BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Mortgage guaranty insurance protects lenders from loss due to default on mortgages where the down payment is less than the customary 20 percent. As a result, it encourages home ownership, and mortgage guaranty insurers have insured approximately 800,000 mortgages in Texas. This line of insurance has some unique capital requirements, and in Texas and 15 other states, the law imposes a risk limit of 25 times the capital of the insurer, or a 25:1 risk-to-capital ratio. If a mortgage guaranty insurer reaches this limit, the insurer must stop insuring new mortgages. Thirteen states have taken steps to provide a waiver of this restriction and changes are currently pending in the other three, including Texas. With the economic downturn, and the resulting increase in foreclosures and defaults, the underwriting results for these companies is deteriorating and some companies may reach the 25:1 ratio. It is important to keep this coverage available to lenders so mortgages will remain available in the market for the benefit of realtors, lenders, builders, and their suppliers, as well as Texas families looking to buy or sell a home. Since mortgage guaranty insurers are generally in the first loss position, sound underwriting and qualified borrowers are important to their success.

The purpose of this bill is to provide the commissioner of insurance (commissioner) with discretion to waive the requirement that mortgage guaranty insurers stop writing business when they reach the 25:1 ratio. To grant the waiver, the commissioner must find that the company is otherwise adequately capitalized and financially sound enough to continue writing based on nine specific criteria. The commissioner may retain actuaries, accountants, and other professionals to assist in the evaluation of waiver requests and place appropriate conditions and limitations on any waiver granted. The waiver can be for up to two years subject to renewal at the insurer's request.

This provides the commissioner with the tools necessary to allow financially sound mortgage guaranty insurers to continue to insure mortgages in Texas and prevent a constriction in the Texas mortgage and real estate markets.

As proposed, S.B. 416 amends current law relating to the amount of outstanding total liability of a mortgage guaranty insurer.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 3502.156, Insurance Code, by amending Subsections (a) and (c) and adding Subsections (d)-(h), as follows:

> (a) Creates an exception under Subsection (d) to Subsection (a), which prohibits a mortgage guaranty insurer from at any time having outstanding under the insurer's aggregate mortgage guaranty insurance policies a total liability, net of reinsurance, that exceeds the sum of the insurer's capital, surplus, and contingency reserve, multiplied by 25.

(c) Creates an exception under Subsection (d) to Subsection (c), which prohibits a mortgage guaranty insurer that has outstanding total liability that exceeds the amount computed under Subsection (a) from writing new mortgage guaranty insurance business until the insurer's total liability no longer exceeds that amount.

(d) Authorizes the commissioner of insurance (commissioner) to waive the limit imposed by Subsection (a) at the written request of a mortgage guaranty insurer on a finding by the commissioner that the sum of the insurer's capital, surplus, and contingency reserve is reasonable in relationship to the insurer's aggregate insured risk and adequate to the insurer's financial needs. Requires that the request be made in writing on or before the 90th day before the date the insurer expects to exceed the limit imposed by Subsection (a) and requires that, at a minimum, the request address the factors listed in Subsection (e).

(e) Authorizes the commissioner, in the commissioner's sole discretion, in determining whether a mortgage guaranty insurer's capital, surplus, and contingency reserve is reasonable in relation to the insurer's aggregate insured risk and adequate to the insurer's financial needs, to consider relevant factors including:

(1) the insurer's size as measured by the insurer's assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) the extent to which the insurer's business is diversified across time, geography, credit quality, origination, and distribution channels;

(3) the nature and extent of the insurer's reinsurance program;

(4) the quality, diversification, and liquidity of the insurer's investment portfolio;

(5) the historical and forecasted trend in the size of the insurer's capital, surplus, and contingency reserve;

(6) the capital, surplus, and contingency reserve maintained by other comparable mortgage guaranty insurers in relation to the nature of the insurers' respective insured risks;

(7) the reasonableness of the insurer's reserves;

(8) the quality and liquidity of the insurer's investments in affiliates; and

(9) the quality of the insurer's earnings and the extent to which the insurer's reported earnings include extraordinary items.

(f) Authorizes the commissioner, with respect to the factors listed in Subsection (e)(8), to treat an investment in an affiliate as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.

(g) Authorizes the commissioner to retain accountants, actuaries, or other experts to assist the commissioner in the review of a request made by a mortgage guaranty insurer under Subsection (d). Requires the insurer to pay the commissioner's cost of retaining those persons.

(h) Requires that a waiver granted under Subsection (d) be for a specified period that does not exceed two years and is subject to any terms and conditions the commissioner considers best suited to restoring the mortgage guaranty insurer's capital, surplus, and contingency reserve to the level required by Subsection (a). Authorizes the mortgage guaranty insurer to apply to extend the waiver on or before the 90th day before the date the waiver period expires.

SECTION 2. Effective date: September 1, 2011.