

## **BILL ANALYSIS**

Senate Research Center  
81R4739 JE-D

H.B. 2735  
By: Flynn (Estes)  
Government Organization  
5/7/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Credit Union Department (TCUD) oversees the safety and soundness of state-chartered credit unions in Texas. TCUD's mission is to safeguard the public interest, protect the interests of credit union members, and promote confidence in credit unions. To achieve its mission, TCUD examines state-chartered credit unions on a regular basis and assists the public by helping to resolve complaints against credit unions.

In fiscal year 2008, TCUD spent about \$1.79 million and employed 23 staff. TCUD relies on fees collected from credit unions to support its operations. TCUD supervised 213 state-chartered credit unions, with assets totaling \$20.35 billion, in fiscal year 2008.

TCUD is subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. The Sunset review found that Texas has a continuing need to regulate credit unions and that TCUD effectively carries out this regulation as a stand-alone agency. The Sunset review also found opportunities to improve TCUD's operations and regulations through greater transparency, expanded enforcement authority, and increased stakeholder input.

H.B. 2735 continues TCUD as an independent agency until September 1, 2021, requiring state-chartered credit unions to provide more information about their financial condition and management to their members. H.B. 2735 also requires credit unions to inform their members on a regular basis that they have access to certain documents related to their credit union's finances and management. H.B. 2735 requires credit unions to provide information about how many consumers are authorized to file a complaint with TCUD, and also authorizes the commissioner of TCUD to issue cease and desist orders to immediately stop unchartered entities from posing as credit unions.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Credit Union Commission in SECTION 11 (Section 15.4024, Finance Code), SECTION 13 (Section 15.409, Finance Code), SECTION 14 (Section 15.4105, Finance Code), SECTION 16 (Sections 15.501 and 15.502, Finance Code), and SECTION 17 (Section 122.107, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 15.001(a), Finance Code, to redefine "Texas trade association."

SECTION 2. Amends Section 15.201(c), Finance Code, to require that appointments to the Credit Union Commission (CUC) be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees. Deletes existing text relating to appointments to CUC being made without regard to creed. Makes nonsubstantive changes.

SECTION 3. Amends Section 15.202, Finance Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Prohibits a person from being a member of CUC if the person is an officer, employee, or paid consultant of a Texas trade association in the financial institutions field, or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the financial institutions field. Deletes existing text that prohibits a CUC member from being an officer, employee, or paid consultant of a trade association

representing or affiliated with a financial institution group or an entity affiliated with financial institutions; a spouse of an officer, manager, or paid consultant of a trade association representing or affiliated with a financial institution group or an entity affiliated with financial institutions; or a person who is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of CUC.

(c) Prohibits a person from being a member of CUC 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 the Texas Credit Union Department (TCUD).

SECTION 4. Amends Section 15.2041, Finance Code, as follows:

Sec. 15.2041. TRAINING PROGRAM. (a) Prohibits a person who is appointed to and qualifies for office as a member of CUC from voting, deliberating, or being counted as a member in attendance at a meeting of CUC until the person completes a training program that complies with this section. Deletes existing text that requires a person appointed to CUC, to be eligible to take office as a member of CUC, to complete at least one course of a training program that complies with this section, and requires a CUC member to complete a training program that complies with Subsection (b) not later than the 180th day after the date on which the person takes office.

(b) Requires that the training program provide the person with information regarding the legislation that created TCUD; the programs, functions, rules, and budget of TCUD; the results of the most recent formal audit of TCUD; the requirements of the laws relating to open meetings, public information, administrative procedure, and conflicts of interest; any applicable ethics policies adopted by TCUD or the Texas Ethics Commission; and the basic principles and responsibilities of credit union management. Deletes existing text requiring that a training program established under this section provide information to the member regarding the enabling legislation that created TCUD and its policy-making body to which the member is appointed to serve; the programs operated by TCUD; the role and functions of TCUD; the rules of CUC with an emphasis on the rules that relate to disciplinary and investigatory authority; the current budget of TCUD; and certain laws relating to open meetings, open records, administrative procedure, and conflicts of interest. Makes nonsubstantive changes.

(c) Entitles a person appointed to CUC 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. Deletes existing text that entitles a person appointed to CUC to reimbursement for travel expenses incurred in attending the training program, as provided by the General Appropriations Act and as if the person were a member of CUC.

SECTION 5. Amends Sections 15.206(b)-(d), Finance Code, as follows:

(b) Provides that it is a ground for removal from CUC that a member does not have at the time of taking office, rather than appointment, the qualifications, rather than applicable qualifications, required by Sections 15.202 (General Qualifications of Commission Members), 15.203 (Qualifications of Industry Commission Members); and 15.204 (Qualifications of Public Commission Members); is ineligible for membership under, rather than violates a prohibition established by, Section 15.202, 15.203, or 15.204; cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term, rather than the term for which the member is appointed; or is absent from more than half of the regularly scheduled CUC meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of CUC. Makes nonsubstantive changes.

(c) Provides that the validity of an action of CUC is not affected by the fact that it is taken when a ground for removal of a CUC member exists. Makes nonsubstantive changes.

(d) Requires the consumer credit commissioner (commissioner), if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of CUC, who is required to then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 6. Amends Section 15.210, Finance Code, to require the governor to designate a member of CUC as the presiding officer of CUC to serve in that capacity at the pleasure, rather than will, of the governor.

SECTION 7. Amends Section 15.212, Finance Code, as follows:

Sec. 15.212, SUNSET PROVISION. Provides that TCUD and CUC are subject to Chapter 325 (Sunset Law), Government Code (Texas Sunset Act). Provides that, unless continued in existence as provided by that chapter, TCUD and CUC are abolished September 1, 2021, rather than September 1, 2009. Makes nonsubstantive changes.

SECTION 8. Amends Section 15.302(c), Finance Code, as follows:

(c) Prohibits a person from being appointed commissioner if the person is an officer, employee, or paid consultant of a Texas trade association in the financial institutions field; or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the financial institutions field. Deletes existing text that prohibits the commissioner from being a salaried officer, employee, or consultant of a trade association in the credit union industry or be related within the second degree of affinity or consanguinity, as determined under Chapter 573 (Degrees of Relationship; Nepotism Prohibitions), Government Code, to a person who is a salaried officer, employee, or consultant of a trade association in the credit union industry.

SECTION 9. Amends Section 15.305, Finance Code, as follows:

Sec. 15.305. GENERAL COUNSEL. Prohibits a person from acting as the general counsel to CUC or TCUD 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 TCUD. Deletes existing text that prohibits a person who 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 CUC, from serving as general counsel to CUC.

SECTION 10. Amends Section 15.311, Finance Code, as follows:

Sec. 15.311. QUALIFICATIONS OF EMPLOYEES. Prohibits a person from being a TCUD employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if the person is an officer, employee, or paid consultant of a Texas trade association in the financial institutions field, or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the financial institutions field. Deletes existing text that prohibits a person from being an employee of TCUD who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, if the person is an officer, employee, or paid consultant of a trade association representing or affiliated with a financial institution group or an entity affiliated with financial institutions; or a spouse of an officer, manager, or paid consultant of a trade association representing or affiliated with a financial institution group or an entity affiliated with financial institutions. Makes nonsubstantive changes.

SECTION 11. Amends Subchapter E, Chapter 15, Finance Code, by adding Section 15.4024, as follows:

Sec. 15.4024. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires CUC to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of TCUD rules, and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under TCUD's jurisdiction.

(b) Requires TCUD's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) Requires CUC to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by TCUD.

SECTION 12. Amends Subchapter E, Chapter 15, Finance Code, by adding Section 15.4044, as follows:

Sec. 15.4044. FEES. Authorizes TCUD to charge a late fee against a credit union for late payment of its operating fees.

SECTION 13. Amends Sections 15.409(b)-(g), Finance Code, as follows:

(b) Requires TCUD to maintain a system to promptly and efficiently act on complaints filed with TCUD. Requires that TCUD maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text requiring the commissioner to supervise the establishment and maintenance of files regarding each written complaint filed with TCUD that TCUD has authority to resolve.

(c) Redesignates Subsection (d) as Subsection (c). Requires that TCUD make information available describing its procedures for complaint investigation and resolution. Deletes existing text requiring a file established and maintained under this section to include all relevant information regarding the nature, status, and disposition of the complaint. Deletes existing text of Subsection (c) requiring TCUD to provide to a person filing a complaint and the persons complained about TCUD's policies concerning complaint investigation and resolution.

(d) Redesignates Subsection (e) as Subsection (d). Requires TCUD to periodically notify the complaint parties of the status of the complaint until final disposition. Deletes existing text requiring TCUD, at least quarterly until final disposition of any written complaint that is filed with TCUD, to notify the parties to the complaint of its status unless the notice would jeopardize an undercover investigation.

(e) Redesignates Subsections (f) and (g) as Subsection (e). Requires that CUC by rule establish methods by which consumers and service recipients are notified of the name, mailing address, telephone number, and Internet website of TCUD for the purpose of directing complaints to TCUD. Requires CUC to provide for that notification on the Internet website of a credit union regulated under this chapter and Subtitle D (Credit Unions), Title 3 (Financial Institutions and Businesses), if the credit union maintains a website, on a sign prominently displayed in the place of business of each credit union regulated under this chapter and Subtitle D, Title 3, and in any newsletter distributed by a credit union regulated under this chapter and Subtitle D, Title 3, if the credit union distributes a newsletter. Deletes existing text requiring TCUD to keep certain

information about each complaint filed by TCUD. Deletes existing text authorizing CUC to provide for notification on each registration form, application, or written contract for services of certain credit unions and in a certain manner.

(f) Authorizes CUC by rule to establish other methods by which credit unions that do not have an Internet website or do not distribute a newsletter are authorized to make the information described by Subsection (e) more readily available to credit unions' customers and service recipients.

SECTION 14. Amends Subchapter E, Chapter 15, Finance Code, by adding Section 15.4105, as follows:

Sec. 15.4105. ANNUAL REPORT TO MEMBERS. (a) Requires CUC to adopt, and the commissioner to enforce, reasonable rules requiring a credit union regulated under this chapter and Subtitle D, Title 3, to provide an annual report to the credit union's members regarding the credit union's financial condition and management. Requires that the report include certain items concerning the credit union's finances and management.

(b) Requires CUC, in adopting rules under this section, ensure that a credit union updates the report before the credit union's annual organizational meeting; makes the report available to members throughout the year on the credit union's Internet website, if the credit union maintains a website; and provides the report to credit union members by an alternative method, including delivery at the credit union's annual organizational meeting, if the credit union does not have an Internet website.

SECTION 15. Amends Subchapter E, Chapter 15, Finance Code, by adding Section 15.416, as follows:

Sec. 15.416. USE OF TECHNOLOGY. Requires that CUC to implement a policy requiring TCUD to use appropriate technological solutions to improve TCUD's ability to perform its functions. Requires that the policy ensure that the public is able to interact with TCUD on the Internet.

SECTION 16. Amends Chapter 15, Finance Code, by adding Subchapter F, as follows:

#### SUBCHAPTER F. RULES REGARDING USE OF ADVISORY COMMITTEES

Sec. 15.501. RULEMAKING AUTHORITY. (a) Requires CUC to adopt rules, in compliance with Section 15.407 (Official Committees) and Chapter 2110 (State Agency Advisory Committees), Government Code, regarding the purpose, structure, and use of the advisory committees by CUC, including rules governing certain operational requirements for an advisory committee.

(b) Requires that an advisory committee be structured and used to advise CUC. Prohibits an advisory committee from being responsible for rulemaking or policymaking.

Sec. 15.502. PERIODIC EVALUATION. Requires CUC by rule to establish a process by which to periodically evaluate an advisory committee to ensure its continued necessity. Authorizes CUC to retain or develop committees as appropriate to meeting changing needs.

Sec. 15.503. COMPLIANCE WITH OPEN MEETINGS ACT. Requires a CUC advisory committee to comply with Chapter 551, Government Code.

SECTION 17. Amends Subchapter C, Chapter 122, Finance Code, by adding Section 122.107, as follows:

Sec. 122.107. NOTICE OF AVAILABILITY OF CERTAIN DOCUMENTS. (a) Requires a credit union regulated under this subtitle and Chapter 15 to give notice to the

credit union's members of the availability on request of a member of documents related to the credit union's finances and management, including a summary of the most recent annual audit; the most recent statement of financial condition, such as nonconfidential pages of the quarterly call report provided under Section 122.101 (Call Reports); a copy of IRS Form 990 or its successor; and any other documents that members are entitled to possess, as determined by CUC.

(b) Requires that the notice required by Subsection (a) be given on the credit union's Internet website if the credit union maintains a website, and in a newsletter twice a year if the credit union distributes a newsletter.

(c) Requires CUC to adopt reasonable rules to implement this section, including rules prescribing an alternative method for credit unions that do not maintain an Internet website or distribute a newsletter to provide their members with notice of the documents by Subsection (a).

SECTION 18. Amends the heading to Section 122.257, Finance Code, to read as follows:

Sec. 122.257. CEASE AND DESIST ORDER FOR CREDIT UNIONS.

SECTION 19. Amends Subchapter F, Chapter 122, Finance Code, by adding Section 122.2575, as follows:

Sec. 122.2575. CEASE AND DESIST ORDER FOR OTHER PERSONS. (a) Authorizes the commissioner, if it appears to the commissioner that a person who is not authorized to engage in business under this subtitle or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.) is violating this subtitle, a rule adopted under this subtitle, or another state statute or rule relating to the regulation of credit unions, to issue without notice and hearing an order to cease and desist from continuing a particular action to enforce compliance with the applicable state statute or rule relating to the regulation of credit unions. Requires that the order contain a reasonably detailed statement of the fact on which the order is made.

(b) Requires the commissioner, if a person against whom an order under this section is made requests a hearing, to set and give notice of a hearing before the commissioner or a hearings officer. Requires that the hearing be governed by Chapter 2001, Government Code.

(c) Provides that an order under this section becomes final unless the person to whom the order is issued requests a hearing not later than the 30th day after the date the order is issued. Provides that if a hearing has not been requested not later than the 30th day after the date the order is made, the order is considered final and nonappealable.

SECTION 20. Provides that the change in law made by this Act in the qualifications of the members of CUC does not affect the entitlement of a person serving as a member of CUC immediately before September 1, 2009, to continue to carry out the functions of the person's office for the remainder of the person's term. Provides that the change in law applies only to a person appointed on or after September 1, 2009. Provides that this Act does not prohibit a person who is a member of CUC immediately before September 1, 2009, from being reappointed as a CUC member if the person has the qualifications required for the position under Chapter 15 (Credit Union Commission and Department), Finance Code, as amended by this Act.

SECTION 21. Effective date: September 1, 2009.