

BILL ANALYSIS

Senate Research Center
80R5869 DWS-F

H.B. 1962
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Over time, state statutes can develop inconsistencies or become obsolete due to changes in other state and federal law or developments in case law. These developments occur frequently with respect to regulation of financial institutions because of the complex interrelationship between applicable state and federal law. H.B. 1962 makes technical corrections and amendments to Title 3 (Financial Institutions and Businesses), Finance Code, to address accumulated inconsistencies and errors identified in the following paragraphs.

Current Texas law with respect to "limited banking associations" is inconsistent with a regulation adopted by the Federal Deposit Insurance Corporation (FDIC) in 2003 regarding the eligibility of a state bank chartered as a limited liability company for deposit insurance, codified at 12 C.F.R. §303.15.

Subtitles A (Banks) and F (Trust Companies), Title 3, Finance Code, incorporate the Texas Business Corporation Act and other business entity statutes by reference to apply to state banks and trust companies, laws that are now relocated and codified into the Business Organizations Code.

Chapter 274 (Substitute or Successor Fiduciary), Finance Code, empowers a bank holding company to allocate and redistribute fiduciary appointments possessed by one of its subsidiary institutions to another of its subsidiary institutions as successor or substitute fiduciary, subject to certain safeguards. Certain definitions in that chapter are technically inadequate because they inadvertently exclude certain national banks and could be interpreted to exclude certain state trust companies organized as limited liability companies.

Several cross-references in Title 3, Finance Code, have been rendered incorrect by subsequent legislation.

H.B. 1962 provides for the application of the Business Organizations Code to certain financial institutions and the regulation of those institutions by the Texas Department of Banking.

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 11.105, Finance Code, as follows:

Sec. 11.105. MATTER IN WHICH MEMBER HAS PERSONAL INTEREST. Deletes existing text prohibiting a member of the Texas Finance Commission from acting or participating in the portion of the commission meeting during which the matter considered specifically relates to an entity of which the member or the member's spouse is a manager, participant, or participant-transferee.

SECTION 2. Amends Sections 31.002(a)(7), (9), (13), (29), (42), (48), (49), (57), and (58), Finance Code, to redefine "board," "capital," "control," "hazardous condition," "participation agreement," "shareholder," "shares," "undivided profits," and "voting security."

SECTION 3. Amends Sections 31.006(a), (b), and (c), Finance Code, as follows:

- (a) Redesignates the Texas Business Corporation Act as the Business Organizations Code. Makes a conforming change.
- (b) Makes conforming changes.
- (c) Makes conforming changes.

SECTION 4. Amends Section 31.007(a), Finance Code, to make conforming changes.

SECTION 5. Amends Section 31.105(b), Finance Code, to make conforming changes.

SECTION 6. Amends Section 31.301(a), Finance Code, by deleting existing text providing that certain information of a participant and a manager is confidential.

SECTION 7. Amends Section 31.308, Finance Code, as follows:

Sec. 31.308. SHAREHOLDER INSPECTION RIGHTS. Prohibits a shareholder of a state bank from examining certain information, notwithstanding Section 21.218 or 101.502, Business Organizations Code, rather than Article 2.44, Texas Business Corporation Act. Makes conforming changes.

SECTION 8. Amends Section 32.002(a), Finance Code, as follows:

(a) Requires the articles of association of a state bank to be signed and acknowledged by each organizer and to contain, subject to Section 32.008, any provision consistent with law that the organizers elect to set forth in the articles of association for the regulation of the internal affairs of the bank, including provisions permissible under the Business Organizations Code for certain companies and corporations, rather than the statement described by Subsection (d). Deletes existing text requiring certain information relating to participation shares in the articles of association of a bank. Makes a conforming change. Deletes existing text requiring the articles of association of a state bank to contain any provision consistent with law that the organizers elect to set forth in the articles of association for the regulation of the internal affairs of the bank or that is otherwise required by this subtitle to be set forth in the articles of association.

SECTION 9. Amends Section 32.003, Finance Code, as follows:

Sec. 32.003. APPLICATION FOR STATE BANK CHARTER; STANDARDS FOR APPROVAL. Makes conforming changes.

SECTION 10. Amends Section 32.004(c), Finance Code, to make a conforming change.

SECTION 11. Amends Section 32.006, Finance Code, to make conforming changes.

SECTION 12. Amends Section 32.008, Finance Code, as follows:

Sec. 32.008. APPLICATION OF GENERAL CORPORATE LAW. (a) Provides that the Business Organizations Code applies to a banking association as if it were a for-profit corporation, and to a limited banking association as if it were a limited liability company, to the extent not inconsistent with this subtitle or the proper business of a state bank, with certain exceptions. Deletes existing text providing that the Texas Business Corporation Act and the Texas Miscellaneous Corporation Laws Act (Article 1302-1.01 et seq., V.T.C.S.) apply to a banking association, and the Texas Limited Liability Company Act (Article 1528n, V.T.C.S.) applies to a limited banking association, to the extent not inconsistent with this subtitle or the proper business of a state bank, with certain exceptions. Makes conforming changes.

- (b) Includes Subsection (d) to the laws which the finance commission is authorized to adopt rules to limit or refine the applicability of to a state bank or to

alter or supplement the procedures and requirements of those laws applicable to an action taken under this chapter.

(c) Makes a conforming change.

(d) Provides that this subsection establishes governing law with respect to a state bank organized before January 1, 2006, under certain circumstances notwithstanding Subsection (a).

SECTION 13. Amends Sections 32.101(c) and (d), Finance Code, as follows:

(c) Deletes existing text prohibiting a limited banking association from amending its articles of association to extend its period of existence for a perpetual period or for any period of years, unless the period of existence is expressly contingent on the events resulting in dissolution of the limited banking association under Section 33.208. Requires amendment or restatement of the articles of association of a state bank and approval of the bank's board and shareholders to be made or obtained as provided by the Business Organizations Code for the amendment or restatement of a certificate of formation by a for-profit corporation, rather than the articles of incorporation, except as otherwise provided by this subtitle or rules adopted under this subtitle.

SECTION 14. Amends the heading to Section 32.102, Finance Code, to read as follows:

Sec. 32.102. ESTABLISHING SERIES OF SHARES.

SECTION 15. Amends Sections 32.102(a) and (b), Finance Code, as follows:

(a) Makes a conforming change.

(b) Redesignates a state bank as a domestic entity, rather than a domestic corporation. Makes conforming changes.

SECTION 16. Amends Sections 32.103(a) and (b), Finance Code, as follows:

(a) Makes a conforming change.

(b) Deletes existing text providing that prior written approval is not required for an increase in capital and surplus accomplished through issuance of shares of common stock or their equivalent in participation shares for cash, unless restricted by rule. Makes conforming changes.

SECTION 17. Amends Sections 32.104(a) and (b), Finance Code, to make conforming changes.

SECTION 18. Amends Sections 32.301(b) and (c), Finance Code, to make conforming and nonsubstantive changes.

SECTION 19. Amends Section 32.303, Finance Code, to make conforming changes.

SECTION 20. Amends Section 32.403, Finance Code, as follows:

Sec. 32.403. LIQUIDATION OF SELLING INSTITUTION. Provides that without further action a purchasing bank is discharged from all responsibilities to a selling institution and to, rather than or, the selling institution's receiver, depositors, creditors, and shareholders. Makes a conforming change.

SECTION 21. Amends Sections 32.405(a) and (c), Finance Code, to make conforming changes.

SECTION 22. Amends Sections 32.501(b) and (c), Finance Code, to make conforming changes.

SECTION 23. Amends Section 32.502(b), Finance Code, to make conforming changes.

SECTION 24. Amends Section 33.001(b), Finance Code, to make a conforming change.

SECTION 25. Amends Section 33.101(a), Finance Code, to make conforming changes.

SECTION 26. Amends Section 33.102, Finance Code, as follows:

Sec. 33.102. BYLAWS. Deletes existing text referencing an exception provided by Section 33.207. Makes a conforming change.

SECTION 27. Amends Section 33.103, Finance Code, as follows:

Sec. 33.103. New heading: BOARD OF DIRECTORS. (a) Deletes existing text providing an exception for a limited banking association in which management has been retained by its participants, to the requirement that the principal executive officer of the bank is a member of the board. Makes a conforming change.

(b) Makes a conforming change.

(c) Makes conforming changes.

(d) Deletes existing text requiring a limited banking association with fewer than five managing participants to add one or more new participants or elect a board of managers of not fewer than five persons to resolve the vacancy. Makes conforming changes.

(e) Deletes existing text requiring a person to submit an affidavit for filing in the minutes of the bank stating that the person, to the extent applicable before each term to which a person is elected to serve as a director or manager of a state bank, or annually for a person who is a managing participant, makes certain commitments. Makes conforming changes.

(f) Makes no changes to this subsection.

SECTION 28. Amends Section 33.104, Finance Code, as follows:

Sec. 33.104. New heading: ADVISORY DIRECTOR. Makes conforming changes.

SECTION 29. Amends Sections 33.108(a) and (b), Finance Code, to make conforming changes.

SECTION 30. Amends Section 33.109, Finance Code, as follows:

Sec. 33.109. TRANSACTIONS WITH MANAGEMENT AND AFFILIATES. (a) Prohibits a state bank from directly or indirectly selling or leasing an asset of the bank to certain entities of an affiliate of the bank or purchasing or leasing an asset in which certain entities of an affiliate of the bank have an interest without the prior approval of a disinterested majority of the board recorded in the minutes or, if a disinterested majority cannot be obtained, the prior written approval of the banking commissioner.

(b) Makes conforming changes.

SECTION 31. Amends Section 33.201(a), Finance Code, as follows:

(a) Deletes existing text providing for an exception as provided by Subsection (b). Deletes existing text providing that a full liability participant is not subject to the provisions of this section that a participant is not a proper party to a proceeding by or against a limited banking association unless the object of the proceeding is to enforce a participant's or manager's right against or liability to a limited banking association. Makes conforming changes.

SECTION 32. Amends Sections 33.204(a) and (b), Finance Code, as follows:

(a) Deletes existing text providing that management of a limited banking association is vested in the participants in proportion to each participant's contribution to capital, as adjusted periodically to properly reflect any additional contribution. Deletes existing text authorizing the articles of association to provide that management of a limited banking association is vested in a board of managers to be elected annually.

(b) Provides that a board of managers operates in substantially the same manner as, and has substantially the same rights, powers, privileges, duties, and responsibilities, as a board of directors of a banking association, and a manager is required to meet the qualifications for a director under Section 33.103. Deletes existing text prohibiting participants of a limited banking association from retaining management and requiring those participants to elect a board of managers if under certain circumstances.

SECTION 33. Amends Section 33.206, Finance Code, as follows:

Sec. 33.206. INTEREST IN LIMITED BANKING ASSOCIATION; TRANSFERABILITY OF INTEREST. (a) Makes conforming changes.

(b) Prohibits the bylaws or the participation agreement from requiring the consent of any other participant in order for a participant to transfer participation shares, including voting rights. Deletes existing text providing that a transferee of a participant's interest has the status of a participant-transferee and does not by the transfer become a participant or obtain a right to participate in the management of the limited banking association.

(c) Deletes existing subsection providing that a participant-transferee is entitled to receive certain benefits in respect to the interest transferred to which the participant who transferred the interest would have been entitled.

(d) Deletes existing subsection authorizing a participant-transferee to become a participant only as provided by the bylaws or the participation agreement.

(e) Deletes existing subsection authorizing a limited banking association to add additional participants in the same manner as participant-transferees after payment in full of the capital contributions to the limited banking association payable for the issuance of additional participation interests.

SECTION 34. Amends Section 33.208, Finance Code, as follows:

Sec. 33.208. DISSOLUTION. Prohibits bylaws or a participation agreement from requiring automatic termination, dissolution, or suspension of the limited banking association on the death, disability, bankruptcy, expulsion, or withdrawal of a participant, or on the happening of any other event other than the passage of time. Deletes existing text providing that a limited banking association organized under this chapter is dissolved under certain circumstances.

(b) Deletes existing subsection providing that a dissolution under this section is considered to be the initiation of a voluntary liquidation under Subchapter B, Chapter 36.

(c) Deletes existing subsection providing that an event of dissolution described by Subsection (a)(3) does not cancel or revoke a contract to which the bank is a party, including a trust indenture or agreement or voluntary dissolution under Subchapter B, Chapter 36, until the period for the remaining participants to continue the business of the bank has expired without the remaining participants having completed the necessary action to continue the business of the bank.

SECTION 35. Amends Section 33.211, Finance Code, as follows:

Sec. 33.211. APPLICATION OF OTHER PROVISIONS TO LIMITED BANKING ASSOCIATIONS. Includes the provisions of Subtitle A to the conditions of this section.

Deletes existing text providing that if there is not a board of managers, a participant is considered to be a director and all of the participants are considered to be the board of directors for purposes of the provisions of this subtitle other than this subchapter. Makes conforming changes.

SECTION 36. Amends Section 34.102, Finance Code, as follows:

Sec. 34.102. New heading: TRANSACTION IN BANK SHARES. Makes conforming changes.

SECTION 37. Amends Sections 34.104(b) and (c), Finance Code, as follows:

(b) Deletes existing text providing for a limitation under Section 34.101(e) regarding a bank's authorization to invest in the investment company without limitation.

(c) Authorizes the bank to invest not more than an amount equal to 15 percent of the bank's capital and certified surplus in an investment company described by Subsection (a) the portfolio of which contains an investment or obligation in which the bank could not invest directly without limitation under this chapter, rather than the portfolio of which contains an investment or obligation that is subject to the limitations of Section 34.101(d) or 34.201(a).

SECTION 38. Amends Section 34.105(c)(2), Finance Code, to redefine "banker's bank."

SECTION 39. Amends Sections 34.202(a) and (d), Finance Code, to make conforming changes.

SECTION 40. Amends Section 34.203(b), Finance Code, to make conforming changes.

SECTION 41. Amends Sections 35.002(a) and (b), Finance Code, to make conforming changes.

SECTION 42. Amends Sections 35.003(a) and (b), Finance Code, to make conforming changes.

SECTION 43. Amends Section 35.005(a), Finance Code, to make conforming changes.

SECTION 44. Amends Section 35.006, Finance Code, to make conforming changes.

SECTION 45. Amends Section 35.101(a), Finance Code, to make a conforming change.

SECTION 46. Amends Section 35.102(a), Finance Code, to make a conforming change.

SECTION 47. Amends Section 35.106, Finance Code, to make a conforming change.

SECTION 48. Amends Section 35.107(b), Finance Code, to make conforming changes.

SECTION 49. Amends Section 36.101, Finance Code, to make conforming changes.

SECTION 50. Amends Section 36.102, Finance Code, to make conforming changes.

SECTION 51. Amends Sections 36.108(a), (c), and (d), Finance Code, to make conforming changes.

SECTION 52. Amends Section 36.201(b), Finance Code, to make a conforming change.

SECTION 53. Amends Section 36.203(c), Finance Code, to make conforming changes.

SECTION 54. Amends Section 36.204(a), Finance Code, to make a conforming change.

SECTION 55. Amends Section 36.208, Finance Code, to make conforming changes.

SECTION 56. Amends Section 36.212(a), Finance Code, to make conforming changes.

SECTION 57. Amends Section 36.213(a), Finance Code, to make conforming changes.

SECTION 58. Amends Section 36.216, Finance Code, to make conforming changes.

SECTION 59. Amends Section 36.301(a), Finance Code, to make a conforming change.

SECTION 60. Amends Section 36.308, Finance Code, to make a conforming change.

SECTION 61. Amends Section 36.310(c), Finance Code, to make a conforming change.

SECTION 62. Amends Section 36.312(b), Finance Code, to make a conforming change.

SECTION 63. Amends Sections 36.313(a), (b), (c), and (d), Finance Code, to make conforming changes.

SECTION 64. Amends Section 37.004(b), Finance Code, to make a conforming change.

SECTION 65. Amends Section 181.002(a)(7), Finance Code, to make a conforming change.

SECTION 66. Amends Section 181.005(a), Finance Code, to make a conforming change.

SECTION 67. Amends Section 181.308(a), Finance Code, to make a conforming change.

SECTION 68. Amends Section 182.009, Finance Code, as follows:

Sec. 182.009. APPLICATION OF GENERAL CORPORATE LAW. (a) Makes conforming changes.

(b) Makes a conforming change consistent with the addition of Subsection (d) to this section.

(c) Makes a conforming change.

(d) Provides that, notwithstanding Subsection (a), this subsection establishes governing law with respect to a state trust company organized before January 1, 2006, to the extent not inconsistent with this subtitle or the proper business of a state trust company under certain Acts. Authorizes the finance commission to establish rules permitting a state trust company to elect to be governed by the provisions of the Business Organizations Code to the extent not inconsistent with this subtitle or the proper business of a state trust company. Provides that this subsection expires January 1, 2010.

SECTION 69. Amends Section 182.021, Finance Code, as follows:

Sec. 182.021. ACTIVITIES NOT REQUIRING CHARTER. Provides that, subject to Subchapter C, Chapter 187, a company does not engage in the trust business in a manner requiring a state charter by engaging as a principal in the money services business, rather than the agent in the lawful sale of checks, under a license issued by the banking commissioner under Chapter 151, rather than 152, acting as trustee under a voting trust as provided by Section 6.251, Business Organizations Code, rather than Article 2.30, Texas Business Corporation Act, and serving as trustee of a charitable trust as provided by Section 2.106, Business Organizations Code, rather than Article 2.31, Texas Non-Profit Corporation Act (Article 1396-2.31, V.T.C.S.).

SECTION 70. Amends Section 182.101(d), Finance Code, as follows:

(d) Requires amendment or restatement of the articles of association of a state trust company and approval of the board and shareholders or participants to be made or obtained in accordance with the Business Organizations Code for the amendment or restatement of a certificate of formation by a for-profit corporation, rather than the

articles of incorporation, except as otherwise provided by this subtitle or rules adopted under this subtitle. Makes a conforming change.

SECTION 71. Amends Section 182.102(b), Finance Code, to make conforming changes.

SECTION 72. Amends Section 182.301, Finance Code, as follows:

Sec. 182.301. MERGER AUTHORITY. (a) Authorizes a state trust company to merge with another person to the same extent as a for-profit corporation, rather than a business corporation, under the Business Organizations Code subject to this subchapter and with the prior written approval of the banking commissioner.

(b) Makes a conforming change.

SECTION 73. Amends Section 182.304, Finance Code, to make a conforming change.

SECTION 74. Amends Section 182.501(b), Finance Code, to make a conforming change.

SECTION 75. Amends Section 183.102, Finance Code, to make a conforming change.

SECTION 76. Amends Section 186.101(a), Finance Code, to make a conforming change.

SECTION 77. Amends Section 202.005(a), Finance Code, as follows:

(a) Authorizes the banking commissioner (commissioner) to examine a bank holding company that controls a Texas bank to the same extent as if the bank holding company were a Texas state bank and bring an enforcement proceeding under Chapter 35 against a bank holding company that violates or participates in a violation of Subtitle A, rather than this subtitle, an agreement filed with the commissioner under this chapter, or a rule adopted by the finance commission or order issued by the commissioner under Subtitle A, rather than this subtitle, as if the bank holding company were a Texas state bank.

SECTION 78. Amends Section 274.001(1), Finance Code, to redefine "bank."

SECTION 79. Amends Section 274.003, Finance Code, as follows:

Sec. 274.003. SUBSIDIARY TRUST COMPANY. Provides that an entity is a subsidiary trust company of a bank holding company if the entity is a trust company organized, rather than a corporation incorporated, under Subchapter A, Chapter 182.

SECTION 80. Repealer: Sections 31.002(a)(28) (relating to the definition of full liability participant), (36) (relating to the definition of managing participant), and (41) (relating to the definition of participant transferee), 32.002(d) (relating to organizers of a limited banking association that include in the articles of association a statement that management), 33.201(b) (relating to liability of a full liability participant), 33.202 (Filing of Notice of Copy of Participation Agreement), 33.203 (Contracting for Debt or Obligation), 33.205 (Withdrawal or Reduction of Participants Contribution to Capital), 33.207 (Bylaws of Limited Banking Association), and 35.007(d) (relating to the election of a certain board of managers), Finance Code.

SECTION 81. Effective date: September 1, 2007.