

- SUBJECT:** Revising the Texas Banking Code
- COMMITTEE:** Financial Institutions — committee substitute recommended
- VOTE:** 6 ayes — Marchant, Carona, Elkins, Gutierrez, Patterson, Romo
0 nays
3 absent — Giddings, Grusendorf, Hudson
- WITNESSES:** For — Dennis Nixon, International Bank of Commerce; Charles E. McMahan, Compass Banks of Texas; David Williams, Texas Bankers Association; Dianne Hughes, Frost Financial Services; Jeffery C. Kanaly, Kanaly Trust Company; Jack Kyle Daniels, Methodist Home Charitable Accord; Henry L. Naizer, Seton Medical Center Charitable Accord; Anne Heilgenstein, Conference of Catholic Health Facilities; Karen M. Neeley, Independent Bankers Association of Texas; Ellen Eisenlohr Dorn, Charitable Accord and Baptist Foundation of Texas

Against — Robert Schneider, Consumers Union; Alvin J. Golden; Frank N. Ikard, Jr.

On — Catherine A. Ghiglieri, Texas Department of Banking; Jeff Huffman, Texas Credit Union League
- BACKGROUND:** The Texas Finance Commission oversees three agencies: the Banking Department, the Savings and Loan Department and the Office of the Consumer Credit Commissioner. The nine-member commission, appointed by the governor for six-year staggered terms, consists of two banking executives, two savings and loan executives and five public members with no financial ties to the industry, one of whom must be a certified public accountant.
- DIGEST:** CSHB 1543 would revise and reorganize the Texas Banking Code into the Texas Banking Act, incorporating the 10 chapters of the Texas Banking Code into nine chapters, and amending the Trust Code. Changes would include:

Texas Finance Commission. The bill would authorize the finance commission to adopt rules and regulations to administer the Banking Act, including those insuring state banks have parity with national banks and protecting the safety and soundness of state banks. It also would authorize the commission to make rules for the safety and soundness of savings and loan associations and savings banks.

Commission members would be disqualified if they miss more than half of the regularly scheduled meetings in a calendar year without excuse. The commission would have to comply with the Texas Open Meetings Act, but could meet in executive session regarding matters made confidential by law. The bill would allow the finance commission to have telephone conference call meetings in certain circumstances.

The bill would authorize the commission to employ an executive director, who could be the banking commissioner, savings and loan commissioner or credit union commissioner and other staff.

State Banking Board. The bill would abolish the state banking board, whose duties would be assumed by the banking commissioner. (The banking board is composed of the banking commissioner, the state treasurer and a public member appointed by the governor, and charters state banks and converts national banks to state banks.) Charter decisions made by the banking commissioner could be appealed to the finance commission or the district court in Travis County.

Texas Department of Banking. The bill would allow the banking commissioner to issue interpretive statements that contain matters of general policy for the guidance of state banks, which the secretary of state would be required to publish in the Texas Register and the Texas Administrative Code. The statements would not be law or administrative rule under the Administrative Procedures Act, but would be an administrative construction.

The bill would eliminate requirements that bank "call" reports (quarterly financial statements) be published in newspapers, but would allow the finance commission to authorize that call reports be published.

The bill would require any information the banking department obtained regarding the financial condition of a financial institution to be confidential and open to disclosure, except in certain instances such as providing information to a federal banking regulatory agency.

The bill would allow state banks to become a community development financial institution that would have special privileges and duties under the federal community reinvestment act.

The bill would allow the banking commissioner to issue a state charter with a hearing under certain conditions and if there are no objections. Otherwise a hearing would be required. The finance commission could review charter decisions by the banking commissioner, and the decision could be appealed to the district court in Travis County.

Newly chartered banks would have to open within six months of being chartered. After six months the banking commissioner could rescind the charter.

Organizational changes, capital and surplus. The bill would specifically allow Texas banks to incorporate under the Texas Business Corporation Act and the Texas Miscellaneous Corporation Laws Act. It would authorize the finance commission to adopt rules to modify or adapt the corporate laws to banks.

The bill would allow the banking commissioner to hold hearings on any issues relating to the Texas Banking Act. Banking commissioner decisions could be appealed to the Finance Commission or the district court in Travis County.

The bill would implement parity between national and state banks under Art. 16, Sec. 16 (c) of the Texas Constitution.

The domicile for a state bank would be the bank's home office where it keeps the corporate books and records.

The bill would provide new procedures for mergers and allow banks to merge with any other business entity. It would require that state bank that merged with another entity could only do business as a bank.

Investments. The bill would expand the types of investments state banks can make, to correspond with federal law. It would also authorize the Finance Commission to adopt rules regarding investments. The bill would allow state banks to make investments or engage in activities already approved by the FDIC.

Loan fees. The bill would allow a bank to require a borrower to pay reasonable fees and expenses the bank expects to incur to make the loan. (Current law caps lending fees at \$15.)

Removal from banking. A person removed from banking would be banned from working for state banks or trust companies for a specified time, which could be lifted by the banking commissioner. A person could not be removed from banking unless the following three findings were made:

- the person committed a violation other than in an inadvertent or unintentional manner or violated a final cease and desist order;
- by reason of the violation the bank suffered or will probably suffer a financial loss, the interests of the bank's depositors have been or could be prejudiced, or the person received financial gain, and
- the violation involved personal dishonesty or demonstrated wilful or continuing disregard for the safety or soundness of the bank.

Enforcement. The bill would allow the banking commissioner to investigate persons believed to be engaged in banking activities without a charter. The commissioner could issue subpoenas and could order such persons to cease and desist the activity, impose administrative penalties and refer the matter to the attorney general for enforcement.

Dissolution and receivership. The bill would amend current law regarding dissolution, receivership and liquidation of state banks. The banking

commissioner could seek an independent receiver if the FDIC would not serve as liquidator of a bank. Receivership provisions similar to those in the Insurance Code would be enacted.

Bank holding companies. The bill would prohibit a bank holding company from acquiring a Texas bank if the holding company would control more than 20 percent of all federally insured deposits in the state. It would also require that a bank have been in existence for a least five years prior to being purchased by an out-of-state holding company.

Foreign banks. Foreign banks with a net worth of at least \$100 million could establish banks in cities with a population of more than 500,000 (Houston, Dallas, Fort Worth-Arlington, San Antonio, Austin and El Paso. (Currently foreign banks are limited to opening banks in Dallas and Houston only.) The finance commission could make rules governing foreign banks, and that foreign banks register their representative office locations with the banking commissioner.

Trust Code. The bill would allow trust company charter decisions made by the banking commissioner to be appealed to the finance commission, and would raise the capital requirement for trust companies from \$500,000 to \$1 million and would allow a phase-in period. However, the banking commissioner could allow a trust company to have a lower capital requirement if it was found that the company was safe.

Charitable organizations and institutions of higher education would be exempted from requirements to have a trust company charter and could act as trustees of a charitable trust that benefits their organization under the Texas Non-Profit Corporation Act.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

CSHB 1543 would revise, reorganize and modernize the Texas Banking Code into the Texas Banking Act. The code was written in 1943 and is outdated. The bill represents a year-long effort by the Texas Banking Code Revision Task Force, composed of members of the Texas Bankers Association, Independent Bankers Association and the Texas Banking

Department. The revised banking code would coordinate the Texas banking code with federal law.

The bill would promote the dual banking system and make state banks as attractive as, if not more attractive, than national banks. It would preserve and enhance the competitive parity between state banks and other financial institutions in Texas, reduce the regulatory burden on state banks while maintaining safety and soundness and provide the needed flexibility to adapt to future changes in banking laws.

This bill would eliminate the State Banking Board and get rid of an unnecessary layer of bureaucracy. The banking board has chartered only two state banks in the last four years. If the State Treasurer's Office is abolished, as has been proposed to the 74th Legislature and recommended by the state treasurer, then one-third of the board, already dominated by the banking commissioner, would be eliminated. The Texas Performance Review's *Against the Grain* report in 1993 recommended abolishing the board. The banking commissioner's decisions on chartering banks could be appealed to the finance commission or the courts.

Information regarding the financial information of a troubled bank should be kept confidential so as not to cause a panic and run on a bank that could otherwise be rehabilitated.

The bill would permit state banks to incorporate under the Texas Business Corporation Act and allow banks to govern their internal affairs and relations with their shareholders in the same way as modern business corporations do, if the safety of depositors and creditors is not adversely affected. When the banking code was written in 1943 the corporate governance for banks and corporations was the same, and this provision would bring bank corporation law into the 21st century.

State banks only need six months after a charter is granted to open for business. Unlike national banks they must have raised their capital by the time they receive a charter. National banks have one year to raise capital and then six months to open for business. The six-month provision would put state banks on the same level as national banks.

The bill would provide new merger procedures for banks that would simplify a sometimes cumbersome procedure. For example, a bank holding could be eliminated in one step under the bill, instead of creating a subsidiary, merging the holding company into the subsidiary and then dissolving the subsidiary in a costly series of transactions. The bill would make it clear that if a state bank merged with another corporation such as an insurance company, the state bank could only do business as a bank and not as an insurance company. Furthermore, since national banks do not have the same merger authority as state banks would have under this bill, it would create an added incentive for a bank to become a state bank.

The bill would allow banks to charge reasonable fees for making loans just like state credit unions, savings banks, and savings and loans institutions. The current \$15 maximum loan fee is artificially low and puts banks at a competitive disadvantage with these other financial institutions.

The bill has provisions, similar to those in the Insurance Code, that would allow the banking commissioner and the attorney general to stop unauthorized banking activities.

The provisions regarding foreign banks would make state law agree with the federal International Banking Act of 1978. The bill would encourage foreign banks to come to Texas. Large foreign banks can provide very large, commercial, industrial and agricultural loans and would be an additional source of funds for large commercial or industrial operations in Texas without using Texas deposits and helping diversify the risks to Texans for large loans.

Changes regarding charitable trusts would include allowing them to be exempt from the trust code and raising the capital requirement by 100 percent, from \$500,000 to \$1 million. Charitable trusts have never been regulated by the trust code, and this bill would merely put into law existing practice. Raising the capital requirement would ensure that trust companies are sound and well capitalized. The banking commissioner could lower the capital requirement for those banks found to be sound.

The task force did not have enough time to examine and make recommendations regarding trust companies, and it is expected that the trust

code will be reviewed next interim and recommendations for any changes made to the 75th Legislature.

OPPONENTS
SAY:

Charitable trusts should not be exempt from the Texas Trust Code. The fact that they have not been regulated by the state in the past does not mean that they should not have had regulatory oversight. Certainly they should not be given a blanket exemption. Exempting charitable trusts would give them an unfair advantage over regulated trusts. They would not have to meet capital requirements or undergo expensive examinations of their finances. Also, charitable trusts could face potential conflict of interests in management.

A state-chartered bank should not have to open its doors within six months of receiving a charter. National banks have 18 months to open for business after receiving a charter, and longer lead time for state banks, perhaps 12 months, would put them closer to parity with national banks.

NOTES:

The committee substitute made amendments pertaining to bank mergers and the Consumer Credit Code. It would authorize a bank to establish a Compliance Review Committee and allow the banking commissioner to lower the capital requirement of a trust company and would exempt charitable organizations from the trust code.