

BILL ANALYSIS

Senate Research Center
83R3977 DDT-F

H.B. 1646
By: Flynn (Carona)
Business & Commerce
5/16/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Finance Code and Business Organizations Code both contain statutes relating to business organizations. However, the terminology found in the Business Organizations Code is more common and up-to-date. Although the Business Organizations Code includes a provision to ensure that terminology found in the Finance Code is synonymous with terminology found in the Business Organizations Code, these differing terms have still caused confusion and at times problems.

H.B. 1646 revises terminology relating to business organizations found in the Finance Code consistent with those found in the Business Organizations Code.

H.B. 1646 amends current law relating to revising provisions in certain laws governing certain banks and trust companies in this state to conform to changes in terminology made by the Business Organizations Code.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission of Texas is modified in SECTION 3 (Section 32.008, Finance Code) and SECTION 18 (Section 182.009, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 32.002, Finance Code, to read as follows:

Sec. 32.002. CERTIFICATE OF FORMATION OF STATE BANK.

SECTION 2. Amends Sections 32.002(a) and (c), Finance Code, as follows:

(a) Changes references to articles of association to certificate of formation.

(c) Provides that a state bank, other than a private bank, organized before August 31, 1993, is considered to have perpetual existence, notwithstanding a contrary statement in its articles of association, unless after September 1, 1995, the bank amends its certificate of formation or articles of association to reaffirm its limited duration.

SECTION 3. Amends Section 32.008, Finance Code, as follows:

Sec. 32.008. APPLICATION OF GENERAL CORPORATE LAW. (a) Makes conforming changes.

(b) Authorizes the Finance Commission of Texas (finance commission) to adopt rules to limit or refine the applicability of the laws listed by Subsection (a), rather than Subsection (a) or (d), 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) Prohibits a state bank, unless expressly authorized by this subtitle or a rule adopted under this subtitle, from taking an action authorized by a law listed by

Subsection (a), rather than Subsection (a) or (d), regarding its corporate status, its capital structure, or a matter of corporate governance, of the type for which those laws would require a filing with the secretary of state if the bank were a filing entity, rather than business corporation, without submitting the filing to the banking commissioner and obtaining the banking commissioner's prior written approval of the action.

(d) Provides that, in this subtitle, a reference to a term or phrase listed in a subdivision of Section 1.006 (Synonymous Terms), Business Organizations Code, includes a synonymous term or phrase referenced by the same subdivision in Section 1.006 of that code.

SECTION 4. Amends the heading to Subchapter B, Chapter 32, Finance Code, to read as follows:

SUBCHAPTER B. AMENDMENT OF CERTIFICATE; CHANGES IN
CAPITAL AND SURPLUS

SECTION 5. Amends the heading to Section 32.101, Finance Code, to read as follows:

Sec. 32.101. AMENDMENT OR RESTATEMENT OF STATE BANK CERTIFICATE
OF FORMATION.

SECTION 6. Amends Sections 32.101(a), (b), and (c), Finance Code, as follows:

(a)-(b) Changes references to articles of association to certificate of formation.

(c) Requires that amendment or restatement of the certificate of formation, rather than the articles of association, of a state bank and approval of the bank's board and shareholders be made or obtained as provided by the Business Organizations Code, rather than as provided by the Business Organizations Code for the amendment or restatement of a certificate of formation by a for-profit corporation, except as otherwise provided by this subtitle or rules adopted under this subtitle. Requires that the original and one copy of the certificate of amendment or restated certificate of formation, rather than the articles of amendment or restated articles of association, be filed with the banking commissioner for approval. Makes a conforming change.

SECTION 7. Amends Sections 32.102(a) and (b), Finance Code, as follows:

(a) Makes conforming and nonsubstantive changes.

(b) Authorizes a series of shares to be established in the manner provided by the Business Organizations Code, rather than provided by the Business Organizations Code as if the state bank were a domestic entity, but prohibits the shares of the series from being issued and sold without the prior written approval of the banking commissioner under Section 32.103 (Change in Outstanding Capital and Surplus).

SECTION 8. Amends Section 32.301(b), Finance Code, to require that implementation of the merger by the parties and approval of the board, shareholders, or owners of the parties be made or obtained in accordance with the Business Organizations Code as if the state bank were a filing entity, rather than domestic entity, and all other parties to the merger were foreign entities, except as may be otherwise provided by applicable rules.

SECTION 9. Amends Sections 32.302(a) and (c), Finance Code, as follows:

(a) Requires the original certificate of merger, rather than articles of merger, and a number of copies of the certificate, rather than articles, equal to the number of surviving, new, and acquiring entities, if the merger is subject to the prior written approval of the banking commissioner, to be filed with the banking commissioner.

(c) Makes conforming changes.

SECTION 10. Amends Section 32.501(b), Finance Code, to change a reference to domestic entity to filing entity.

SECTION 11. Amends Section 33.204(c), Finance Code, to change a reference to articles of association to certificate of formation.

SECTION 12. Amends Section 33.209, Finance Code, to make a conforming change.

SECTION 13. Amends Section 33.210, Finance Code, to make a conforming change.

SECTION 14. Amends Section 36.312(a), Finance Code, to make a conforming change.

SECTION 15. Amends Section 36.313(c), Finance Code, to make a conforming change.

SECTION 16. Amends the heading to Section 182.002, Finance Code, to read as follows:

Sec. 182.002. CERTIFICATE OF FORMATION OF STATE TRUST COMPANY.

SECTION 17. Amends Sections 182.002(a) and (c), Finance Code, to change references to articles of association to certificate of formation.

SECTION 18. Amends Section 182.009, Finance Code, as follows:

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

(b) Prohibits a state trust company, unless expressly authorized by this subtitle or a rule of the finance commission, from taking an action authorized by a law listed under Subsection (a) (relating to providing that the Business Organizations Code applies to a trust association as if it were a limited liability company, excepting certain items), rather than Subsection (a) or (d), regarding its corporate status, capital structure, or a matter of corporate governance, of the type for which a law listed under Subsection (a) would require a filing with the secretary of state if the state trust company were a filing entity, rather than a business corporation or a limited liability company, without submitting the filing to the banking commissioner for prior written approval of the action.

(c) Authorizes the finance commission to adopt rules to alter or supplement the procedures and requirements of the laws listed by Subsection (a), rather than Subsection (a) or (d), applicable to an action taken under this chapter by a state trust company.

(d) Provides that, in this subtitle, a reference to a term or phrase listed in a subdivision of Section 1.006, Business Organizations Code, includes a synonymous term or phrase referenced by the same subdivision in Section 1.006 of that code.

SECTION 19. Amends the heading to Subchapter B, Chapter 182, Finance Code, to read as follows:

SUBCHAPTER B. AMENDMENT OF CERTIFICATE; CHANGES IN CAPITAL AND SURPLUS

SECTION 20. Amends the heading to Section 182.101, Finance Code, to read as follows:

Sec. 182.101. AMENDMENT OR RESTATEMENT OF STATE TRUST COMPANY CERTIFICATE OF FORMATION.

SECTION 21. Amends Sections 182.101(a), (b), (c), and (d), Finance Code, as follows:

(a)-(c) Changes references to articles of association to certificate of formation.

(d) Requires that amendment or restatement of the certificate of formation, rather than articles of association, of a state trust company and approval of the board and shareholders or participants be made or obtained in accordance with the Business Organizations Code, rather than in accordance with the Business Organizations Code for the amendment or restatement of a certificate of formation by a for-profit corporation, except as otherwise provided by this subtitle or rules adopted under this subtitle. Requires that the original and one copy of the certificate of amendment or restated certificate of formation, rather than the articles of amendment or restated articles of association, be filed with the banking commissioner for approval. Makes a conforming change.

SECTION 22. Amends Sections 182.102(a) and (b), Finance Code, as follows:

(a) Makes conforming and nonsubstantive changes.

(b) Authorizes a series of shares or participation shares to be established in the manner provided by the Business Organizations Code, rather than established in a manner provided by the Business Organizations Code as if a state trust company were a domestic corporation, but the shares or participation shares of the series may not be issued and sold except on compliance with Section 182.103 (Change in Restricted Capital). Requires the state trust company to file the original and one copy of the statement of action required by the Business Organizations Code with the banking commissioner.

SECTION 23. Amends Section 182.301, Finance Code, as follows:

Sec. 182.301. MERGER AUTHORITY. (a) Authorizes two or more trust institutions, corporations, or other entities with the authority to participate in a merger, at least one of which is a state trust company, to adopt and implement a plan of merger in accordance with this section. Prohibits the merger from being made without the prior written approval of the banking commissioner if any surviving, new, or acquiring entity that is a party to the merger or created by the terms of the merger is a state trust company or is not a trust institution. Deletes existing text authorizing a state trust company, subject to this subchapter and with the prior written approval of the banking commissioner, to merge with another person to the same extent as a for-profit corporation under the Business Organizations Code.

(b) Requires that implementation of the plan of merger by the parties and approval of the board, shareholders, participants, or owners of the parties be made or obtained as provided by the Business Organizations Code as if the state trust company were a filing entity, rather than domestic corporation, and all other parties to the merger were foreign entities, rather than foreign corporations and other entities, except as otherwise provided by rules adopted under this chapter.

SECTION 24. Amends Section 182.302(a), Finance Code, to change references to articles of merger to certificate of merger.

SECTION 25. Amends Section 182.303(a), Finance Code, to make conforming changes.

SECTION 26. Amends Section 182.501(b), Finance Code, as follows:

(b) Requires that the merger or conversion be made and approval of the state trust company's board, shareholders, or participants be obtained in accordance with the Business Organizations Code as if the state trust company were a filing entity, rather than a domestic corporation, and all other parties to the transaction, if any, were foreign entities, rather than foreign corporations or other entities, except as may be otherwise

provided by rule. Provides that, for purposes of this subsection, a conversion is considered a merger into the successor trust institution.

SECTION 27. Amends Section 183.203, Finance Code, to change a reference to articles of association to certificate of formation.

SECTION 28. Amends Sections 183.204(a) and (c), Finance Code, as follows:

(a) Authorizes the certificate of formation, rather than the articles of association, to provide that management of a limited trust association is vested in a board of managers to be elected annually by the participants as prescribed by the bylaws or the participation agreement.

(c) Makes a conforming change.

SECTION 29. Amends Sections 183.205(a) and (c), Finance Code, to change references to articles of association to certificate of formation.

SECTION 30. Amends Section 183.207(a), Finance Code, to make a conforming change.

SECTION 31. Amends Section 183.208(a), Finance Code, to make a conforming change.

SECTION 32. Amends Section 183.209, Finance Code, to make a conforming change.

SECTION 33. Amends Section 183.210, Finance Code, to make a conforming change.

SECTION 34. Amends Section 186.312(a), Finance Code, to make a conforming change.

SECTION 35. Amends Section 186.313(c), Finance Code, to make a conforming change.

SECTION 36. Amends Section 204.101(a), Finance Code, to require that an application submitted by a foreign bank that desires to establish and maintain a Texas state branch or agency to meet certain criteria and have attached certain information, including have attached an authenticated copy of the foreign bank's certificate of formation, rather than articles of incorporation, and bylaws or other constitutive documents and, if the copy is in a language other than English, an English translation of the document, under the oath of the translator and evidence of compliance with Section 201.102 (Registration to Do Business).

SECTION 37. Amends Section 204.107, Finance Code, as follows:

Sec. 204.107. New heading: FILING OF AMENDMENTS TO CERTIFICATE OF FORMATION. Requires the foreign bank, if the certificate of formation, rather than the articles of incorporation, of a foreign bank licensed to maintain a Texas state branch or agency is amended, to promptly file with the banking commissioner a copy of the amendment, duly authenticated by the proper officer of the country of the foreign bank's organization. Provides that the filing does not enlarge or alter the business the foreign bank is authorized to pursue in this state, authorize the foreign bank to transact business in this state under a name other than the name set forth in its license, or extend the duration of its corporate existence.

SECTION 38. Amends Section 204.201(a), Finance Code, to make a conforming change.

SECTION 39. Effective date: upon passage or September 1, 2013.