

BILL ANALYSIS

Senate Research Center

S.B. 1008
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Finance Commission of Texas (finance commission) oversees the Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner. The finance commission currently has nine members: five public members, an executive of a state-chartered bank, an executive of a state-chartered thrift, an executive of a consumer financial services company, and a mortgage broker.

Texas regulatory oversight commissions historically have been structured to have one or more members from the regulated industry, but to have a majority of public members.

Generally speaking, mortgage brokers do not act as a lender; rather, they broker loans that are made by a third-party lender. A few large mortgage brokers may make loans directly and those loans would typically be sold after the transaction is completed.

Mortgage bankers on the other hand are companies or individuals that originate mortgage loans using their own capital or short-term borrowings. Such loans would be held until they can be sold individually or in groups on the secondary market. There are fairly significant capital requirements for classification as a mortgage banker, and a mortgage banker must also be authorized to originate mortgages through one of a list of federal agencies.

Until the passage in 2009 of the Secure and Fair Enforcement for Mortgage Licensing Act (the SAFE Act), mortgage bankers were subject only to an entity registration requirement, and a complaint resolution process. With the passage of the SAFE Act, the individual loan originators of mortgage banks for the first time must be licensed.

Currently, there are approximately 6,500 individually licensed mortgage bank loan originators in Texas. The number of mortgage brokers licensed in Texas peaked in 2004-2005 at over 29,000 licensees, but now sits at only approximately 3,800. Additional federal changes that take effect on April 1, 2011, are expected to reduce those numbers even further. Although mortgage bankers and their licensed originators have larger numbers of licensees, there is no mortgage banking representation on the finance commission.

Section 11.102 (Qualifications of Members), Finance Code, currently requires that one member of the finance commission be a mortgage broker. S.B. 1008 would allow the governor to appoint to the finance commission a licensed mortgage loan originator who is licensed either as a mortgage banker under Chapter 157 (Registration of Mortgage Bankers), Finance Code, or a mortgage broker under Chapter 156 (Mortgage Brokers), Finance Code. The bill would allow the current appointee to serve until the expiration of her term.

By broadening the eligibility pool for this finance commission position, the governor has a deeper pool of persons from which to select finance commission representatives.

It is important to note that this bill would not expand the size of the finance commission and, therefore, would have no fiscal impact to the state.

As proposed, S.B. 1008 amends current law relating to the composition of the Finance Commission of Texas.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 11.102(b), Finance Code, as follows:

(b) Requires one member of the Finance Commission of Texas (commission) to be a banking executive, one member to be a savings executive, one member to be a consumer credit executive, one member to be a consumer credit executive, and one member to be a residential mortgage loan originator licensed under Chapter 156 (Mortgage Brokers) or 157 (Registration of Mortgage Brokers), rather than a mortgage broker.

SECTION 2. Amends Section 11.102(e)(4), Finance Code, as follows:

(4) Defines "residential mortgage loan originator," rather than "mortgage broker," to mean a person who:

(A) has had five years' or more experience as a residential mortgage loan originator, rather than mortgage broker, as defined by Section 180.002 (Definitions), rather than Section 156.002 (Definitions), during the seven-year period preceding the person's appointment; and

(B) is a residential mortgage loan originator, rather than mortgage broker, as defined by Section 180.002, rather than Section 156.002.

SECTION 3. (a) Provides that a member of the commission who is a mortgage broker and who is serving on the effective date of this Act continues to serve until the expiration of the term for which the member was appointed.

(b) Requires the governor, as soon as practicable following the expiration of the term of the member described in Subsection (a) of this section or following any vacancy in that position that occurs before the expiration of the term, to make an appointment to the commission to achieve the composition prescribed by Section 11.102, Finance Code, as amended by this Act.

SECTION 4. Effective date: upon passage or September 1, 2011.