



**Independent
Bankers
Association
of Texas**

Joe Kim King
IBAT Chairman
jkk@bradynationalbank.com
Brady National Bank

Ronnie Miller
IBAT Chairman-Elect
rmiller@cnbanktx.com
Community National Bank, Hondo

Richard F. Scanio
IBAT Secretary-Treasurer
rscanio@americanbank.com
American Bank, Corpus Christi

Hazem Ahmed
Leadership Division Chairman
hahmed@ibanktx.com
Integrity Bank, ssb, Pasadena

Thomas C. Sellers
IBAT Education Foundation Chairman
tsellers@alliancebank.com
Alliance Bank, Sulphur Springs

Darla Rooke
Immediate Past Chairman
drooke@junctionnational.com
Junction National Bank

Christopher L. Williston, CAE
President and CEO
cwilliston@ibat.org

Mark Few
Director-Membership/Strategic Relations
mfew@ibat.org

Jane Holstien
Director-Board Relations/Events
jholstien@ibat.org

Ursula L. Jimenez, CAE
Chief Financial Officer
ujimenez@ibat.org

Stephen Y. Scurlock
Director-Government Relations/Public Policy
sscurlock@ibat.org

Christopher L. Williston, VI, CAE
Chief Operations Officer
clwilliston@ibat.org

Julie Courtney, CAE, CMP
IBAT Education Foundation President
jcourtney@ibat.org

Curt Nelson
IBAT Services Inc. President
cnelson@ibat.org

May 9, 2018

Ken Levine
Director
Sunset Advisory Commission
Post Office Box 13066
Austin, TX 78711

RE: Sunset Review of the Finance Commission of Texas and related agencies

Dear Mr. Levine:

Thank you for the opportunity to comment on the Staff Report addressing the Finance Commission of Texas and the agencies under its purview. The Independent Bankers Association of Texas (IBAT) represents the interests of more than 2800 banks and branches in 700 communities across Texas.

While we work with each of these agencies (Texas Department of Banking, Office of Consumer Credit Commissioner and Department of Savings and Mortgage Lending), and each has some influence over the activities of our members, the majority of our interaction and that of our membership is with the Texas Department of Banking. The Department of Banking, under the outstanding leadership of Commissioner Charles Cooper, is considered one of the premier banking regulatory agencies – state or federal – in the country. We have found each of the agencies to be highly responsive, attentive to our concerns and very professional in the discharge of their important roles in the financial services industry.

Our comments below focus on those recommendations impacting the regulation of the banking industry.

Issue 1 Recommendations

1.1 Abolish the Department of Savings and Mortgage Lending as a separate state agency and transfer regulation of state savings banks and the mortgage industry to the Texas Department of Banking.

This recommendation is clearly the most controversial of those offered in this report. IBAT membership includes some 80% of the state chartered commercial banks (regulated by the Texas Department of Banking) as well as a majority of the state savings banks (regulated by the Department of Savings and Mortgage Lending) domiciled in Texas. We take pride in being a “member-driven” organization. In a recent survey of our state savings bank members to determine their position on this issue, a significant majority were strongly in favor of maintaining the independence of the Department of Savings and Mortgage Lending for the regulation of their institutions.

After thorough discussion with our volunteer leadership, IBAT respectfully disagrees with this recommendation based upon the input received from our state savings bank members.

1.2 Continue the Texas Department of Banking for 12 years.

IBAT concurs with this recommendation.

1.3 Continue the Office of Consumer Credit Commissioner for 12 years.

IBAT concurs with this recommendation.

Issue 2 Recommendations

Our industry and members fund a majority of the overall cost of the combined activities of the Finance Commission agencies, and no General Revenue/tax monies are utilized by any of the agencies. We are strong proponents of the self-directed semi-independent (SDSI) status of these agencies, and believe that each of the agencies and the Finance Commission take this responsibility very seriously. IBAT believes that transparency and accountability to the Legislature and Executive Branch, as well as the regulated industries and the public, are vitally important duties of all government entities. It is our experience that the Finance Commission and the agencies under their jurisdiction are in full agreement.

2.1 Require the finance agencies to remit all administrative penalties to the General Revenue Fund.

IBAT respectfully disagrees with this recommendation. The vast majority of entities regulated by these agencies seeks to comply with the law and applicable rules. As indicated previously, the regulated entities pay all of the costs for this regulation. Fines and penalties are assessed for “the outliers” and those who are not “playing by the rules.” The cost of investigation, possible hearings, appeals and legal review can be significant. It simply does not seem appropriate for those who are compliant to subsidize those who for whatever reason are outside of the bounds of acceptable behavior. The remittance of administrative penalties to the General Revenue Fund will clearly penalize those attempting to “play by the rules.”

Further, it is my recollection that all administrative penalties assessed are reported to the Finance Commission at their regular meetings, which acts as a safeguard to any potential abuse of this policy. Such penalties are purposefully not included in the agencies’ budgets, as they are neither predictable nor should they be relied upon to fund normal operations.

2.2 Direct the Finance Commission to evaluate and update the agencies’ key performance measures.

IBAT concurs with this recommendation.

2.3 Direct the Finance Commission to develop a budget policy that fosters more straightforward budgeting and fee setting.

IBAT believes that the current budget process is indeed straightforward, transparent and appropriate. We have been engaged with the budgeting process for the Departments of Banking and Savings and Mortgage Lending in both the SDSI environment and when these agencies were under the Appropriations process. IBAT appreciates the stewardship of monies collected from our industry by these agencies, and has heard no concerns from any of our state chartered financial institutions regarding any waived assessment fees in the event those funds were not needed for that fiscal year. In fact, they appear appreciative and much prefer this scenario to a special assessment when circumstances dictate an additional assessment to offset unanticipated expenses.

2.4 Direct the Finance Commission to update its fund balance policy to limit growth.

The Finance Commission recognizes the need to address the fund balance issue, and adopted an updated liquidity and fund balance policy in February 2018. IBAT recommends that this new policy be given appropriate time to be implemented. Further, this issue is a frequent topic of discussion at Finance Commission meetings and is being addressed.

2.5 Direct the Finance Commission to develop standard policies regarding tracking and reporting of travel expenditures.

IBAT supports transparency in the operations of the Finance Commission agencies. As indicated previously, we believe that these agencies are prudent in the control of expenditures.

2.6 Direct the Finance Commission to minimize duplication of agency functions and promote more cost-efficient administration of the finance agencies.

IBAT supports seeking efficiencies by further combining functions to promote efficiency among the Finance Commission agencies where appropriate. Under the present scheme, each agency is responsible for meeting their statutory responsibilities and the expectations of the Finance Commission, so some separation of key functions is very appropriate. While there are similarities in the activities of the agencies, there are also some significant differences in their regulatory responsibilities and processes that may make consolidation problematic, especially in the complaint intake, human resources and information technology areas. Further, a seemingly arbitrary 10% reduction in administrative costs appears unwarranted, and would be more appropriate in our opinion to recommend the Finance Commission explore possible avenues for efficiencies in this area.

We are especially concerned with the recommendation to centralize the complaint process, and believe that would result in a more cumbersome and less responsive process. These agencies regulate a very diverse population of financial services firms, with substantive differences in business models and governing statutes and rules. The process appears to work well, and we would urge that these functions continue to be dealt with by each agency.

Issue 3 Recommendations

IBAT has no position on any of these issues.

Issue 4 Recommendations

These recommendations appear reasonable and appropriate. Given the numerous areas that will require attention through the Sunset process, not to mention the significant ongoing responsibilities of the Department of Banking, it would appear reasonable to extend the deadline for **4.4** to at least December 1, 2019.

Issue 5 Recommendations

IBAT has no position on these recommendations as they do not appear to impact our membership.

Issue 6 Recommendations

As in Issue 4 commentary above, these recommendations appear reasonable and appropriate. The comments regarding an extension of 90 days to adopt updated complaint rules are applicable as well.

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Issue 7 Recommendations

These recommendations appear reasonable and appropriate.

IBAT appreciates the thorough review of these important agencies, and thanks the Sunset staff for their courtesies, communications and professionalism in our interactions. We look forward to working with the Sunset Commission and staff through this process, and appreciate the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Scurlock". The signature is written in a cursive, flowing style.

Stephen Y. Scurlock
Director of Government Relations and Public Policy