HOUSE RESEARCH ORGANIZATION bill analysis | 4/18/2001 | HB 1763 McCall, et al. (CSHB 1763 by Averitt)

SUBJECT: Continuing the Finance Commission of Texas

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 8 ayes — Averitt, Solomons, Denny, Grusendorf, Hopson, Marchant, Menendez, Wise

0 nays

1 absent —Pitts

WITNESSES: For — Jim Pair and Dennis Schwartz, Texas Association of Mortgage Brokers; *Registered but did not testify:* Harry Dinham, Texas Association of Mortgage Brokers; Eric Sandberg, Texas Savings and Community Bankers Association

Against — None

On — Randall James, Texas Department of Banking; Jim Pledger, Texas Savings and Loan Department; Rob Schneider, Consumers Union; Stephen Scurlock, Independent Bankers Association of Texas; *Registered but did not testify:* Everette Jobe, Texas Department of Banking

BACKGROUND: The Finance Commission, created in 1943, oversees three other state agencies that regulate financial businesses: the Texas Department of Banking (DOB), the Texas Savings and Loan Department (SLD), and the Office of Consumer Credit Commissioner (OCCC). The Finance Commission, made up of nine members — two each from the banking and savings and loan industries and five from the general public — also has rulemaking authority for the three finance agencies and provides an administrative law judge to hear cases that the finance agencies bring against regulated individuals or entities.

In fiscal 2000-01, the commission's budget was $395,940 and it employed an administrative law judge and the commission's part-time executive director, who serves in the same capacity for the DOB. The commission generates revenues of about $132,000 a year from a portion of a statutory fee on certain consumer loans. The commission is permitted to keep $100,000 per year of that revenue, with the remainder accruing to general revenue.

In addition to its oversight and rulemaking authority, the commission is charged with conducting research on the availability, quality, and prices of financial services in Texas. The commission has contracted these projects out to private research firms.

The commission last underwent sunset review in 1989, and its authority will expire September 1, 2001, unless the Legislature renews it.

DIGEST: CSHB 1763 would continue the Finance Commission and its functions until September 1, 2013, but would eliminate its status as a separate state agency. Instead, the bill would designate the commission as the body that oversees and coordinates the activities of the DOB, SLD, and OCCC and sets policy for and makes the rules of those agencies. The internal auditor of the finance agencies would be accountable only to the commission, and the rulemaking authority of the SLD and OCCC would be consolidated in the commission. The bill also would move rulemaking for prepaid funeral services from the DOB to the Finance Commission. Rules promulgated by the finance agencies before the bill's effective date would remain in effect and become rules of the commission if they were not inconsistent with the bill's provisions.

The bill would rewrite the commission's goals to include protecting consumers, ensuring the safety and soundness of financial industries, and increasing Texas' economic prosperity. To these ends, the bill would direct the commission, in conjunction with each of the finance agencies, to prepare and update periodically a strategic plan for the coordination of the state financial system.

CSHB 1763 would make many technical changes to effect the change in the commission's status from an independent agency. Many of these revisions would assign the commission's current functions that can be carried out only by a state agency to one or more of the finance agencies or their commissioners. For instance, the bill would transfer to the DOB, SLD, and OCCC commissioners the Finance Commission's current authority to make contracts, apply for grants, and receive gifts related to their agencies. On the other hand, the bill would authorize the DOB to employ the administrative law judge who now works for the commission. The bill also would direct the finance agencies to arrange by interagency contract for proportionate sharing of the cost of the commission's use of each agency's staff.

The bill would assign the commission's research functions to the finance agencies and would create a new research directive for the DOB and SLD: to conduct a continuing review of the condition of the state banking system, including monitoring economic forecasts, industry practices, and new legislation. The agencies would have to submit to the commission periodic reports of their findings and forecasts regarding the industry.

CSHB 1763 would change the membership of the commission so that it contained one member each from the banking, savings and loan, consumer credit, and mortgage broker industries. These changes would not prohibit current members from serving out their terms.

The bill also would add standard sunset language governing conflicts of interest, standards of conduct, training of commission members, separation of commission and agency functions, encouraging public testimony, and handling public complaints.

The bill would take effect September 1, 2001.

SUPPORTERS SAY:

CSHB 1763 would continue the Finance Commission, but only as an oversight and coordinating entity, not as a separate agency. As an umbrella policy-making body, the commission serves as a critical link between the three finance agencies. As an independent agency, however, the commission adds an unnecessary layer of bureaucracy and administrative costs to financial regulation.

Consolidating rulemaking authority in the Finance Commission would promote consistency in the rules, ensure that the rules reflected the commission's broad oversight perspective, and enhance public input into the rulemaking process.

The explicit three-part mission that the bill would confer on the commission is needed to clarify the commission's purposes — consumer protection, safety of financial industries, and economic growth.

Likewise, the proposed changes in commission membership are needed to make the commission's composition reflect the industries it regulates and to provide representation for the consumer credit industry, which now lacks any representation on the body. The Finance Commission could delegate research on the market for financial services to the consumer credit commissioner if the commission deemed that the most appropriate option.

OPPONENTS SAY:

CSHB 1763 unwisely would allow the Finance Commission to delegate research functions to agencies whose jurisdictions the research is designed to monitor. Current law requires the commission to conduct research on the availability, quality, and prices of financial services available to farmers and ranchers, small businesses, and individual consumers and on the business practices of the industries that serve those customers. This bill would direct the commission to delegate those functions to either the banking, savings and loan, or consumer credit commissioner. However, because the primary focus of the DOB and SLD is on the safety and health of those industries rather than on consumers' interests in access to financial services, it would be inappropriate to delegate the research to those agencies.

NOTES:

The committee substitute added the requirement that the members of the commission representing the consumer credit and mortgage broker industries be engaged in those industries as defined by the relevant sections of the Finance Code. The substitute also changed the filed version to provide that the commission would have to direct "a" finance agency (rather than "each" agency) to employ an internal auditor to oversee the finance agencies.

The companion bill, SB 316 by Sibley, has been referred to the Senate Business and Commerce Committee.