

## **BILL ANALYSIS**

Senate Research Center

S.B. 654  
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### **DIGEST AND PURPOSE**

Currently, Texas regulations and programs relating to access to capital and credit for Texas borrowers create barriers for people trying to access home loans, small business loans and personal loans. Moreover, individuals with limited borrowing experience or credit histories are often excluded from traditional loans. As proposed, S.B. 654 creates broader programs to increase the availability of funds for loans within Texas. This bill requires the Finance Commission of Texas, the Texas Department of Economic Development, and the Texas Department of Housing and Community Affairs, to jointly prepare a biennial strategic plan relating to access to capital in unserved and underserved areas of the state. Additionally, S.B. 654 requires information regarding borrowing issues and lending practices to be available to the public on the Internet. This bill establishes programs and develops regulations to strengthen the economy by expanding the opportunity for all citizens to access capital and credit.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the finance commission in SECTION 2 (Section 279.005, Finance Code), to the Texas Department of Economic Development in SECTION 7 (Section 481.415, Government Code) and to the comptroller in SECTION 10 (Article 4.52, Insurance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 3Z, Finance Code, by adding Chapter 278, as follows:

#### **CHAPTER 278. ACCESS TO FINANCIAL CAPITAL**

Sec. 278.001. DUTY OF CERTAIN AGENCIES TO PREPARE STRATEGIC PLAN CONCERNING ACCESS TO FINANCIAL CAPITAL. Requires the Finance Commission of Texas (SFC), the Texas Department of Economic Development (TDED), and the Texas Department of Housing and Community Affairs (TDHCA) to jointly prepare a biennial strategic plan relating to access to capital in unserved and underserved areas of the state.

Sec. 278.002. SUBMISSION OF PLAN AND RECOMMENDATIONS. Requires the agencies, not later than November 1 of each even-numbered year, to jointly submit the strategic plan required by this chapter to the lieutenant governor, the speaker of the house of representatives, and the presiding officers of the senate business and commerce and house business and industry committees and make recommendations on actions that the legislature may take to improve access to capital in unserved and underserved areas of the state.

Sec. 278.003. CONTENTS OF PLAN. Requires the strategic plan to follow certain guidelines.

Sec. 278.004. FINANCIAL CAPITAL INFORMATION AVAILABLE ON INTERNET. Requires the agencies to create and maintain an Internet site through the Texas Online government portal or any successor to that portal that includes certain information.

Sec. 278.005. INTEGRATED BUDGET. Requires the agencies to work together to determine whether an integrated budget is appropriate and necessary for purposes of creating the strategic plan required by this chapter. Requires the agencies to present to the Legislative Budget Board recommendations concerning the distribution of funds to each of the agencies, if the agencies determine that an integrated budget is appropriate and necessary.

SECTION 2. (a) Amends Title 3Z, Finance Code, by adding Chapter 279, as follows:

#### CHAPTER 279. COMMUNITY REINVESTMENT PLANS

Sec. 279.001. DEFINITIONS. Defines "community development financial institution," "community reinvestment plan," "finance commission," and "underserved area."

Sec. 279.002. APPLICABILITY. Provides that this chapter applies only to a lender that is subject to a corporate franchise tax.

Sec. 279.003. COMMUNITY REINVESTMENT STRATEGIC PLAN. Authorizes a lender, in accordance with rules adopted by the finance commission under Section 279.005, to develop and implement an annual community reinvestment strategic plan in order to be eligible to receive a tax credit as provided by Section 279.004. Requires a lender's plan to include the lender's specific targets for the expenditure of funds for community reinvestment purposes, including certain items.

Sec. 279.004. TAX CREDIT. Requires a lender to meet each of the targets set by the lender's community reinvestment plan, as certified by rule of the finance commission, in order to be eligible for a tax credit as provided by Subchapter V, Chapter 171, Tax Code.

Sec. 279.005. DUTIES OF FINANCE COMMISSION; RULEMAKING AUTHORITY.

(a) Requires SFC, in consultation with TDED and TDHCA to assist lenders in identifying and setting community reinvestment targets for the submission of community reinvestment plans.

(b) Requires SFC to adopt policies and rules as necessary to implement this chapter, including policies and rules that provide lenders with specific guidelines and procedures for the adoption and submission to the commission of community reinvestment plans, including a reasonable time frame for implementation of the plan and create a certification process for lenders that meets each of the targets set under their respective plan.

(c) Authorizes SFC to consult with and request information relevant to this chapter from TDED and TDHCA. Requires SFC, in developing rules and policies under this section, to consider any information obtained under this subsection.

Sec. 279.006. INTERNET POSTING. (a) Authorizes a lender to post the lender's community reinvestment plan on any Internet website maintained by the lender. Requires the plan to be posted in a format that is readily accessible to and understandable by a member of the public. Requires the lender to notify SFC if it posts a plan.

(b) Requires SFC to maintain on its Internet website a link to each lender's community reinvestment plan that is posted on the Internet.

(b) Amends Chapter 171, Tax Code, by adding Subchapter V, as follows:

#### SUBCHAPTER V. TAX CREDIT FOR ACHIEVING COMMUNITY REINVESTMENT TARGETS

Sec. 171.901. APPLICATION OF SUBCHAPTER. Provides that this subchapter applies only to a corporation that is certified by the SFC as having met the targets of a community reinvestment plan submitted by the corporation under Chapter 279, Finance Code.

Sec. 171.902. CREDIT. Provides that a corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.

Sec. 171.903. CREDIT FOR EXPENDITURE. Authorizes a corporation to claim a credit under this subchapter only for a qualifying expenditure relating to the implementation of the corporation's community reinvestment plan. Provides that a qualifying expenditure includes an expenditure of funds described by Section 279.003, Finance Code.

Sec. 171.904. LIMITATION. (a) Prohibits the total credit claimed under this subchapter for a period from exceeding 15 percent of the amount of franchise tax due for the report after any other applicable tax credits.

(b) Authorizes a corporation to claim a credit under this subchapter for a contribution made during an accounting period only against the tax owed for the corresponding reporting period.

Sec. 171.905. APPLICATION FOR CREDIT. (a) Requires a corporation to apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.

(b) Requires the comptroller to adopt a form for the application for the credit. Requires a corporation to use this form in applying for the credit.

Sec. 171.906. ASSIGNMENT PROHIBITED. Prohibits a corporation from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

(c) Provides that Chapter 171V, Tax Code, as added by this section, applies only to a report due on or after January 1, 2004.

(d) Authorizes a corporation to claim a credit under Chapter 171V, Tax Code, as added by this section, only for a qualified expenditure made on or after January 1, 2004.

(e) Requires SFC, not later than November 1, 2003, to adopt rules under Chapter 279, Finance Code, as added by this section.

SECTION 3. (a) Amends Section 393.001, Finance Code, by amending Subdivisions (1) and (3) and adding Subdivision (5), as follows:

(1) Redefines "consumer."

(3) Redefines "credit services organization." Makes conforming changes.

(5) Defines "office."

(b) Amends Section 393.002, Finance Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Creates an exception. Deletes reference to Finance Code in Subdivision (11).

(c) Provides that this chapter applies to any person, including a person listed in Subsection (a), who enters into a valid debt-pooling contract with a consumer under Chapter 394B.

(c) Amends Sections 393.101(a), (c), and (d), Finance Code, as follows:

(a) Requires a credit services organization to register with the Office of Consumer Credit Commissioner (CCC), rather than the secretary of state (SOS), by filing a statement that contains certain items.

(c) Makes a conforming change.

(d) Makes a conforming change.

(d) Amends Section 393.104, Finance Code, to make a conforming change.

(e) Amends Section 393.401(b), Finance Code, to make a conforming change.

(f) Amends Section 393.402(b), Finance Code, to make a conforming change.

(g) Amends Section 393.407, Finance Code, to make a conforming change.

(h) Provides that on September 1, 2003, certain functions and activities performed by the SOS are transferred to the CCC.

SECTION 4. (a) Amends Title 5, Finance Code, by adding Chapter 397 as follows:

#### CHAPTER 397. DISCLOSURE OF INFORMATION TO CONSUMERS IN CERTAIN HOME LOAN CONTRACTS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 397.001. DEFINITIONS. Defines "consumer reporting agency," "credit score," "enterprise," "residential mortgage loan," and "residential real property."

[Reserves Sections 397.002-397.050 for expansion.]

##### SUBCHAPTER B. CREDIT SCORE DISCLOSURE

Sec. 397.051. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to a person other than an enterprise who is engaged in the business of making or arranging a residential mortgage loan and uses a credit score in connection with an application initiated by a prospective borrower.

Sec. 397.052. DISCLOSURE OF CREDIT SCORE AND OTHER INFORMATION. (a) Requires a lender, as soon as reasonably practicable, to provide certain information to a prospective borrower.

(b) Requires the notice required by Subsection (a)(2) to include the name, address, and telephone number of each consumer reporting agency that submitted the customer's credit score that was used by the lender to comply with Subsection (a).

(c) Requires the lender to disclose to a prospective borrower any numerical credit score that is generated by an automated underwriting system used by an enterprise if that score is disclosed to the lender.

(d) Requires a prospective borrower's credit score disclosed under Subsection (a)(1)(B) to include any key factors, not to exceed four, that may have adversely affected that credit score if the lender used another credit score in its determination to make the loan to the borrower or uses an automated underwriting system to underwrite the loan. Defines "key factors."

Sec. 397.053. EXEMPTION FROM DISCLOSURE REQUIREMENT. Provides that the lender is not required to provide the disclosure and other information required by this chapter if the prospective borrower has received the same information for that loan transaction from another person.

Sec. 397.054. DUTY OF PROSPECTIVE BORROWER. Requires a prospective borrower, at the time a loan transaction is initiated, to disclose to the lender, at the lender's request, whether the borrower has received or is in the process of receiving the disclosure and other information required by this chapter from a consumer reporting agency or another person.

Sec. 397.055. DUTIES OF LENDER. Provides that a lender is not required to explain the information disclosed under Section 397.052(a)(1), disclose a credit score or related information obtained by the lender after the date on which the loan is closed or provide more than one disclosure for each loan transaction.

Sec. 397.056. LIABILITY OF LENDER. (a) Prohibits a lender from being held liable under this subchapter for the content of any information the lender obtains from a consumer reporting agency or any other person about a prospective borrower or the omission of any information from a credit file provided by a consumer reporting agency to the lender or a prospective borrower under this subchapter.

(b) Prohibits a lender from being held liable under a contractual provision for disclosure of a credit score.

Sec. 397.057. WAIVER PROHIBITED. Provides that a provision in a contract that prohibits a lender from disclosing a credit score as required by this subchapter is void.

Sec. 397.058. VIOLATION OF SUBCHAPTER. Provides that a person who violates this subchapter commits an offense. Provides that an offense under this section is a Class C misdemeanor.

(b) Amends Section 20.01, Business & Commerce Code, by adding Subdivision (5-1) to define "credit score."

(c) Amends the heading to Section 20.03, Business & Commerce Code, to read as follows:

Sec. 20.03. DISCLOSURE OF CONSUMER FILE.

(d) Amends Section 20.03, Business & Commerce Code, by adding Subsection (d) to require a consumer reporting agency to provide to the consumer a statement indicating that the consumer is entitled to receive a credit score as provided by Section 20.035, if a consumer requests a consumer file without requesting a consumer score.

(e) Amends Chapter 20, Business & Commerce Code, by adding Section 20.035 as follows:

Sec. 20.035. DISCLOSURE OF CREDIT SCORE. (a) Provides that this section applies only to a consumer reporting agency that distributes a credit score that is used in connection with a residential real property loan or develops a credit score that assists a credit provider in evaluating a consumer's general creditworthiness and predicting the consumer's future credit

standing.

(b) Requires a consumer reporting agency, on request for a credit score and presentation of proper identification provided by a consumer, to provide certain information.

(c) Requires a consumer reporting agency, in complying with Subsection(b)(1), to provide to the consumer a credit score that meets certain criteria.

(d) Requires the information required by this section to be disclosed within the same time and in the same manner as a consumer's credit file is required to be disclosed under this chapter.

(e) Provides that a consumer reporting agency that distributes a credit score developed by another person or entity is not required to provide a further explanation of that score. Requires the agency to provide the consumer with the name, the address, and any electronic mail address for contacting the person or entity who developed the credit score or the credit score's methodology.

(f) Prohibits this section from being construed to require a consumer reporting agency to maintain a credit score in a consumer's credit file.

(g) Defines "key factors."

(f) Amends Section 20.04, Business & Commerce Code, by adding Subsection (c) to authorize a consumer reporting agency to impose a reasonable charge for the disclosure of a credit score. Prohibits the amount of the charge from exceeding the amount of a charge imposed under Subsection (a).

SECTION 5. (a) Amends Subchapter B, Government Code, by adding Section 481.030, as follows:

Sec. 481.030. REDISTRIBUTION OF CERTAIN COMMUNITY DEVELOPMENT OR REINVESTMENT FUNDS. (a) Requires the Texas Department of Economic Development (TDED), not earlier than the 90th day before the end of each fiscal year, to determine the amount of each appropriation or other funds of TDED intended for the administration of community reinvestment or community development programs or activities that will remain unexpended or unobligated at the end of the fiscal year.

(b) Requires TDED, before the end of the fiscal year, to distribute each amount determined under Subsection (a), if any, to a community development center, community development financial institution, or other similar entity that agrees to use the amount under the direction of the department for any purpose for which the appropriation was made or the funds were intended.

(b) Amends Chapter 2306E, Government Code, by adding Section 2306.101, as follows:

Sec. 2306.101. REDISTRIBUTION OF CERTAIN COMMUNITY DEVELOPMENT OR REINVESTMENT FUNDS. (a) Requires the Texas Department of Housing and Community Affairs (TDHCA), not earlier than the 90th day before the end of each fiscal year, to determine the amount of each appropriation or other funds of TDHCA intended for the administration of community reinvestment or community development programs or activities that will remain unexpended or unobligated at the end of the fiscal year.

(b) Requires the TDHCA, before the end of the fiscal year, to distribute each amount determined under Subsection (a), if any, to a community development center,

community development financial institution, or other similar entity that agrees to use the amount under the direction of TDHCA for any purpose for which the appropriation was made or the funds were intended.

SECTION 6. Amends Section 481.198, Government Code, as follows:

(a) Requires TDHCA to aggressively promote the linked deposit program established by this subchapter to eligible borrowers and financial institutions that make commercial loans and are depositories of state funds. Requires TDHCA's promotion efforts to be designed to maximize use of the program.

(a-1) Requires TDHCA to provide information on the linked deposit program in English and in Spanish on TDHCA's Internet website.

(c) Requires the report required by Subsection (b) to include any factors identified by TDHCA that may inhibit the use of the linked deposit program and any recommended action for increasing the use of the linked deposit program.

SECTION 7. Amends Chapter 481BB, Government Code, by adding Section 481.415, as follows:

Sec. 481.415. COMMUNITY INVESTMENT PROGRAM. (a) Defines "community development financial institution," "community development investment," "community development loan," and "eligible institution."

(b) Requires TDHCA, notwithstanding any other law, to establish a community investment program in which TDHCA makes grants or interest-free loans, using money in the fund, to eligible institutions that use the money to make community development loans in distressed areas of the state or to assist low-income areas by providing basic consumer financial services.

(c) Requires TDHCA to determine the eligibility of an institution by verifying that the institution meets the minimum selection criteria described by 12 U.S.C. Section 4704, as amended. Authorizes TDHCA to set a limit on the number of eligible institutions that may participate in the community investment program. Requires an eligible institution, that wants to participate in the community investment program, to enter into a participation agreement with TDHCA that sets out the terms and conditions under which TDHCA will make a grant or loan to the eligible institution.

(d) Authorizes TDHCA to make a grant to an institution or nonprofit organization to assist the institution or organization to meet the minimum selection criteria described by 12 U.S.C. Section 4704, as amended, or to otherwise obtain assistance under 12 U.S.C. Section 4701 et seq., as amended and become an eligible institution and participate in the community investment program.

(e) Authorizes TDHCA to make a grant to a nonprofit organization TDHCA determines is performing activities consistent with the goals of this section to provide the organization operating support, technical assistance, and training assistance.

(f) Requires TDHCA to adopt rules relating to the implementation of the community investment program and any other rules necessary to accomplish the purposes of this section.

(g) Authorizes an eligible institution to file a grant or loan application with TDHCA. Requires the application to be in a form approved by TDHCA and include a plan of investment that includes the type and number of community development loans or

investments that the institution plans to make using money from the community investment program. Requires TDHCA to act on a completed application not later than the 30th day after the date on which the application is filed with TDHCA.

(h) Provides that all income received on a loan or investment made with money received under the community investment program is the property of the eligible institution that makes the loan or investment.

(i) Requires the eligible institution to submit a report to TDHCA that states in detail the status of each investment or loan made under the community investment program, not later than the 30th day after the expiration of each six-month period for which there is a participation agreement in effect between TDHCA and an eligible institution. Requires the report to be in a form prescribed by TDHCA and must contain all information required by TDHCA as part of the institution's participation agreement.

(j) Requires the participation agreement between the eligible institution and TDHCA to provide for an annual audit. Requires TDHCA to adopt rules relating to the format of the audit, including rules allowing not more than \$5,000 of the amount received by the eligible institution under the community investment program to be used to finance the audit.

SECTION 8. (a) Amends Chapter 531B, Government Code, by adding Section 531.063 as follows:

Sec. 531.063. ELIGIBILITY FOR PUBLIC ASSISTANCE: EXCLUSION OF CERTAIN INCOME AND RESOURCES. (a) Defines "individual development account."

(b) Prohibits, to the extent authorized by federal law, the Health and Human Services Commission (HHS) and each health and human services agency from considering money contributed to an individual development account established for a recipient of public assistance benefits as income or the balance of the account as a resource in determining whether the recipient meets household income and resource requirements for eligibility for public assistance benefits.

(c) Provides that this section applies to an individual development account established for certain low-income individuals under the pilot program required by Section 301.068, Labor Code.

(b) Requires an agency affected by the provision, if before implementing any provision of Section 531.063, Government Code, as added by this section, it determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, to request the waiver or authorization and authorizes an agency to delay implementing that provision until the waiver or authorization is granted.

(c) Provides that Section 531.063, Government Code, as added by this section, applies to a person receiving public assistance benefits on or after that date, regardless of the date on which eligibility for those benefits was determined.

SECTION 9. (a) Amends Chapter 1372B, Government Code, by adding Section 1372.0262 as follows:

Sec. 1372.0262. RECOMMENDED ALLOCATION FOR HOUSING FINANCE CORPORATIONS. (a) Defines "economic submarket" and "geographic submarket."

(b) Requires a housing finance corporation to attempt to allocate not less than 40



percent of its total single-family mortgage revenue bond loan volume to meet the credit needs of borrowers in underserved economic and geographic submarkets in the state, as indicated by the market study results provided to the Bond Review Board under Section 2306.142, in the state fiscal year beginning on September 1, 2004, and in each subsequent state fiscal year.

(c) Requires the housing finance corporation to annually report to the Bond Review Board and to TDHCA on the extent to which the corporation achieves the goals of this section in a state fiscal year. Requires the corporation to include in its report the reasons why the loan volume was not allocated as recommended by this section, including reasons regarding unfeasibility, adverse financial effect, and low market volume demand, if applicable, if, in any state fiscal year, the housing finance corporation fails to achieve the goals of this section.

(b) Amends Section 394.027(b), Local Government Code, to include additional information required in the report. Makes conforming changes.

SECTION 10. (a) Amends Articles 4.74(a), (c), and (d), Insurance Code, as follows:

(a) Authorizes the comptroller, notwithstanding any other provision of this subchapter, to implement this subchapter only if the comptroller determines, on the basis of a revenue estimate made under this article, that revenues are anticipated in amounts sufficient to finance all appropriations made by the legislature, after making deductions for all reductions in taxes, including the reduction in premium tax through premium tax credits authorized under this subchapter. Requires the comptroller, until the comptroller implements this subchapter as required by this article, to review the revenue estimate as required by this subsection after adjournment sine die of each legislative session during which the legislature enacts a General Appropriations Act that becomes law.

(c) Requires the comptroller, on a determination by the comptroller to implement this subchapter under Subsection (a) or (b) of this article, to specify a date, not later than the 90th day after the date of adjournment sine die of the appropriate legislative session, as the implementation date. Makes nonsubstantive changes.

(d) Requires the comptroller, after each legislative session during which the legislature enacts a General Appropriations Act that becomes law, to notify the governor, lieutenant governor, and speaker of the house of representatives of the determination made under this article.

(b) Amends Article 4.52, Insurance Code, to require the comptroller to adopt rules and forms as necessary to implement this subchapter not later than the 90th day after the implementation date established under Article 4.74 of this code.

(c) Amends article 4.53, Insurance Code, by adding Subsection (f), to require the comptroller to begin accepting applications for certification under this article not later than the 120th day after the implementation date established under article 4.74 of this code.

(d) Amends Article 4.65, Insurance Code, by adding Subsection (d) to prohibit a certified investor from making an investment with a certified capital company before the 225th day after the implementation date after the implementation date established under Article 4.74 of this code.

(e) Amends Article 4.66(a), Insurance Code, to change the date by which a certified capital company is required to file a claim with the comptroller from February 15, 2002, to the 225th day after the implementation date established under Article 4.74 of this code.

(f) Amends Article 4.68(c), Insurance Code, to change the date by which the comptroller is required to notify each certified capital company of tax credits allocated to investors, from March 1, 2002, to the 240th day after the implementation date established under Article 4.74 of this code.

(g) Amends Article 4.73(a), Insurance Code, to require the comptroller to prepare a report after implementation of this subchapter under Article 4.74 of this code and to make a change in a date in the required report.

SECTION 11. (a) Requires the comptroller to conduct a study of the availability of venture capital in this state and to compare the availability of venture capital in this state to its availability in the other states. Authorizes the comptroller to recommend actions that the legislature may take to improve the availability of venture capital in this state.

(b) Requires the comptroller, before November 1, 2005, to report the comptroller's findings of the study conducted under Section 11(a) of this Act to the speaker of the house of representatives, the lieutenant governor, and the presiding officers of the senate business and commerce and house business and industry committees.

SECTION 12. Effective date: September 1, 2003.