

SUBJECT: Using Texas real estate loan provisions for loans on property in Mexico

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 8 ayes — Marchant, Ehrhardt, Elkins, Giddings, Grusendorf, Patterson, Smith, Solomons

0 nays

1 absent — Gutierrez

WITNESSES: For — Hector Barraza, Stewart Title Guaranty Co., Kevin Garcia

Against — None

On — Leslie Pettijohn, Office of the Consumer Credit Commissioner

DIGEST: HB 1266 would permit loans to be used to purchase an interest in a trust outside of the United States so long as the principal asset of the trust was real property located outside the United States.

Loans would be subject to normal interest provisions of Texas law for real estate transactions, but not consumer credit provisions used for regulated or installment loans. The loan would be subject to any charges permitted for real property loans for non-homestead property.

HB 1266 would take immediate effect if finally approved by a two-thirds record vote of the membership of both houses.

SUPPORTERS SAY: HB 1266 would allow Texans to secure loans at normal interest rates through regular financing channels to buy property in Mexico and other countries. The bill is necessary because of the way Mexico treats purchases of property by foreigners. Foreigners can purchase real estate in the “prohibited zones” of Mexico — within 30 miles from any coastline and 60 miles from a border — only by purchasing a trust that contains the real property. Currently, if a U.S. citizen wishes to purchase property in those areas of Mexico, financing sources are limited to the seller or a Mexican bank. Sellers typically only provide short-term loans of 10 years or less and

often require up to 25 percent of the purchase price as a down payment. Mexican banks can charge interest rates at over 30 percent. Neither financing method gives U.S. citizens the same protections that they would receive if the loan were made in Texas.

Under current law, Texas lenders are unlikely to make loans for this type of purchase. The loans are subject to consumer credit provisions, not real estate loan provisions, because there is no transfer of the title of real estate and lenders are not able to charge normal fees associated with real estate transactions such as appraisal, survey or title insurance fees. HB 1266 would place these transactions under real estate law provisions, where they would normally fall if not for the unusual way Mexico structures property purchases by foreigners.

HB 1266 would promote investment in our neighboring country and biggest trade partner. It would ensure that such investments retain the same protections as loans made for property in Texas. Lenders would be allowed to assess any risks when deciding to make such loans.

The bill has not been limited to investment only in Mexico in order to allow for real estate trust purchases in other counties that might use this convention to structure property purchases by foreign investors now or in the future. Lenders would be free to structure the terms of the loan to conform with the risk of purchasing property in a foreign country; HB 1266 would not require them to assume any risk that they might not want to take on.

**OPPONENTS
SAY:**

Although HB 1266 originally may have been meant to remedy a specific problem with Mexican foreign investment law, the provisions of the bill as it currently stands could be used throughout the entire world. This might encourage lenders to take unnecessary risks by making loans for properties in countries with unstable governments or shaky economies. Texas lending institutions have just recently emerged from trying times; it would be unwise to encourage a return to risky behavior.

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NOTES: The committee substitute reformatted HB 1266 to conform to the style of the Texas Legislative Council.

The companion bill, SB 854 by Patterson, is currently pending in the Senate Economic Development Committee.