

BILL ANALYSIS

C.S.H.B. 1535
By: Flynn
Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

While the federal Securities and Exchange Commission has overall responsibility for monitoring the securities marketplace in the United States, the State Securities Board (SSB) has primary oversight over administering and enforcing the Texas Securities Act and plays a critical role in protecting Texas residents from fraudulent or negligent practices by securities professionals and criminal opportunists. Subject to review and abolishment under the Texas Sunset Act, the Sunset Advisory Commission found that, while the SSB effectively carries out its mission to protect investors and ensure a healthy securities market, the SSB could further streamline its functions and provide tools its staff needs to address ever evolving demands, including establishing more formal processes and providing opportunities for more transparency. C.S.H.B. 1535 seeks to continue the SSB with several statutory modifications aimed at addressing those findings.

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 rulemaking authority is expressly granted to the State Securities Board in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 1535 amends The Securities Act, Vernon's Texas Civil Statutes, to postpone from September 1, 2019, to September 1, 2031, the date on which the State Securities Board (SSB) is abolished and that act expires unless continued in existence as provided by the Texas Sunset Act. The bill updates provisions relating to SSB operations by:

- revising training requirements for board members, providing for the development and distribution of a training manual by the securities commissioner, and providing limitations on certain board meeting activity for board members until the additional required training has been completed;
- revising provisions relating to SSB duties with respect to maintaining complaint information; and
- providing for the use of negotiated rulemaking procedures and alternative dispute resolution procedures by the SSB.

C.S.H.B. 1535 authorizes the SSB to provide assistance to a county or district attorney who requests assistance in a criminal prosecution involving an alleged violation of The Securities Act that is referred by the SSB to the attorney and requires the securities commissioner to make a certain determination regarding available SSB employees and other resources for requested assistance before referring a case to such a prosecuting attorney. The bill requires the SSB by

rule to establish a process to enable the commissioner to determine whether to provide any requested assistance to the appropriate prosecuting attorney following referral of a case for prosecution, and, if so, the appropriate amount of such assistance. The bill sets out the issues the rules must require the commissioner to consider and requires the SSB to adopt the necessary rules not later than March 1, 2020. The bill limits the SSB, in responding to a request for assistance, to providing only those SSB employees or resources, if any, determined by the commissioner to be available for the case and authorizes the commissioner, if a change in circumstances occurs after the time of such a determination, to reconsider the determination and to increase or reduce the number of employees or other resources to be made available for the case. The bill requires the attorney general, at least biennially, to review a sample of criminal cases for which the SSB provided requested assistance, sets out requirements for the review, and provides for the attorney general's authority to report concerns regarding the assistance to the appropriate legislative committees. The bill requires the SSB annual report to the governor and the legislative presiding officers to include for the preceding year the amount spent by the SSB for all such requested assistance and a specified breakdown concerning the status of the cases referred by the SSB.

C.S.H.B. 1535 authorizes the commissioner to order a dealer, agent, investment adviser, or investment adviser representative regulated under The Securities Act to pay a refund to a client or a purchaser of securities or services from the person or company as provided in an agreed order or an enforcement order instead of or in addition to imposing an administrative penalty or other sanctions and provides certain limitations on the amount of a refund order. The bill removes the requirement for the SSB or commissioner to charge and collect a fee for any filing for the registration of a branch office.

EFFECTIVE DATE

September 1, 2019

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1535 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a change to the SSB's duties relating to the maintenance of complaint information clarifying that the duty to periodically notify complaint parties of the status of the complaint does not apply if the notice would jeopardize any law enforcement investigation.

The substitute includes an authorization for the securities commissioner to reconsider a determination regarding the availability of SSB employees and resources for requested assistance in a criminal case and to increase or reduce the number of employees or other resources made available for the case if a change of circumstances occurs after the initial determination. The substitute includes an evaluation of any such subsequent determination as part of the attorney general's review of a sample of criminal cases for which the SSB provided requested assistance.