

BILL ANALYSIS

C.S.S.B. 1138
By: Watson
Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that because of a decline in the market for direct, two-party repurchase agreements, on which the Texas Treasury Safekeeping Trust Company has relied in the past for short-term cash management, the trust company needs the capability to transition to tri-party repurchase agreements, which are offered through a clearing bank that requires certain indemnification language in its contracts as a matter of market practice. C.S.S.B. 1138 seeks to facilitate the use of this investment mechanism by extending a limited waiver of sovereign immunity already existing for certain other trust company transactions to apply to securities contracts between the trust company and third parties, while limiting the associated liability to the trust company's statutory reserve fund.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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.S.B. 1138 amends the Government Code to authorize the Texas Treasury Safekeeping Trust Company to enter into trust agreements, fiduciary instruments, or other contracts as principal or as trustee, with the comptroller of public accounts and other third parties. The bill makes the trust company liable under those agreements, instruments, or contracts in accordance with the terms contained in them. The bill requires the obligations of the trust company under securities contracts between the trust company and third parties, 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 outside the treasury. The bill specifies that "securities contract" includes direct security repurchase agreements, reverse security repurchase agreements, and related custody agreements. The bill establishes that, for purposes of those security 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. This provision expressly does not alter or affect the immunity accorded to state officials and employees under state law.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1138 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes a specific authorization for the Texas Treasury Safekeeping Trust Company to enter into trust agreements, fiduciary instruments, or other contracts, as principal or as trustee, with the comptroller of public accounts and other third parties and clarifies that the limited waiver of governmental immunity and limitation on the state's guarantee of certain obligations provided by the bill applies to securities contracts between the trust company and third parties. The substitute includes a specification that certain agreements are included in the meaning of "securities contract" for the bill's purposes.

The substitute establishes that the bill's provision waiving certain defenses of governmental immunity does not alter or affect the immunity accorded to state officials and employees under state law with respect to the applicable contracts with third parties.