

BILL ANALYSIS

Senate Research Center
80R13869 DWS-F

H.B. 2754
By: Anchia et al. (Fraser)
Business & Commerce
5/9/2007
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Financial institutions are subject to extensive regulation for the purpose of ensuring safe and sound operations and the protection of customer funds. In addition to being subject to regular examination, banks and trust companies must file applications for prior regulatory approval for a variety of activities.

H.B. 2754 addresses the efficiency and the effectiveness of the corporate application and filing process at the Texas Department of Banking with respect to state banks and trust companies.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 5 (Section 32.401, Finance Code), SECTION 6 (Section 32.405, Finance Code), SECTION 14 (Section 182.401, Finance Code), and SECTION 15 (Section 182.405, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 32.002(a), Finance Code, to require the articles of association of a state bank to contain certain information.

SECTION 2. Amends Sections 32.004(b) and (c), Finance Code, as follows:

(b) Deletes existing text authorizing any person, other than a person protesting under Section 32.005 (Protest; Hearing; Decision On Charter Application), to request a copy of the nonconfidential portions of the application and written report as provided by Chapter 552 (Public Information), Government Code.

(c) Authorizes the rules adopted under this subtitle (Banks) to specify the confidential or nonconfidential character of information obtained or prepared by the Texas Department of Banking (department) under this chapter (Powers, Organization, And Financial Requirements). Provides that the business plan of the applicant and certain individuals' financial statements are confidential and not subject to public disclosure, except as provided by Subchapter D (Confidentiality of Information), Chapter 31, or in rules regarding confidential information.

SECTION 3. Amends Sections 32.005(a) through (d), Finance Code, as follows:

(a) Requires a protest of a charter application to be received by the department before the 15th day after the date the organizers publish notice under Section 32.004(a) and to be accompanied by the fees and deposits required by law. Requires the department, if the protest is untimely, to return all submitted fees and deposits to the protesting party. Requires the department, if the protest is timely, to notify the applicant of the protest and mail or deliver a complete copy of the nonconfidential sections of the charter application to the protesting party before the 15th day after the later of the date of receipt of the protest or receipt of the charter application. Deletes existing text authorizing any person to file a protest of an application.

(b) Requires a protesting party to file a detailed protest responding to each contested statement contained in the nonconfidential portion of the application not later than the 20th day after the date the protesting party receives the application from the department,

and relate each statement and response to the standards for approval set forth in Section 32.003(b). Requires the applicant to file a written reply to the protesting party's detailed response on or before the 10th day after the date the response is filed. Requires the protesting party's response and the applicant's reply to be verified by affidavit and to certify that a copy was served on the opposing party. Authorizes, if applicable, statements in the response and reply to be supported by references to data available in sources of which official notice is authorized to be taken. Requires any comment received by the department and any reply of the applicant to the comment to be made available to the protesting party. Deletes existing text requiring the banking commissioner (commissioner) to perform certain duties regarding the charter application.

(c) Prohibits the commissioner from being compelled to hold a hearing before granting or denying the charter application. Authorizes the commissioner to consider granting a hearing on a charter application at the request of the applicant or a protesting party in the exercise of discretion. Authorizes the commissioner to order a hearing regardless of whether one has been requested. Requires a party requesting a hearing to indicate with specificity the issues involved that cannot be determined on the basis of the record compiled under Subsection (b) and why the issues cannot be determined. Requires that a request for a hearing and the commissioner's decision with regard to granting a hearing to be made a part of the record. Makes an exception for holding a public hearing by prohibiting the commissioner from permitting discovery of confidential information in the charter application or the investigation report. Deletes existing text requiring the commissioner to conduct a public hearing if a protest of the application is timely filed accompanied by the fees and deposits required by law. Deletes existing text entitling a person protesting the application to the confidential portion, subject to a protective order that restricts the use of confidential information to the charter proceedings.

(d) Requires the commissioner to make a specific determination based on the record, rather than the record of the hearing.

SECTION 4. Amends Sections 32.103(b) and (c), Finance Code, as follows:

(b) Provides that prior written approval is not required for an increase in capital and surplus accomplished in certain ways unless restricted by rule.

(c) Provides that prior approval is not required under certain circumstances.

SECTION 5. Amends Section 32.401, Finance Code, as follows:

Sec. 32.401. New heading: **AUTHORITY TO PURCHASE ASSETS**. (a) Authorizes a state bank to purchase assets from another financial institution or other seller, except that the prior written approval of the commissioner is required if the purchase price exceeds an amount equal to three times the bank's unimpaired capital and surplus, rather than requiring the commissioner's written approval in all cases. Authorizes the Finance Commission of Texas (commission) by rule to require a state bank to obtain the prior written approval of the commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the safety and soundness of the purchasing bank.

(b) Changes references to the selling institution to the selling entity. Deletes existing Subsection (c) providing that this subchapter (Purchase or Sale of Assets) does not govern or prohibit the purchase of all or part of the assets of a corporation or other entity that is not a financial institution by a state bank, except as otherwise provided by this subtitle (Banks).

SECTION 6. Amends Section 32.405, Finance Code, as follows:

Sec. 32.405. **SALE OF ASSETS**. (a) Authorizes a state bank to sell a portion of its assets to another financial institution or other buyer, except that the prior written approval of the banking commissioner is required if the sales price exceeds an amount equal to three times the bank's unimpaired capital and surplus. Authorizes the commission by rule

to require a state bank to obtain the prior written approval of the commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the safety and soundness of the selling bank.

(b) Requires the state bank to provide written notice of the transaction to the commissioner at least 30 days before the expected closing date of the transaction if the prior approval of the commissioner for a sale of assets is not required under Subsection (a) and the sale involves the disposition of a branch office or another established location of the state bank.

(c) Creates this subsection from existing text.

(d) Redesignated from existing Subsection (b). Makes a reference to a sale under Subsection (c), rather than this section.

(e) Redesignated from existing Subsection (c).

SECTION 7. Amends Section 32.501(c), Finance Code, to provide that the state bank does not cease to be a state bank subject to the supervision of the commissioner unless certain actions are taken by the commissioner or bank.

SECTION 8. Amends Section 33.002(c), Finance Code, to authorize rules adopted under this subtitle (Banks) to specify the confidential or nonconfidential character of information obtained by the commissioner under this section. Provides that, in the absence of rules, information obtained by the commissioner under this section (Application Regarding Acquisition Of Control) is confidential and is prohibited from being disclosed by the commissioner or any employee of the department, except as provided by Subchapter D (Confidentiality of Information), Chapter 31.

SECTION 9. Amends Section 36.102, Finance Code, to make nonsubstantive changes.

SECTION 10. Amends Section 182.002(a), Finance Code, to require the articles of association of a state trust company to be signed and acknowledged by each organizer and to contain certain information.

SECTION 11. Amends Sections 182.004(b) and (c), Finance Code, to make conforming changes.

SECTION 12. Amends Sections 182.005(a) through (d), Finance Code, as follows:

(a) Requires a protest of a charter application to be received by the department before the 15th day after the date the organizers publish notice under Section 182.004(a) and to be accompanied by the fees and deposits required by law. Requires the department, if the protest is untimely, to return all submitted fees and deposits to the protesting party. Requires the department, if the protest is timely, to notify the applicant of the protest and mail or deliver a complete copy of the nonconfidential sections of the charter application to the protesting party before the 15th day after the later of the date of receipt of the protest or receipt of the charter application. Deletes existing text authorizing any person to file a protest of an application.

(b) Requires a protesting party to file a detailed protest responding to each contested statement contained in the nonconfidential portion of the application not later than the 20th day after the date the protesting party receives the application from the department, and relate each statement and response to the standards for approval set forth in Section 182.003(b). Requires the applicant to file a written reply to the protesting party's detailed response on or before the 10th day after the date the response is filed. Requires the protesting party's response and the applicant's reply to be verified by affidavit and to certify that a copy was served on the opposing party. Authorizes, if applicable, statements in the response and reply to be supported by references to data available in sources of which official notice is authorized to be taken. Requires any comment received by the department and any reply of the applicant to the comment to be made

available to the protesting party. Deletes existing text requiring the commissioner to perform certain duties regarding the charter application.

(c) Prohibits the commissioner from being compelled to hold a hearing before granting or denying the charter application. Authorizes the commissioner to consider granting a hearing on a charter application at the request of the applicant or a protesting party in the exercise of discretion. Authorizes the commissioner to order a hearing regardless of whether one has been requested. Requires a party requesting a hearing to indicate with specificity the issues involved that cannot be determined on the basis of the record compiled under Subsection (b) and why the issues cannot be determined. Requires that a request for a hearing and the commissioner's decision with regard to granting a hearing to be made a part of the record. Makes an exception for holding a public hearing by prohibiting the commissioner from permitting discovery of confidential information in the charter application or the investigation report. Deletes existing text requiring the commissioner to conduct a public hearing if a protest of the application is timely filed accompanied by the fees and deposits required by law. Deletes existing text entitling a person protesting the application to the confidential portion, subject to a protective order that restricts the use of confidential information to the charter proceedings.

(d) Requires the commissioner to make a specific determination based on the record, rather than the record of the hearing.

SECTION 13. Amends Sections 182.103(b) and (c), Finance Code, as follows:

(b) Provides that prior approval is not required for an increase in restricted capital accomplished in certain ways unless otherwise restricted by rules.

(c) Provides that prior approval is not required under certain circumstances.

SECTION 14. Amends Section 182.401, Finance Code, as follows:

Sec. 182.401. New heading: **AUTHORITY TO PURCHASE ASSETS**. (a) Authorizes a state trust company to purchase assets from another trust institution, including the right to control accounts established with the trust institution, or assets from another seller, except that the prior written approval of the commissioner is required if the purchase price exceeds an amount equal to three times the trust company's equity capital less intangible, rather than requiring the commissioner's written approval in all cases. Authorizes the commission by rule to require a state trust company to obtain the prior written approval of the commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the safety and soundness of the purchasing trust company.

(b) Changes references to a trust institution to the selling entity. Makes a conforming change.

(c) Requires an application in the form required by the commissioner to be filed with the commissioner if prior approval is required. Deletes existing text providing that this subchapter (Purchase or Sale of Assets) does not govern or prohibit the purchase of all or part of the assets of a corporation or other entity that is not a trust institution by a state trust company, except as otherwise provided by this subtitle (Trust Companies).

(d) Redesignated from existing Subsection (e). Requires the commissioner to approve the application to purchase if certain conditions are met.

(e) Redesignated from existing Subsection (f). Provides that a purchase subject to prior approval is effective on the date of approval unless the purchase agreement provides for and the commissioner consents to a different effective date.

(f) Redesignated from existing Subsection (g). Requires the acquiring state trust company to succeed by operation of law to all of the rights, privileges, and fiduciary obligations of the selling trust institution or other fiduciary under each

account included in the assets acquired if the purchase transaction includes all or substantially all of the assets of another trust institution or other fiduciary.

SECTION 15. Amends Section 182.405, Finance Code, as follows:

Sec. 182.405. SALE OF ASSETS. (a) Authorizes a state trust company to sell all or any portion of its assets to another trust institution or other buyer, except that the prior written approval of the commissioner is required if the sales price exceeds an amount equal to three times the sum of the trust company's equity capital less intangible assets. Authorizes the commission by rule to require a state trust company to obtain the prior written approval of the commissioner for a transaction not otherwise subject to approval that involves potentially substantial risks to the safety and soundness of the selling trust company.

(b) Requires the state trust company to provide written notice of the transaction to the commissioner at least 30 days before the expected closing date of the transaction if prior approval of the commissioner for a sale of assets is not required under Subsection (a) and the sale involves the disposition of an established location of the state trust company.

(c) Redesignated from existing Subsection (a).

(d) Redesignated from existing Subsection (b). Makes a reference to a sale under Subsection (c), rather than this section.

(e) Redesignated from existing Subsection (c) and (d). Deletes existing text providing that this section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(f) Redesignated from existing Subsection (e). Requires each buyer in a transaction described by Subsection (c) that is a trust institution or other fiduciary to succeed by operation of law to all of the rights, privileges, and fiduciary obligations of the selling state trust company under each account included in the assets acquired.

SECTION 16. Amends Section 182.501(c), Finance Code, to provide that a state trust company does not cease to be a state trust company subject to the supervision of the commissioner unless certain conditions are met.

SECTION 17. Amends Section 183.002(c), Finance Code, to authorize the rules adopted under this subtitle (Trust Companies) to specify the confidential or nonconfidential character of information obtained by the commissioner under this section (Application Regarding Acquisition Of Control). Provides that, in the absence of rules, information obtained by the commissioner under this section is confidential and is prohibited from being disclosed by the commissioner or any employee of the department except as provided by Subchapter D (Confidentiality of Information), Chapter 181.

SECTION 18. Amends Section 186.102, Finance Code, to make nonsubstantive changes.

SECTION 19. Effective date: September 1, 2007.