

1-1 By: Anchia, et al. (Senate Sponsor - Fraser) H.B. No. 2754
1-2 (In the Senate - Received from the House May 7, 2007;
1-3 May 8, 2007, read first time and referred to Committee on Business
1-4 and Commerce; May 11, 2007, reported favorably by the following
1-5 vote: Yeas 7, Nays 0; May 11, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the regulation of state banks and state trust
1-9 companies.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 32.002(a), Finance Code, is amended to
1-12 read as follows:

1-13 (a) The articles of association of a state bank must be
1-14 signed and acknowledged by each organizer and must contain:

1-15 (1) the name of the bank, subject to Subsection (b);

1-16 (2) the period of the bank's duration, which may be
1-17 perpetual, subject to Subsection (c);

1-18 (3) the powers of the bank, which may be stated as:

1-19 (A) all powers granted by law to a state bank; or

1-20 (B) a list of the specific powers under Section
1-21 32.001 that the bank chooses to exercise;

1-22 (4) the aggregate number of shares or participation
1-23 shares that the bank will be authorized to issue and the number of
1-24 classes of shares or participation shares, which may be one or more;

1-25 (5) if the shares or participation shares are to be
1-26 divided into classes:

1-27 (A) the designation of each class and statement
1-28 of the preferences, limitations, and relative rights of the shares
1-29 or participation shares of each class, which in the case of a
1-30 limited banking association may be more fully set forth in the
1-31 participation agreement;

1-32 (B) the number of shares or participation shares
1-33 of each class; and

1-34 (C) a statement of the par value of the shares or
1-35 participation shares of each class or that the shares or
1-36 participation shares are to be without par value;

1-37 (6) any provision limiting or denying to shareholders
1-38 or participants the preemptive right to acquire additional or
1-39 treasury shares or participation shares of the bank;

1-40 (7) any provision granting the right of shareholders
1-41 or participants to cumulative voting in the election of directors
1-42 or managers;

1-43 (8) the aggregate amount of consideration to be
1-44 received for all shares or participation shares initially issued by
1-45 the bank and a statement that:

1-46 (A) all authorized shares or participation
1-47 shares have been subscribed; and

1-48 (B) all subscriptions received have been
1-49 irrevocably [~~provide for the consideration to be fully~~] paid in
1-50 cash [~~before issuance of the charter~~];

1-51 (9) any provision consistent with law that the
1-52 organizers elect to set forth in the articles of association for the
1-53 regulation of the internal affairs of the bank or that is otherwise
1-54 required by this subtitle to be set forth in the articles of
1-55 association;

1-56 (10) the street address of the bank's initial home
1-57 office; and

1-58 (11) either:

1-59 (A) the number of directors or managers
1-60 constituting the initial board and the names and street addresses
1-61 of the persons who are to serve as directors or managers until the
1-62 first annual meeting of shareholders or participants or until
1-63 successor directors or managers have been elected and qualified; or

1-64 (B) the statement described by Subsection (d).

2-1 SECTION 2. Sections 32.004(b) and (c), Finance Code, are
 2-2 amended to read as follows:

2-3 (b) At the expense of the organizers, the banking
 2-4 commissioner shall thoroughly investigate the application. The
 2-5 banking commissioner shall prepare a written report of the
 2-6 investigation~~[, and any person, other than a person protesting~~
 2-7 ~~under Section 32.005, may request a copy of the nonconfidential~~
 2-8 ~~portions of the application and written report as provided by~~
 2-9 ~~Chapter 552, Government Code].~~

2-10 (c) Rules adopted under this subtitle may specify the
 2-11 confidential or nonconfidential character of information obtained
 2-12 or prepared by the department under this chapter. Except as
 2-13 provided by Subchapter D, Chapter 31, or in rules regarding
 2-14 confidential information, the business plan of the applicant and
 2-15 the financial statement of a proposed officer, director, manager,
 2-16 or managing participant are [is] confidential and not subject to
 2-17 public disclosure.

2-18 SECTION 3. Sections 32.005(a) through (d), Finance Code,
 2-19 are amended to read as follows:

2-20 (a) A protest of a charter application must be received by
 2-21 the department before the 15th day after the date the organizers
 2-22 publish notice under Section 32.004(a) and must be accompanied by
 2-23 the fees and deposits required by law. If the protest is untimely,
 2-24 the department shall return all submitted fees and deposits to the
 2-25 protesting party. If the protest is timely, the department shall
 2-26 notify the applicant of the protest and mail or deliver a complete
 2-27 copy of the nonconfidential sections of the charter application to
 2-28 the protesting party before the 15th day after the later of the date
 2-29 of receipt of the protest or receipt of the charter application [Any
 2-30 person may file a protest of an application].

2-31 (b) A protesting party must file a detailed protest
 2-32 responding to each contested statement contained in the
 2-33 nonconfidential portion of the application not later than the 20th
 2-34 day after the date the protesting party receives the application
 2-35 from the department, and relate each statement and response to the
 2-36 standards for approval set forth in Section 32.003(b). The
 2-37 applicant must file a written reply to the protesting party's
 2-38 detailed response on or before the 10th day after the date the
 2-39 response is filed. The protesting party's response and the
 2-40 applicant's reply must be verified by affidavit and must certify
 2-41 that a copy was served on the opposing party. If applicable,
 2-42 statements in the response and in the reply may be supported by
 2-43 references to data available in sources of which official notice
 2-44 may properly be taken. Any comment received by the department and
 2-45 any reply of the applicant to the comment shall be made available to
 2-46 the protesting party [If a protest of the application is not filed
 2-47 before the 15th day after the date the organizers publish notice
 2-48 under Section 32.004(a), the banking commissioner may immediately
 2-49 determine whether the necessary conditions set forth in Section
 2-50 32.003(b) have been established, based on the application and
 2-51 investigation. The banking commissioner shall approve the charter
 2-52 application or set the charter application for hearing].

2-53 (c) The banking commissioner may not be compelled to hold a
 2-54 hearing before granting or denying the charter application. In the
 2-55 exercise of discretion, the banking commissioner may consider
 2-56 granting a hearing on a charter application at the request of the
 2-57 applicant or a protesting party. The banking commissioner may order
 2-58 a hearing regardless of whether a hearing has been requested by a
 2-59 party. A party requesting a hearing must indicate with specificity
 2-60 the issues involved that cannot be determined on the basis of the
 2-61 record compiled under Subsection (b) and why the issues cannot be
 2-62 determined. A request for hearing and the banking commissioner's
 2-63 decision with regard to granting a hearing shall be made a part of
 2-64 the record. If [a protest of the application is timely filed,
 2-65 accompanied by the fees and deposits required by law, or if] the
 2-66 banking commissioner sets a hearing, the banking commissioner shall
 2-67 conduct a public hearing and one or more prehearing conferences and
 2-68 opportunities for discovery as the banking commissioner considers
 2-69 advisable and consistent with the applicable law, except that the

3-1 banking commissioner may not permit discovery of confidential
 3-2 information in the charter application or the investigation report.
 3-3 ~~[A person protesting the application is entitled to the~~
 3-4 ~~confidential portion of the application, subject to a protective~~
 3-5 ~~order that restricts the use of confidential information to the~~
 3-6 ~~charter proceedings.]~~

3-7 (d) Based on the record ~~[of the hearing]~~, the banking
 3-8 commissioner shall determine whether the application meets the
 3-9 requirements of Section 32.003(b) and shall enter an order granting
 3-10 or denying the charter.

3-11 SECTION 4. Sections 32.103(b) and (c), Finance Code, are
 3-12 amended to read as follows:

3-13 (b) Unless restricted by rule, prior written approval is not
 3-14 required for an increase in capital and surplus accomplished
 3-15 through:

3-16 (1) issuance of shares of common stock ~~[or their~~
 3-17 ~~equivalent in participation shares]~~ for cash, or a cash
 3-18 contribution to surplus by shareholders that does not result in
 3-19 issuance of additional common stock or other securities;

3-20 (2) declaration and payment of pro rata share
 3-21 dividends as defined by the ~~[Texas]~~ Business Organizations Code
 3-22 ~~[Corporation Act]; or~~

3-23 (3) adoption by the board of a resolution directing
 3-24 that all or part of undivided profits be transferred to capital or
 3-25 surplus.

3-26 (c) Prior approval is not required for:

3-27 (1) a decrease in capital or surplus caused by losses
 3-28 in excess of undivided profits; or

3-29 (2) a change in capital and surplus resulting from
 3-30 accounting adjustments required by a transaction approved by the
 3-31 banking commissioner if the accounting adjustments are reasonably
 3-32 disclosed in the submitted application.

3-33 SECTION 5. Section 32.401, Finance Code, is amended to read
 3-34 as follows:

3-35 Sec. 32.401. AUTHORITY TO PURCHASE ASSETS ~~[OF ANOTHER~~
 3-36 ~~FINANCIAL INSTITUTION]~~. (a) A state bank ~~[with the prior written~~
 3-37 ~~approval of the banking commissioner]~~ may purchase ~~[all or~~
 3-38 ~~substantially all of the]~~ assets from ~~[of]~~ another financial
 3-39 institution or other seller, except that the prior written approval
 3-40 of the banking commissioner is required if the purchase price
 3-41 exceeds an amount equal to three times the bank's unimpaired
 3-42 capital and surplus. The finance commission by rule may require a
 3-43 state bank to obtain the prior written approval of the banking
 3-44 commissioner for a transaction not otherwise subject to approval
 3-45 that involves potentially substantial risks to the safety and
 3-46 soundness of the purchasing bank.

3-47 (b) Except as otherwise expressly provided by another
 3-48 statute, the purchase of all or part of the assets of the selling
 3-49 entity ~~[institution]~~ does not make the purchasing bank responsible
 3-50 for any liability or obligation of the selling entity ~~[institution]~~
 3-51 that the purchasing bank does not expressly assume.

3-52 ~~[(c) Except as otherwise provided by this subtitle, this~~
 3-53 ~~subchapter does not govern or prohibit the purchase by a state bank~~
 3-54 ~~of all or part of the assets of a corporation or other entity that is~~
 3-55 ~~not a financial institution.]~~

3-56 SECTION 6. Section 32.405, Finance Code, is amended to read
 3-57 as follows:

3-58 Sec. 32.405. SALE OF ASSETS. (a) A state bank may sell a
 3-59 portion of its assets to another financial institution or other
 3-60 buyer, except that the prior written approval of the banking
 3-61 commissioner is required if the sales price exceeds an amount equal
 3-62 to three times the bank's unimpaired capital and surplus. The
 3-63 finance commission by rule may require a state bank to obtain the
 3-64 prior written approval of the banking commissioner for a
 3-65 transaction not otherwise subject to approval that involves
 3-66 potentially substantial risks to the safety and soundness of the
 3-67 selling bank.

3-68 (b) If the prior approval of the banking commissioner for a
 3-69 sale of assets is not required under Subsection (a) and the sale

4-1 involves the disposition of a branch office or another established
 4-2 location of the state bank, the state bank must provide written
 4-3 notice of the transaction to the banking commissioner at least 30
 4-4 days before the expected closing date of the transaction.

4-5 (c) The board of a state bank, with the prior written
 4-6 approval of the banking commissioner, may cause the bank to sell all
 4-7 or substantially all of its assets without shareholder or
 4-8 participant approval if:

4-9 (1) the banking commissioner finds the interests of
 4-10 depositors and creditors are jeopardized because of insolvency or
 4-11 imminent insolvency and that the sale is in their best interest; and

4-12 (2) the Federal Deposit Insurance Corporation or its
 4-13 successor approves the transaction and agrees to provide assistance
 4-14 to the prospective buyer under 12 U.S.C. Section 1823(c) or a
 4-15 comparable law unless the deposits of the bank are not insured.

4-16 (d) ~~[(b)]~~ A sale under Subsection (c) ~~[this section]~~ must
 4-17 include an assumption and promise by the buyer to pay or otherwise
 4-18 discharge:

4-19 (1) all of the bank's liabilities to depositors;

4-20 (2) all of the bank's liabilities for salaries of the
 4-21 bank's employees incurred before the date of the sale;

4-22 (3) obligations incurred by the banking commissioner
 4-23 arising out of the supervision or sale of the bank; and

4-24 (4) fees and assessments due the department.

4-25 (e) ~~[(e)]~~ This section does not affect the banking
 4-26 commissioner's right to take action under another law. The sale by
 4-27 a state bank of all or substantially all of its assets with
 4-28 shareholder or participant approval is considered a voluntary
 4-29 dissolution and liquidation and is governed by Subchapter B,
 4-30 Chapter 36.

4-31 SECTION 7. Section 32.501(c), Finance Code, is amended to
 4-32 read as follows:

4-33 (c) The state bank does not cease to be a state bank subject
 4-34 to the supervision of the banking commissioner unless:

4-35 (1) the banking commissioner has been given written
 4-36 notice of the intention to merge or convert before the 31st day
 4-37 before the date of the proposed transaction;

4-38 (2) ~~[the bank has published notice of the transaction,~~
 4-39 ~~in the form and frequency specified by the banking commissioner,~~
 4-40 ~~in:~~

4-41 ~~[(A) a newspaper of general circulation~~
 4-42 ~~published in the county of its home office or, if such a newspaper~~
 4-43 ~~is not published in the county, in an adjacent county; and~~

4-44 ~~[(B) other locations that the banking~~
 4-45 ~~commissioner considers appropriate;~~

4-46 ~~[(3)]~~ the bank has filed with the banking
 4-47 commissioner:

4-48 (A) a copy of the application filed with the
 4-49 successor regulatory authority, including a copy of each contract
 4-50 evidencing or implementing the merger or conversion, or other
 4-51 documents sufficient to show compliance with applicable law; and

4-52 (B) a certified copy of all minutes of board
 4-53 meetings and shareholder or participant meetings at which action
 4-54 was taken regarding the merger or conversion; ~~and~~

4-55 ~~[(C) a publisher's certificate showing~~
 4-56 ~~publication of the required notice;]~~

4-57 (3) ~~[(4)]~~ the banking commissioner determines that:

4-58 (A) all deposit and other liabilities of the
 4-59 state bank are fully discharged, assumed, or otherwise retained by
 4-60 the successor form of financial institution;

4-61 (B) any conditions imposed by the banking
 4-62 commissioner for the protection of depositors and creditors have
 4-63 been met or otherwise resolved; and

4-64 (C) any required filing fees have been paid; and

4-65 (4) ~~[(5)]~~ the bank has received a certificate of
 4-66 authority to do business as the successor financial institution.

4-67 SECTION 8. Section 33.002(c), Finance Code, is amended to
 4-68 read as follows:

4-69 (c) Rules adopted under this subtitle may specify the

5-1 confidential or nonconfidential character of information obtained
 5-2 by the banking commissioner under this section. In the absence of
 5-3 rules, information [Information] obtained by the banking
 5-4 commissioner under this section is confidential and may not be
 5-5 disclosed by the banking commissioner or any employee of the
 5-6 department except as provided by Subchapter D, Chapter 31.

5-7 SECTION 9. Section 36.102, Finance Code, is amended to read
 5-8 as follows:

5-9 Sec. 36.102. FILING RESOLUTIONS WITH BANKING
 5-10 COMMISSIONER. After resolutions to dissolve and liquidate a state
 5-11 bank have been adopted by the bank's board and shareholders or
 5-12 participants, a majority of the directors, managers, or managing
 5-13 participants shall verify and file with the banking commissioner
 5-14 [~~duplicate~~] certified copies of:

5-15 (1) the resolutions of the shareholders or
 5-16 participants that:

5-17 (A) are adopted at a meeting for which proper
 5-18 notice was given or by unanimous written consent; and

5-19 (B) approve the dissolution and liquidation of
 5-20 the bank;

5-21 (2) the resolutions of the board approving the
 5-22 dissolution and liquidation of the bank if the bank is operated by a
 5-23 board of directors or managers; and

5-24 (3) [~~a copy of~~] the notice to the shareholders or
 5-25 participants informing them of the meeting.

5-26 SECTION 10. Section 182.002(a), Finance Code, is amended to
 5-27 read as follows:

5-28 (a) The articles of association of a state trust company
 5-29 must be signed and acknowledged by each organizer and must contain:

5-30 (1) the name of the state trust company, subject to
 5-31 Subsection (b);

5-32 (2) the period of the state trust company's duration,
 5-33 which may be perpetual;

5-34 (3) the powers of the state trust company, which may be
 5-35 stated as:

5-36 (A) all powers granted to a state trust company
 5-37 in this state; or

5-38 (B) a list of the specific powers that the state
 5-39 trust company chooses and is authorized to exercise;

5-40 (4) the aggregate number of shares, or participation
 5-41 shares in the case of a limited trust association, that the state
 5-42 trust company will be authorized to issue, and the number of classes
 5-43 of shares or participation shares, which may be one or more;

5-44 (5) if the shares or participation shares are to be
 5-45 divided into classes:

5-46 (A) the designation of each class and statement
 5-47 of the preferences, limitations, and relative rights of the shares
 5-48 or participation shares of each class, which in the case of a
 5-49 limited trust association may be more fully set forth in the
 5-50 participation agreement;

5-51 (B) the number of shares or participation shares
 5-52 of each class; and

5-53 (C) a statement of the par value of the shares or
 5-54 participation shares of each class or that the shares or
 5-55 participation shares are to be without par value;

5-56 (6) any provision limiting or denying to shareholders
 5-57 or participants the preemptive right to acquire additional or
 5-58 treasury shares or participation shares of the state trust company;

5-59 (7) any provision granting the right of shareholders
 5-60 or participants to cumulative voting in the election of directors
 5-61 or managers;

5-62 (8) the aggregate amount of consideration to be
 5-63 received for all shares or participation shares initially issued by
 5-64 the state trust company and a statement that:

5-65 (A) all authorized shares or participation
 5-66 shares have been subscribed; and

5-67 (B) all subscriptions received have been
 5-68 irrevocably [~~provide for the consideration to be fully~~] paid in
 5-69 cash [~~before issuance of the charter~~];

6-1 (9) any provision consistent with law that the
 6-2 organizers elect to set forth in the articles of association for the
 6-3 regulation of the internal affairs of the state trust company or
 6-4 that is otherwise required by this subtitle to be set forth in the
 6-5 articles of association;

6-6 (10) the street address of the state trust company's
 6-7 home office; and

6-8 (11) either:

6-9 (A) the number of directors or managers
 6-10 constituting the initial board and the names and street addresses
 6-11 of the persons who are to serve as directors or managers until the
 6-12 first annual meeting of shareholders or participants or until
 6-13 successor directors or managers have been elected and qualified; or

6-14 (B) the statement described by Subsection (c).

6-15 SECTION 11. Sections 182.004(b) and (c), Finance Code, are
 6-16 amended to read as follows:

6-17 (b) At the expense of the organizers, the banking
 6-18 commissioner shall thoroughly investigate the application and
 6-19 inquire fully into the identity and character of each proposed
 6-20 director, manager, officer, managing participant, and principal
 6-21 shareholder or participant. The banking commissioner shall prepare
 6-22 a written report of the investigation ~~and any person, other than a~~
 6-23 ~~person protesting under Section 182.005, may request a copy of the~~
 6-24 ~~nonconfidential portions of the application and written report as~~
 6-25 ~~provided by Chapter 552, Government Code].~~

6-26 (c) Rules adopted under this subtitle may specify the
 6-27 confidential or nonconfidential character of information obtained
 6-28 or prepared by the department under this section. Except as
 6-29 provided by Subchapter D, Chapter 181, or in rules regarding
 6-30 confidential information, the business plan of the applicant and
 6-31 the financial statement of a proposed officer, director, manager,
 6-32 or managing participant are ~~is~~ confidential and not subject to
 6-33 public disclosure.

6-34 SECTION 12. Sections 182.005(a) through (d), Finance Code,
 6-35 are amended to read as follows:

6-36 (a) A protest of a charter application must be received by
 6-37 the department before the 15th day after the date the organizers
 6-38 publish notice under Section 182.004(a) and must be accompanied by
 6-39 the fees and deposits required by law. If the protest is untimely,
 6-40 the department shall return all submitted fees and deposits to the
 6-41 protesting party. If the protest is timely, the department shall
 6-42 notify the applicant of the protest and mail or deliver a complete
 6-43 copy of the nonconfidential sections of the charter application to
 6-44 the protesting party before the 15th day after the later of the date
 6-45 of receipt of the protest or receipt of the charter application ~~[Any~~
 6-46 ~~person may file a protest of an application with the banking~~
 6-47 ~~commissioner].~~

6-48 (b) A protesting party must file a detailed protest
 6-49 responding to each contested statement contained in the
 6-50 nonconfidential portion of the application not later than the 20th
 6-51 day after the date the protesting party receives the application
 6-52 from the department, and relate each statement and response to the
 6-53 standards for approval set forth in Section 182.003(b). The
 6-54 applicant must file a written reply to the protesting party's
 6-55 detailed response on or before the 10th day after the date the
 6-56 response is filed. The protesting party's response and the
 6-57 applicant's reply must be verified by affidavit and must certify
 6-58 that a copy was served on the opposing party. If applicable,
 6-59 statements in the response and in the reply may be supported by
 6-60 references to data available in sources of which official notice
 6-61 may properly be taken. Any comment received by the department and
 6-62 any reply of the applicant to the comment shall be made available to
 6-63 the protesting party ~~[If a protest of the application is not filed~~
 6-64 ~~on or before the 15th day after the last date the notice was~~
 6-65 ~~published under Section 182.004, the banking commissioner may~~
 6-66 ~~immediately determine whether all of the necessary conditions set~~
 6-67 ~~forth in Section 182.003(b) have been established, based on the~~
 6-68 ~~application and investigation. The banking commissioner shall~~
 6-69 ~~approve the application for charter or set the charter application~~

7-1 ~~for hearing].~~

7-2 (c) The banking commissioner may not be compelled to hold a
 7-3 hearing before granting or denying the charter application. In the
 7-4 exercise of discretion, the banking commissioner may consider
 7-5 granting a hearing on a charter application at the request of the
 7-6 applicant or a protesting party. The banking commissioner may order
 7-7 a hearing regardless of whether a hearing has been requested by a
 7-8 party. A party requesting a hearing must indicate with specificity
 7-9 the issues involved that cannot be determined on the basis of the
 7-10 record compiled under Subsection (b) and why the issues cannot be
 7-11 determined. A request for hearing and the banking commissioner's
 7-12 decision with regard to granting a hearing shall be made a part of
 7-13 the record. If ~~[a protest of the application is timely filed,~~
 7-14 ~~accompanied by the fees and deposits required by statute or rule, or~~
 7-15 ~~if]~~ the banking commissioner sets a hearing, the banking
 7-16 commissioner shall conduct a public hearing and as many prehearing
 7-17 conferences and opportunities for discovery as the banking
 7-18 commissioner considers advisable and consistent with governing
 7-19 statutes and rules, except that the banking commissioner may not
 7-20 permit discovery of confidential information in the charter
 7-21 application or the investigation report. ~~[A person protesting the~~
 7-22 ~~application is entitled to the confidential portions of the~~
 7-23 ~~application under a protective order that restricts the use of~~
 7-24 ~~confidential information to the charter proceedings.]~~

7-25 (d) Based on the record ~~[of the hearing]~~, the banking
 7-26 commissioner shall determine whether all of the necessary
 7-27 conditions set forth in Section 182.003(b) have been established
 7-28 and shall enter an order granting or denying the charter.

7-29 SECTION 13. Sections 182.103(b) and (c), Finance Code, are
 7-30 amended to read as follows:

7-31 (b) Unless otherwise restricted by rules, prior approval is
 7-32 not required for an increase in restricted capital accomplished
 7-33 through:

7-34 (1) issuance of shares of common stock or their
 7-35 equivalent in participation shares for cash, or a cash contribution
 7-36 to surplus by shareholders or participants that does not result in
 7-37 issuance of additional common stock or other securities;

7-38 (2) declaration and payment of pro rata share
 7-39 dividends as defined by the ~~[Texas]~~ Business Organizations Code
 7-40 ~~[Corporation Act]; or~~

7-41 (3) adoption by the board of a resolution directing
 7-42 that all or part of undivided profits be transferred to restricted
 7-43 capital.

7-44 (c) Prior approval is not required for:

7-45 (1) a decrease in restricted capital caused by
 7-46 ~~[incurred]~~ losses in excess of undivided profits; or

7-47 (2) a change in restricted capital resulting from
 7-48 accounting adjustments required by a transaction approved by the
 7-49 banking commissioner if the accounting adjustments are reasonably
 7-50 disclosed in the submitted application.

7-51 SECTION 14. Section 182.401, Finance Code, is amended to
 7-52 read as follows:

7-53 Sec. 182.401. AUTHORITY TO PURCHASE ASSETS ~~[OF ANOTHER~~
 7-54 ~~TRUST INSTITUTION]~~. (a) A state trust company ~~[with the prior~~
 7-55 ~~written approval of the banking commissioner]~~ may purchase ~~[all or~~
 7-56 ~~substantially all of the]~~ assets from ~~[of]~~ another trust
 7-57 institution, including the right to control accounts established
 7-58 with the trust institution, or assets from another seller, except
 7-59 that the prior written approval of the banking commissioner is
 7-60 required if the purchase price exceeds an amount equal to three
 7-61 times the sum of the trust company's equity capital less intangible
 7-62 assets. The finance commission by rule may require a state trust
 7-63 company to obtain the prior written approval of the banking
 7-64 commissioner for a transaction not otherwise subject to approval
 7-65 that involves potentially substantial risks to the safety and
 7-66 soundness of the purchasing trust company.

7-67 (b) Except as otherwise expressly provided by this section
 7-68 or another statute, the purchase of all or part of the assets of the
 7-69 selling entity ~~[trust institution]~~ does not make the purchasing

8-1 state trust company responsible for any liability or obligation of
 8-2 the selling entity [~~trust institution~~] that the purchasing state
 8-3 trust company does not expressly assume.

8-4 (c) If prior approval of the banking commissioner is
 8-5 required [~~Except as otherwise provided by this subtitle, this~~
 8-6 ~~subchapter does not govern or prohibit the purchase by a state trust~~
 8-7 ~~company of all or part of the assets of a corporation or other~~
 8-8 ~~entity that is not a trust institution.~~

8-9 [~~(d) To make a purchase~~] under this section, an application
 8-10 in the form required by the banking commissioner must be filed with
 8-11 the banking commissioner. The banking commissioner shall
 8-12 investigate the condition of the purchaser and seller and may
 8-13 require the submission of additional information as considered
 8-14 necessary to make an informed decision.

8-15 (d) [~~(e)~~] The banking commissioner shall approve the
 8-16 application to purchase if:

8-17 (1) the purchasing state trust company:

8-18 (A) has complied with all applicable statutes and
 8-19 rules; and

8-20 (B) will be solvent and have sufficient
 8-21 capitalization for its business and location;

8-22 (2) all fiduciary obligations and liabilities of each
 8-23 trust institution that is a party to the purchase or sale of assets
 8-24 have been properly discharged or otherwise lawfully assumed or
 8-25 retained by a trust institution or other fiduciary;

8-26 (3) all conditions imposed by the banking commissioner
 8-27 have been satisfied or otherwise resolved; and

8-28 (4) all fees and costs have been paid.

8-29 (e) [~~(f)~~] A purchase subject to prior approval is effective
 8-30 on the date of approval unless the purchase agreement provides for
 8-31 and the banking commissioner consents to a different effective
 8-32 date.

8-33 (f) If the purchase transaction includes all or
 8-34 substantially all of the assets of another trust institution or
 8-35 other fiduciary, the [~~(g) The~~] acquiring state trust company shall
 8-36 succeed by operation of law to all of the rights, privileges, and
 8-37 fiduciary obligations of the selling trust institution or other
 8-38 fiduciary under each account included in the assets acquired.

8-39 SECTION 15. Section 182.405, Finance Code, is amended to
 8-40 read as follows:

8-41 Sec. 182.405. SALE OF ASSETS. (a) A state trust company
 8-42 may sell all or any portion of its assets to another trust
 8-43 institution or other buyer, except that the prior written approval
 8-44 of the banking commissioner is required if the sales price exceeds
 8-45 an amount equal to three times the sum of the trust company's equity
 8-46 capital less intangible assets. The finance commission by rule may
 8-47 require a state trust company to obtain the prior written approval
 8-48 of the banking commissioner for a transaction not otherwise subject
 8-49 to approval that involves potentially substantial risks to the
 8-50 safety and soundness of the selling trust company.

8-51 (b) If the prior approval of the banking commissioner for a
 8-52 sale of assets is not required under Subsection (a) and the sale
 8-53 involves the disposition of an established location of the state
 8-54 trust company, the state trust company must provide written notice
 8-55 of the transaction to the banking commissioner at least 30 days
 8-56 before the expected closing date of the transaction.

8-57 (c) The board of a state trust company, with the banking
 8-58 commissioner's approval, may cause the state trust company to sell
 8-59 all or substantially all of its assets, including the right to
 8-60 control accounts established with the state trust company, without
 8-61 shareholder or participant approval if:

8-62 (1) the banking commissioner finds that the interests
 8-63 of the state trust company's clients, depositors, and creditors are
 8-64 jeopardized because of the hazardous condition of the state trust
 8-65 company and that the sale is in their best interest; and

8-66 (2) the Federal Deposit Insurance Corporation or its
 8-67 successor approves the transaction, if the deposits of the state
 8-68 trust company are insured.

8-69 (d) [~~(b)~~] A sale under Subsection (c) [~~this section~~] must

9-1 include an assumption and promise by the buyer to pay or otherwise
9-2 discharge:

9-3 (1) all of a state trust company's liabilities to
9-4 clients and depositors;

9-5 (2) all of the state trust company's liabilities for
9-6 salaries of the state trust company's employees incurred before the
9-7 date of the sale;

9-8 (3) obligations incurred by the banking commissioner
9-9 arising out of the supervision or sale of the state trust company;
9-10 and

9-11 (4) fees and assessments due the department.

9-12 ~~(e) [(c) This section does not limit the incidental power of~~
9-13 ~~a state trust company to buy and sell assets in the ordinary course~~
9-14 ~~of business.~~

9-15 ~~[(d)]~~ This section does not affect the banking
9-16 commissioner's right to take action under another law. The sale by
9-17 a state trust company of all or substantially all of its assets with
9-18 shareholder or participant approval is considered a voluntary
9-19 dissolution and liquidation and is governed by Subchapter B,
9-20 Chapter 186.

9-21 (f) Each buyer in a transaction described by Subsection (c)
9-22 that is a [(e) The acquiring] trust institution or other fiduciary
9-23 shall succeed by operation of law to all of the rights, privileges,
9-24 and fiduciary obligations of the selling state trust company under
9-25 each account included in the assets acquired.

9-26 SECTION 16. Section 182.501(c), Finance Code, is amended to
9-27 read as follows:

9-28 (c) The state trust company does not cease to be a state
9-29 trust company subject to the supervision of the banking
9-30 commissioner unless:

9-31 (1) the banking commissioner has been given written
9-32 notice of the intention to merge or convert before the 31st day
9-33 before the date of the proposed transaction;

9-34 ~~(2) [the state trust company has published notice of~~
9-35 ~~the transaction, in the form and frequency specified by the banking~~
9-36 ~~commissioner, in:~~

9-37 ~~[(A) a newspaper of general circulation~~
9-38 ~~published in the county of its home office or, if such a newspaper~~
9-39 ~~is not published in the county, in an adjacent county; and~~

9-40 ~~[(B) other locations that the banking~~
9-41 ~~commissioner considers appropriate;~~

9-42 ~~[(3)]~~ the state trust company has filed with the
9-43 banking commissioner:

9-44 (A) a copy of the application filed with the
9-45 successor regulatory authority, including a copy of each contract
9-46 evidencing or implementing the merger or conversion, or other
9-47 documents sufficient to show compliance with applicable law; and

9-48 (B) a certified copy of all minutes of board
9-49 meetings and shareholder or participant meetings at which action
9-50 was taken regarding the merger or conversion; and

9-51 ~~[(C) a publisher's certificate showing~~
9-52 ~~publication of the required notice;]~~

9-53 (3) [(4)] the banking commissioner determines that:

9-54 (A) all accounts and liabilities of the state
9-55 trust company are fully discharged, assumed, or otherwise retained
9-56 by the successor trust institution;

9-57 (B) any conditions imposed by the banking
9-58 commissioner for the protection of clients and creditors have been
9-59 met or otherwise resolved; and

9-60 (C) any required filing fees have been paid; and

9-61 (4) [(5)] the state trust company has received a
9-62 certificate of authority to do business as the successor trust
9-63 institution.

9-64 SECTION 17. Section 183.002(c), Finance Code, is amended to
9-65 read as follows:

9-66 (c) Rules adopted under this subtitle may specify the
9-67 confidential or nonconfidential character of information obtained
9-68 by the banking commissioner under this section. In the absence of
9-69 rules, information [Information] obtained by the banking

10-1 commissioner under this section is confidential and may not be
10-2 disclosed by the banking commissioner or any employee of the
10-3 department except as provided by Subchapter D, Chapter 181.

10-4 SECTION 18. Section 186.102, Finance Code, is amended to
10-5 read as follows:

10-6 Sec. 186.102. FILING RESOLUTIONS WITH BANKING
10-7 COMMISSIONER. After resolutions to dissolve and liquidate a state
10-8 trust company have been adopted by the board and shareholders or
10-9 participants, a majority of the directors, managers, or managing
10-10 participants shall verify and file with the banking commissioner
10-11 [~~duplicate~~] certified copies of:

10-12 (1) the resolutions of the shareholders or
10-13 participants that:

10-14 (A) are adopted at a meeting for which proper
10-15 notice was given or by unanimous written consent; and

10-16 (B) approve the dissolution and liquidation of
10-17 the state trust company;

10-18 (2) the resolutions of the board approving the
10-19 dissolution and liquidation of the state trust company if the trust
10-20 company is operated by a board of directors or managers;

10-21 (3) [~~a copy of~~] the notice to the shareholders or
10-22 participants informing them of the meeting described by Subdivision
10-23 (1)(A); and

10-24 (4) a plan of liquidation.

10-25 SECTION 19. This Act takes effect September 1, 2007.

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