

- SUBJECT:** Continuing the Finance Commission and related finance agencies
- COMMITTEE:** Pensions, Investments, and Financial Services — favorable, without amendment
- VOTE:** 7 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Lambert, Wu
- 0 nays
- 4 absent — Gutierrez, Leach, Longoria, Stephenson
- SENATE VOTE:** On final passage, March 27 — 31-0
- WITNESSES:** *On House companion bill, HB 1569:*
For — (*Registered, but did not testify:* Meredyth Fowler and Karen Neeley, Independent Bankers Association of Texas; Mandy Balch, Seller Finance Coalition; Billy Phenix, Texas Association of Builders; Celeste Embrey, Texas Bankers Association; John Fleming, Texas Mortgage Bankers Association)
- Against — None
- On — Charles Cooper, Texas Department of Banking (*Registered, but did not testify:* Caroline Jones, Department of Savings and Mortgage Lending; Carissa Nash, Sunset Advisory Commission)
- BACKGROUND:** The Finance Commission of Texas is the policymaking body that oversees the Texas Department of Banking (DOB), Office of Consumer Credit Commissioner (OCCC), and Department of Savings and Mortgage Lending (SML). The three agencies work with the commission to regulate the finance industry in the state.
- Finance Commission.** In 2009, DOB, OCCC, and SML were given self-directed semi-independent status by the Legislature, which removed them from the legislative appropriations process and gave the finance

commission greater oversight responsibility for the agencies. The commission has also been tasked by the Legislature with ensuring that state depository and lending institutions function as a system.

In order to fulfill its charges, the Finance Commission hires and oversees the commissioner of each finance agency, conducts public hearings and adopts rules for each agency, and approves the fees charged to regulated industries, agency expenditures, and overall agency performance. The commission also interprets the home equity lending provisions of the Texas Constitution, administers the Texas Financial Education Endowment, and manages the internal auditor.

Governance. The Finance Commission consists of 11 members appointed by the governor with the advice and consent of the Senate to six-year staggered terms. Five members represent the finance industry and six members represent the public. The governor appoints the presiding officer.

The Finance Commission appoints one of the three finance agency commissioners to serve as the commission's executive director to handle administrative tasks. Since May 2014, the banking commissioner has served this role.

Oversight. Across the three finance agencies, the Finance Commission oversaw \$40.9 million in expenditures, \$43 million in revenue, \$39.8 million in reserve fund balances, and \$4.1 million in the Texas Financial Education Endowment grant fund in fiscal 2017. The commission also oversees the agencies' staff, which numbered 314 at the end of fiscal 2017.

The Finance Commission approves the finance agencies' rules and budget but has no direct role in licensing decisions or the management of consumer complaints, which are under the purview of each agency's commissioner.

The commission is also statutorily required to consider appeals of orders issued by the banking commissioner against banks or trust companies,

which remain in effect unless stayed by the Finance Commission.

Department of Banking. DOB is an independent agency that regulates the state's financial service industries, including state-chartered banks, trust companies, money services business, foreign banks, and the financial aspects of some death care services.

The department works to maintain a safe, sound, and competitive financial services system in the state by:

- approving new charters, charter conversions, mergers, and other structural or operational changes for state-chartered banks, trust companies, and foreign banks operating in Texas;
- licensing and registering money services businesses, certain death care service providers, and other entities;
- examining regulated entities for sound operations and compliance with state and federal laws; and
- enforcing the Texas Finance Code by investigating and resolving complaints and taking appropriate disciplinary action.

Governance. The Finance Commission hires each of the agency's commissioners, who are directly responsible for all licensing and enforcement decisions.

Funding. DOB does not receive a legislative appropriation but is funded by industry fees. In fiscal 2017, the agency collected about \$26.3 million in revenue, primarily from bank and trust assessments. That year the agency spent about \$26.1 million and maintained a fund balance of \$14.7 million at the end of fiscal 2017.

Staffing. At the end of fiscal 2017, DOB employed 178 full-time staff. About 121 staff travel throughout the state examining state-chartered banks, money services businesses, and other regulated entities.

Department of Savings and Mortgage Lending. SML was created by the Legislature to regulate state savings and loan associations, commonly

called thrifts. Today, the Texas thrift industry is made up entirely of state saving banks, whose assets primarily consist of residential mortgage loans, and SML is charged with ensuring a healthy mortgage lending environment and maintaining sound state savings banks in the state. The agency accomplishes this by:

- approving new charters, charter conversions, mergers, and other structural or operational changes for state savings banks;
- licensing mortgage companies, residential mortgage loan originators, and other entities that originate mortgage loan services for properties in Texas;
- examining state savings banks and mortgage licensees for sound operations and compliance with state and federal laws; and
- enforcing the Texas Finance Code by investigating and resolving complaints against licensees and taking disciplinary action when appropriate.

Governance. The Finance Commission hires each of the agency's commissioners, who are directly responsible for all licensing and enforcement decisions.

Funding. SML does not receive a legislative appropriation but is funded through industry fees. In fiscal year 2017, the agency collected \$6.5 million in revenue, primarily from licensing fees on mortgage industry licensees. That same year, the agency spent about \$5.8 million. SML maintained a fund balance of \$12.7 million at the end of fiscal 2017.

Staffing. At the end of fiscal year 2017, the agency employed 53 staff. About 23 staff travel throughout the state examining state savings banks and mortgage industry licensees, and the remainder work at the agency's Austin headquarters.

Expiration. The Finance Commission, Texas Department of Banking, and Department of Savings and Mortgage Lending would expire on September 1, 2019, unless continued in statute.

DIGEST: CSSB 614 would continue the Finance Commission, Texas Department of Banking (DOB), and Department of Savings and Mortgage Lending (SML) until September 1, 2031. The bill would make certain substantive changes to the agencies and also would implement several across-the-board Sunset recommendations.

Advisory committees. CSSB 614 would individually authorize the Finance Commission, DOB, and SML to appoint advisory committees to assist the commission and finance agencies in performing their respective duties. The commission and agencies would have to specify each committee's purpose, powers, and duties, and require each committee to report to the commission or agency regarding the committee's activities and the results of its work.

Permits and certificates. The Finance Commission would be authorized to establish by rule the terms of permits to sell prepaid funeral benefits and of certificates of authority to operate perpetual care cemeteries. If the commission prescribed the term of a permit or certificate for a period other than one year, the commission would have to prorate the required fee as necessary to reflect the term.

The bill also would remove requirements that cemetery brokers and private child support enforcement agencies register with DOB. On the effective date of the bill, any certificate of registration for cemetery brokers or private child support enforcement agencies would expire. No person would be entitled to a refund of a fee paid for such a certificate before the effective date of the bill.

The requirement that a residential mortgage loan originator licensee applicant be of "good moral character" also would be removed from statute.

Appeals. CSSB 614 would change the process by which an order of the banking commissioner could be appealed so that parties could no longer appeal agency decisions to the Finance Commission. Instead, a person affected by a final order from DOB could appeal the order by filing a

petition for judicial review in a district court in Travis County.

Rulemaking and dispute resolution. The Finance Commission would be required to develop a policy to encourage the use of negotiated rulemaking procedures for the commission's adoption of rules applicable to DOB and SML. The policy also would have to encourage the use of appropriate alternative dispute resolution procedures by both DOB and SML.

CSSB 614 would require DOB and SML to maintain systems to promptly and efficiently act on complaints filed with the agencies and would remove certain SML complaint filing requirements.

Training requirements. The bill also would update training requirements for the finance agencies. The commissioner of each agency would have to create a training manual including required information applicable to the commissioner's agency and annually distribute a copy of the training manual to each member of the finance commission. The commissioners of each finance agency could collaborate and jointly create one training manual including information applicable to each agency. Each member of the commission would have to sign and submit to the appropriate commissioner a statement acknowledging that the member had received and reviewed the manual.

These training requirements would apply to a member of the Finance Commission appointed before, on, or after the bill's effective date. If a member of the commission had completed the required training program before the bill's effective date, the member would have to acknowledge that the member received and reviewed the required training manual. A member of the commission could not vote, deliberate, or be counted as a member in attendance at a commission meeting held on or after December 1, 2019, until the member acknowledged the receipt and review of the training manual.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSSB 614 would continue the Finance Commission, Texas Department of Banking (DOB), and Department of Savings and Mortgage Lending (SML), which help protect the state's finance industry, while making statutory changes that would improve the agencies' efficiency and effectiveness.

The bill would discontinue unnecessary regulatory burdens, such as the requirement that cemetery brokers and private child support enforcement agencies register with DOB. This would ensure that the finance agencies were imposing the least amount of regulation necessary to protect the public interest. DOB also would be given the rulemaking authority to establish certain license terms, ensuring the agency had the flexibility to reduce the time spent on processing renewals and use its time and resource effectively and efficiently.

By removing the Finance Commission as an avenue for appeal for orders issued by the banking commissioner, CSSB 614 would bring the agencies' appeals process into compliance with the Administrative Procedures Act. Under the act, the appropriate avenue for appeals in an administrative hearing is district court, and that is where the bill would direct appeals of DOB orders.

The bill also would revise complaint requirements, giving the finance agencies the necessary flexibility to adopt updated rules and procedures to resolve complaints in a timely and transparent manner.

Retaining SML as an agency separate from DOB is appropriate, as it would allow the agency to continue to effectively regulate the fluctuating number of savings and loan institutions in the state.

**OPPONENTS
SAY:**

CSSB 614 should abolish SML as a separate state agency and transfer regulation of state savings banks and the mortgage industry to DOB. Having two separate agencies regulate two types of banks is inefficient, and consolidating bank examination and supervision within one state agency would allow DOB to monitor and report on the complete banking and mortgage industry in Texas and to have a more holistic picture of

local economies, market changes, and regulatory impacts on community banks.