

BILL ANALYSIS

C.S.H.B. 2921
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Investigations involving charitable trusts and nonprofit corporations with charitable purposes are conducted by the charitable trust section of the office of the attorney general. Currently, that charitable trust section has the authority to intervene on behalf of the general public in any proceeding involving a charitable trust because, as a matter of public policy, money given to a charity is viewed as belonging to the public. Legal action against trusts and nonprofit corporations is often related to mismanagement, including misapplication of funds. Therefore, the goal of the charitable trust section is to protect the public's money from mismanagement and fraud.

Statements taken under oath, including depositions, are an important tool used to discover information necessary to an investigation, and the information in such a statement often assists the attorney general's staff in determining whether to file suit. Deceptive trade practices law gives the attorney general specific authority to take statements under oath during investigations. However, there is no such authority for investigations conducted by the attorney general's charitable trust section for cases involving the review of trusts in the absence of misrepresentations under deceptive trade practices law. C.S.H.B. 2921 seeks to save time and resources and assist the attorney general in determining whether to file suits involving the review of trusts and nonprofit organizations involving charitable trusts by authorizing the attorney general to take statements under oath during investigations involving these issues.

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

C.S.H.B. 2921 amends the Business Organizations Code to specify that a record of an entity includes an electronic transmission as it relates to the attorney general's authority to examine books and records of the entity. The bill authorizes the attorney general, if the attorney general has reason to believe that a nonprofit entity with a charitable purpose is engaging in, has engaged in, or is about to engage in an unlawful act or practice or that it would be in the public interest to conduct an investigation to ascertain whether the entity is engaging in, has engaged in, or is about to engage in such activity to require an employee or agent of the entity to file on forms prescribed by the attorney general a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged unlawful act or practice and other data and information the attorney general considers necessary and to examine under oath any person in connection with the alleged unlawful act or practice.

C.S.H.B. 2921 amends the Property Code to require each charitable entity or fiduciary or managerial agent of a charitable trust to permit the attorney general to inspect, examine, and make copies, as the attorney general considers necessary in the performance of a power or duty of the attorney general with respect to charitable entities and trusts, of any record of the

charitable entity or trust. The bill establishes that a record of the charitable entity or trust includes minutes and a book, account, letter, memorandum, electronic transmission, document, check, voucher, telegram, constitution, and bylaw. The bill authorizes the attorney general, if the attorney general has reason to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful act or practice with respect to a charitable trust or that it would be in the public interest to conduct an investigation to ascertain whether the person is engaging in, has engaged in, or is about to engage in such activity, to require the person to file on forms prescribed by the attorney general a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged unlawful act or practice and other data and information as the attorney general considers necessary and to examine under oath any person in connection with the alleged unlawful act or practice.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2921 differs from the original, in provisions relating to the attorney general's authority to examine the books and records of each filing entity and of each charitable entity or fiduciary or of a charitable trust's managerial agent, by specifying that such a record includes an electronic transmission, whereas the original specifies that a record includes an e-mail.