BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a cotrustee has been suspended, but not yet removed, from a trust by court action, current law authorizes the remaining cotrustees to act by a majority vote to preserve trust assets and transact business as authorized by the trust. This provision, however, does not address a situation in which there is only one remaining trustee; thus, a majority vote is not possible. This situation can potentially paralyze the trust for an indefinite amount of time and may result in wasted trust assets or missed investment opportunities.

C.S.H.B. 3635 amends current law relating to administration of a trust with cotrustees.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 113.085(c) and (d), Property Code, as follows:

(c) Requires a cotrustee to participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, suspension under this code or other law, disqualification, if any, under this code, disqualification under other law, or other temporary incapacity.

(d) Authorizes the remaining cotrustee or a majority of the remaining cotrustees, if a cotrustee is unavailable to participate in the performance of a trustee's function for a reason described by Subsection (c)(1) (relating to requiring a cotrustee to participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function due to a certain incapacity) and prompt action is necessary to achieve the efficient administration or purposes of the trust or to avoid injury to the trust property or a beneficiary, to act for the trust.

SECTION 2. Provides that Section 113.085, Property Code, as amended by this Act, applies only to a trust existing on or after September 1, 2009, regardless of the date the trust was created.

SECTION 3. Effective date: September 1, 2009.