

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 3, 2017

TO: Honorable John T. Smithee, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB1354 by Wray (Relating to trusts.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill amends several Sections of the Texas Property (Trust) Code, which, in part, govern charitable trusts over which the OAG has oversight. In particular, the bill proposes changes to Texas Property Code Sections 112.054 (modification of trusts), 112.074 ("decanting" of trusts), and 240.0081 (Uniform Disclaimer of Property Interests), which affect statutory notice to the Attorney General on behalf of the public interest in charity.

The bill amends Section 112.054 of the Texas Property Code, relating to the judicial modification and termination of trusts by adding "Reformation" to the title and amending subsection (a) to allow a court to reform a trust under this Section, and subsection (6) thereunder to provide an otherwise irrevocable trust may be judicially modified if "the order is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intent." The bill provides that such an order has retroactive effect. And the bill provides that such an order may be issued only if the settlor's intent is established by clear and convincing evidence.

The bill amends subsection (b) of Section 112.054 to add "reform" and "reformation" to the provisions requiring a court to exercise its jurisdiction to modify or terminate (and now "reform") a trust in a manner that conforms as nearly as possible to the probable intention of the donor, taking into account whether or not the trust is a spendthrift trust but not prohibiting modification or termination (now "reformation") solely because the trust is a spendthrift trust.

The bill amends Section 112.074 of the Texas Property Code, which provides the notice required for distribution of trust principal in further trust, by amending subsection (c) and adding subsection (e-1). The bill provides that notice to the OAG under Section 112.074(c) of the Texas Property Code is not required if the OAG waives that notice requirement. Section 112.074 (c) currently provides that notice of the trustee's decision to exercise the power of distribution to a second trust must be given to the Attorney General if:

- a charity is entitled to notice;
- a charity entitled to notice is no longer in existence;
- the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
- the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

The bill amends Section 240.0081 of the Texas Property Code (Notice Required by Trustee Disclaiming Certain Interests in Property) by amending subsection (c) and adding subsection (e-1) which provides that notice to the OAG under Section 240.0081(c) is not required if the OAG waives that notice requirement. Section 240.0081(c) currently provides that notice of the trustee's disclaimer of an interest in property that would cause the interest in property not to become trust property must be given to the OAG if:

- a charity is entitled to notice;
- a charity entitled to notice is no longer in existence;
- the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
- the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

The OAG's Financial Litigation and Charitable Trusts Division ("FLD") assumes that the proposed legislation could increase the number of reviews of "proceedings involving a charitable trust" required of this division pursuant to Chapter 123 of the Texas Property Code. If the OAG establishes a process for waiver of notice, then that would require a new, though limited, process.

There will be no significant fiscal impact to the OAG as a result of this bill. The OAG anticipates any legal work resulting from the passage of this bill could be reasonably absorbed within current agency resources.

The bill takes effect September 1, 2017.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General

LBB Staff: UP, LBO, SJS