

BILL ANALYSIS

H.B. 2416
By: Leibowitz
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A suit for breach of fiduciary duty often requires the attorney general to sue the charitable entity as well as the board of directors and others who operate on behalf of that entity. The current language of Section 123.005, Property Code, does not make clear that the attorney general may bring a breach of fiduciary duty suit against a charitable entity. Because of this ambiguity, the attorney general's office has faced venue challenges relating to filing suit in Travis County against corporate defendants located elsewhere in the state, particularly in matters where the attorney general's office seeks the appointment of a receiver. Although it is clear under the Property Code provision that the attorney general can recover fees in bringing a breach of fiduciary duty action, it is not clear that the attorney general can also recover fees in cases which need intervention of the attorney general. The change will help clarify the intent of this permissive venue provision.

H.B. 2416 clarifies that the attorney general may bring a breach of fiduciary duty suit against a charitable entity, and clarifies that the attorney general may recover fees and costs in actions in which the attorney general intervenes in a suit or in which the attorney general originates a suit.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2416 amends the Property Code to require that venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity be a court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office.

H.B. 2416 clarifies that the attorney general, if successful in a breach of fiduciary duty proceeding, is entitled to recover from the charitable entity or fiduciary or managerial agent of the charitable trust actual costs incurred in bringing the suit, and authorizes the attorney general to recover reasonable attorney's fees.

H.B. 2416 authorizes a court to award the attorney general court costs and reasonable and necessary attorney's fees as may seem equitable and just in a proceeding in which the attorney general intervenes, other than in a breach of a fiduciary duty proceeding.

EFFECTIVE DATE

September 1, 2009.