

- SUBJECT:** Continuing the Texas Savings and Loan Department
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 7 ayes — Averitt, Solomons, Denny, Grusendorf, Hopson, Menendez, Wise  
0 nays — None  
2 absent — Marchant, Pitts
- WITNESSES:** For — Russ Chase, Texas Association of Mortgage Brokers; Dennis Patillo, Texas Association of Realtors; John Snider; *Registered but did not testify:* Jim Pair, Texas Association of Mortgage Brokers; Eric Sandberg, Texas Savings and Community Bankers Association; Bill Stinson, Texas Association of Realtors  
  
Against — None  
  
On — Daniel Estrada, Legislative Budget Board; Ginny McKay, Sunset Advisory Commission; *Registered but did not testify:* Jeremy Mazur, Sunset Advisory Commission; Jim Pledger, Texas Savings and Loan Department
- BACKGROUND:** The Savings and Loan Department, one of three agencies supervised by the Finance Commission, charters, examines, and supervises 26 state-chartered savings banks and one state-chartered savings and loan institution. It also licenses and investigates consumer complaints regarding more than 8,700 first-lien mortgage brokers and their loan officers. In fiscal 2000-01, the agency had a budget of \$2.6 million and 22 full-time equivalent employees (FTEs). The agency last underwent sunset review in 1989 and will expire on September 1, 2001, unless the Legislature continues it.  
  
The Mortgage Broker Licensing Act, administered by the Savings and Loan Department, permits investigation of licensees only if the savings and loan commissioner receives a signed written complaint regarding the broker or one of the broker's loan officers that provides reasonable cause to initiate the investigation. The commissioner or a department employee can sign a complaint against a licensee and thus initiate an investigation if the licensee

is convicted of a crime, the licensee bounces a check written to the commissioner, or a licensee is liable for certain dishonest or illegal conduct related to the licensee's duties as a mortgage broker and the damages must be paid from the department's Mortgage Broker Recovery Fund.

**DIGEST:** CSHB 1636 would continue the Texas Savings and Loan Department until September 1, 2013.

**Licensing.** The bill would require the savings and loan commissioner to order a criminal history check by the Federal Bureau of Investigation on all applicants for a mortgage broker license. If the commissioner did not receive the criminal history records from the FBI within 60 days of the request, the commissioner would have to issue a provisional license to an applicant who met all other requirements. If the commissioner still had not received the background check within 180 days of requesting it, the provisional license would become permanent, but the commissioner could revoke the license for any grounds now in statute.

**Annual reports.** CSHB 1636 would require licensed mortgage brokers to submit annual reports to the department that would include data on the licensee's loan originations in Texas, information about the loan officers sponsored by the licensee, and any other information required under the Finance Commission's rules. Trade information contained in such reports would be confidential, and the department could not disclose it.

**Inspections and investigations.** The bill would modify the commissioner's investigative authority to permit an investigation if the commissioner decided it was necessary to determine whether the licensee had complied with the Finance Code and Finance Commission rules. Because the commissioner would not have to have received a complaint in order to investigate, the bill would eliminate the provision permitting a department employee to sign a complaint against a broker.

The bill would permit inspection of any books, documents, records, operations, or facilities of a licensee and any documents to which the Finance Commission had given the commissioner access under its rules. The Finance Commission would have to promulgate rules to serve as guidelines to cover inspections and investigations, including what would constitute

reasonable cause for an investigation and to what information and records inspectors could demand access.

The bill would make information obtained in an inspection or investigation confidential unless another law permitted or required its disclosure. However, the commissioner could share with law enforcement any information about criminal activity obtained during an inspection or investigation.

The bill would amend the definition of a contested case under the Mortgage Broker Licensing Act. Instead of defining a proceeding to impose a penalty under the act as a contested case, the bill would define an appeal of such a penalty as a contested case.

CSHB 1636 would add standard sunset provisions regarding conflicts of interest, equal employment opportunity, standards of conduct, training, and maintenance of complaints. It also would add standard sunset provisions on licensing, including licensing people from other jurisdictions and license-renewal penalties.

The bill would take effect September 1, 2001.

**SUPPORTERS  
SAY:**

CSHB 1636 would continue the Savings and Loan Department, which provides needed and judicious regulation of the thrift and mortgage broker industries. The bill would make some needed changes in the department's authority to regulate mortgage brokers and loan officers.

The Savings and Loan Department performs a necessary regulatory function and should be continued as a separate department under the Finance Commission. The thrift industry, which concentrates its lending in residential real-estate loans, differs in its focus from the banking industry, which offers a much broader range of financial services. Furthermore, the thrift industry is expected to grow significantly in the next several years.

The department has regulated mortgage brokers effectively, licensing almost 10,000 brokers and loan officers in the past biennium. The department understands the mortgage industry well, given that it regulates the thrift industry, whose focus is on residential lending. The Office of Consumer

Credit Commissioner (OCCC) would be a less knowledgeable and appropriate regulator, given that office's focus on sub-prime lending, such as pawn shops and low dollar, high-interest, unsecured consumer loans.

CSHB 1636 would give the Savings and Loan Department needed authority to investigate mortgage brokers. The department now can investigate only in response to a complaint, and the commissioner must wait for consumers to be harmed before acting, even if the commissioner knows of a problem with a licensee. This bill would permit the commissioner to take the initiative in such investigations.

The bill also would give the department important authority to inspect a licensee's books, records, facilities, and operations. Without this authority, the commissioner, even if allowed to investigate a licensee, could not actually enter the licensee's place of business or look at the licensee's files.

The bill would balance the interests of mortgage brokers and the public. It would enumerate the kinds of documents and other records to which the commissioner could have access in an investigation or inspection. It would not authorize routine inspections but would require the commissioner to determine that an inspection was necessary. This requirement would save state resources by targeting the department's efforts on licensees who posed the most concern, as well as by eliminating the burden of inspection for licensees whom the department had no reason to suspect of violating the Mortgage Broker Licensing Act.

To further the discovery of problems with licensees, the bill would require mortgage brokers to file annual reports with the commissioner.

Finally, the bill would make FBI background checks mandatory instead of optional. Because of its backlog of requests, the FBI will perform the checks only for state agencies that require them.

**OPPONENTS  
SAY:**

CSHB 1636 should dissolve the Savings and Loan Department and divide its functions between the Department of Banking and OCCC. Because the savings and banking industries are not very different, the banking department would be a competent supervisor of the savings and loan industry. This move would save the state money by improving administrative efficiency.

Mortgage brokers who provide second liens or home equity loans now must register with both the Savings and Loan Department and the OCCC. This is inefficient and redundant, and the OCCC could handle this function better than the Savings and Loan Department. OCCC already is set up to handle licensing, and its mission is more in line with licensing mortgage brokers than is that of the department. This consolidation would save the state \$110,000 per year, according to Sunset Commission staff report.

NOTES:

The committee substitute changed the filed version by lengthening from 90 days to 180 days the period that would have to elapse without a response on the criminal background check before a provisional license automatically would become a regular one. The substitute also added the requirement for annual reports and changed the definition of a contested case.

The substitute also altered the section regarding inspections and investigations, eliminating a provision for “routine” inspections and inserting the requirement that the commissioner deem the inspection “necessary.” Finally, the substitute added a provision describing the types of records the commissioner could inspect and allowing the commissioner to share with law enforcement evidence of criminal activity gathered through inspections.

The bill’s fiscal note estimates that the department would require six new FTEs to implement the bill’s provisions, assuming 2,835 business units to inspect, a four-year inspection cycle, and 118 inspections per examiner per year. However, the changes to the Mortgage Broker Licensing Act would result in no impact on general revenue, assuming that the department increased fees to offset the increased cost of inspections and background checks.

The companion bill, SB 315 by Sibley, has been referred to the Senate Business and Commerce Committee.