BILL ANALYSIS

Senate Research Center | S.B. 1138
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Finance
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Treasury Safekeeping Trust Company invests, manages, and oversees more than $70 billion in state and local government financial assets.

As the federal Dodd-Frank Act has changed the regulatory environment for financial transactions, the Trust Company needs to be able to adapt in order to maintain access to cost-effective financial management tools.

For example, the Trust Company utilizes repurchase agreements, which are common, low-risk, short-term investments used to manage cash. At the end of any given day, the Trust Company sweeps the cash in the state's accounts to invest overnight through repurchase agreements and then replenishes the accounts in the morning. Failing to invest those funds overnight would represent an opportunity cost to the state of more than $10 million a year in foregone income.

The market for direct, two-party repurchase agreements has been diminishing since Dodd-Frank and soon the only option will be tri-party agreements, which are offered through a single clearinghouse, BNY Mellon. Under federal law, BNY Mellon cannot contract with the Trust Company without standard indemnification language.

In 1989, the Texas Legislature established a limited waiver of sovereign immunity to be applied only for Trust Company contracts with the Federal Reserve and the Depository Trust Company. The comptroller of public accounts of the State of Texas is asking to extend the waiver of sovereign immunity to securities instruments while limiting the liability only to the Trust Company's statutory reserve fund, which will allow the Trust Company to generate an estimated $10 million per year in investment income. (Original Author's/Sponsor's Statement of Intent)

S.B. 1138 amends current law relating to securities contracts entered into by the Texas Treasury Safekeeping Trust Company.

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 Section 404.103(b), Government Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

> (b) Makes a nonsubstantive change to this subsection.
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> (b-1) Defines "securities contract" for purposes of this subsection. Authorizes the Texas Treasury Safekeeping Trust Company (trust company) to enter into trust agreements, fiduciary instruments, or other contracts as principal or as trustee, with the comptroller of public accounts of the State of Texas (comptroller) and other third parties. Requires the trust company to be liable under the agreements, instruments, or contracts in accordance with the terms contained in the agreements, instruments, or contracts. Requires the trust company's obligations under securities contracts between the trust company and third

parties, notwithstanding any other statute to the contrary, to the extent permitted by the Texas Constitution and the contracts, to be guaranteed by the state with, and only to the extent of, the reserve balances held by the trust company under Section 404.105 (Capital or Reserve), and provides that, for those securities contracts, the state expressly waives all defenses of governmental immunity by and on behalf of the trust company, and expressly consents by and on behalf of the trust company to sue and be sued in federal court or in any court of competent jurisdiction. Provides that, however, this provision does not alter or affect the immunity accorded to state officials and employees under state law.

SECTION 2. Amends Section 404.104(b), Government Code, to authorize the comptroller to enter into contracts, trust agreements, and other instruments with the trust company as provided by Section 404.103 (Powers), rather than by Section 404.103(b) (relating to authorizing the trust company to enter into certain contracts, agreements, and instruments with certain entities).

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: upon passage or September 1, 2019.