

(c) Investments in direct security repurchase agreements and reverse security repurchase agreements may be made with state or national banks doing business in this state or with primary

dealers as approved by the Federal Reserve System. Notwithstanding any other law, the term of any reverse security repurchase agreement may not exceed 90 days after the date the reverse security repurchase agreement is delivered. Money received under the terms of a reverse security repurchase agreement may be used to acquire additional authorized investments, but the term of the authorized investments acquired must mature not later than the expiration date stated in the reverse security repurchase agreement.

(d) The comptroller may contract with a depository for the payment of interest on time or demand deposits at a rate not to exceed a rate that is lawful under an Act of Congress and rules and regulations of the board of governors of the Federal Reserve System, the board of directors of the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Home Loan Banking Board.

(e) The treasury may not purchase any of the following types of investments:

(1) obligations the payment of which represents the coupon payments on the outstanding principal balance of the underlying mortgage-backed security collateral and pays no principal;

(2) obligations the payment of which represents the principal stream of cash flow from the underlying mortgage-backed security collateral and bears no interest;

(3) collateralized mortgage obligations that have a stated final maturity date of greater than 10 years; and

(4) collateralized mortgage obligations the interest rate of which is determined by an index that adjusts opposite to the changes in a market index.

(f) The comptroller by rule may define derivative investments other than those described by Subsection (e). The treasury may not purchase investments defined by rule adopted under this subsection in an amount that at the time of purchase will cause the aggregate value of the investments to exceed five percent of the treasury's total investments.

(g) To the extent practicable, the comptroller shall give first consideration to banks that maintain main offices or branch offices in this state when investing in direct security repurchase agreements.

(h) The comptroller may not use state funds to invest in or purchase obligations of a private corporation or other private business entity doing business in Northern Ireland unless the corporation or other entity:

(1) adheres to fair employment practices; and

(2) does not discriminate on the basis of race, color, religion, sex, national origin, or disability.

(i) Notwithstanding Subsection (b)(6)(B), the comptroller may purchase commercial paper with a rating lower than the rating required by that paragraph to provide liquidity for commercial paper issued by the comptroller or an agency of the state.

(j) If the comptroller is required by law to invest funds other than as provided by this section, and if other law does not establish a conflicting standard governing that investment, the comptroller shall invest those funds under the restrictions and procedures for making the investments that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the prevailing circumstances, would follow in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(k) The comptroller may contract with private professional investment managers to assist the comptroller in investing funds under the care, custody, and control of the comptroller.

(l) The comptroller may lend securities under procedures established by the comptroller. The procedures must be consistent with industry practice and must include a requirement to fully secure the loan with cash, obligations, or a combination of cash and obligations. In this subsection, "obligation" means an item described by Subsections (b)(1)-(6).

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 53, Sec. 2.005, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 4, Sec. 2.06(a), eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 78, Sec. 3, eff. May 11, 1989; Acts 1991, 72nd Leg., ch. 408, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 858, Sec. 2, eff. June 18, 1993; Acts 1993, 73rd

Leg., ch. 939, Sec. 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 265, Sec. 1, eff. Aug. 28, 1995; Acts 1995, 74th Leg., ch. 426, Sec. 5, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 891, Sec. 3.08, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1311, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.32, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 8.05, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 5.004, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 847, Sec. 4, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1310, Sec. 25, eff. June 20, 2003.

Sec. 404.0245. CRUDE OIL AND NATURAL GAS FUTURES CONTRACTS. (a) In this section, "hedging" means the buying and selling of crude oil and natural gas commodity futures or options on crude oil and natural gas commodity futures as a protection against loss due to price fluctuations. Hedging at all times shall comply with Commodity Futures Trading Commission regulations.

(b) Subject to the limitations of Subsection (c), the comptroller may determine and designate the amount of state funds that shall be invested by the comptroller in hedging transactions in crude oil and natural gas futures contracts and options on crude oil and natural gas futures contracts that are traded on an established exchange regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(c) The principal amount of state funds invested and outstanding in hedging transactions on any one day may not exceed \$500,000 with a maximum risk of loss of \$5,000,000 in a biennium. The total principal amount of state funds that may be invested by the comptroller in hedging transactions during any one biennium may not exceed the amount of money credited to the unclaimed money fund for that biennium and attributable to the remittance of mineral proceeds under Chapter 75, Property Code. Any premium incurred in connection with hedging transactions may be paid only from funds appropriated for that purpose.

(d) The comptroller shall invest state funds in crude oil and natural gas futures contracts or options on crude oil and natural gas futures contracts under the restrictions and procedures for making investments that persons of ordinary prudence, discretion, and intelligence, exercising the judgment and care under the circumstances then prevailing, would follow in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The investments may be made only for hedging purposes.

(e), (f) Repealed by Acts 1995, 74th Leg., ch. 426, Sec. 32, eff. June 9, 1995.

Added by Acts 1991, 72nd Leg., ch. 871, Sec. 1, eff. June 16, 1991. Amended by Acts 1993, 73rd Leg., ch. 939, Sec. 4, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 426, Sec. 6, 32, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 891, Sec. 3.09, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.33, eff. Sept. 1, 1997.

Sec. 404.026. ELEEMOSYNARY FUNDS. The comptroller may invest the permanent funds of the Texas School for the Blind and Visually Impaired, Texas School for the Deaf, Austin State Hospital, and Corsicana State Home and may invest other permanent funds, the investment of which is not otherwise provided for, that have \$1,000 or more on deposit with the comptroller that are not invested. The comptroller shall invest the funds in the same classes of bonds as are authorized for investment of the permanent school fund.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 247, Sec. 15, eff. June 14, 1989; Acts 1997, 75th Leg., ch. 891, Sec. 3.10, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.34, eff. Sept. 1, 1997.

Sec. 404.027. LIQUIDITY. (a) The comptroller may enter into credit agreements or other similar agreements to provide liquidity for obligations issued for governmental purposes by an agency of the state if the agreements do not conflict with the liquidity needs of the treasury. An agency may enter into a credit agreement with the comptroller on the issuance of obligations or at a later date as agreed to by the comptroller and the agency.

(b) The comptroller may charge reasonable costs to provide services under this section.

(c) In this section:

(1) "Credit agreement" has the meaning assigned by Section 1371.001.

(2) "Obligations" include commercial paper, variable

rate demand obligations, and "public securities" as defined by Section 1201.002.

Added by Acts 1993, 73rd Leg., ch. 939, Sec. 5, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 7.35, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.230, eff. Sept. 1, 2001.

Sec. 404.028. INVESTMENT ADVISORY BOARD. (a) The comptroller shall establish an investment advisory board to advise the comptroller regarding investments that the comptroller makes under this subchapter or other law. For purposes of this section, the deposit of state funds in a state depository is not considered an investment.

(b) The comptroller shall appoint members to the advisory board who possess the expertise appropriate for advising the comptroller with regard to one or more types of investments that the comptroller may make.

(c) The comptroller shall determine the number of members of the advisory board. A member serves on the advisory board at the will of the comptroller.

(d) Chapter 2110 does not apply to the size, composition, or duration of the advisory board.

Added by Acts 2001, 77th Leg., ch. 282, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. COLLATERAL, DEPOSITS, AND WITHDRAWALS

Sec. 404.031. COLLATERAL REQUIREMENTS. (a) The comptroller may deposit state funds with a depository only if the depository has pledged with the comptroller eligible investment securities acceptable to the comptroller in an amount not less than the amount of deposits to be secured. The comptroller shall determine the market value of securities pledged to secure state funds for the purpose of determining the adequacy of the amount of collateral. The comptroller's valuation of the securities is final and not subject to review.

(b) If the market value of the securities pledged by a depository becomes less than the amount of funds on deposit in the depository, the comptroller shall require that additional collateral be pledged immediately or deposits reduced. If the collateral pledged by a state depository is in excess of the amount required by this chapter, the comptroller may permit the release of the excess collateral. If the balance of state funds in a state depository is increased, the depository shall increase the collateral for the deposits to the amount required by this chapter.

(c) A state depository may substitute one group of eligible securities for another group of securities pledged with the comptroller.

(d) Except as provided by Subsections (e) and (f), a state depository shall deposit any pledged securities with the comptroller. The comptroller shall give the depository a receipt for the securities and place them in the vaults of the treasury.

(e) Instead of depositing pledged securities with the comptroller, a depository may deposit them with a custodian. The custodian may be the Texas Treasury Safekeeping Trust Company or a state or national bank that has a capital stock and permanent surplus of not less than \$5 million, is a state depository, and has been designated as a custodian by the comptroller. The state depository and the custodian of securities pledged by that state depository may not be the same bank or be owned by the same bank holding company. The securities shall be held in trust by the custodian to secure funds deposited by the comptroller in the state depository pledging the securities. On receipt of the securities, the custodian shall immediately, by book entry or otherwise, identify on its books and records the pledge of the securities and shall promptly issue and deliver to the comptroller controlled trust receipts for the securities pledged. The security evidenced by the trust receipts is subject to inspection by the comptroller at any time. The depository pledging the securities shall pay the charges, if any, of the custodian bank for accepting and holding the securities. The custodian, acting alone or through a permitted institution, is for all purposes under state law and notwithstanding Chapters 8 and 9, Business & Commerce Code, the bailee or agent of the comptroller. The security interest arising out of a pledge of securities to secure deposits of the state is created, attaches, and is perfected for all purposes under state law from the time the custodian identifies the pledge of the securities on its books and records and issues the trust receipts. The security interest remains perfected as of that time in the hands

of all subsequent custodians and permitted institutions.

(f) Instead of depositing pledged securities with the comptroller, a state depository may deposit pledged securities with a Federal Reserve Bank or a Federal Home Loan Bank. The securities shall be held by the bank to secure funds deposited by the comptroller in the state depository pledging the securities. When the pledged securities are deposited, the bank may apply book entry to the securities. The records of the bank shall at all times reflect the name of the state depository depositing the pledged securities, and the bank shall issue an advice of transaction to the comptroller and the state depository pledging the securities.

(g) In this section, "permitted institution" means a Federal Reserve Bank, a Federal Home Loan Bank, a "clearing corporation" as defined by Section 8.102, Business & Commerce Code, the Texas Treasury Safekeeping Trust Company, a state depository, and any state or nationally chartered bank or trust company that is controlled by a bank holding company that controls a state depository. Neither the state depository that pledges the securities nor any bank that is controlled by a bank holding company that controls that state depository may be the permitted institution with respect to the particular securities pledged by that state depository. A custodian holding in trust securities of a state depository under Subsections (e) and (f) may deposit the pledged securities with a permitted institution if the permitted institution is the third party to the transaction. The securities shall be held by the permitted institution to secure funds deposited by the comptroller in the state depository pledging the securities. On receipt of the securities, the permitted institution shall immediately issue to the custodian an advice of transaction or other document evidencing the deposit of the securities. When the pledged securities held by a custodian are deposited, the permitted institution may apply book entry procedures to the securities. The records of the permitted institution shall at all times reflect the name of the custodian depositing the pledged securities. The custodian shall immediately issue and deliver to the comptroller controlled trust receipts for the pledged securities. The trust receipts shall indicate that the custodian has deposited with the permitted institution the pledged securities held in trust for the state depository pledging the securities. A legal action or proceeding brought by or against the state, arising out of or in connection with the duties of the state depository, the custodian, or other permitted institution under this subchapter must be brought and maintained in state district court in Travis County. In this section, "control" and "bank holding company" have the meanings assigned by Section 31.002(a), Finance Code.

(h) On request of the owner or owners, the comptroller or custodian bank may surrender interest coupons or other evidence of interest on securities deposited by state depositories, when the interest is due, if the securities are sufficient to meet the collateral requirements of the state.

(i) A state depository making deposits of securities with the comptroller may cause the securities to be endorsed or stamped, as it considers proper, to show that they are deposited as collateral and not transferable except as provided by this chapter.

(j) If a state depository fails to credit a deposit or part of a deposit made by the comptroller, the comptroller may immediately sell or otherwise convert the securities to money.

(k) Repealed by Acts 1997, 75th Leg., ch. 891, Sec. 3.22(3), eff. Sept. 1, 1997.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 78, Sec. 4, eff. May 11, 1989; Acts 1993, 73rd Leg., ch. 945, Sec. 1, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 426, Sec. 8, 9, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 891, Sec. 3.22(3), eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.36, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.58, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 5.005, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 847, Sec. 5, eff. Sept. 1, 1999.

Sec. 404.032. DEPOSITS. (a) The comptroller shall deposit state funds in depositories that satisfy the collateral requirements of this chapter. The comptroller may deposit funds designated as demand deposits only in institutions designated as depositories by the comptroller.

(b) The comptroller shall monitor the financial stability

of state depositories in which state deposits are held and take appropriate action to protect state funds.

(c) A state depository shall collect all checks, drafts, and demands for money deposited with it by the comptroller. If the depository uses due diligence, it is not liable for the collections until the proceeds of the collections are duly received by the depository bank. An expense incurred in collection that the depository is not permitted to pay by reason of an Act of Congress or a rule or regulation adopted under such an Act by the board of governors of the Federal Reserve System or the board of directors of the Federal Deposit Insurance Corporation shall be charged to and paid by the comptroller out of money appropriated by the legislature for that purpose.

(d) The comptroller shall keep sufficient money on deposit in demand deposit accounts in depositories designated by the comptroller as clearing institutions to meet all current claims on the state. Items received by the comptroller for collection shall be deposited with a clearing institution to be credited to the demand deposit account in the depository. Checks, drafts, or warrants drawn by the comptroller for the payment of obligations due by the state may be drawn on such an account in such a depository or on the demand deposit account in another state depository so that the checks, drafts, or warrants of the state may at all times pass current as cash.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 939, Sec. 6, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 426, Sec. 10, 11, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 891, Sec. 3.11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.37, eff. Sept. 1, 1997.

Sec. 404.033. WITHDRAWALS AND REMITTANCES. (a) Funds on deposit with a depository are subject to withdrawal at any time by the comptroller, except funds designated as time deposits, which may be withdrawn in the manner agreed on in the contract under which the funds were deposited. The depository shall remit the withdrawal on demand and free of charge, except charges that the depository is not permitted to pay by reason of an Act of Congress or a rule or regulation adopted under such an Act by the board of governors of the Federal Reserve System or the board of directors of the Federal Deposit Insurance Corporation.

(b) A remittance to the comptroller by a state depository or another person may be made by any method authorized by the comptroller, including cash, money order, or bank draft. The liability of the depository or other person making the remittance continues until the money is received by the comptroller. A depository that refuses to make a remittance required by this chapter forfeits its right to receive further deposits, on order of the comptroller. The comptroller may withdraw all funds from the depository, which after the withdrawal ceases to be a state depository.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 891, Sec. 3.12, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.38, eff. Sept. 1, 1997.

SUBCHAPTER E. GENERAL DUTIES

Sec. 404.041. TRUSTEE. The comptroller is the trustee of funds in the treasury.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 7.39, eff. Sept. 1, 1997.

Sec. 404.043. SECURITY OFFICERS.. The comptroller may employ security officers to provide needed security services for the treasury and may commission the officers as peace officers.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 12, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.41, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 285, Sec. 13, eff. Sept. 1, 2003.

Sec. 404.045. RECEIPT OF MONEY . The comptroller shall receive all money paid into the treasury in accordance with the procedures required by Section 403.052.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 19, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.43, eff. Sept. 1, 1997.

Sec. 404.046. PAYMENT FROM TREASURY. The comptroller shall pay warrants the comptroller draws on the treasury that are authorized by law. Except as provided by Section 403.0271, money may not be paid out of the treasury except on a warrant drawn or an electronic funds transfer initiated by the comptroller. A warrant

may not be paid by the comptroller unless presented for payment to a financial institution or the comptroller before two years after the close of the fiscal year in which the warrant was issued. Claims for the payment of warrants presented after that time may be presented to the legislature for appropriations from which the claims may be paid.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 78, Sec. 5, eff. May 11, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.44, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 1.20, eff. June 19, 1999.

Sec. 404.047. ACCOUNTS. The comptroller shall keep accounts of the receipt and expenditure of the money in the treasury and close the accounts on August 31 of each year. The comptroller shall keep proper records, distinguishing between the receipts and disbursements of each fiscal year.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 13, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.45, eff. Sept. 1, 1997.

Sec. 404.048. REPORT. In addition to the reports required by the constitution, the comptroller shall, as required by the governor, submit a statement of the balance of money remaining in the treasury and a summary of the receipts and disbursements recorded by the treasury. The comptroller shall exhibit all books, papers, and records on request by the legislature or a branch or committee of the legislature.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 14, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.46, eff. Sept. 1, 1997.

Sec. 404.049. MONEY IN TREASURY. Money received by the comptroller as trustee of funds in the treasury shall be kept in the treasury. The comptroller may not keep or receive into the treasury money, or the representative of money, belonging to an individual except as provided by law. The comptroller may not appropriate to the comptroller's own use or lend, sell, or exchange money, or the representative of money, in the comptroller's custody or control.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 7.47, eff. Sept. 1, 1997.

Sec. 404.050. DELIVERY TO SUCCESSOR. The comptroller shall, at the close of the term of office, deliver into the possession of the successor comptroller the money, securities, and all other property of the state in the comptroller's possession and the books, vouchers, papers, evidences of property, and all other matters and things pertaining to the office.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 7.48, eff. Sept. 1, 1997.

Sec. 404.051. MONEY RETURNED TO COUNTY OR MUNICIPALITY. If money is in the treasury for the purpose of paying an obligation due from a county or municipality and the comptroller finds from certified copies of the records of the commissioners court or by other satisfactory evidence that the obligation is no longer outstanding against the county or municipality, the comptroller shall draw a warrant on the treasury in favor of the county or municipality for that amount of money and shall pay the money to the treasurer of the county or municipality for the benefit of its general fund.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 7.49, eff. Sept. 1, 1997.

Sec. 404.052. OBLIGATIONS OF MUNICIPALITIES, DISTRICTS, AND POLITICAL SUBDIVISIONS. (a) A bond, warrant, or other evidence of indebtedness issued by a municipality, district, or political subdivision of this state and any interest, at the discretion of the municipality, district, or political subdivision may be payable at the office of the comptroller. The comptroller serves as ex officio treasurer and fiscal agent of the municipality, district, or political subdivision for the purposes of receiving funds for the payment of the obligation and interest, making payment of the obligation and interest, and for all other purposes designated by this chapter or necessary or incidental to the service.

(b) The comptroller shall deposit money received by the comptroller under this section and shall keep a separate account for each municipality, district, or political subdivision. The payment of interest and principal due on an obligation of the municipality, district, or political subdivision must be on deposit with the comptroller not later than five business days before the date of maturity. Any charges incurred for late receipt of funds

shall be assessed to the municipality, district, or political subdivision. On receipt of those amounts by the comptroller, the comptroller shall issue a warrant for the payment of amounts due.

(c) On return of the obligation, the treasurer of the municipality, district, or political subdivision shall record the payment and cancellation.

(d) The comptroller shall collect for the use of the state from the municipality, district, or political subdivision a fee in an amount established by rule of the comptroller that is sufficient to pay the comptroller's cost of administration. The treasurer of the municipality, district, or political subdivision, at the time of the remittance for the payment of the maturing obligation or interest, shall remit the fee to the comptroller as ex officio treasurer of the municipality, district, or political subdivision. On receipt of the fee, the comptroller shall deposit it to the appropriate fund. The amount of the fees earned, or as much as necessary, is reserved to the comptroller to be used in the administration of this chapter. Any balance remaining at the end of a fiscal year is available for use in the next fiscal year.

(e) It is the general intent of this section to provide an inexpensive and feasible means for the payment of bonds and interest coupons issued by municipalities, districts, and political subdivisions in the state at the office of the comptroller, and this section shall be broadly construed to carry out that intent. An official or a municipality, district, or political subdivision concerned with the administration of this section shall perform the acts and duties necessary or appropriate to facilitate and expedite the operation of this section to the end that bonds and interest may be promptly paid and the payment clearly evidenced and accounted for.

(f) The comptroller shall cancel and return to the municipality, district, or political subdivision depositing funds for the payment of interest coupons or the retirement of bonds the coupons and bonds that have matured or been retired by purchase, together with a statement of the account of the municipality, district, or subdivision showing the amounts received and placed to its credit, service charges, and amount of coupons or bonds retired. At the request of the municipality, district, or political subdivision, the comptroller shall remit to the municipality, district, or subdivision any balance remaining in custody of the comptroller for more than two years for which bonds or coupons have not been presented for payment. The municipality, district, or political subdivision shall pay these coupons or bonds when presented. A municipality, district, or political subdivision is entitled at any reasonable time to a statement of its account with the comptroller.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 15, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.50, eff. Sept. 1, 1997.

Sec. 404.054. DAILY TOTALS. The comptroller shall post the daily totals of deposits to the proper fund and control accounts in the general ledger. The comptroller shall keep a transit record, in which the comptroller shall record the essential details of cash, checks, money orders, drafts, or other items deposited or cashed each day, showing the items deposited in each depository bank or otherwise disposed of. The totals of deposits shall be charged to the accounts of the respective depositories on the books of the treasury. The comptroller shall keep a journal of all journal vouchers or other memoranda of transfers between funds or accounts. Postings shall be made from this journal to the proper accounts on the books of the treasury.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 21, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.51, eff. Sept. 1, 1997.

Sec. 404.055. TIME AND DEMAND DEPOSITS. The comptroller shall maintain records of the daily balances of and the interest income from funds deposited by the comptroller in time and demand deposit accounts in each bank acting as a state depository. The comptroller shall maintain and preserve those records according to the provisions of Subchapter D, Chapter 441, and of Chapter 552.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(94), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 426, Sec. 16, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.52, eff. Sept. 1, 1997.

Sec. 404.056. INFORMATION CONCERNING WARRANTS. (a) The

comptroller shall keep the information on each warrant that is necessary to enable an adequate audit to be performed.

(b) The comptroller shall keep information on the payment of each warrant, including the number and amount of each warrant paid.

(c) The comptroller shall keep detailed information concerning all canceled warrants.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 22, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.53, eff. Sept. 1, 1997.

Sec. 404.057. WARRANTS PAYABLE ACCOUNTS. (a) The comptroller shall keep warrants payable accounts for each fund.

(b) To each account, the comptroller shall credit the daily totals of warrants issued and charged to each fund so that the balance of those accounts represents the aggregate amount of outstanding warrants.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 23, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.54, eff. Sept. 1, 1997.

Sec. 404.058. OUTSTANDING WARRANTS. (a) The comptroller shall compile information concerning outstanding warrants, which must be consistent with the requirements of the uniform statewide accounting system.

(b) The warrant number of an outstanding warrant is excepted from the requirements of Section 552.021 if the warrant is issued by the comptroller.

(c) A person who issues a warrant under Section 403.060(a) may disclose the warrant number of the warrant to a person other than the comptroller only if the comptroller has:

(1) informed the person that the warrant is not an outstanding warrant; or

(2) authorized or required the disclosure.

(d) In this section:

(1) "Outstanding warrant" means any warrant except a warrant that:

(A) has been paid by the comptroller;

(B) has been canceled; or

(C) may not be paid by the comptroller because it was not presented before the date determined under Section 404.046 or other applicable law.

(2) "Warrant number" means the number or other data element printed on a warrant that the comptroller uses to distinguish it from all other warrants that the comptroller may pay during the same period that the comptroller may pay the warrant under Section 404.046 or other applicable law.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 24, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.55, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 20, eff. June 15, 2001.

Sec. 404.059. GENERAL LEDGER ACCOUNTS. The comptroller shall charge the daily totals of the warrants to the respective funds and control accounts in the general ledger to which they apply.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 25, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.56, eff. Sept. 1, 1997.

Sec. 404.060. PRIORITY OF WARRANTS. Warrants on the treasury shall be on an equal basis with each other, except that if a question arises concerning the priority of payment of the warrants the comptroller shall determine the priority of payment.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 26, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 679, Sec. 64, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 426, Sec. 17, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.57, eff. Sept. 1, 1997.

Sec. 404.062. UNDETERMINED REMITTANCES. (a) This subsection applies to money the status of which is undetermined or that is awaiting the time when it can be taken into the treasury. The money shall be placed with the comptroller and credited to the suspense account. The comptroller shall maintain information about the deposit of funds into the suspense account in accordance with Section 403.052.

(b) When the status of money placed in the suspense account is determined, the money shall be transferred from the suspense account by placing the portion of it belonging to the state in the appropriate fund in the treasury, and the part not belonging to the

state shall be refunded. The refund shall be made either to the payor of the money or to the payor's estate, assignee, devisee, or other successor-in-interest.

(c) When a deposit is made, it and any refunds shall be entered in the suspense cash book, and the balance shall represent the aggregate of the items still in suspense. Warrants shall be used for making refunds. The warrants shall be charged against the suspense funds to which they apply.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 27, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 641, Sec. 11, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 426, Sec. 18, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.58, eff. Sept. 1, 1997.

Sec. 404.063. VIOLATION. A person who knowingly or wilfully violates this chapter commits an offense. An offense under this chapter is punishable by a fine of not less than \$50 nor more than \$500, by confinement in the county jail for not less than 30 days nor more than six months, or by both a fine and confinement.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 404.064. OFFICE FEES. The comptroller shall keep records of the fees earned by the comptroller under this chapter. Those fees shall be deposited to the appropriate fund in the treasury.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 28, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 426, Sec. 19, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.59, eff. Sept. 1, 1997.

Sec. 404.065. CASH BALANCING. The comptroller shall keep records for the purpose of arriving at the daily cash balance. The daily totals of receipts and disbursements and the amount of cash on hand and in depository banks shall be recorded.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 20, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.60, eff. Sept. 1, 1997.

Sec. 404.066. LEDGER. (a) The general ledger kept by the comptroller shall contain accounts for each fund. Those accounts shall be credited with the existing balances and the daily totals of deposits. Warrants issued and electronic funds transfers shall be charged daily to the fund accounts.

(b) The ledger shall contain control accounts for cash, depository banks, bonds, interest, securities, warrants payable, and other necessary accounts. Postings shall be made to the ledger daily.

(c) The ledger shall be balanced daily.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 29, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 641, Sec. 12, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 7.61, eff. Sept. 1, 1997.

Sec. 404.067. SAFEKEEPING; INVESTMENT AGENCIES. (a) The comptroller shall keep custodial records that shall reflect all deposits and releases of securities held by the comptroller and belonging to a state investment agency.

(b) The comptroller shall keep appropriate ledger accounts that include a short description of each security held in safekeeping for certain investment agencies of the state.

(c) The comptroller shall keep controlling or total accounts of securities in the general ledger. Those accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund.

(d) Those controlling accounts shall be balanced monthly with the sum of the individual accounts for securities, which also shall be balanced monthly, and shall correspond to similar accounts kept by the comptroller.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 21, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.62, eff. Sept. 1, 1997.

Sec. 404.068. STATE REGULATORY AGENCIES SAFEKEEPING AND PLEDGED COLLATERAL. (a) The comptroller shall keep a suitable system in which shall be entered all securities deposited with the comptroller by state depositories and other state agencies. The comptroller shall enter in the system the authorizations to deposit or release the securities.

(b) The comptroller shall keep a securities ledger in which appropriate accounts for each custodial agency are kept. That ledger shall be balanced monthly against control accounts kept in

the general ledger and against corresponding accounts kept by the comptroller.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 30, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 426, Sec. 22, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.63, eff. Sept. 1, 1997.

Sec. 404.069. TRUST FUNDS. (a) All money and securities deposited with the comptroller in trust for any legal purpose may be received by the comptroller as provided by Section 403.052. The money or securities shall be held in trust by the comptroller in the same manner as the departmental suspense account. Except as provided by Section 403.0271, the money may be withdrawn only on a warrant drawn or an electronic funds transfer initiated by the comptroller. The securities may be withdrawn only by withdrawal authorization.

(b) Money received in trust or for any legal purpose that is placed in a suspense account or fund shall be handled by the comptroller in the same manner as items deposited in the departmental suspense account.

(c) Adequate registers, ledgers, and files shall be maintained by the comptroller to account for the receiving and disposing of trust and suspense money and securities. Those registers, ledgers, and files shall be known as the trust and suspense record.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 31, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.64, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1467, Sec. 1.21, eff. June 19, 1999.

Sec. 404.070. VALIDITY OF VOIDED WARRANTS. (a) A warrant issued by the comptroller in payment of refunds from a fund in the treasury becomes void unless presented to the comptroller for payment before two years after the end of the fiscal year in which the warrant was issued. The sum of money represented by a warrant voided under this section shall be transferred by the comptroller from the fund from which the warrant was originally issued to the general revenue fund. Claims for the payment of a voided warrant may be presented to the legislature for appropriation from which the warrant may be paid. This section does not affect the laws regulating the payment of other warrants issued by the comptroller.

(b) When a transfer of money under this section is made, the comptroller shall prepare a list of the outstanding warrants representing the transfer. The list must show the date of the original warrant, the departmental suspense account against which the warrant was originally drawn, the original warrant number, and the amount of the original warrant. The list shall be maintained as a permanent record in the office of the comptroller.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 207, Sec. 32, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 426, Sec. 23, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.65, eff. Sept. 1, 1997.

Sec. 404.071. DISPOSITION OF INTEREST ON INVESTMENTS. (a) Interest received from investments of money in funds and accounts in the charge of the comptroller shall be allocated on a monthly basis as follows:

(1) the prorata portion of the interest received due to each constitutional fund shall be credited to that fund;

(2) the pro rata portion of the interest received due to the game, fish, and water safety fund shall be credited to that fund; and

(3) the remainder of the interest received shall be credited to the general revenue fund.

(b) The legislature may appropriate a portion of the interest under Subsection (a) to the comptroller in the amount necessary to reimburse the comptroller for costs incurred in receiving, paying, accounting for, investing, and safekeeping money in those funds and accounts. Amounts appropriated for that purpose shall be deposited to the credit of the fund established for the deposit of commissions reserved to the comptroller under Section 404.052(d).

(c) If a deficit occurs in the general revenue fund, the comptroller may place with a designated depository bank an offsetting compensating balance in a special depository account known as a special demand account secured by general revenue warrants only.

(d) The comptroller is entitled to rely on the opinion and

advice of the attorney general for the proper interpretation and application of this section.

(e) For each special fund or account that contains depository interest, the comptroller shall transfer from the fund or account to the general revenue fund an amount equal to the interest paid from the general revenue fund on behalf of the fund or account. In this subsection:

(1) "Account" means a subdivision of a special fund or the general revenue fund.

(2) "Fund" and "special fund" have the meanings assigned by Section 403.001.

(f) The comptroller may adopt procedures and rules to administer Subsection (e).

(g) Subsection (e) applies notwithstanding any other law. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.07(a), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 438, Sec. 1, eff. June 6, 1993; Acts 1993, 73rd Leg., ch. 449, Sec. 33, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 426, Sec. 24, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.66, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 16, Sec. 1, eff. April 20, 2001.

Sec. 404.072. EXAMINATION BY STATE AUDITOR. The disbursements and receipts of the comptroller are subject to audit by the state auditor in accordance with Chapter 321.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 11, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.67, eff. Sept. 1, 1997.

Sec. 404.073. FUNDS OUTSIDE TREASURY. (a) The comptroller may be the trustee of funds or property outside the treasury.

(b) The comptroller functioning as the trustee of funds or property outside the treasury may contract with the treasury to manage the funds or property in a manner similar to the management of funds in the treasury.

(c) Interest that has been and that will be accrued or earned from deposits made under a law to which this subsection applies is state funds not subject to allocation or distribution to taxing units, cities, or transportation authorities under that law. This subsection applies to:

- (1) Section 205.02, Alcoholic Beverage Code;
- (2) Section 2001.507, Occupations Code;
- (3) Section 403.105(d) of this code;
- (4) Sections 321.501 and 321.504, Tax Code;
- (5) Sections 322.301 and 322.304, Tax Code; and
- (6) Sections 323.501 and 323.504, Tax Code.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.08(a), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.68, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 14.750, eff. Sept. 1, 2001.

SUBCHAPTER F. STATE FUNDS REFORM ACT

Sec. 404.091. SHORT TITLE. This subchapter may be cited as the State Funds Reform Act.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 404.092. DEFINITION. In this subchapter, "state agency" means an office, institution, or other agency that is in the executive branch of state government, has authority that is not limited to a geographical portion of the state, and was created by the constitution or a statute of this state, but does not include an institution of higher education as defined by Section 61.003, Education Code.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987.

Sec. 404.093. APPLICABILITY OF SUBCHAPTER; EXEMPTIONS. (a) This subchapter applies to a state agency only to the extent that it is not otherwise required to deposit funds in the treasury.

(b) This subchapter does not apply to:

(1) funds pledged to the payment of bonds, notes, or other debts if the funds are not otherwise required to be deposited in the treasury;

(2) funds held in trust or escrow for the benefit of a person or entity other than a state agency;

(3) funds set apart out of earnings derived from investment of funds held in trust for others, as administrative expenses of the trustee agency;

(4) funds, grants, donations, and proceeds from funds, grants, and donations, given in trust to the Texas State Library and Archives Commission for the establishment and maintenance of

regional historical resource depositories and libraries in accordance with Section 441.154; or

(5) funds under the management of the secretary-treasurer of the Anatomical Board of the State of Texas, as provided by Section 691.008, Health and Safety Code.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(87), eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 152, Sec. 2, eff. Sept. 1, 1999.

Sec. 404.094. FUNDS TO BE DEPOSITED IN TREASURY. (a) Fees, fines, penalties, taxes, charges, gifts, grants, donations, and other funds collected or received by a state agency under law shall be deposited in the treasury, credited to a special fund or funds, and subject to appropriation only for the purposes for which they are otherwise authorized to be expended or disbursed. A deposit shall be made at the earliest possible time that the treasury can accept those funds, but not later than the third business day after the date of receipt. However, if an agency determines that for seasonal or other extraordinary reasons deposits cannot be made by the third business day after the date of receipt, the agency shall provide written notice of the determination to the state auditor and comptroller with an explanation of the circumstances that require the delay. If the state auditor finds that an agency has not complied with this subsection, the state auditor shall make an estimate of any resulting financial loss to the state, taking into consideration compliance costs that would have been additionally incurred by the agency, and report the amount to the legislative audit committee, the governor, and the comptroller.

(b) Money that is required by this subchapter or by another law to be deposited in the treasury shall be deposited to the credit of the general revenue fund unless the money is expressly required to be deposited to another fund, trust fund, or special account not in the general revenue fund. This subsection does not affect the authority of the comptroller to establish and use accounts necessary to manage and account for state revenues and expenditures.

(c) Money collected or received by a state agency by mistake of fact or law, including money that is not due the state and money collected and received in excess of the amount required to be collected or received, shall, if not refunded as permitted or required by law, be deposited in the treasury to the credit of the general revenue fund. This section does not apply to unrefunded motor fuel taxes or to other unrefunded money that is required by law to be deposited to the credit of another fund, trust fund, or account not in the general revenue fund.

(d) A state agency that receives money from securities transactions under applicable law, including Chapter 815 or 825, Government Code, Chapter 161, 162, or 164, Natural Resources Code, Chapter 43, Education Code, Section 94.016, Human Resources Code, and the Texas Statewide Emergency Services Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes), with the comptroller's approval may, as an alternative to the deposit of the funds as provided by Subsection (a), net funds received against purchases of securities occurring within one business day. Any proceeds received and available for reinvestment that are not reinvested within one business day of receipt shall be deposited in the state treasury as provided by Subsection (a). An agency authorized to net securities transactions under this section is subject to the accounting and reporting procedures established by the comptroller.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 78, Sec. 6, eff. May 11, 1989; Acts 1997, 75th Leg., ch. 1311, Sec. 5, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.69, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 337, Sec. 11, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1011, Sec. 1, eff. June 15, 2001.

Sec. 404.095. ELECTRONIC TRANSFER OF CERTAIN PAYMENTS. (a) This section applies only to a state agency that during the preceding state fiscal year collected or received more than \$50 million in fees, fines, penalties, taxes, charges, gifts, grants, donations, and other funds, excluding federal grants and interest and dividend income.

(b) If during the preceding state fiscal year a person paid a state agency a total of \$500,000 or more in a category of payments and the agency reasonably anticipates that during the current state fiscal year the person will pay the agency \$500,000 or more in a

category of payments, the state agency shall require the person to transfer payment amounts due to the agency in that category, on or before the date the payment is due, by one of the means of electronic funds transfer approved by the comptroller. For the purposes of this section, each of the following is a separate category of payments to a state agency:

- (1) fees;
- (2) fines;
- (3) civil penalties;
- (4) taxes, with each type of tax specified by the comptroller being considered a separate category; and
- (5) other payments to the state agency, excluding extraordinary payments such as gifts, grants, donations, interest and dividend income, and one time surcharges.

(c) A state agency by rule may require a person other than a person subject to Subsection (b) to transfer all payment amounts due in a category of payments to the agency on or before the date the payment is due by electronic funds transfer.

(d) A person's failure to transfer payment amounts by electronic funds transfer may result in the assessment of a penalty by the state agency in an amount equal to five percent of the payment amount.

(e) The comptroller shall adopt rules specifying approved means of electronic funds transfer and specifying the types of taxes constituting separate categories. A person's failure to comply with the rules may result in the assessment of a penalty by the state agency in an amount equal to five percent of the payment amount.

(f) To the extent of any conflict between this section and another law specifying the time or manner of making a payment to the agency, this section controls. This section does not affect a law specifying the time for the filing of a return or other report related to the payment.

(g) A state agency may not require payment by electronic funds transfer of a protested tax payment.

Added by Acts 1989, 71st Leg., ch. 78, Sec. 7, eff. May 11, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 4.01, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 426, Sec. 25, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.70, eff. Sept. 1, 1997.

Sec. 404.096. RAPID DEPOSITS, TRANSACTIONS, AND TRANSFERS REQUIRED. According to a schedule established by the comptroller, the comptroller shall conduct a study of each state agency that collects or receives \$50 million or more a year from all sources or processes 100,000 or more transactions a year of any kind to determine whether implementing a program for the rapid administration of deposits or transactions by the agency or for the rapid transfer of revenue or information to or from the state agency would result in a net savings of state revenue. If the comptroller determines that the implementation of a program for the rapid administration of deposits or transactions or for the rapid transfer of revenue or information to or from the state agency would result in a net savings of state revenue, the comptroller may require the agency to implement a program for that rapid administration or transfer that meets the specifications of the comptroller.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 4.02, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 7.71, eff. Sept. 1, 1997.

Sec. 404.097. DEPOSIT OF FUNDS RECOVERED BY LITIGATION OR SETTLEMENT. (a) Notwithstanding Section 404.093, this section applies by its terms to each state governmental entity.

(b) In this section, "contingent fee contract" and "state governmental entity" have the meanings assigned by Section 2254.101.

(c) All funds recovered by a state governmental entity in litigation or in settlement of a matter that could have resulted in litigation, including funds designated as damages, amounts adjudged or awarded, attorney's fees, costs, interest, settlement proceeds, or expenses, are public funds of the state or the state governmental entity and shall be deposited in the state treasury to the credit of the appropriate fund or account.

(d) Legal fees and expenses may be paid from the recovered funds under a contingent fee contract for legal services only:

- (1) after the funds are deposited in accordance with

this section; and

(2) in accordance with Subchapter C, Chapter 2254, if that subchapter applies to the contract.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 3.02, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 1266, Sec. 1.14, eff. June 20, 2003.

SUBCHAPTER G. TEXAS TREASURY SAFEKEEPING TRUST COMPANY
Sec. 404.101. DEFINITIONS. In this subchapter:

(1) "Advisory board" means the Texas treasury safekeeping trust company investment advisory board.

(2) "Participant" means the state, agencies and local political subdivisions of the state, and nonprofit corporations, foundations, and other charitable organizations created on behalf of the state or an agency or local political subdivision of the state authorized to deposit money and securities with the trust company.

(3) "The state and its agencies" includes the Employees Retirement System of Texas and the Teacher Retirement System of Texas.

(4) "Trust company" means the Texas Treasury Safekeeping Trust Company.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 21, eff. June 15, 2001.

Sec. 404.102. CREATION OF TRUST COMPANY. (a) The comptroller may incorporate a special-purpose trust company called the Texas Treasury Safekeeping Trust Company. The purposes of the trust company are to provide a means for the comptroller to obtain direct access to services provided by the Federal Reserve System and to enable the comptroller to manage, disburse, transfer, safekeep, and invest funds and securities more efficiently and economically by using established and reasonable financial practices, including the pooling of funds and the lending of securities to the extent practical or necessary. The comptroller may deposit funds and securities with the trust company to achieve its purpose.

(b) The trust company is a special-purpose trust company with necessary and implied powers to accomplish its purpose and is subject to regulation only as provided by this subchapter. The trust company may not engage in commercial banking activity.

(c) The trust company may establish government investment pools consisting of state agency funds not required to be deposited in the state treasury and local government funds that are placed into the pools for investment or reinvestment by the trust company. A state agency or local government may place funds into the pools for investment or reinvestment as authorized by Subsection (a) or other law. In this subsection, "local government" and "state agency" have the meanings assigned by Section 2256.002.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 78, Sec. 8, eff. May 11, 1989; Acts 1991, 72nd Leg., 2nd C.S., ch. 12, Sec. 1.24, eff. Jan. 1, 1992; Acts 1997, 75th Leg., ch. 1423, Sec. 7.72, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1310, Sec. 26, eff. June 20, 2003.

Sec. 404.103. POWERS. (a) The trust company may receive, transfer, and disburse money and securities as provided by statute or belonging to the state, agencies and local political subdivisions of the state, and nonprofit corporations, foundations, and other charitable organizations created on behalf of the state or an agency or local political subdivision of the state in a manner that qualifies the trust company for federal reserve services.

(b) The trust company may enter into contracts, trust agreements, or other fiduciary instruments with the comptroller, the Federal Reserve System, a depository trust company, and other third parties. The trust company shall be liable under those contracts in accordance with the terms contained in the contracts. Notwithstanding any other statute to the contrary, to the extent permitted by the Texas Constitution and the contracts, trust agreements, or other fiduciary instruments between the trust company, the Federal Reserve System, and a depository trust company, the trust company's obligations shall be guaranteed by the state, and the state expressly waives all defenses of governmental immunity by and on behalf of the trust company, the comptroller, and the state and expressly consents to sue and be sued in federal court or in any court of competent jurisdiction. However, this provision does not alter or affect the immunity accorded to state officials

and employees under state law. The trust company may enter into contracts with the comptroller and the Federal Reserve System to provide any services that the Federal Reserve System makes available, including:

(1) safekeeping book-entry United States Treasury and agency securities owned by the state and its agencies;

(2) using the federal reserve wire transfer system to transfer money and book-entry securities and to settle securities transactions involving book-entry United States Treasury and agency securities owned by the state and its agencies;

(3) collecting, through the Federal Reserve System, checks deposited with the treasury;

(4) receiving payments from and making payments to the federal government on behalf of the state and its agencies;

(5) originating automated clearinghouse transactions or other electronic transfers to make payments on behalf of the state and its agencies, collecting revenues due the state and its agencies, and transferring money between state depositories;

(6) paying warrants drawn on the treasury and presented through the Federal Reserve System for payment; and

(7) safekeeping collateral pledged to secure deposits of public funds.

(c) The trust company may adopt and amend articles of incorporation, bylaws, resolutions, and other documents necessary to carry out its purposes.

(d) The trust company may act as escrow agent for refunding bonds issued under Subchapter A, Chapter 1207, to make a deposit under Subchapter B or C of that chapter.

(e) The trust company may hire employees and may fix their compensation and prescribe their duties or may contract with the comptroller's office for staff support.

(f) The trust company shall develop a fee schedule in the amount necessary to recover costs of service and to retain adequate reserves to support the operations of the trust company.

(g) The trust company is exempt from other state laws regulating or limiting state purchasing or a purchasing decision if the trust company determines that the purchase or decision relates to the fiduciary duties of the trust company. The trust company shall make all purchases of goods and services using purchasing methods that ensure the best value to the trust company and its participants. In determining best value, the trust company may consider the best value standards applicable to state agencies as enumerated in Section 2155.074. The trust company shall develop a plan of operation that includes procedures and standards for the purchases of goods and services using best value methods.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 78, Sec. 9, eff. May 11, 1989; Acts 1991, 72nd Leg., ch. 909, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 2nd C.S., ch. 12, Sec. 1.25, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 939, Sec. 7, 13, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1311, Sec. 6, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.73, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 22, eff. June 15, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 8.231, eff. Sept. 1, 2001.

Sec. 404.104. DUTIES OF COMPTROLLER. (a) The comptroller is the sole officer, director, and shareholder of the trust company. The comptroller's office shall manage the trust company.

(b) The comptroller may enter into contracts, trust agreements, and other instruments with the trust company as provided by Section 404.103(b).

(c) The comptroller shall submit to the Legislative Budget Board an audited report regarding the operations of the trust company. The trust company may contract with a certified public accountant or the state auditor to conduct an independent audit of the operations of the trust company. This subsection does not affect the state auditor's authority to conduct an audit of the trust company in accordance with Chapter 321.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 12, eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.74, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 23, eff. June 15, 2001.

Sec. 404.105. CAPITAL OR RESERVE. The trust company shall hold capital stock and reserve balances outside the treasury in an amount required by applicable regulatory bodies for eligibility for federal reserve services, for participation in a depository trust

company, and as necessary to achieve its purposes under Section 404.103. The stock of the trust company is an authorized investment for state funds and shall be held by the comptroller, but the amount may not be more than \$1 million.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 26, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.75, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 24, eff. June 15, 2001.

Sec. 404.106. EARNINGS; AUTHORIZED INVESTMENTS. (a) Any net earnings of the trust company attributable to capital stock or investments of capital stock shall be credited annually to the account of the treasury and shall be allocated annually to the funds held and managed by the comptroller in accordance with Section 404.071(a).

(b) Funds held by the trust company shall be invested in obligations authorized by law for the investment of funds held and managed by the comptroller.

(c) With respect to specific funds held by the trust company for a particular participant, the trust company has the same investment authority as that participant for those specific funds.

(d) The trust company may hold reserve balances or securities as required by the Federal Reserve System or as required for participation in a depository trust company.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 27, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.76, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1158, Sec. 25, eff. June 15, 2001.

Sec. 404.107. FEES. (a) Any fees or assessments imposed by state law for the incorporation, regulation, or operation of trust companies do not apply to the Texas Treasury Safekeeping Trust Company.

(b) A participant that has money or securities on deposit with the trust company shall pay the fees provided in the trust company's fee schedule developed under Section 404.103(f). The trust company may:

(1) deduct a fee from the principal or earning of a participant on deposit with the trust company; or

(2) require a participant to pay a fee from an amount not on deposit with the trust company.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 2001, 77th Leg., ch. 1158, Sec. 26, eff. June 15, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 27, eff. June 20, 2003.

Sec. 404.108. TRUST COMPANY INVESTMENT ADVISORY BOARD. (a) The comptroller may appoint an investment advisory board to advise the comptroller with respect to managing the assets held by the trust company. The advisory board shall provide the comptroller guidance on the investment philosophy that should be pursued in managing the assets under the trust company's control. The advisory board serves in an advisory capacity only and is not a fiduciary with respect to the assets held by the trust company.

(b) The advisory board is composed of seven members appointed by the comptroller with the advice of the governor, lieutenant governor, and speaker of the house of representatives.

(c) The members of the advisory board must have knowledge of or experience in finance, including the management of funds or business operations.

(d) Appointments to the advisory board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of appointees.

(e) Each member of the advisory board must be a resident of this state.

(f) The creation, size, composition, and duration of the advisory board is governed exclusively by this subchapter. Chapter 2110 does not apply to the size, composition, or duration of the advisory board.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 27, eff. June 15, 2001.

Sec. 404.109. RESTRICTIONS ON ADVISORY BOARD APPOINTMENT, MEMBERSHIP, AND EMPLOYMENT. A person is not eligible for appointment to the advisory board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the trust company;

(2) owns or controls, directly or indirectly, more

than a 10 percent interest in a business entity or other organization receiving funds from the trust company; or

(3) receives money from the business entity or other organization receiving funds from the trust company that exceeds five percent of the person's gross income for the preceding calendar year.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 27, eff. June 15, 2001.

Sec. 404.110. REMOVAL OF ADVISORY BOARD MEMBERS. The comptroller may remove from the advisory board an advisory board member at will or for any of the following causes:

(1) at the time of the member's appointment, the member did not have the qualifications prescribed by Section 404.108 or was ineligible under Section 404.109;

(2) while serving on the advisory board, the member does not maintain the qualifications prescribed by Section 404.108 or becomes ineligible for appointment under Section 404.109;

(3) for a substantial portion of the member's term, the member is unable to discharge the member's duties because of illness or disability; or

(4) without being excused by a majority vote of the advisory board, the member is absent from more than one-third of the regularly scheduled board meetings that the member is eligible to attend during a calendar year.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 27, eff. June 15, 2001.

Sec. 404.111. ADVISORY BOARD MEMBER TRAINING. (a) Before a member of the advisory board may assume the member's duties, the member must complete at least one course of the training program established under this section.

(b) A training program established under this section shall provide information regarding:

(1) the role and functions of the trust company;

(2) the assets managed by and programs operated by the trust company; and

(3) the statutes applicable to the trust company, including Chapters 551, 552, and 2001.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 27, eff. June 15, 2001.

Sec. 404.112. COMPENSATION; EXPENSES. Members of the advisory board serve without compensation but are entitled to reimbursement for actual and necessary expenses in attending meetings of the advisory board or performing other official duties authorized by the comptroller.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 27, eff. June 15, 2001.

Sec. 404.113. MEETINGS. (a) The advisory board may meet as often as necessary, but shall meet at least twice each year.

(b) Advisory board meetings are subject to Chapter 551.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 27, eff. June 15, 2001.

Sec. 404.114. INVESTMENT MANAGEMENT. (a) The comptroller may delegate investment authority and may contract with private professional investment managers to manage or assist in managing assets held by the trust company.

(b) The comptroller may delegate a power or duty relating to the investment of assets held by the trust company to an employee or agent of the comptroller, including professional investment managers.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 27, eff. June 15, 2001.

Sec. 404.115. PERSONNEL. (a) The comptroller may appoint a person to serve as chief executive officer in managing the trust company and carrying out the policies of the trust company. The chief executive officer and employees of the trust company serve at the will of the comptroller.

(b) The comptroller may delegate any of the comptroller's duties to the chief executive officer and trust company employees.

(c) The chief executive officer or the chief executive officer's designee shall develop a career ladder program and a system of compensation necessary to retain qualified staff.

(d) The chief executive officer or the chief executive officer's designee shall develop a system of annual performance evaluations. Merit pay for trust company employees must be based on the system established under this subsection.

(e) The chief executive officer or the chief executive officer's designee shall prepare and maintain a written policy statement to assure implementation of a program of equal employment opportunity under which all personnel decisions are made without regard to race, color, disability, religion, age, or national origin.

(f) The chief executive officer shall appoint an internal auditor for the trust company. The appointment of the internal auditor must be approved by the comptroller. The comptroller may require the internal auditor to submit certain reports directly to the comptroller.

(g) Except as provided by this section and Section 404.103(e), trust company employees hired under this subchapter are state employees for all purposes, including accrual of leave time, insurance benefits, retirement benefits, and travel regulations, Chapter 104, Civil Practice and Remedies Code, and Chapter 501, Labor Code.
Added by Acts 2001, 77th Leg., ch. 1158, Sec. 27, eff. June 15, 2001.

Sec. 404.116. LIABILITY INSURANCE FOR CERTAIN BOARD MEMBERS, OFFICIALS, AND STAFF. (a) The trust company may purchase or otherwise acquire insurance to protect members of the advisory board and the trust company staff.

(b) Insurance purchased or acquired by the trust company under this section may:

(1) protect against any type of liability to third persons that might be incurred while conducting trust company business; and

(2) provide for all costs of defending against such liability, including court costs and attorney's fees.

(c) This section does not authorize the purchase or acquisition of insurance to protect against liability not described in Subsection (b).

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 27, eff. June 15, 2001.

SUBCHAPTER H. TAX AND REVENUE ANTICIPATION NOTES

Sec. 404.121. DEFINITIONS. In this subchapter:

(1) "Cash flow deficit" for any period means the excess, if any, of expenditures paid and transfers made from the general revenue fund in the period, including payments provided by Section 42.259, Education Code, over taxes and other revenues deposited to the fund in the period, other than revenues deposited pursuant to Section 403.092, that are legally available for the expenditures and transfers.

(2) "Committee" means the cash management committee.

(3) "Credit agreement" means a loan agreement, revolving credit agreement, agreement establishing a line of credit, letter of credit, reimbursement agreement, insurance contract, commitment to purchase tax and revenue anticipation notes, purchase or sale agreement, forward payment conversion agreement, contract providing for payments based on levels of or changes in interest rates or currency exchange rates, or commitment or other contract or agreement approved by the comptroller in connection with the authorization, issuance, security, exchange, payment, purchase, or redemption of an obligation, interest on an obligation, or both.

(4) "Tax and revenue anticipation notes" and "notes" mean notes issued under this section, including any obligations under credit agreements entered into by the comptroller in connection with the issuance of the notes.

(5) "Temporary cash shortfall" during any period means the greater of:

(A) the cash flow deficit forecast by the comptroller for the period; or

(B) the cash balance of taxes and other revenues in the general revenue fund at the beginning of the period that are legally available for expenditures and transfers included in the cash flow deficit, other than transfers deposited pursuant to Section 403.092, less the cash flow deficit for the period and less an amount determined by the comptroller that is reasonably required as a cash balance in the general revenue fund, but the reasonable account balance may not exceed 10 percent of expenditures and transfers made from the general revenue fund in the fiscal year before the year in which the determination is made.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended

by Acts 1987, 70th Leg., 2nd C.S., ch. 53, Sec. 2.001, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 426, Sec. 28, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 6.14, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 7.77, eff. Sept. 1, 1997.

Sec. 404.122. CASH MANAGEMENT COMMITTEE. The cash management committee is composed of the governor, lieutenant governor, speaker of the house of representatives, and comptroller. If the speaker of the house of representatives is not permitted by the Texas Constitution to serve as a voting member of the committee, the speaker of the house of representatives serves as a nonvoting member of the committee.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.09(a), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.78, eff. Sept. 1, 1997.

Sec. 404.123. NOTES AUTHORIZED. (a) In anticipation of a temporary cash shortfall in the general revenue fund during any fiscal year, the comptroller, subject to Section 404.124, may issue, sell, and deliver tax and revenue anticipation notes on behalf of the state.

(b) The committee may impose a limit on the sum of the total amount of the notes outstanding and the total outstanding liability of the general revenue fund under Section 403.092.

(c) Tax and revenue anticipation notes are not debts of the state within the meaning of any state constitutional prohibition. The notes may be used solely to coordinate the state's cash flow within each fiscal biennium.

(d) All notes must mature and be paid in full during the fiscal biennium in which they were issued. The notes must be signed by the governor.

(e) The notes are not subject to review by the Bond Review Board.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 53, Sec. 2.002, 2.006, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 4, Sec. 2.10(a), eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 426, Sec. 29, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.79, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.232, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1310, Sec. 28, eff. June 20, 2003.

Sec. 404.124. SHORTFALL FORECAST; COMMITTEE APPROVAL. (a) Before issuing notes the comptroller shall submit to the committee a general revenue cash flow shortfall forecast, based on the comptroller's most recent anticipated revenue estimate. The forecast must contain a detailed report of estimated revenues and expenditures for each month and each major revenue and expenditure category and must demonstrate the maximum general revenue cash flow shortfall that may be predicted.

(b) Based on the forecast the committee may approve the issuance of notes and the maximum outstanding balance of notes in any fiscal year. The outstanding balance may not exceed the maximum temporary cash shortfall forecast by the comptroller for any period in the fiscal year. The comptroller may not issue notes in excess of the amount approved.

(c) The committee may determine whether the notes will be sold on a negotiated or competitive bid basis. If the committee determines that competitive bids are appropriate, the underwriter of any notes issued under this section shall be selected by the solicitation of sealed bids and an appropriate bid notice shall be published at least one time in one or more recognized financial publications of general circulation published within the state and one or more recognized financial publications of general circulation published outside the state. Unless all bids are rejected, the underwriter shall be selected from the bids received. The comptroller may not sell the notes in a manner not approved.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 426, Sec. 30, eff. June 9, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 7.8, eff. Sept. 1, 1997.

Sec. 404.125. ISSUANCE OF NOTES. (a) The comptroller, consistent with the committee's determinations under Section 404.124, shall authorize the issuance, sale, and delivery of the notes by order.

(b) Except as otherwise provided by this subsection, the proceeds of the notes shall be deposited in a special fund in the treasury called the tax and revenue anticipation note fund. The comptroller may pay the costs of issuance of the notes from the fund and from time to time shall transfer the net proceeds to the general

revenue fund to honor authorized expenditures from the general revenue fund. The comptroller may invest any funds held in the tax and revenue anticipation note fund in the authorized investments described in Section 404.024 until used in accordance with this section. Proceeds of a credit agreement may be deposited as directed by the comptroller pursuant to the order authorizing the credit agreement and may be applied to pay the principal of and interest on the notes.

(c) In connection with the issuance of the notes, the comptroller may exercise the powers granted to the governing body of an issuer in connection with the issuance of obligations under Chapter 1371 to the extent not inconsistent with this section. The notes are subject to review and approval by the attorney general in the same manner and with the same effect as is provided by that chapter.

(d) The comptroller is an authorized issuer under Chapter 1201, and that chapter applies to the tax and revenue anticipation notes authorized in this subchapter.

(e) Amounts in the tax and revenue anticipation note fund may be pledged to secure payment of the notes and performance of obligations under credit agreements relating to the notes and may be used to pay required rebates to the federal government. The comptroller may make covenants to carry out the purposes of this subchapter and take other actions necessary, desirable, or appropriate to complete the issuance of the notes. The state pledges to and agrees with the holders of any notes that the state will not limit or alter the rights vested in the comptroller to fulfill the terms of any agreements made with the holders, or in any way impair the rights and remedies of the holders, until the notes are fully discharged.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 53, Sec. 2.003, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1423, Sec. 7.81, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.233, eff. Sept. 1, 2001.

Sec. 404.126. FUND TRANSFERS; INTEREST; PAYMENT OF NOTES. (a) Cash received from the collection of taxes and revenues credited to the general revenue fund during the fiscal biennium in which the notes are issued is available to restore the balance of the tax and revenue anticipation note fund. The comptroller periodically shall transfer the cash to the fund to ensure the timely payment in full of the notes. Transfers to the tax and revenue anticipation note fund under this subsection may not exceed the amount that has been transferred from that fund to the general revenue fund and has not been restored to the tax and revenue anticipation note fund. The comptroller shall transfer surplus cash into the general revenue fund under Section 403.092, as is necessary to complete the transfers required by this section.

(b) Notwithstanding any other provision of law, depository interest in the tax and revenue anticipation note fund shall be credited to that fund. Depository interest shall be calculated and credited to the fund monthly as if transfers to the general revenue fund had not been made.

(c) On payment in full of all outstanding notes, all required rebates to the federal government, and all costs of issuance of the notes, the comptroller shall transfer to the general revenue fund any amounts remaining in the tax and revenue anticipation note fund. To the extent that the amounts credited to the tax and revenue anticipation note fund are insufficient to pay the principal, premium, if any, interest on the notes, and any required rebate to the federal government when due, and any issuance costs related to the notes, amounts in the general revenue fund are available for appropriation by the legislature to make those payments. Amounts in the tax and revenue anticipation note fund are available for appropriation by the legislature to carry out the purposes of this subchapter.

(d) Payment of the notes and performance of official duties prescribed by the state constitution and by this subchapter may be enforced in the state supreme court by mandamus or other appropriate proceeding.

Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 53, Sec. 2.004, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 4, Sec. 2.11(a), eff. Sept. 1, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 7.82, eff. Sept. 1, 1997.