

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 1763  
By: McCall (Sibley)  
Business & Commerce  
5/8/2001  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

The Finance Commission of Texas (Finance commission) is the governing body for the Texas Department of Banking, the Savings and Loan Department, and the Office of Consumer Credit Commissioner. The Sunset Advisory Commission has recommended that the finance commission be continued with certain changes to its composition, authority, and status as an independent agency. C.S.H.B. 1763 continues the Finance Commission of Texas for twelve years and adopts the recommendations of the Sunset Advisory Commission.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission in SECTION 12 (Section 11.306, Finance Code) and SECTION 13 (Section 11.307), of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 11.001, Finance Code, as follows:

Sec. 11.001. DEFINITIONS. (a) Defines "finance agency."

SECTION 2. Amends Chapter 11A, Finance Code, by adding Section 11.002 as follows:

Sec. 11.002. PURPOSE OF COMMISSION; STRATEGIC PLAN. (a) Provides that the Finance Commission of Texas (finance commission) is responsible for overseeing and coordinating the Texas Department of Banking, the Savings and Loan Department, and the Office of Consumer Credit Commissioner and serves as the primary point of accountability for ensuring that state depository and lending institutions function as a system, considering the broad scope of the financial services industry. Provides that the finance commission is the policy-making body for those finance agencies and is not a separate state agency. Requires the finance commission to carry out its functions in a manner that protects consumer interests, maintains a safe and sound banking system, and increases the economic prosperity of the state.

(b) Requires the finance commission to prepare and periodically update a strategic plan for coordination of the state financial system. Requires each finance agency to cooperate in preparation of the plan.

SECTION 3. Amends Sections 11.102(b), (c), (d), and (e), Finance Code, as follows:

(b) Requires one member, rather than two members, of the finance commission to be a banking executive, one member, rather than two members, of the finance commission to be a savings executive, one member of the finance commission to be a consumer credit executive, and one member of the finance commission to be a mortgage broker.

(c) Requires five members of the finance commission to be representatives of the general public. Requires at least one of those members to be a certified public accountant.

(d) Prohibits a person from being a public member of the finance commission if the person or the person's spouse meets certain requirements.

(e) Defines, "banking executive," "savings executive," "consumer credit executive," and "mortgage broker."

SECTION 4. Amends Chapter 11B, Finance Code, by adding Section 11.1021,as follows:

Sec. 11.1021. CONFLICT OF INTEREST. (a) Defines, "Texas trade association."

(b) Prohibits a person from being a member of the finance commission if the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by a finance agency or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by a finance agency.

(c) Prohibits a person from being a member of the finance commission if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of a finance agency.

SECTION 5. Amens Section 11.103, Finance Code, as follows:

Sec. 11.103. New heading: REMOVAL OF MEMBERS. (a) Provides that it is a ground for removal from the finance commission that a member does not have at the time of taking office the qualifications required by Section 11.102, does not maintain during service on the finance commission the qualifications required by Section 11.102, is ineligible for membership under Section 11.102 or 11.1021, cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term or is absent from more than half of the regularly scheduled finance commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the finance commission.

(b) Requires if the banking commissioner, savings and loan commissioner, or consumer credit commissioner has knowledge that a potential ground for removal exists, to notify the presiding officer of the finance commission of the potential ground. Requires the presiding officer to then notify the governor and the attorney general that a potential ground for removal exists. Requires the banking commissioner, savings and loan commissioner, or consumer credit commissioner, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the finance commission, who shall then notify the governor and the attorney general that a potential ground for removal exists.

(c) Provides that the validity of an action of the finance commission is not affected by the fact that it was taken when a ground for removal of a member of the finance commission existed. Deletes language regarding removal.

SECTION 6. Amens Section 11.108, Finance Code, to provide that the finance commission is subject to Chapter 325, Government Code (Texas Sunset Act). Provides that unless continued in existence as provided by that chapter, the commission is abolished September 1, 2013, rather than 2001.

SECTION 7. Amends Chapter 11B, Finance Code, by adding Sections 11.109-11.112 as follows:

Sec. 11.109. STANDARDS OF CONDUCT. Requires the presiding officer of the finance commission or the presiding officer's designee to provide to members of the finance commission, as often as necessary, information regarding the requirements for office under this title, including information regarding a person's responsibilities under applicable laws relating to

standards of conduct for state officers.

Sec. 11.110. TRAINING. (a) Provides that a person who is appointed to and qualifies for office as a member of the finance commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the finance commission until the person completes a training program that complies with this section.

(b) Requires the training program to provide the person with certain information.

(c) Provides that a person appointed to the finance commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 11.111. SEPARATION OF FUNCTIONS. Requires the finance commission to develop and implement policies that clearly separate the policymaking responsibilities of the finance commission and the management responsibilities of the banking commissioner, savings and loan commissioner, and consumer credit commissioner and staff of the finance agencies.

Sec. 11.112. PUBLIC TESTIMONY. Requires the finance commission to develop and implement policies that provide the public with a reasonable opportunity to appear before the finance commission and to speak on any issue under the jurisdiction of the finance agencies.

SECTION 8. Amends Section 11.202, Finance Code, to require the finance commission to direct a finance agency to employ an internal auditor to provide services to and facilitate commission oversight and control over the finance agencies.

(b) Authorizes the Texas Department of Banking to employ a hearings officer to serve the finance agencies as determined by interagency agreement. Provides that the hearings officer's only duty is to preside over matters related to contested cases before a finance agency or the finance commission.

SECTION 9. Amends Section 11.203, Finance Code, as follows:

Sec. 11.203. New heading: LIMITATION ON DIRECTION OF AUDITOR. Provides that the internal auditor reports to the finance commission and is not subject to direction by the employing finance agency.

SECTION 10. Amends Section 11.204, Finance Code, as follows:

Sec. 11.204. New heading: SHARING OF STAFF, EQUIPMENT, AND FACILITIES; ALLOCATION OF COSTS. (a) Requires the finance commission to use the staff, equipment, and facilities of the finance agencies to the extent necessary to carry out the finance commission's duties. Requires that, to reduce administrative costs, the finance agencies share staff, equipment, and facilities to the extent that the sharing contributes to cost efficiency without detracting from the staff expertise needed for individual areas of agency responsibility.

(b) Requires an interagency agreement to provide that the cost of staff used by the finance commission, including the internal auditor, is to be charged to the finance agencies in proportion to the amount of time devoted to each agency's business. Provides that all other costs of operation of the finance commission are to be shared by and included in the budgets of the finance agencies in proportion to the amount of cash receipts of each of those agencies.

SECTION 11. Amends Section 11.305, Finance Code, by amending Subsections (a) and (b) and

adding Subsection (d) as follows:

(a) Requires the finance commission to assign the banking commissioner, savings and loan commissioner, or consumer credit commissioner to conduct research on certain items.

(b) Makes a conforming change.

(d) Requires the Texas Department of Banking and the Savings and Loan Department to jointly conduct a continuing review of the condition of the state banking system. Requires the review to include a review of all available national and state economic forecasts and an analysis of changing banking practices and new banking legislation. Periodically the departments shall submit a report to the finance commission on the results of the review, including information relating to the condition of the state banking system at the time of the report and the predicted condition of that system in the future.

SECTION 12. Amends Section 11.306, Finance Code, as follows:

Sec. 11.306. New heading: MORTGAGE BROKER RULES. Authorizes the finance commission to adopt mortgage broker rules as provided by Chapter 156.

SECTION 13. Amends Chapter 11D, Finance Code, by adding Section 11.307, as follows:

Sec. 11.307. RULES RELATING TO CONSUMER COMPLAINTS. (a) Requires the finance commission to adopt rules applicable to each entity regulated by the Texas Department of Banking or the Savings and Loan Department specifying the manner in which the entity provides consumers with information on how to file complaints with the appropriate agency.

(b) Requires the finance commission to adopt rules applicable to each entity regulated by a finance agency requiring the entity to include information on how to file complaints with the appropriate agency in each privacy notice that the entity is required to provide consumers under law, including Pub. L. No. 106-102.

SECTION 14. Section 12.101(a), Finance Code, to provide that the banking commissioner serves at the will of the finance commission, rather than is an employee of the commission, and is subject to the finance commission's orders and directions.

SECTION 15. Amends Section 13.002(a), Finance Code, to make a conforming change.

SECTION 16. Amends Section 13.008(a), Finance Code, to delete language regarding the savings and loan commissioner.

SECTION 17. Amends Section 14.051(b), Finance Code, to provide that the commissioner serves at the will of the commission; and is subject to orders and directions of the commission.

SECTION 18. Amends Section 14.107, Finance Code, to require the finance commission to establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, and Chapters 392 and 394 and under Chapters 38-41, Business & Commerce Code.

SECTIONS 19-21. Make conforming changes to the Finance Code.

SECTION 22. Amends Section 61.007, Finance Code, to require the finance commission by rule set the amount of fees the commissioner charges for supervision and examination of associations filing an application or other documents, other services the commissioner performs and to specify the time and manner of payment of the fees.

SECTION 23. Amends Section 62.001(b), Finance Code, to make a nonsubstantive change.

SECTIONS 24-34. Make conforming changes to the Finance Code.

SECTIONS 35-37 Make conforming and nonsubstantive changes to the Finance Code.

SECTIONS 38-71, Make conforming changes to the Finance Code.

SECTION 72. Amends Section 154.002, Finance Code, to define “commission.”

SECTIONS 73-79 Make conforming changes to the Finance Code.

SECTION 80. Makes conforming and nonsubstantive changes.

SECTION 81- 102 Make conforming changes to the Finance Code.

SECTION 103. Repealer: Section 11.201 (Executive Director), Finance Code.

SECTION 104. (a) Requires the Texas Legislature to create and direct a committee consisting of representatives of the pawnbroker industry, law enforcement, and the computer software industry to study and recommend one or more standard formats for pawnbrokers to electronically provide reportable data to law enforcement agencies. Requires the committee to consider all privacy issues related to reporting such data to ensure the protection of the financial information of the individuals who use the services of the pawnbroker industry.

(b) Requires the committee to report its findings and recommendations to the Texas Legislature not later than June 30, 2002.

SECTION 105. Provides that a rule adopted by the Texas Department of Banking, the Banking Commissioner of Texas, the Savings and Loan Commissioner, or the Consumer Credit Commissioner that is in effect on the effective date of this Act and that is not inconsistent with this Act remains in effect as a rule or regulation of the finance commission until superseded by action of the finance commission.

SECTION 106. Provides that the changes made by this Act in the prohibitions and qualifications applying to members of the finance commission do not affect the entitlement of a member serving on the commission immediately before the effective date of this Act to continue to serve and function as a member of the finance commission for the remainder of the member's term. Provides that the changes in law apply only to a member appointed on or after the effective date of this Act. Provides that this Act does not prohibit a person who is a member of the finance commission on the effective date of this Act from being reappointed to the finance commission if the person has the qualifications required for a member under Chapter 11, Finance Code, as amended by this Act.

SECTION 107. Effective date: September 1, 2001.

#### **SUMMARY OF COMMITTEE CHANGES**

SECTION 104. Deletes text from previous version of Substitute and replaces it with text requiring the Texas Legislature to create and direct a committee consisting of representatives of the pawnbroker industry, law enforcement, and the computer software industry to study and recommend one or more standard formats for pawnbrokers to electronically provide reportable data to law enforcement agencies. Requires the committee to consider all privacy issues related to reporting such data to ensure the protection of the financial information of the individuals who use the services of the pawnbroker industry.

(b) Requires the committee to report its findings and recommendations to the Texas Legislature not later than June 30, 2002.