

## **BILL ANALYSIS**

Senate Research Center

S.B. 1138  
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Finance  
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As Filed

### **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.

As proposed, S.B. 1138 amends current law relating to the management of certain state and local funds, investments, and obligations.

### **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, as follows:

(b) Requires the trust company's obligations, notwithstanding any other statute to the contrary, to the extent permitted by the Texas Constitution and the contracts, trust agreements, or other fiduciary instruments between the trust company and other third parties, to be guaranteed only by the reserve balances held pursuant to Section 404.105 (Capital or Reserve), and the state expressly waives all defenses of governmental immunity by and on behalf of the trust company, and provides that the state 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. Makes a nonsubstantive change.

SECTION 2. Effective date: upon passage or September 1, 2019.