

SUBJECT: Authorizing the State Securities Board to set higher fees

COMMITTEE: Pensions and Investments — committee substitute recommended

VOTE: 5 ayes — Ritter, Grusendorf, Martinez Fischer, Pena, Rose
0 nays
2 absent — Telford, McClendon

WITNESSES: For — None
Against — None
On — Denny Crawford, State Securities Board

BACKGROUND: The Texas Securities Act (V.T.C.S., art. 581) governs the sale of securities under regulation of the State Securities Board (SSB), created by the 55th Legislature in 1957. Art. 581-35 establishes fees to be charged and collected, specified at \$10 to \$75.

DIGEST: CSHB 1840 would allow the SSB to set certain fees so that the aggregate amount that exceeded fees on September 1, 2002, would produce sufficient revenue to cover the costs of administering and enforcing the Securities Act. The bill would specify five categories of filing fees, each capped at \$100:

- an application to sell or dispose of securities;
- an original application of a dealer or investment adviser or a notice filing for a federal covered investment adviser;
- a renewal application of a dealer or investment adviser or a renewal notice filing for a federal covered investment adviser;
- an original application for each agent, officer, or investment adviser representative or a notice filing for each representative of a federal covered investment adviser; and
- a renewal application for each agent, officer, or investment adviser representative or a renewal notice filing for each representative of a federal covered investment adviser.

The board would have to set these fees in amounts reasonable and necessary to defray costs. A cost incurred by the board to administer the Securities Act could be paid only from a fee collected under these provisions. The bill also would repeal language that specifies the current fee amounts.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 1840 would establish a range from current amounts up to \$100 for the SSB to set certain application fees. In effect, this would enable the agency to become self-funding in administering and enforcing the Securities Act.

The SSB is funded through a direct appropriation from general revenue, unlike similar state agencies that regulate financial transactions. The board's current appropriation is not sufficient to protect Texas investors. Both the Governor's Office and the Legislative Budget Board have acknowledged that the SSB's method of finance is flawed.

The SSB's fees are specified in statute, unlike most other state agencies that regulate financial transactions and institutions. The \$10 fee for an application to sell securities has not changed since 1977. These fees typically have generated much more for general revenue — more than \$225 million in the past two fiscal years — than the agency has been appropriated for operations. With authority to raise certain fees above the current levels, the SSB could generate enough revenue to pay for its operations and still generate over \$200 million in biennial general revenue.

In general, the SSB fees are relatively low compared to other states, especially considering the value of doing business in Texas, the nation's third largest securities market. The SSB anticipates that it would not have to increase fees in each category detailed in CSHB 1840 and that it could set fees at less than half of the bill's proposed \$100 caps.

In the past year and a half, investors have witnessed sensational incidents of alleged and actual corporate malfeasance and violations of securities law. Enron's demise has made Texans acutely aware of the effects of questionable accounting and investment practices. These events have caused much damage

to financial markets and to the economy as a whole. Texas investors have lost billions of dollars. WorldCom's malfeasance alone has cost the State of Texas an estimated \$277 million.

The House-passed version of HB 1 by Heflin, the general appropriations bill for fiscal 2004-05, would reduce the SSB's budget to \$7.1 million, compared to \$8.7 million in the current biennium. To meet the reduction, the SSB would have to eliminate 16 full-time employees, or 20 percent of its staff, including four investigators. The securities commissioner has testified that the planned cuts would erode the board's ability to investigate cases involving securities fraud during a critical period for the securities market.

It would seem ill-timed to reduce the SSB's budget in view of the rise in insider trading and corporate malfeasance. By changing the SSB's method of finance, CSHB 1840 would give the agency financial stability without drawing down general revenue at a period when the state and Texas investors particularly need protection.

**OPPONENTS
SAY:**

Fees are taxes in disguise. Allowing the SSB to increase its fees would contradict the tax-policy commitments of state leaders and the preferences of the voters who put them in office.

Also, it would be inequitable to cut programs as essential as nursing homes and children's health care while allowing the SSB and other financial regulatory agencies to retain their full budgets simply because they can generate and raise fees. All components of state government should share the burden of adjusting to the budget shortfall.

NOTES:

The fiscal note for CSHB 1840 projects a biennial net gain of \$8.1 million in general revenue from making the SSB self-funding.

As reported by the Senate Finance Committee, HB 1 would contain a contingency appropriation for HB 1840, which would increase the SSB's appropriation by \$1.7 million in fiscal 2004 and by \$1.8 million in fiscal 2005 from additional revenues collected pursuant to this legislation. This would bring the agency's total appropriation to \$10.5 million, the amount in its original Legislative Appropriations Request.

The committee substitute would differ from the original bill by specifying that the SSB would have to set fees so that the aggregate amount that exceeded the amount of fees on September 1, 2002, would produce sufficient revenue. The substitute also would change the proposed effective date to immediate effect, as opposed to September 1, 2003, in the original bill.