SUBJECT: Amending banking regulations to conform with federal legislation

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 7 ayes — Averitt, Denny, Grusendorf, Hopson, Menendez, Pitts, Wise

0 nays

2 absent — Solomons, Marchant

WITNESSES: For — *Registered but did not testify:* Steve Scurlock, IBAT

Against — None

On — Randall S. James and Everette Jobe, Texas Department of Banking

BACKGROUND: Banks and savings and loans (S&Ls) can choose whether to operate under federal or state charters. Finance Code, chapters 11-13 and 31-119 establish the regulatory agencies and rules for state-chartered banks and S&Ls.

In November 1999, President Clinton signed the Gramm-Leach-Bliley Act (GLBA), effecting sweeping changes in federal regulation of the banking, insurance, and securities industries. The GLBA essentially allows federally chartered banks, S&Ls, insurance companies, and securities firms to engage in each other's businesses for the first time since the Depression. The act preempts certain aspects of state law and gives federally chartered institutions more leeway than state-chartered institutions have under current law.

DIGEST: CSHB 2155 would make extensive changes to the Finance Code, many of which would be minor or technical. The more substantive changes are summarized below.

The bill would modify the definition of a bank "branch" to exclude locations where a bank offered nondepository functions. It would make a limited banking association and a limited trust association the equivalent of a limited liability company.

CSHB 2155 would allow the Finance Commission to adopt a rule defining an investment security. It would broaden the commission's rulemaking authority and would direct that its rules be at least as permissive as federal rules, instead of equally permissive, as now provided. The commission could define permissible financial activities for banks, trust companies, and bank holding companies, as well as activities incidental or complementary to financial activities. The bill would provide guidelines for situations in which exercising that rulemaking authority was appropriate.

The bill also would amend the disclosure rules of Finance Code, sec. 31.303 and 181.303, related to sharing information with other regulatory agencies. It would permit disclosures of confidential information in situations in which the banking commissioner determined that the interest of law enforcement outweighed confidentiality interests (instead of "in the public interest") or where the recipient agency promised to maintain confidentiality. Disclosure of information by or to the commissioner would not constitute a waiver of privilege in the information.

The commissioner could establish information sharing programs with an agency that had overlapping jurisdiction with the banking department in regulating affiliates that were engaged in financial activities or in activities incidental to those financial activities. All the sharing agencies, including Texas state agencies, would have to agree to maintain the confidentiality of the information shared and could take reasonable steps to oppose attempts to force disclosure.

CSHB 2155 would expand the powers and permissible acts of state banks, trust companies, and financial holding companies to accord with the GLBA. Specifically, a state bank could provide financial investment or economic advice, issue and sell securities that represented pools of assets in which banks invested, or engage in other finance activity that the commissioner approved. A state bank also could serve as a community development partner. The bill would delete references that prohibit state banks from selling insurance.

However, the commissioner could require a state bank or trust company to engage in some activities through a subsidiary. Although the bill would allow state banks, trust companies, and financial holding companies to

engage in the insurance business, those types of firms would not be exempt from licensing and regulation as insurers.

CSHB 2155 would change the criteria for the commissioner's decision to charter a state bank from "public necessity" to "public convenience and advantage" and would make other current considerations factors in that determination.

The bill would modify the kind and extent of the investments that a state bank or trust company could make. It would broaden banks' ability to invest in securities by changing the limits on certain kinds of investments so that they were capped at a percentage of either the capital and surplus or of the bank's total equity capital, whichever was less. It would allow banks to invest in small businesses.

CSHB 2155 would make an exception to the rule that banks may not own a subsidiary that engages in activities in which the bank would be prohibited from engaging to allow ownership of such a subsidiary if FDIC-approved. It also would make an exception to that rule for situations in which the subsidiary's activities and the bank's investments both were approved by federal law, specifically under 12 U.S.C., sec. 1831w.

The bill would ease the requirements for banks to act on behalf of other financial institutions through agency agreements. It would eliminate statutory language denying bank customers a privacy right in their records, while still allowing disclosure to law enforcement or the U.S. Internal Revenue Service and for purposes of bank examination by regulators. It also would provide that the issuance and service of an administrative subpoena on a financial institution would be confidential under certain circumstances.

The bill would take effect September 1, 2001.

NOTES:

The committee substitute moved the rulemaking authority from the banking commissioner to the Finance Commission and added guidelines for some rulemaking authority. It also deleted a provision from the original bill that

would have required the operator of an automatic teller machine (ATM) to post notice of fees charged for use of the ATM.