SUBJECT: Enabling legislation to increase the size of an urban homestead

COMMITTEE: Financial Institutions — favorable, without amendment

VOTE: 6 ayes — Averitt, Solomons, Ehrhardt, Elkins, Pitts, Juan Solis

0 nays

3 absent — Denny, Grusendorf, Marchant

SENATE VOTE: On final passage, March 18 — voice vote (Ogden voting nay)

WITNESSES: None

BACKGROUND: Art. 16, sec. 50 of the Texas Constitution protects a homestead from forced sale for payment of debts, except the purchase or improvement of the homestead, taxes, certain partitions such as in a divorce, refinancing of a lien, and, as of 1997, home equity loans and reverse mortgages.

Art. 16, sec. 51 limits an urban homestead to a lot or lots consisting of one acre, together with any improvements. A homestead may be used as either a home or a place of business. A rural homestead consists of up to two hundred acres, in one or more parcels. Any property beyond these limitations is excluded from the homestead.

Under the Property Code, a homestead is considered rural if the property is not served by municipal utilities and fire and police protection. All other homesteads are considered urban.

DIGEST: SB 496 would amend the Property Code to increase the size of an urban homestead to 10 acres from one acre, subject to voter approval of a constitutional change. It would require urban homesteads to be a single parcel of land or comprised of contiguous lots. It would allow urban homesteads to be used as an urban home or as both an urban home and a place of business.

These provisions of SB 496 would take effect on January 1, 2000, if SJR 22 by Harris, amending the constitutional definition of an urban homestead, is approved and would apply to liens and writs of execution issued on or after

that date. Current law would continue to apply to liens and writs of execution issued before that date.

SB 496 also would define an urban homestead as property that was located within the limits of a municipality, its extraterritorial jurisdiction, or a platted subdivision. It would also have to be served by police protection, paid or volunteer fire protection, and at least three utility services provided by, or under contract with, a municipality. Eligible utility services would be electricity, natural gas, sewer, storm sewer, and water.

The bill would specify that a doctrine or rule prohibiting an existing lien upon part of a homestead from extending to another part of the homestead not securing the existing lien would not be applicable in Texas.

These provisions of SB 496 would take effect on September 1, 1999, regardless of whether SJR 22 is approved.

SUPPORTERS SAY:

SB 496 and SJR 22, its constitutional authorization, would extend to more Texans the right and freedom to use private property as security for a loan. Many people live within cities on tracts of land that exceed one acre in size. Under current law, they generally are not able to obtain a home equity loan, which is available to nearly all other home owning Texans, because their legal homestead may represent only a portion of their home property. The home equity requirements in the Constitution prohibit use of collateral other than the homestead as security for a home equity loan. Selling off part of the excess land may not be desirable or even possible due to subdivision restrictions or restrictive covenants on minimum lot sizes. If SB 494 and SJR 22 were approved, then urban homeowners could obtain a home equity loan on homesteads of up to 10 acres.

SB 496 and SJR 22 also would help protect the business homestead, while at the same time allowing property owners with both an urban home and a business interest on the same property to qualify for a home equity loan. An urban homestead would not lose its homestead character because part of it was used for business purposes. Property owners would be prohibited from obtaining an equity loan on non-contiguous property, such as a home on one side of town and a business on the other.

SB 496, in tandem with SJR 22, also would remove ambiguities that have arisen over the so-called overburdening and spreading of loans secured by a homestead. Because the law is not definitive, Texas courts have ruled that refinancing of existing liens cannot be applied to a smaller portion of homestead property than the original lien, an action that would "overburden" the parcel. Courts also have ruled that refinancing of existing liens or new home equity loans cannot be applied, or "spread," to a larger property than that securing the original loan.

Lenders in other states routinely approve new loans and refinancing of existing loans that courts in Texas would view as overburdening or spreading. SB 496 would specifically state that any judicial doctrine prohibiting spreading would not apply in Texas. SJR 22 would stipulate that refinancing an existing loan on a portion of the homestead would not constitute overburdening and would not invalidate the lien.

SB 496 also would clarify the meaning of the term "urban homestead," which is ambiguous under current law. The bill provides a specific checklist of items that would have to be in place before property could be considered an urban homestead.

OPPONENTS SAY:

There should not be a specific limit as to the size of an urban homestead. Rather than being subject to an arbitrary cutoff of 10 acres, or any other size, urban homeowners ought to be able to secure a home equity loan, reverse mortgage, or other extension of credit with the entire parcel of land they own.

NOTES:

SJR 22 by Harris, the constitutional authorization for revising the size and character of an urban homestead, was on the May 21 Constitutional Amendments Calendar.