

BILL ANALYSIS

C.S.H.B. 3472
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Department of Savings and Mortgage Lending's recovery fund was established to make payments to consumers who have suffered a loss as a result of dishonest actions by licensed residential mortgage loan originators. Though consumer access to these funds has been made easier over the years, the number of claims filed and the dollar amounts paid out have continued to remain low. Over the lifetime of the fund, there has been roughly \$550,000 in total claims. Today, the balance of the fund stands at nearly \$4.5 million. Critics argue that this is an excessive level and that much of the money in the fund could be put to better use. C.S.H.B. 3472 seeks to leverage some of that money by providing that, when the amount of money in the recovery fund exceeds \$3.5 million, some of the surplus would be made available for grants to qualifying statewide nonprofit organizations for housing rehabilitation and mortgage assistance and for certain other purposes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 3472 amends the Finance Code to require the savings and mortgage lending commissioner to establish, administer, and maintain a mortgage grant fund. The bill authorizes all or any portion of the amounts of specified civil penalties collected by the commissioner for regulatory purposes, as determined by the commissioner, to be deposited to the credit of the fund or the residential mortgage loan originator recovery fund at the end of each fiscal year. The bill redirects to the mortgage grant fund any balance in excess of \$3.5 million remaining in the recovery fund at the end of a calendar year. The bill requires the amounts received by the commissioner for deposit in the mortgage grant fund to be held by the commissioner in trust for carrying out the purposes of the fund.

C.S.H.B. 3472 requires the commissioner, as manager of the mortgage grant fund, to do the following:

- invest and reinvest the fund's assets;
- make disbursements from the fund;
- advise the Finance Commission of Texas regarding the fund;
- maintain books and records for the fund as required by the finance commission; and
- appear at hearings or judicial proceedings related to the fund.

Amounts in the fund may be invested and reinvested in accordance with the Public Funds Investment Act and under the prudent person standard established by the Texas Constitution for investments of permanent university fund assets.

C.S.H.B. 3472 requires the commissioner to make disbursements from the mortgage grant fund as follows:

- to pay qualifying claims relating to fraudulent unlicensed activity, as provided by the bill; and
- to the extent the commissioner determines the fund has sufficient available assets, to provide a grant in an amount of not less than \$100,000 each year to an auxiliary mortgage loan activity company or to another specified statewide nonprofit organization for the following purposes:
 - providing statewide training and technical assistance to certain nonprofit organizations who provide self-help housing through zero interest loans or other residential mortgage loans for borrowers who contribute part of the labor to construct the mortgaged dwelling;
 - servicing third-party mortgage loans;
 - providing consumer financial education that relates to mortgage loans; and
 - administering disaster repair programs and preparedness resources for consumers with mortgage loans.

The bill authorizes the commissioner to make other disbursements from the fund as follows:

- to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers; and
- if a governor's declaration of a state of disaster is in effect, to a governmental or nonprofit organization providing mortgage payment assistance for residence homesteads as needed due to the disaster.

The bill requires the commissioner to approve each disbursement from the fund and clarifies that the limited purposes outlined in the bill are the only purposes for which a disbursement may be authorized.

C.S.H.B. 3472 authorizes a residential mortgage loan applicant to make a claim on and receive payment from the mortgage grant fund for the recovery of the applicant's actual, out-of-pocket damages incurred because of fraud committed by an individual who acted as a residential mortgage loan originator but did not hold the required license at the time the individual committed the fraudulent act. The bill makes the eligibility and procedural requirements, statute of limitations, and recovery limits that apply to claims on the recovery fund also applicable to a claim on the mortgage grant fund for fraudulent unlicensed activity.

C.S.H.B. 3472 requires the finance commission to adopt rules to administer the bill's provisions relating to the mortgage grant fund, including rules governing the implementation of disbursements that ensure an awarded grant is used for an authorized public purpose and provide a means of recovering awarded money that is not used in compliance with the bill's disbursement provisions.

C.S.H.B. 3472 changes the investment standard for any investment or reinvestment of amounts in the recovery fund from the manner of investment of funds of the Employees Retirement System of Texas to the standards established by the Public Funds Investment Act and the prudent person standard established by the Texas Constitution for investments of permanent university fund assets.

C.S.H.B. 3472 removes the authority of the commissioner to set fee amounts under the Residential Mortgage Loan Company Licensing and Registration Act and the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act for deposit in the recovery fund. The bill sets the amount of an additional recovery fund fee payable by an applicant for a residential mortgage loan originator license at \$20. The bill removes the requirement for an applicant for renewal of such a license to pay the fee.

C.S.H.B. 3472 repeals Sections 156.501(d) and (f), Finance Code, which do the following:

- authorize the recovery fund to be used at the commissioner's discretion to reimburse expenses incurred to secure and destroy certain abandoned residential mortgage loan documents; and
- entitle the commissioner to reimbursement for reasonable and necessary costs and expenses incurred in the management of the fund.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3472 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the original and the substitute seek to establish a mechanism by which excess funds in the recovery fund are reallocated for purposes of providing grants to certain organizations for specified housing assistance purposes. However, whereas the original did so by establishing a subaccount in the Texas financial education endowment account administered by the comptroller of public accounts, the substitute instead creates a new mortgage grant fund administered by the savings and mortgage lending commissioner. Accordingly, the substitute includes provisions not in the original relating to the management of the fund.

With respect to grants awarded from the fund to applicable organizations, the substitute revises the original's provisions to do the following:

- condition the requirement for a grant to be made on the commissioner's determination that there are sufficient available assets, whereas the original did not;
- add an auxiliary mortgage loan activity company as an eligible recipient;
- include the following as additional purposes for which the grant funding is to be provided:
 - providing statewide training and technical assistance to specified nonprofit organizations; and
 - administering disaster preparedness resources for consumers with mortgage loans;
- make discretionary the original's requirement to provide support for statewide financial education, activities, and programs specifically related to mortgage loans for consumers; and
- change mortgage assistance provided during a declared state of disaster for residence homesteads from direct assistance to assistance through grants to a governmental or nonprofit organization.

Whereas the original made the finance commission responsible for administering the money, the substitute makes the commissioner responsible for approving each disbursement from the mortgage grant fund.

While the original authorized the use of the mortgage grant fund to reimburse a residential mortgage loan applicant for a claim relating to fraudulent activity by a licensed residential mortgage loan originator and determined to be valid, subject to certain limits, the substitute provides instead for a residential mortgage loan applicant's claim against the fund for fraudulent activity by an unlicensed residential mortgage loan originator and requires the commissioner to pay such claims that meet applicable requirements.

The substitute includes a provision not in the original authorizing all or any portion of the amounts of specified administrative penalties collected by the commissioner to be deposited to the credit of the recovery fund or the mortgage grant fund at the end of each fiscal year.

The substitute includes a provision not found in the original that removes the authorization for the commissioner to set fee amounts under the Residential Mortgage Loan Company Licensing and Registration Act and the Mortgage Banker Registration and Residential Mortgage Loan Originator License Act for deposit in the recovery fund.