

BILL ANALYSIS

Senate Research Center
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H.B. 2007
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The "dual banking system" refers to the parallel state and federal structures for the chartering, supervision, and regulation of depository institutions. It encompasses the powers, activities, and competitiveness of banks as well as the powers, policies, and institutional structure of the bank regulatory agencies at the state and federal levels. The dual banking system contains an inherent competitive dynamic that causes both federal and state bank regulators to be flexible and innovative in order to retain their regulated constituents, in that it is not possible for one banking agency to exercise a regulatory monopoly to create and enforce a single industry cartel. This dynamic has produced a decentralized and unconcentrated banking system and a tradition of innovation in bank regulation. Federal and state regulatory components have each played a creative role in helping the banking industry to adapt to changing competitive conditions.

One important feature of the dual banking system has been a relative balance between the state and national systems, both in numerical terms and in the perception among bankers of the relative attractiveness of the two types of charters. Therefore, maintenance of the dual banking system requires constant attention to issues of competitive and regulatory parity among charters.

H.B. 2007 enhances the state charter and modernizes state regulation by addressing:

- opportunities for improving financial literacy of Texas citizens;
- flexibility in examination scheduling to preserve competitive and regulatory parity with other depository institutions;
- simplification of legal limit calculations on loans and investments;
- bank ownership of nominally valued, nonworking mineral or royalty interests;
- types of deposit accounts that can be secured by pledging bank assets; and
- authority of the department of banking to facilitate financial system restoration after a natural disaster or other emergency.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the banking commissioner of Texas in SECTION 2 (Section 31.105, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 12, Finance Code, by adding Section 12.1085, as follows:

Sec. 12.1085. FINANCIAL LITERACY PROGRAM. (a) Requires the Texas Department of Banking (department) to seek to improve the financial literacy and education of persons in this state and to encourage access to mainstream financial products and services by persons who have not previously participated in the conventional finance system by performing certain functions and duties.

(b) Authorizes the department to solicit and accept a gift, grant, or donation from any source, including certain sources to assist in the implementation of this section.

SECTION 2. Amends Section 31.105, Finance Code, as follows:

Sec. 31.105. EXAMINATION REQUIRED. (a) Requires the banking commissioner of Texas (commissioner) to examine each state bank annually, or on another periodic basis as may be required by rule or policy, or as the commissioner considers necessary for certain purposes. Deletes existing text requiring the commissioner to examine each state bank not less than once during each 12-month period, except that this examination is required not less than once during each 18-month period under certain circumstances.

(b) Redesignated from Subsection (d). Deletes existing text authorizing the commissioner to defer an examination for not more than six months if the commissioner considers the deferment necessary for the efficient enforcement of applicable law.

(c) Redesignated from Subsection (e).

(d) Redesignated from Subsection (f).

SECTION 3. Amends Section 34.002(a), Finance Code, to prohibit a state bank, without the prior written approval of the commissioner, from directly or indirectly investing an amount in excess of its unimpaired capital and surplus, rather than capital and certified surplus, in bank facilities, furniture, fixtures, and equipment.

SECTION 4. Amends Subchapter A, Chapter 34, Finance Code, by adding Section 34.004, as follows:

Sec. 34.004. PASSIVE INVESTMENT IN MINERAL INTERESTS. (a) Authorizes a state bank, notwithstanding Section 34.003(a), to hold nonworking mineral or royalty interests under certain circumstances.

(b) Authorizes the commissioner to order a state bank that holds nonworking mineral or royalty interests to divest such interests at any time if the commissioner determines that continued ownership of such interests is detrimental to the state bank.

(c) Provides that, subject to compliance with this section, nonworking mineral or royalty interests are not considered to be real property for purposes of this subtitle (Banks).

SECTION 5. Amends Sections 34.101(c) and (f), Finance Code, as follows:

(c) Prohibits the amount of the investment securities of any one obligor or maker held by the bank for its own account, except as otherwise provided by this section, from exceeding an amount equal to 15 percent of the bank's unimpaired capital and surplus, rather than from exceeding an amount equal to the lesser of 15 percent of the bank's capital and certified surplus or the bank's total equity capital.

(f) Prohibits a state bank from investing more than an amount equal to 25 percent of the bank's unimpaired capital and surplus, rather than an amount equal to the lesser of 25 percent of the bank's capital and certified surplus or the bank's total equity capital, in investment grade adjustable rate preferred stock and money market (auction rate) preferred stock.

SECTION 6. Amends Section 34.103(b), Finance Code, to prohibit a state bank without prior written approval of the commissioner, except for investment in a subsidiary engaging solely in activities that may be engaged in directly by the bank and that are conducted on the same terms and conditions that govern the conduct of the activities by the bank, from investing more than an amount equal to 10 percent of its unimpaired capital and surplus, rather than an amount equal to 10 percent of the lesser of its capital and certified surplus or the bank's total equity capital, in a single subsidiary.

SECTION 7. Amends Section 34.104(c), Finance Code, to authorize a state bank to invest not more than an amount equal to 15 percent of the bank's unimpaired capital and surplus, rather

than the bank's capital and certified surplus, in an investment company described by Subsection (a) the portfolio of which contains an investment or obligation that is subject to the limitations of Section 34.101(d) (relating to securities) and 34.201(a).

SECTION 8. Amends Section 34.105(a), Finance Code, to authorize a state bank to purchase for its own account equity securities of any class issued by certain entities, except that the bank is prohibited from investing more than a certain percentage of the bank's unimpaired capital and surplus, rather than the bank's capital and certified surplus, in that entity.

SECTION 9. Amends Section 34.106(d), Finance Code, to prohibit a bank's aggregate investments under this section (Investments for Public Welfare), including loans and commitments for loans, from exceeding an amount equal to 10 percent of the bank's unimpaired capital and surplus, rather than the bank's capital and certified surplus.

SECTION 10. Amends Section 34.201(a), Finance Code, to prohibit the total loans and extensions of credit by a state bank to a person outstanding at one time without the prior written approval of the commissioner from exceeding an amount equal to 25 percent of the bank's unimpaired capital and surplus, rather than an amount equal to 25 percent of the lesser of the bank's capital and certified surplus or the bank's total equity capital. Prohibits certain aggregated indebtedness of a person from exceeding an amount equal to 50 percent of the bank's unimpaired capital and surplus, rather than an amount equal to 50 percent of the lesser of the bank's capital and certified surplus or the bank's total equity capital. Makes conforming changes.

SECTION 11. Amends Section 34.304(b), Finance Code, to authorize a state bank to pledge its assets to secure a deposit of certain entities.

SECTION 12. Amends Chapter 37, Finance Code, by adding Sections 37.007 and 37.008, as follows:

Sec. 37.007. TEMPORARY BRANCH OR OFFICE. (a) Authorizes the commissioner, if the commissioner determines that an emergency has affected and will continue to affect one or more particular bank offices for an extended period, either as a result of the emergency or subsequent recovery operations, to authorize the bank or banks affected to open temporary branch offices or other facilities required for bank operations for the purpose of prompt restoration of access by the public to banking services.

(b) Authorizes a temporary bank office opened under the authority of Subsection (a) to remain open only for the period specified in the commissioner's order, except that the commissioner is authorized to extend the period the office may remain open on a finding that the conditions requiring the temporary office continue to exist. Authorizes the bank to convert a temporary branch office to a permanent bank location only by obtaining the prior written approval of the commissioner under Section 32.203 (Branch Offices).

(c) Authorizes the commissioner, if requested by the state bank regulatory agency of another state that is experiencing an emergency and is contiguous to this state, to authorize a bank or banks located in the state to open temporary offices in this state for the purpose of prompt restoration of banking services to the existing customers of the bank or banks, as the circumstances of such emergency may require. Authorizes a temporary bank office opened under the authority of this subsection to remain open only for the period specified in the commissioner's order, except that the commissioner is authorized to extend the period the office may remain open on a finding that the conditions requiring the temporary office continue to exist. Authorizes a bank to convert a temporary branch office to a permanent bank location if permitted by and subject to the conditions and requirements of Chapter 203 (Interstate Bank Mergers and Branches).

Sec. 37.008. REGULATORY COORDINATION. (a) Authorizes the commissioner, for certain purposes, to enter into cooperative, coordinating, or information-sharing agreements with other state or federal agencies, with banks or banking trade associations, or with other entities affiliated or representing one of these entities and to issue

interpretive statements of opinions to temporarily waive or suspend regulatory requirements that threaten to impede recovery and restoration of financial services.

(b) Provides that disclosure of information by or to the commissioner under this section does not constitute a waiver of or otherwise affect or diminish an evidentiary privilege to which the information is otherwise subject, regardless of whether the disclosure is governed by a confidentially agreement. Authorizes a party to an agreement described by Subsection (a), notwithstanding any other law, to execute, honor, and comply with an agreement to maintain confidentially and oppose disclosure of information obtained from the commissioner, and requires such a party to treat as confidential any information obtained from the commissioner that is entitled to confidential treatment under applicable state or federal law.

(c) Requires the commissioner to coordinate and cooperate with and assist the office of the governor in the performance of duties under this chapter (Emergencies) and other state or federal law as required by Section 421.071 (Cooperation and Assistance), Government Code.

SECTION 13. Amends Section 204.105(b), Finance Code, to provide that a limitation or restriction based on the capital and surplus, rather than capital and certified surplus, of a Texas state bank is considered to refer, as applied to a Texas state branch or agency, to the dollar equivalent of the capital and surplus of the foreign bank.

SECTION 14. Repealer: Section 31.002(a)(10) (defining "certified surplus") and Section 33.105(b) (relating to the required monthly board meeting for the board of a state bank), Finance Code.

SECTION 15. Effective date: September 1, 2007.