

- SUBJECT:** Revised regulation of state banks and state trust companies
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 6 ayes — Solomons, Flynn, Anchia, Anderson, McCall, Orr  
0 nays  
1 absent — Chavez
- WITNESSES:** For — (*Registered, but did not testify:* John Heasley, Texas Bankers Association; Steve Scurlock, Independent Bankers Association of Texas)  
Against — None  
On — Randall James, Texas Department of Banking; (*Registered, but did not testify:* Everette Jobe, Texas Department of Banking)
- BACKGROUND:** The banking system is a dual system of state and federal regulation. The Texas Banking Act provides for regulation of state-chartered banks and state-chartered trusts. Approval for assets of a state bank to be bought or sold is required only if the seller is ending its existence as a bank.
- DIGEST:** CSHB 2754 would revise filing, confidentiality, and charter protest requirements for state banks and trusts.
- Subscriptions would have to be irrevocably paid in cash before the articles of association for a state bank or trust company were filed rather than prior to the issuance of the charter. In a charter application, the department's investigation report, the business plan of the state bank or state trust applicant, and the financial statements of proposed officers and directors would be confidential and not subject to public disclosure.
- The protest of a charter application for a state bank or trust would have to be filed within 15 days of the organizers' publishing notice of application. The applicant would be informed of any protest, and the protesting party would receive a copy of the nonconfidential aspects of the charter application within 15 days of filing the protest. The protesting party would have 20 days to file a detailed protest responding to each contested

statement contained in the application and relating it to the approval standards for state banks or trust charters. The charter applicant would have 10 days to respond to the contested statements in the protest. The banking commissioner would decide whether or not a hearing was necessary to determine the outcome of the protest.

State banks and state trusts would be exempted from obtaining approval from the banking commissioner before making changes to their capitalization, for the following reasons:

- a direct cash contribution by shareholders without the corresponding issuance of additional shares of stock; or
- certain accounting adjustments if the transaction that caused the adjustment was already subject to prior application and approval of the banking commissioner.

CSHB 2754 would eliminate requirements for merging state banks and trusts to publish notice of the merger in newspapers and other publications as required by the Finance Commission. The department could adopt rules regarding the confidentiality of information contained on the interagency form for change of control applications. State banks and trusts would not have to file duplicate copies of documents associated with a voluntary dissolution and liquidation of institution assets.

Without written approval from the banking commissioner, a state bank or state trust could not:

- purchase the assets of another institution if the purchase price exceeded three times the purchasing institution's unimpaired capital and surplus; or
- sell a portion of its assets if the selling price exceeded three times the institution's unimpaired capital and surplus.

If approval was not required for a sale that affected the disposition of a state bank or trust, the selling institution would provide the commissioner with notice at least 30 days prior to the closing of the sale. The Finance Commission could adopt rules for additional circumstances under which an approval for a purchase or sale would be required if it would risk the soundness of a state institution.

The bill would take effect September 1, 2007.

SUPPORTERS  
SAY:

CSHB 2754 would streamline the state bank corporate application and filing process by revising certain notice, hearing, and filing requirements and by clarifying the application of confidentiality to contents of pending applications. The bill also would modernize the law regarding required approvals of certain voluntary asset purchases or sales to require regulatory approval only if warranted by transaction size and risk.

HB 2754 would revise cash subscription requirements applicable to proposed state bank and trust company charters so that capital could not change between the date of the articles of association and the date the certificate of authority was issued. This would avoid corrections on previously filed and approved articles.

The bill would make hearings regarding a formal protest of a bank or trust company charter progress more efficiently by clarifying the confidentiality restrictions applicable to specific information in the application file. The added clarity in the statute would free the department from having to establish which documents were confidential at each hearing. The bill also would allow the Finance Commission to adopt rules to specify the confidential information in a change of control application so that the commission could align rules with applicable federal law.

The commissioner would be granted discretion about whether to hold a hearing based on whether the protest raised legitimate issues with respect to the statutory standards for approval of the charter. The commissioner's decision in this matter would be aided by additional requirements for the protestor to cite what standards for approval the protestor did not feel the charter application met. The protestors in such cases would be sophisticated parties that should be able to clearly record the grounds for protest. The discretion provided to the commissioner would be valuable, because there has been a recent increase in charter protests filed by bank competitors, and the commissioner could refuse to hear cases that were not well-substantiated.

The bill would streamline bank and trust operations by eliminating certain required actions that no longer are relevant to the current regulatory system. A bank would not have to seek approval for making changes to its capitalization under certain circumstances that did not merit reporting, such as accounting adjustments that already required approval. State banks and state trusts would not have to publish information regarding mergers

or conversions to a successor under a different regulatory scheme because the successor regulatory scheme already would have sufficient publication requirements. State banks and trusts would not have to submit duplicate certified copies of notices of corporate resolutions involving dissolution of the institution to the banking commissioner.

The bill would require consideration of the level of risk to the safety and soundness of a transaction in determining whether a bank could be sold or purchased by another bank.

**OPPONENTS  
SAY:**

CSHB 2754 should not change the current requirement that the commissioner conduct a hearing on all charter protests filed in a timely fashion. An allegation that a bank had not met all charter requirements should not be taken lightly, because the requirements to obtain a charter were established to ensure that a bank would operate in a sound manner to the public advantage. The evidence to support the claims in a charter protest could emerge through the discovery process, yet the discovery process would not occur if the commissioner did not allow a hearing.

**NOTES:**

The companion bill, SB 1545 by Fraser, has been referred to Senate Business and Commerce Committee.