HOUSE
RESEARCH
ORGANIZATION bill analysis | 5/20/2011 | SB 1124 Carona (Truitt)

SUBJECT: Conforming the Texas SAFE Act to the federal SAFE Act

COMMITTEE: Pensions, Investments, and Financial Services — favorable, without amendment

VOTE: 9 ayes — Truitt, Anchia, C. Anderson, Creighton, Hernandez Luna, Legler, Nash, Orr, Veasey

0 nays

SENATE VOTE: On final passage, March 31 — 31-1

WITNESSES: *(On House companion, CSHB 2248:)*
For — (*Registered, but did not testify:* Celeste Embrey, Texas Bankers Association)

Against — None

On — Doug Foster, Department of Savings and Mortgage Lending; (*Registered, but did not testify:* John Fleming, Texas Mortgage Bankers)

BACKGROUND: The federal Housing and Economic Recovery Act of 2008 included the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), which all states were required to enact. HB 10 by Solomons, enacted by the 81st Legislature in 2009, established the Texas SAFE Act, which applies to residential mortgage loan originators in Texas.

A residential mortgage loan originator is an individual who for compensation or gain takes a residential mortgage loan application or offers or negotiates the terms of a residential mortgage loan. The federal SAFE Act licenses six types of originators: mortgage companies; mortgage bankers; credit union subsidiary organizations; auxiliary mortgage loan activity companies; independent contractor loan processors or underwriter companies and their originators; or financial services companies and exclusive agents. An employee of a licensed or registered entity must be licensed only if he or she acts as a residential mortgage loan originator.

The Recovery Fund is funded by licensees and registrants and may be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a residential mortgage loan originator.

DIGEST:

SB 1124 would conform terminology to that used in the federal SAFE Act. The bill would establish the license types and qualifications established in the federal SAFE Act and would establish a December 31 expiration date for all licenses. The bill also would establish a process for the reinstatement of a license. Individuals who failed to maintain their license for at least five consecutive years would have to retake the prelicensing education and testing.

The bill would require company licensees to file a mortgage call report. The savings and mortgage lending commissioner would be responsible for establishing, administering, and maintaining the Recovery Fund. The bill would increase the penalty that could be assessed by the commissioner against a mortgage banker.

The bill would amend the process for criminal background checks of mortgage brokers and would revise sponsorship and registration requirements for mortgage loan originators.

With the exception of the provisions concerning individuals originating residential mortgage loans exclusively for a depository institution, which would take effect on November 1, 2011, the bill would take effect September 1, 2011.

SUPPORTERS SAY:

SB 1124 would conform terminology in Finance Code, chs. 156 and 157 to conform to ch. 180 (Texas SAFE Act). SB 1124 would codify current administrative practice and would conform statute to federal law. The bill would codify the separate license types currently used in licensing under the SAFE Act by the Texas Department of Savings and Mortgage Lending and qualifications for the license types. The bill would not provide additional exemptions to the SAFE Act.

The bill also would clean up the Finance Code by reconciling standards such as the standards and limits on administrative penalties. The bill would expand flexibility in modifying revocation orders and strengthen prohibitions against licensees with claims against the Recovery Fund.

OPPONENTS SAY: No apparent opposition

NOTES: The companion bill, HB 2248 by Truitt, was considered in a public hearing on March 15 by the House Pensions, Investments, and Financial Services Committee and was reported favorably, as substituted, on March 22.