

## BILL ANALYSIS

Senate Research Center  
78R10722 CLG-D

C.S.S.B. 1059  
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Jurisprudence  
4/5/2003  
Committee Report (Substituted)

### DIGEST AND PURPOSE

Currently, some feel there is a need for increased efficiency in addressing corporate fraud and providing penalties. An agency within the Office of the Attorney General could assist district attorneys and county attorneys in investigating and prosecuting corporate fraud. C.S.S.B. 1059 creates a Corporate Integrity Unit within the office of the attorney general to assist in the enforcement of the laws relating to corporate fraud or other similar illegal activities. This bill requires companies entering into contracts with the state to immediately report any financial irregularities relating to the contract or the company's financial position. C.S.S.B. 1059 also establishes criminal and civil penalties for untimely or inaccurate disclosure of financial reports.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the governing body of a state governmental entity in SECTION 3 (Section 2263.004, Government Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 402B, Government Code, by adding Section 402.0231, as follows:

Sec. 402.0231. CORPORATE INTEGRITY UNIT. (a) Defines "corporate fraud."

(b) Provides that a corporate integrity unit is created within the office of the attorney general to assist in the enforcement of the laws relating to corporate fraud or other similar illegal activities. Requires the unit to assist district attorneys and county attorneys in the investigation and prosecution of corporate fraud or other similar illegal activities allegedly committed by corporations, limited liability companies, and registered limited liability partnerships, to assist state agencies with investigation of complaints and administrative enforcement actions for corporate fraud violations, including the assessment of an administrative penalty or other administrative sanction, and serve as a clearinghouse for information relating to the investigation and prosecution of corporate fraud and other similar illegal activities in this state.

(c) Requires a state agency or local law enforcement agency to cooperate with the corporate integrity unit by providing information requested by the unit as necessary to carry out the purposes of this section, to the extent allowed by law. Provides that information disclosed under this subsection is confidential and not subject to disclosure under Chapter 552 (Public Information).

SECTION 2. Amends Chapter 2252Z, Government Code, by adding Section 2252.904, as follows:

Sec. 2252.904. CONTRACTS WITH COMPANIES; FINANCIAL DISCLOSURES. (a) Defines "certified audit," "company," "financial irregularity," "independent certified public accountant" and "state governmental entity."

(b) Requires a company that enters into a contract with a state governmental

entity that involves the expenditure of more than \$25,000, to immediately report to the entity any financial irregularity relating to the contract or the company's financial position that is detrimental to the interest of the entity and annually during the contract period submit to the entity a certified audit of the company's operations, except as provided by Subsection (g).

(c) Requires the auditor's opinion in an audit required by Subsection (b)(2) to state whether the financial statements of the audited company present fairly, in all material respects and in accordance with accounting principles generally accepted in the United States, its financial position and results of operations relating to the obligation, receipt, expenditure, and use of state funds.

(d) Provides that a company that violates Subsection (b)(1) commits an offense. Provides that an offense under this subsection is a Class A misdemeanor.

(e) Provides that a company that violates Subsection (b)(2) is liable to the state for a civil penalty in an amount not to exceed \$10,000. Authorizes the attorney general to bring suit to recover the civil penalty imposed under this subsection.

(f) Provides that if the attorney general prevails in an action for recovery of a civil penalty under Subsection (e), the attorney general is entitled to recover reasonable attorney's fees incurred in obtaining the penalty.

(g) Authorizes a federally insured financial institution that has less than \$500 million in assets to submit a directors examination conducted by an independent certified public accountant in accordance with the Statement of Standards for Attestation Engagements, in lieu of a certified audit required by Subsection (b)(2).

SECTION 3. Amends Title 10F, Government Code, by adding Chapter 2263, as follows:

**CHAPTER 2263. ETHICS AND DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS AND SERVICE PROVIDERS**

Sec. 2263.001. **APPLICABILITY.** (a) Provides that this chapter applies in connection with the management or investment of any state funds managed or invested under certain laws and by or for certain entities.

(b) Provides that this chapter applies in connection with the management or investment of state funds without regard to whether the funds are held in the state treasury.

(c) Provides that this chapter does not apply to or in connection with a state governmental entity that does not manage or invest state funds and for which state funds are managed or invested only by the comptroller.

Sec. 2263.002. **DEFINITION.** Defines "financial advisor or service provider."

Sec. 2263.003. **CONSTRUCTION WITH OTHER LAW.** Provides that to the extent of a conflict between this chapter and another law, the law that imposes a stricter ethics or disclosure requirement controls.

Sec. 2263.004. **ETHICS REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISORS OR SERVICE PROVIDERS.** Requires the governing body of a state governmental entity by rule to adopt standards of conduct applicable to financial advisors or service providers who are not employees of the state governmental entity, who provide financial services to the state governmental entity or advise the state governmental entity or a member of the governing body of the state governmental entity in connection with the management or investment of state funds, and who may reasonably be expected to receive, directly or indirectly, more than \$10,000 in compensation from the entity during a fiscal year or

render important investment or funds management advice to the entity or a member of the governing body of the entity, as determined by the governing body.

(b) Provides that a contract under which a financial advisor or service provider renders financial services or advice to a state governmental entity or other person described by Subsection (a) is voidable by the state governmental entity if the financial advisor or service provider violates a standard of conduct adopted under this section.

Sec. 2263.005. DISCLOSURE REQUIREMENTS FOR OUTSIDE FINANCIAL ADVISOR OR SERVICE PROVIDER. (a) Requires a financial advisor or service provider described by Section 2263.004 to disclose in writing to the administrative head of the applicable state governmental entity and to the state auditor certain information.

(b) Requires the financial advisor or service provider to disclose a relationship described by Subsection (a) without regard to whether the relationship is a direct, indirect, personal, private, commercial, or business relationship.

(c) Requires a financial advisor or service provider described by Section 2263.004 to file annually a statement with the administrative head of the applicable state governmental entity and with the state auditor. Requires the statement to disclose each relationship and pecuniary interest described by Subsection (a), or if no relationship or pecuniary interest described by that subsection existed during the disclosure period, to affirmatively state that fact.

(d) Requires the annual statement to be filed not later than February 1 on a form prescribed by the governmental entity, other than the state auditor, receiving the form. Requires the statement to cover the reporting period of the previous calendar year. Requires the state auditor to develop and recommend a uniform form that other governmental entities receiving the form may prescribe.

(e) Requires the financial advisor or service provider to promptly file a new or amended statement with the administrative head of the applicable state governmental entity and with the state auditor whenever there is new information to report under Subsection (a).

Sec. 2263.006. PUBLIC INFORMATION. Provides that Chapter 552 controls the extent to which information contained in a statement filed under this chapter is subject to required public disclosure or excepted from required public disclosure.

SECTION 4. Amends Article 1.03B, Texas Miscellaneous Corporation Laws Act (Article 1302-1.03, V.T.C.S.), to provide an exception.

SECTION 5. Amends Part Five, Texas Miscellaneous Corporation Laws Act (Article 1302-5.01 et seq., V.T.C.S.), by adding Article 5.20, as follows:

Art. 5.20. CERTIFICATION OF FALSE OR MISLEADING FINANCIAL REPORT; CRIMINAL PENALTY. (a) Defines "corporate official" and "financial report."

(b) Provides that a corporate official who signs a sworn statement certifying that information contained in a financial report fairly represents, as of the period presented in the report, the financial condition or results of operation of the company issuing the report commits an offense if the corporate official makes the certification knowing that the report contains false or misleading information that affects or may affect the finances or operations of the issuing company, as appropriate, in any material respect.

(c) Provides that an offense under this section is a state jail felony.

SECTION 6. Provides that the office of the attorney general is not required to implement

Section 402.0231, Government Code, as added by this Act, unless a specific appropriation for the implementation is provided in the General Appropriations Act, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 7. Requires each state governmental entity required to adopt rules under Chapter 2263, Government Code, as added by this Act, to adopt its initial rules in time for the rules to take effect not later than January 1, 2004.

SECTION 8. Effective date: September 1, 2003.

### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1. No changes

SECTION 2. Amends As Filed S.B. 1059, proposed Section 2252.904(a)(1) by deleting the phrase “generally accepted accounting principals” from the definition of “certified audit.” Adds to the definition of “independent certified public accountant” in Section 2252.904(a)(4). Includes the phrase “that involves the expenditure of more than \$25,000” relating to a company that enters into a contract with a state governmental entity in proposed Section 2252.904(b) and provides an exception. Includes the phrase “generally accepted in the United States” in proposed Section 2252.904(c) relating to accounting principals. Adds proposed Subsections (f)-(g) to Section 2252.904.

SECTION 3. Amends proposed Section 2263.002 to include the phrase “a person or business entity who acts as” in the definition of “financial advisor or service provider.” Adds proposed Subsection (b) to Section 2263.004. Amends proposed Section 2263.005(a)(1) to insert the phrase “a reasonable person could expect the relationship” to diminish the “financial advisor’s or service provider’s” independence of judgment. Inserts “if no relationship or pecuniary interest described by that subsection existed during the disclosure period, the statement must affirmatively state that fact” at the end of Section 2263.005(c).

SECTION 4. No changes.

SECTION 5. No changes.

SECTION 6. Adds a new proposed SECTION 6. Redesignates the following Sections accordingly.