

SUBJECT: Continuing the Credit Union Department and Credit Union Commission

COMMITTEE: Pensions, Investments, and Financial Services — favorable, without amendment

VOTE: 7 ayes — Anchia, Flynn, Hernandez, Hopson, Parker, Veasey, Woolley

0 nays

2 absent — Truitt, Anderson

WITNESSES: For — (*Registered, but did not testify*: Jeff Huffman, Texas Credit Union League; Melodie Stegall, Credit Union Legislative Coalition)

Against — None

On — Harold Feeney, Credit Union Department; Gary Janacek, Credit Union Commission; Karen Latta, Sunset Advisory Commission

BACKGROUND: The Credit Union Department (CUD) is the primary regulator of the 220 state-chartered credit unions, with \$19.3 billion in assets to ensure their safety and soundness. The CUD was created as a separate entity in 1969 from the Department of Banking, which had previously regulated state-chartered credit unions.

The CUD carries out the following functions:

- approves new charters, charter conversions, mergers, and other structural changes for state-chartered credit unions;
- examines every state-chartered credit union on a regular basis;
- oversees out of-state credit unions operating in Texas; and
- assists the public by helping to resolve complaints against credit unions and providing informational materials.

For fiscal 2008, CUD had an operating budget of almost \$1.9 million, which is supported through various operating fees from regulated credit unions, and employed 23 staff with three unfilled positions. The CUD is governed by a nine-member commission appointed by the governor, which includes five public members and four credit union industry representatives serving six-year staggered terms. The industry

representatives must have at least five years of active credit union experience as a director, officer, or committee member. The governor appoints a member to serve as the commission's chair.

The CUD last underwent Sunset review in 1997 and was continued by the 75th Legislature. If not continued by the 81st Legislature, the department will be abolished September 1, 2009.

DIGEST:

HB 2735 would continue the Credit Union Commission (CUC) until September 1, 2021. It would require credit unions to provide an annual report and make available financial and management documents to its members, require the CUC to adopt rules to ensure that its advisory committees comply with existing laws, and allow the commissioner of the Credit Union Department (CUD) to issue cease and desist orders and issue fees for late operating fees.

The bill also would add standard sunset provisions governing membership of the commission, conflict of interest, gubernatorial designation of the presiding officer, grounds for removing a board member, training of board members, policy and rulemaking, use of technology, complaint documentation, unbiased appointments, separation of policymaking and staff functions, public testimony, and dispute resolution procedures.

Annual Report. The CUC would adopt reasonable rules that the commissioner of the CUD would enforce to require a regulated credit union to provide an annual report to its members containing information on a credit union's financial condition and management. The report would include:

- a current balance sheet;
- an income and expense statement;
- the name and date of expiration of the term of office of each board member;
- a brief description of any changes since the last report on the credit union's management, bylaws, articles of incorporation, financial condition, membership size, and services offered; and
- any other information the CUC deemed necessary to ensure that credit union members were provided basic knowledge of the credit union's financial condition and management.

The CUC, in adopting rules for annual report, would ensure that a credit union:

- updated the report before its annual organizational meeting;
- made the report available on its website, if available; and
- provided the report by an alternative method, including delivery at its annual organizational meeting, if it does not have a website.

Advisory committees. The CUC would adopt rules, in compliance with existing provisions in Government Code, ch. 2210, regarding the purpose, structure, and use of the advisory committees by the CUC, including rules governing the committee's:

- purpose, role, responsibility, and goals;
- size and quorum responsibilities;
- qualifications for membership, including experience requirements and geographic representation;
- appointment procedures;
- terms of service;
- training requirements; and
- duration.

An advisory committee would be structured and used to advise the CUC, would not establish rules or policy, and would comply with open meetings requirements. The CUC could retain or develop committees as appropriate to meet its changing needs. Additionally, the CUC would establish via rulemaking a process through which it could periodically evaluate an advisory committee to ensure its continued necessity.

Providing availability of documents to credit union members. A regulated credit union would provide notice of the availability of documents related to its finances and management, including:

- a summary of the most recent annual audit;
- the most recent statement of financial condition, such as non-confidential pages of quarterly call reports;
- a copy of IRS Form 990 or its successor; and
- any other documents, as determined by the CUC, that members are entitled to possess.

The notice of available documents would have to be given on the credit union's website and twice a year in its newsletter if available. The CUC would adopt through rule a method for credit unions without website or newsletter to make the required documents available.

Cease and desist orders and penalties. The credit union commissioner could issue, without notice and hearing, a cease-and-desist order if it appeared that a person not authorized was engaging in business as a credit union or was violating state law or rule regarding credit union regulation. The bill also includes provisions for administration of a cease-and-desist order, including an opportunity for a hearing and when an order becomes final.

The CUD could charge a late fee against a credit union for late payment of its operating fees.

Complaint notifications. The CUD would periodically notify complaint parties of the status of the complaint until final disposition. The bill would remove provisions that the CUD keep information about each complaint filed with the department.

The CUC would through rule establish methods by which consumers and service recipients are notified of the CUD's web page for submitting complaints. The CUC also would provide for the notification on a regulated credit union's website and its newsletter, if available. The CUC could through rule establish other methods for credit unions not having an website or newsletter to make the CUD's complaint contact information available.

The bill would take effect September 1, 2009. Changes in the qualifications of CUC members would only apply to those members appointed on or after September 1, 2009. A CUC member appointed immediately before the effective date could be reappointed as a commission member if the person had the required amended qualifications.

SUPPORTERS
SAY:

HB 2735 appropriately would continue the Credit Union Department (CUD), which was found by the Sunset Advisory Commission to provide the important service of regulating state-chartered credit unions to ensure their safety and soundness. The oversight provided by the CUD effectively performed is independent of the Finance Commission, which regulates

other financial institutions. The Sunset Commission found that the benefits of transferring the CUD functions to the Finance Commission would not be sufficient to justify such a significant change.

Annual report. The bill would require the Credit Union Commission (CUC) to ensure that credit unions provide an annual report with basic financial and management information to their members. This would provide transparency of credit union operations to their members, thereby increasing the confidence of members in their cooperative institutions. Additionally, requiring that this information be provided, if available, via the credit union's website or newsletter would allow members equal and easy access.

Advisory committees. HB 2735 would ensure that the CUC met statutory requirements for agency committees provided in Government Code, ch. 2110. Currently, the CUC's Legislative Advisory Committee does not meet a number of established requirements for advisory committees, such as having rules defining the purpose and tasks for the committee. The bill would allow the CUC's advisory committees to comply with existing provisions in the law.

Providing availability of documents to credit union members. Requiring credit unions to alert members that basic documents, such as a credit union's most recent annual audit and quarterly call reports, are available for review would provide an added measure of accountability and demonstrate that credit unions are responsible to their members. This is important because members often are not aware of the availability of these documents.

Cease and desist orders and penalties. By giving the commissioner of the CUD the authority to issue cease-and-desist orders, the bill would provide an effective deterrent should unchartered credit union activity occur within the state. This would protect the public against potential fraud and financial loss. Additionally, as the CUC has adopted rules to define time frames and amounts for late operating fees, the bill would provide statutory authority for the CUD commissioner to assess these penalties.

Complaint notifications. By providing information to credit union members about how to file a complaint in credit union offices as well as through websites and newsletters, the bill would ensure that this

information was widely available should a member encounter a problem but not be able to resolve it through their credit union.

IRS Form 990. The bill should not remove the authority for the CUD to file a consolidated IRS Form 990 on behalf of state-chartered credit unions, thereby requiring credit unions to file individual statements. Such a move is unnecessary and would provide an additional regulatory burden for credit unions. The CUD has been filing this consolidated statement since 1976 and, as such, already has a system in place to ensure that state-chartered credit unions, as tax-exempt organizations, meet the filing requirement. This would be more efficient than requiring all credit unions to assume the responsibility and cost of filing individual statements.

OPPONENTS
SAY:

CSHB 2735 would be strengthened by including a provision to remove authority for the CUD to file a consolidated IRS Form 990 for state-chartered credit unions. This would require all state-chartered credit unions to file their own information returns with the IRS, which would increase access to this public information. Currently, the CUD files a consolidated Form 990 on behalf of state-chartered credit unions that provides all credit unions' financial information in aggregate. This effectively limits the usefulness of the information for consumers who want to know financial information for a specific credit union.

NOTES:

The companion bill, SB 1012 by Estes, was left pending after a March 23 hearing by the Senate Government Organization Committee.