SUBJECT: Allowing financial commissions to interpret home equity loan provisions

COMMITTEE: Financial Institutions — favorable, without amendment

VOTE: 5 ayes — Solomons, Christian, Gutierrez, Flynn, Hopson

1 nay — Wise

1 absent — Paxton

SENATE VOTE: On final passage, May 15 — voice vote (Barrientos recorded nay)

WITNESSES: No public hearing

BACKGROUND: In 1997, Texas voters approved Proposition 8 (HJR 31 by Patterson), amending Texas Constitution, Art. 16, sec. 50 to allow homeowners to obtain loans and other extensions of credit based on the equity of their residence homestead. Equity is the difference between a home's market value and what is owed on the home.

DIGEST: SB 1067 would amend the Finance Code to authorize the Finance Commission and the Credit Union Commission to issue interpretations of the home equity lending provisions in the Texas Constitution. The commissions would have to try to adopt interpretations that were as consistent as feasible or would have to justify any inconsistency.

The bill also would prohibit a lender from charging the borrower of a high-cost home loan an amount for a service or product that the borrower never received. It also would repeal a provision of the Finance Code that otherwise would cause certain disclosure requirements to expire on September 1, 2003. The disclosure requirements in question concern mortgage counseling and other mortgage information provided to homeowners on home loans with an interest rate of 12 percent or more.

The bill would take effect on the date on which the constitutional amendment that would be proposed by SJR 42 by Carona took effect. If that amendment was not approved by voters, SB 1067 would have no effect.

SUPPORTERS SAY:

Home equity lenders in Texas often are uncertain about whether a particular action would violate the Constitution and require them to forfeit the principal on a loan. However, since home equity lending in Texas is authorized by the Constitution rather than by statute, no state agency is authorized to give guidance on the Constitution's meaning. That uncertainty translates into higher interest rates for all home equity loans as lenders try to cover the market risk they face.

SB 1067, the enabling legislation for SJR 42 by Carona, would solve this problem by assigning the Finance and Credit Union commissions the responsibility of clarifying home equity law. It would enable lenders to make loans with confidence that their actions were within the law, thus lowering their risk and, consequently, lowering interest rates charged to consumers.

Currently, disputes about the meaning of home equity law must be settled between two parties in the courts. SB 1067 would make an important change by moving the interpretation process to the executive branch and subjecting it to the Administrative Procedure Act, which includes publication in the *Texas Register,* open meetings, public comment, and openness to all parties that wish to participate. This greater transparency would be a significant gain to the public.

To include all lenders in the scope of home equity regulation, both the Credit Union Commission and the Finance Commission need to have interpretative authority, since they regulate different lenders. The two commissions already work together effectively on other policy issues, and there is no reason to expect that they would not be able to arrive at consistent interpretations of home equity lending to guide the lending industries seamlessly.

This bill also would incorporate two important provisions to help address problems in the current home-equity lending system. Prohibiting a lender from charging for a product that the borrower never received would provide greater security for borrowers who otherwise might be taken advantage of by lenders. The bill also would protect borrowers of subprime, high-interest-rate loans by allowing them to continue receiving information about mortgage counseling after the current statutory expiration date of September 1, 2003. Subprime borrowers need this information today, and they would be well served by continuing to receive it for the foreseeable future.

OPPONENTS SAY:

By dividing interpretative authority between two commissions, SB 1067 could lead to divergent practices among lenders, despite the intention that the two commissions adopt consistent interpretations. The bill would give neither commission greater authority in the event of fundamental disagreement, nor would it establish any other arbiter. Inconsistency may not be a problem when commissions have good working relations. However, the relationship between the two commissions could change over time such that they might be unable to coordinate effectively, thus producing even more confusion for lenders than under current law.

SB 1067 would incorporate two consumer protections that homeowners need, but it would not incorporate the full range of protections that homeowners deserve if they are to have the opportunity and liability of mortgaging their homes through home equity lines of credit.