

BILL ANALYSIS

S.B. 875
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Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There are concerns regarding the application of capital restrictions to trust companies of varying sizes and to certain exempt trust companies. Additionally, there are concerns regarding the examination of trust companies and the need for clarification as to which trust companies may apply for exempt status if they serve only family members and other statutes concerning trust companies with exempt status. S.B. 875 seeks to address these issues.

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

S.B. 875 amends the Finance Code to raise from \$1 million to \$2 million the minimum restricted capital a state trust company must have to be issued a charter by the banking commissioner of Texas under the Texas Trust Company Act. The bill changes the benchmark by which a state trust company is considered insolvent due to insufficient equity capital from less than \$500,000 in equity capital, as determined under regulatory accounting principles, to equity capital that is 50 percent or less of the amount of restricted capital the trust company is required to maintain.

S.B. 875 requires a state trust company with less than the required amount of restricted capital to increase its restricted capital to at least the required amount not later than September 1, 2020, unless the state trust company has a private trust exemption or prior exemption. The bill specifies that a state trust company is authorized under current law to apply to the commissioner for approval of restricted capital in an amount that is less than the required amount. The bill requires a state trust company with insufficient restricted capital and a prior exemption on September 1, 2015, to increase its restricted capital to at least \$250,000 on or before September 1, 2020. The bill authorizes the Finance Commission of Texas to adopt rules specifying procedures for ratable increases in restricted capital for state trust companies and for deferrals and extensions of time for a state trust company acting in good faith to achieve the minimum required restricted capital.

S.B. 875 increases from 40 percent to 50 percent the amount of restricted capital a state trust company is required to invest and maintain in investment securities that are readily marketable and can be converted to cash within four business days. The bill requires a state trust company to comply with these amended investment liquidity requirements not later than September 1, 2016. The bill authorizes the commissioner, on written application, to extend the period for compliance for a state trust company for good cause shown.

S.B. 875 revises the commissioner's authority to examine state trust companies other than on an annual basis by repealing a provision authorizing the commissioner to examine a state trust company more often than annually as the commissioner considers necessary to safeguard the interests of certain stakeholders and to enforce the Texas Trust Company Act and instead providing for the commissioner examination of each state trust company annually or on another periodic basis or as the commissioner considers necessary to safeguard the interests of such stakeholders and to efficiently enforce applicable law. The bill repeals the commissioner's authorization to defer an examination for up to six months.

S.B. 875 creates an exception to a provision making a state trust company's statement of condition and income a public record by establishing that such a statement for a state trust company exempt as a private trust or under a prior exemption is not a public record with regard to the period during which the exemption is in effect.

S.B. 875 clarifies the basis on which the commissioner is authorized to grant a private state trust company an exemption in whole or in part from specified provisions of the Texas Trust Company Act by changing the standard for making such a determination from a finding that the state trust company does not transact business with the public as specified by statute, to a finding that the trust company has only family clients and transacts business solely on behalf of family clients and their related interests; is wholly owned, directly or indirectly, legally or beneficially, by one or more family members; and does not hold itself out to the general public as a corporate fiduciary for hire. The bill sets out the persons and entities considered a family client; defines "family member" and "former family member" for such purposes; includes among the rules the finance commission is authorized to adopt rules defining or further defining terms used by statutory provisions governing the exemption; and conforms the sworn statement in the application for such an exemption to the revised standard.

S.B. 875 specifies that the certification an exempt state trust company is required to file regarding the company maintaining the conditions and limitations of the exemption is to be filed annually with its statement of income instead of before June 30 each year. The bill requires an exempt state trust company to maintain records necessary to verify its certification and subjects the records to examination by the commissioner. The bill removes the condition that a certification is not valid unless it bears an acknowledgement stamped by the Texas Department of Banking and repeals a provision requiring the department to return a copy of the acknowledged annual certification to the state trust company.

S.B. 875 removes provisions prohibiting an exempted state trust company from being sold or transferred with its exempt status, automatically terminating the exempt status on the effective date of transfer, and requiring the acquiring person to file a separate application to obtain an exemption. The bill instead provides for the continuation of the exempt status of a state trust company if control of the company is sold or transferred, contingent on the acquiring person filing a certification with the commissioner that the state trust company will comply, or continue to comply, with requirements governing qualification for the exemption after control is transferred. The bill authorizes the commissioner to examine or investigate the acquiring person and the state trust company as necessary to verify the certification. The bill requires the commissioner to terminate the exemption on the effective date of the transfer if the commissioner determines that the state trust company will not comply or continue to comply with such requirements and requires the acquiring person to file a separate application to obtain a new exemption after the termination. The bill subjects an acquiring person to Texas Trust Company Act provisions requiring an application to be filed for approval of such an acquisition.

S.B. 875 prohibits a state trust company that was exempt under a predecessor to current law governing trust companies before September 1, 1997, from continuing to operate with that prior exempt status after the earlier of September 1, 2020, or the date control of the company is sold or otherwise transferred. The bill authorizes a state trust company to apply for a new exemption as a private trust before the loss of its exempt status.

S.B. 875 repeals the following provisions of the Finance Code:

- Sections 181.104(b) and (c)
- Section 182.013(b)

EFFECTIVE DATE

September 1, 2015.