

RESOLUTION ANALYSIS

S.J.R. 60
By: Hancock
Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that certain changes should be made to the home equity borrowing system in Texas to ensure that home equity financing is available for both large and small home equity loans. S.J.R. 60 seeks to increase the accessibility of home equity loans and maintain the stability of home equity lending in Texas by proposing a constitutional amendment to implement such changes.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this resolution 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 this resolution does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.J.R. 60 proposes an amendment to the Texas Constitution to make certain changes to the conditions that must be met for an extension of credit secured by a voluntary lien on a homestead created under a written agreement with the consent of each owner and each owner's spouse to be excepted from the required protection of a family's or single adult person's homestead from forced sale for the payment of debts. The resolution lowers from three percent of the original principal amount of the extension of credit to two percent of that amount the cap on the aggregate total amount of fees necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that the owner or the owner's spouse may be required to pay; specifies that such fees are in addition to any bona fide discount points used to buy down the interest rate; and excludes certain fees from the cap. The resolution removes the condition that the extension of credit is not secured by homestead property that on the date of closing is designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk. The resolution includes a subsidiary of a bank, savings and loan association, savings bank, or credit union doing business under state or federal laws among the entities authorized to make the extension of credit, provided the entity has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area.

S.J.R. 60 expands the circumstances under which a refinance of debt secured by a homestead, any portion of which is such an excepted extension of credit, may be secured by a valid lien against the homestead to include circumstances in which all of the following conditions are met: the refinance is not closed before the first anniversary of the date the extension of credit was closed; the refinanced extension of credit does not include the advance of any additional funds

other than funds advanced to refinance certain debts or actual costs and reserves required by the lender to refinance the debt; the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made; and the lender provides the owner a specified written notice within a certain time period regarding the option to refinance a home equity loan as either a home equity loan or non-home equity loan. The resolution establishes that a lien securing a refinance of debt under such conditions is deemed to be a certain type of lien excepted from required protection from forced sale and that an affidavit executed by the owner or the owner's spouse acknowledging that the conditions have been met conclusively establishes that the requirements of that type of excepted lien have been met. The resolution removes language establishing that a home equity line of credit is a form of an open-end account under which no additional debits or advances are made if the total principal amount outstanding exceeds an amount equal to 50 percent of the fair market value of the homestead as determined on the date the account is established.

S.J.R. 60 adds a temporary provision, set to expire January 1, 2019, making the amendment effective January 1, 2018, and applicable only to a home equity loan made on or after that date and to an existing home equity loan that is refinanced on or after that date.

ELECTION DATE

The constitutional amendment proposed by this joint resolution will be submitted to the voters at an election to be held November 7, 2017.