

BILL ANALYSIS

Senate Research Center
76R8660 DWS-F

H.B. 2781
By: Pitts (Harris)
Economic Development
5/14/1999
Engrossed

DIGEST

Legislation passed by the 75th Legislature created a class of commercial loans called "qualified commercial loans," which consists of commercial loans in the original principal amount of \$3 million or more. Such a qualified commercial loan allows the lender to receive certain defined compensation from the borrower in the form of "equity participation" which is not classified as interest under Texas law and, therefore, does not subject the lender to penalties for usury. This feature encourages small and "start up" businesses in emerging fields like technology which are able to borrow sufficient capital for business formation only by utilizing equity participation with their lenders. Often, however, a borrower enters into transactions with several different lenders, or more than one individual borrower seeks such a package of loans from a lender or lenders as part of one transaction. Current law does not clarify that all of the loans in such a "bundle of loans" totaling more than \$3 million and forming part of the same package would be considered as "qualified commercial loans," making it unclear whether such a loan package enjoys the available protections. H.B. 2781 clarifies the definition of "qualified commercial loan" to include the situation where more than one lender lends or more than one borrower receives money or credit in the aggregate amount of \$3 million or more as part of the same transaction.

PURPOSE

As proposed, H.B. 2781 set forth the definition of a qualified commercial loan.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 1H.001(9), Title 79, (Article 5069-1H.001, V.T.C.S.), to define "quality commercial loan" as a commercial loan in which one or more persons as part of the same transaction lends, advances, or borrows, receives, or is obligated to lend or advance or entitled to borrow or receive, money or credit with an aggregate value of \$3,000,000 or more, rather than a commercial loan in the original principal amount of \$3,000,000 or more; or as a renewal or extension of such a commercial loan, regardless of the principal amount of the loan at the time of the renewal or extension. Makes conforming and nonsubstantive changes.

SECTION 2. Amends Section 306.001(9), Finance Code, to make conforming changes.

SECTION 3. Provides that SECTION 1 is effective upon passage only if the Act of the 76th Legislature, Regular Session, 1999, relating to nonsubstantive additions to and corrections in enacted codes does not take effect. Provides that SECTION 2 is effective September 1, 1999, only if the Act of the 76th Legislature, Regular Session, 1999, relating to nonsubstantive additions to and corrections in enacted codes takes effect.

SECTION 4. Emergency clause.