

**SELF-EVALUATION REPORT**  
**TO THE SUNSET ADVISORY COMMISSION**

**TEXAS DEPARTMENT OF BANKING**  
**AUGUST 1999**

**Randall S. James**  
**Acting Commissioner**

# TABLE OF CONTENTS

---

Instructions .....	2
Self-Evaluation Report .....	3
I. Key Functions, Powers, and Duties .....	3
II. History and Major Events .....	16
III. Policymaking Structure .....	28
IV. Funding .....	33
V. Organization .....	42
VI. Guide to Agency Programs	
Bank Examination .....	45
Application Processing .....	56
Prepaid Funeral Contract .....	61
Perpetual Care Cemetery .....	68
Currency Exchange .....	74
Sale of Checks .....	79
VII. Agency Performance Evaluation .....	83
VIII. 76th Legislative Session Chart .....	94
IX. Policy Issues	
I. Would the licensing, regulation, supervision, and examination of the death care industry be improved through restructuring of supervision, increased specificity in the statutes, and redesigned agency authority to encourage compliance with the statutes? .....	98
X. Comments .....	99
Attachments .....	Binder

## INSTRUCTIONS

---

Each agency under Sunset review is required by law to complete a Self-Evaluation Report on its operations. The Self-Evaluation Report is designed to provide the Sunset Commission members and staff with a general background description of each agency being reviewed. The report also gives each agency an opportunity to provide the Commission with a preview of issues and suggested improvements regarding the agency and its functions.

The Self-Evaluation Report contains ten sections. Agencies should record their responses to each question directly on this electronic form. Answers should be typed in the white space beneath each question box. Use as little or as much room as needed to answer each question. In charts, add or delete rows, or change column widths as necessary. In addition, chart headings can be renamed to better reflect agency practices. If the information requested does not apply to the agency, please either provide similar information to reflect agency practices, or enter "N/A" in the space provided.

Once the report is complete, please fill in the appropriate page numbers on the table of contents. The Instructions, Attachments, and Examples sections can be deleted from the Self-Evaluation Report that the agency submits to the Sunset Commission.

This document contains examples for certain sections of the Self-Evaluation Report, both in the hard copy and in the electronic version. In the electronic version, links are provided to jump directly from one part of the document to another, and can be accessed by clicking on the underlined text where the links appear.

Reviewing the background and issues sections of recent Sunset staff reports may also be helpful in preparing certain sections of the Self-Evaluation Report. Recent Sunset staff reports are available on the Sunset website at [www.sunset.state.tx.us](http://www.sunset.state.tx.us). Hard copies can also be obtained by calling the Sunset Commission office at (512) 463-1300.

Finally, please notify Sunset of any major changes or updates to the information provided in the Self-Evaluation Report that occur between submission and January 2001 (e.g., new board members, changes in the organizational structure).

By August 15, 1999, please submit:

- C the electronic version of the Self-Evaluation Report to: [sunadmin@sunset.state.tx.us](mailto:sunadmin@sunset.state.tx.us)
- C four hard copies of the Self-Evaluation Report on 8½ x 11-inch paper, three bound and one left unbound, to:

Sunset Advisory Commission  
P.O. Box 13066  
Austin, TX 78711

Please contact Ginny McKay or Lisa Mogil of the Sunset staff at (512) 463-1300 with any questions, or you can e-mail them at [gabby.mckay@sunset.state.tx.us](mailto:gabby.mckay@sunset.state.tx.us) or [lisa.mogil@sunset.state.tx.us](mailto:lisa.mogil@sunset.state.tx.us). Every effort will be made to minimize the additional workload this report places on an agency.

## TEXAS DEPARTMENT OF BANKING Self-Evaluation Report

### ***I. Key Functions, Powers, and Duties***

Please provide the following information about the overall operations of the agency. More detailed information about individual programs will be requested in a later section.

**A. Provide an overview of the agency’s mission, key functions, powers, and duties. Specify which duties are statutory.**

The mission of the Texas Department of Banking is to ensure that Texas has a safe and sound financial services system (see the agency’s strategic plan, Exhibit I).

Statutory duties of the Department of Banking include the chartering or licensing, regulation, supervision, and/or examination of:

- C State-chartered commercial banks,
- C State-chartered trust companies,
- C Bank holding companies,
- C Interstate branches of state banks,
- C Foreign bank offices,
- C Perpetual care cemetery trust funds,
- C Prepaid funeral contract sellers,
- C Check sellers (money orders, traveler's checks, etc.), and,
- C Currency exchange, transmission, and transportation businesses.

The agency also examines and regulates the providers of information systems (IS) processing for state banks. As required by law, the agency records and investigates consumer complaints on the regulated entities.

**B. Does the agency’s enabling law correctly reflect the agency’s mission, key functions, powers, and duties?**

Yes. To the extent that chartering or licensing, regulation, supervision and examination are central to ensuring the safety and soundness of the financial institutions entrusted with citizens’ assets, the enabling statutes generally provide adequate authority and flexibility to perform these duties. Exceptions are the statutes over the perpetual care cemetery and prepaid funeral industries. These laws convey very limited powers to the Department to correct egregious situations, and in some instances, to protect citizens’ interests. Therefore, the agency is not completely able to ensure the safety and soundness of these industries and their responsiveness to the public.

**C. Please explain why these functions are needed. Are any of these functions required by federal law?**

The functions of the Department of Banking are needed to ensure the safety of Texas citizens' monies entrusted to institutions providing financial services, and death-care providers who warrant future products/services.

The ability of states to charter financial institutions is important in that it fosters creativity in financial services, regulatory efficiency, and local control over important economic functions. The "dual (state and federal) banking system" encourages entry into the banking industry and ensures a high level of competition. Consumers, businesses, and the economy as a whole benefit from the ability to choose among a wide range of financial service providers. The existence of two separate, but parallel, regulatory systems also advances professionalism and efficiency in the regulatory system itself. The state banking system has been the incubator of innovation in banking over the years. Everything from ATMs to the Limited Banking Association was developed by the states. The state banking system provides for local control, regional influence, and support for the economy locally.

The regulation, supervision and examination of banks is needed to ensure that their activities are conducted in a safe and sound manner. Sound bank conditions promote economic prosperity and protect depositors and the federal deposit insurance fund. Federal law requires that insured depository institutions be examined, and the agency's examinations meet the qualifications of a federal examination. The Department therefore generally alternates bank examinations with the federal banking regulators, with the state performing the examination in one mandatory examination period, and the applicable federal agency (either the Federal Reserve Bank of Dallas or the FDIC) performing the next mandated examination. This program reduces regulatory burden and ensures consistency between the federal and state agencies.

The licensing, regulation, supervision and examination of foreign banking activities in Texas provide the state a means to monitor and control this activity. Foreign banks provide a significant source of capital and investment for the state, and have not historically competed with commercial banks for deposits as they have been statutorily prohibited from accepting such. Also, foreign banks offer only limited competition to commercial banks in the lending arena since they generally make only very large loans which are beyond the lending limits of most community banks.

Although the Department has the authority to examine bank holding companies, it has not historically exercised this authority due to the oversight of these entities by the Federal Reserve Bank. The Federal Reserve Bank generally performs onsite examinations of holding companies, and some bank affiliates. The agency does review the examination reports issued by the Federal Reserve.

State licensing, regulation, supervision, and examination of the trust company, death care, sale of check and money transmitter industries help prevent fraud, abuse, and loss of consumer funds to these providers. There are no federal programs that establish minimum standards of entry into these industries, nor is there any other existing means of controlling and monitoring this activity.

**D. In general, how do other states carry out similar functions?**

All states license and regulate state-chartered banks, although other states may allow their banks to engage in different activities. Also, different chartering criteria, timeframes, and fees exist among the states. Most states carry out the bank examination program in generally the same manner as the Department of Banking. All state and federal banking regulators use a common bank rating system and conduct onsite bank examinations, although

examination frequency and scope may vary. Not all states have the authority or capability to alternate examinations with the federal regulators.

The organizational structure of state banking authorities varies widely among the states. In the 1998 Profile of State-Chartered Banking issued by the Conference of State Bank Supervisors (excerpts provided), 23 of the 52 reporting banking departments (including the District of Columbia, Guam and Puerto Rico) operate independently from a parent agency. Supervision of banks is consolidated with the supervision of savings and loans (in 75% of the states), with savings banks (in 85% of the states), and with credit unions (in 72% of the states).

While Texas does, not all states charter and examine trust companies. The Department uses a unique rating system to evaluate the condition of state-chartered trust companies and offers an exemption from examination for trust companies that do not offer services to the public. Exempt trust companies are subject to an annual certification/verification that they are not offering their services to the public, but are otherwise exempt from the examination and reporting requirements of the trust company statute. The Department has recently amended the statutes to offer a “family trust company” charter that has less stringent regulatory requirements than a trust company doing business with the public (i.e. lower minimum capital requirements), but still subjects the company to annual regulatory examinations.

While Texas does, not all states participate with the federal banking authorities in the examination of bank IS providers due to the level of expertise required.

Only a few states have foreign banking activity. Where foreign banking activity is present, the state normally licenses, regulates, and examines these entities. A common set of rating criteria is used by the state and federal regulators to evaluate their condition. These activities are generally uniform among the states. The Department coordinates supervision and examination of these entities with the Federal Reserve Bank of Dallas.

There are no federal laws pertaining to the regulation of prepaid funeral contracts. However, most states have enacted licensing and regulatory programs similar to the one in Texas. There are varying degrees of such contract regulation and supervision among the states. Some states’ regulatory oversight provides only minimal consumer protection, while other states have more extensive licensing and examination requirements. Only a few other states perform on-site examinations of their licensees.

There are no federal laws pertaining to the regulation of perpetual care cemeteries. However, most states have enacted licensing and regulatory programs similar to the one in Texas. There are varying degrees of cemetery regulation and supervision among the states. In some states, regulatory oversight is limited to registering the cemeteries and collecting a registration fee. Some states do not perform on-site examinations of the licensees, while others have programs similar to Texas.

Check seller, currency exchange and currency transmission businesses are commonly known as the money transmission industry. Forty-six other states have some type of money transmission licensing and regulation. Some states’ regulatory oversight is limited to registering the businesses and collecting a registration fee. While Texas does, not all states perform on-site examinations of the licensees. These industries are not subject to federal oversight, although there are federal laws requiring the reporting of large currency transactions.

**E. Describe any major agency functions that are outsourced.**

The Department's internal audit function is outsourced at the Finance Commission level. To date, audits have only been performed on Banking Department activities.

The Finance Commission has elected to retain a professional search firm to recruit a replacement for the banking commissioner. In the past, this function has been handled by the Department of Banking's Human Resource office. All other major functions are performed internally by Department of Banking personnel.

Due to lack of adequate staffing, the Department of Banking performs very little in-house training of its employees. Examiners are generally trained through attendance at courses offered by the federal banking regulators or the Conference of State Bank Supervisors. Administrative staff attends courses offered by external providers or other state agencies.

The Department uses the databases of the federal banking regulators to obtain financial and structural information on state-chartered banks.

The Office of the Attorney General is used to provide litigation support for the agency. Some litigation work has been outsourced to private attorneys when the Attorney General has declined to pursue an action.

**F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency's key functions.**

**Anticipated Changes in Federal Law**

Federal banking law continues to evolve as the market pushes the statutory envelope limiting traditional banking powers. A complete review of current pending issues in federal law is included as Exhibit II. The following anticipated changes directly relate to the Banking Department's key functions.

***Financial Modernization.*** A bill is currently pending in Congress which relates to "financial modernization," and is generally intended to loosen restrictions on bank activities and broaden the activities that can be conducted by a bank subsidiary. This effort has been underway for two sessions and may still fail this session, although the parties are closer than ever before. The differences between the House (formerly H.R. 10) and Senate version (S. 900) are highlighted in Exhibit III. Important aspects of the pending legislation include the issues of unitary thrifts and operating subsidiaries. Federal law presently allows "unitary thrifts," (thrift holding companies approved by the Office of Thrift Supervision "OTS") to engage in any legitimate business activity that they choose, and be free from the activities restrictions that apply to bank holding companies. In addition, the federal thrift charter is attractive because of the aggressive state law preemption policy practiced by the OTS. In the last three years, 174 federal thrift acquisitions or new charter applications have been filed, of which 55 were filed by insurance or securities companies prevented by the Glass-Steagall Act of 1933 from owning a bank (see Exhibit I under Section G - statutes affecting the agency). These companies fully intend to use the thrift charter to preempt state regulation and conduct nationwide lending and fiduciary activities as an adjunct to their principal business, without regard to local law. Incentive exists for state charters to convert to the federal thrift charter in order to take advantage of these expanded powers. Alternatively, state charters may apply for parity to obtain competitive powers. As currently written, the House bill would prohibit OTS from approving any applications filed by commercial companies after March 4, 1999. Regarding operating subsidiaries, the Federal Reserve Board wants to use holding company subsidiaries for expanded activities and its position is supported by the Senate bill. The Treasury Department wants to allow direct bank operating subsidiaries to engage in these activities, and is supported by the House bill. Serious disagreement also exists over how to regulate securities activities. Expanded activities at the bank level would require that the Department review or appropriately supervise the new functions.

**Pending Uniform State Law**

The National Conference of Commissioners on Uniform State Laws (NCCUSL) held its Annual Meeting in July 1999 in Denver, Colorado, and granted first approval of a model act draft that is of significant interest to the Department. NCCUSL bylaws require that a model or uniform act be approved at two Annual Meetings before the act is recommended to the states for adoption.

*Money Services Business Act.* Section 407 of the Reigle Community Development and Regulatory Improvement Act of 1994 (PL 103-325, 108 Stat. 2160), expressed the sense of the Congress that the states should pursue uniform licensing and regulation of check cashing, currency exchange, and money transmitting businesses, for purposes of preventing money laundering and protecting the payment system from fraud and abuse. Pursuant to this provision, the Treasury Department gave a grant to NCCUSL to draft a model act. The drafting committee this year produced the draft Money Services Business Act, a model law which would significantly dilute current Texas and other states' regulations and is uniformly opposed by state regulators. Should NCCUSL grant second and final approval to this model law and if the Texas Legislature passes it, the state's ability to combat money laundering will be diminished, even though check cashers would be licensed and regulated in Texas.

**Outstanding Cases**

*Texas Department of Banking, Catherine A. Ghiglieri, Banking Commissioner of Texas, and Carole Keeton Rylander, Texas Comptroller of Public Accounts, v. Mt. Olivet Cemetery Assoc.,* Case No. 03-99-00359-CV, in the Third Court of Appeals, Austin, Texas; appealing from *Mt. Olivet Cemetery Assoc. v. Texas Department of Banking, Catherine A. Ghiglieri, Banking Commissioner of Texas, and Carole Keeton Rylander, Texas Comptroller of Public Accounts,* Cause No. 98-06266, 53rd Judicial District Court of Travis County, Texas (June 2, 1999).

Mount Olivet Cemetery Assoc., Ft. Worth (MOCA) filed suit in response to criticisms in Department examination reports that it had retained about \$1 million in unclaimed or abandoned property in its prepaid funeral contract trust fund, attributable to contracts for which the owner or beneficiary cannot be located. MOCA sought a declaratory judgment that it was not subject to the unclaimed property statutes by virtue of a 1981 commissioner's order approving its "alternate" plan for protecting consumers in lieu of the statutory structure now codified in Fin. Code Chapter 154. MOCA's plan permits withdrawal of all earnings quarterly. The statutory provision authorizing approval of an alternate plan is now codified as Fin. Code §154.201(3). Only one alternate plan has ever been approved, and the department has been unable to revise its 1981 approval in spite of what the Department has perceived as changed circumstances. (see *Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129 (Tex. App.--Austin 1986, writ ref'd n.r.e.).

The agencies asserted a plea to the jurisdiction, arguing that they had not taken any overt action to subject MOCA to enforcement, but the plea was denied. MOCA won a summary judgment motion that its fund is not subject to the unclaimed property statutes and obtained an injunction against the agencies enforcing those statutes against MOCA. MOCA also obtained a judgment for attorneys fees in the amount of \$15,000, plus additional amounts for different stages of appeal. An appeal has been filed and is pending.

**G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency.** Do not include general state statutes that apply to all agencies, such as the Open Records Act, the Open Meetings Act, or the Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1995 - 1999, or earlier significant Attorney General opinions, that affect the agency's operations.

<b>Texas Department of Banking Exhibit 1: Statutes/Attorney General Opinions</b>	
<b>Statutes (as effective September 1, 1999)</b>	
<b>Citation/Title</b>	<b>Authority/Impact on Agency</b>
<i>State Constitution/Statutes</i>	
Tex. Const. Art. XVI, §16(c).	Constitutional authority for corporate banking was initially added in 1905 to reverse an earlier prohibition. Most provisions of §16 are federally preempted by federal cases and statutes as discussed below, either directly or through operation of §16(c). Subsection 16(c) has a continuing impact on the agency by mandating competitive parity of state banks with respect to “rights and privileges” of national banks domiciled in this state, notwithstanding state statutes to the contrary.
Fin. Code, Tit. 2, Chapter 12.	General enabling statute for Department, and commissioner as its chief executive officer.
Fin. Code, Tit. 3, Subtit. A: • Chapters 31-37.	Authority of commissioner to charter, examine, and regulate state banks, to enforce the Texas Banking Act, and to close and liquidate insolvent state banks. Amended by H.B. 2066, art. 2, eff. Sept. 1, 1999, to conform with new interstate banking and branching authorization.
Fin. Code, Tit. 3, Subtit. E: • Chapter 152.	Authority of commissioner to license, examine, and regulate check sellers and to enforce the Sale of Checks Act. Limited rulemaking authority in Fin. Code §152.102(b), regarding permissible investments. (Finance Commission also has rulemaking authority in §152.102(a).)
Fin. Code, Tit. 3, Subtit. E: • Chapter 153.	Authority of commissioner to license, examine, and regulate currency exchange, transmission, and transportation businesses and to enforce the Currency Exchange Act.
Fin. Code, Tit. 3, Subtit. E: • Chapter 154.	Authority of commissioner to license, examine, and regulate sellers of prepaid funeral services and merchandise, and to enforce Chapter 154. Rulemaking authority of commissioner in Fin. Code §154.051. Commissioner chairs Guaranty Fund Advisory Council and administers Fund under Fin. Code §§154.351-154.357.
Fin. Code, Tit. 3, Subtit. F: • Chapters 181-186, 199 (as codified by S.B. 1361, §7.16, eff. Sept. 1, 1999).	Authority of commissioner to charter, examine, and regulate state trust companies, to enforce the Texas Trust Company Act, and to close and liquidate insolvent state trust companies (except to the extent Subtitle F is superseded by H.B. 2066, art. 3-4, eff. Sept. 1, 1999 (see next entry)).
V.T.C.S. Arts. 342a-1.001 et seq., as amended eff. Sept. 1, 1999. (Surviving portions of Chapters 1-3 and 6-8, Texas Trust Company Act.)	Amended authority of commissioner to regulate trust companies, primarily conforming amendments to authorize multistate trust business. (H.B. 2066, art. 4.) The Texas Legislative Council will seek to codify these provisions into Fin. Code, Tit. 3, Subtit. F in the 2001 legislative session.

Citation/Title	Authority/Impact on Agency
New V.T.C.S. Arts. 342-9.001 et seq. (Chapter 9, Texas Trust Company Act).	New chapter effective Sept. 1, 1999, authorizing multistate trust business by state trust companies in other states or foreign countries, and by out-of-state trust institutions in this state. Commissioner has authority to regulate entry and conduct of out-of-state trust companies; if necessary, to the same extent as state trust companies. (H.B. 2066, art. 3.) The Texas Legislative Council will seek to codify these provisions into Fin. Code, Tit. 3, Subtit. F in the 2001 legislative session.
Fin. Code, Tit. 3, Subtit. G: ● Fin. Code §§201.005-.006.	Authority of commissioner to cooperate with other state, federal, and foreign banking regulators to emphasize seamless regulation of interstate banking, to share fees with other regulators, and to issue interpretations of law governing interstate activities. Subtitle G was added by H.B. 2066, §1.001, eff. Sept. 1, 1999.
Fin. Code, Tit. 3, Subtit. G: ● Fin. Code §201.009.	Authority of commissioner to take administrative enforcement action against out-of-state state banks, foreign banks, and bank holding companies to the same extent as if they were state banks.
Fin. Code, Tit. 3, Subtit. G: ● Fin. Code Chapter 202.	Authority of commissioner to comment on or review and approve out-of-state bank holding company acquisitions of Texas banks.
Fin. Code, Tit. 3, Subtit. G: ● Fin. Code Chapter 203.	Authority of commissioner to approve interstate bank branches and acquisitions by state banks in other states and authority for out-of-state banks to branch into this state under a reciprocity de novo standard. Subject to interstate regulatory cooperation, commissioner has authority to regulate Texas branches of out-of-state banks on the same basis as Texas state banks.
Fin. Code, Tit. 3, Subtit. G: ● Fin. Code Chapter 204.	Authority of commissioner to approve, examine, and regulate foreign bank branches, agencies, and representative offices in this state.
Health & Safety Code, Chapter 712.	Authority of commissioner to approve formation of perpetual care cemetery corporations, and to examine a corporation's perpetual care trust fund. Extremely limited and largely ineffective enforcement authority is provided and little or no authority exists to examine other aspects of perpetual care cemetery corporation operations and activities.
Health & Safety Code, Chapters 711, 713-714.	Statutes regarding general requirements applicable to cemeteries, also applicable to perpetual care cemeteries. Notwithstanding a general lack of authority to enforce these chapters, compliance is a subject discussed in examination reports.
Health & Safety Code §711.007(b)(2).	Authority of commissioner to bring suit to abate a cemetery as a nuisance and seek injunction against its continuance. A nuisance is defined as a cemetery maintained, located, or used in violation of Chapter 711 or 712, or neglected so that it is offensive to nearby inhabitants. Technically the commissioner's authority is not limited to perpetual care cemeteries, although that is probably the intent.

Citation/Title	Authority/Impact on Agency
Fin. Code Chapter 274 (Tit. 3, Subtit. Z).	Required filing with commissioner of forms related to transferring fiduciary accounts among subsidiaries of a bank holding company without the need for trust settlors and beneficiaries to approve the change in trustee. Commissioner is merely repository of filing and has no authority to enforce the statute or exercise discretion in evaluating the merits of the transaction.
Fin. Code Chapter 395 (Tit. 5).	The banking commissioner appoints a representative of the Department to the Community Reinvestment Working Group, an interagency committee or task force that meets at least quarterly. The mandate for the work group is to work in conjunction with the banking community in this state and appropriate federal regulatory agencies to develop statewide community reinvestment strategies, as well as to monitor and evaluate these strategies. The work group is required to submit a written report to the legislature each biennium on the effectiveness of the strategies developed.
Agric. Code §54.006.	The commissioner must give prior approval to permit a corporation organized under the laws of this state (other than a savings bank) to invest in the preferred stock of a mutual loan corporation, a specialized agricultural lender to its shareholders.
Agric. Code Chapter 56.	An agriculture finance corporation may not commence business until authorized by the commissioner upon a finding of legal compliance, and is subject to regulation and examination by the commissioner, must file reports with the commissioner, and is subject to liquidation by the commissioner for insolvency.
Gov't Code §411.092.	Provides the commissioner access to criminal history records for an applicant (and its principals) for a bank charter, and for a license for sale of checks, currency exchange, or prepaid funeral benefits. Codification inadvertently omits trust company charter applications as originally included in source law. See SB 1368, §7.59 (1999). Does not include perpetual care cemetery corporations.
Gov't Code §§572.003(b)(1), 572.026.	Classifies the commissioner as an "appointed officer of a major state agency," mandating the filing of financial statements with the Texas Ethics Commission.
Gov't Code §§603.002, 603.004, and 603.009.	Sets fees to be charged for certified copies of documents in commissioner's office, and provides for fees to be deposited in general revenue. May conflict with Chapter 552.
Gov't Code §§665.051-.054.	Provides for removal by address of commissioner. "Removal by address" is removal by the governor upon "address" of 2/3 record vote of each house of the Legislature, after opportunity for hearing.
Gov't Code §2001.223(2).	Provides exemption from contested case notice and hearing requirements for the issuance of a new bank or trust company charter for the purpose of assuming assets and liabilities of a financial institution in hazardous condition.
V.T.C.S. Art. 1528g, §12.	A business development corporation is required to file annual reports of its condition with the commissioner and the Department of Insurance. Commissioner is merely repository of filing and has no authority to enforce the statute or exercise discretion in evaluating the merits of the report.

Citation/Title	Authority/Impact on Agency
<p><b>Federal Constitution/Statutes/Cases</b>                      (Banks and certain other licensees must comply with extensive federal law, and examiners must be aware of those provisions and determine compliance with laws relating to safety and soundness. The following list contains the more important provisions impacting the agency but is not necessarily complete with respect to industry compliance items.)</p>	
U.S. Const. Supremacy Clause (Art. VI, cl. 2).	Provisions in state constitution or statute that contradict or are inconsistent with federal law are preempted. Preemption of state law is a frequent occurrence in banking law.
12 USC §§24(Seventh), 29, 84, 90, 91, and 92; also 12 CFR parts 1-2, 5-7, 23, and 32.	Relating to powers of national banks. Parallel authority for state banks must be maintained, either through legislation or application of constitutional parity (Tex. Const. art. XVI, §16(c); Fin. Code §32.009); <i>but see Bank of East Texas v. Jones</i> , 758 S.W.2d 293 (Tex. App. — Tyler 1988, no writ).
12 USC §43	Required procedure for preemption of state law by the Office of the Comptroller of the Currency (OCC), added to law in 1994. (Parallel procedure does not exist for OTS.)
12 USC §1831a; 12 CFR part 362.	Relating to activities of insured state banks. Generally, notwithstanding conflicting state law, an insured state bank may not engage as principal in any type of activity that is not permissible for a national bank, and a state bank subsidiary may not engage as principal in any type of activity that is not permissible for a national bank subsidiary, unless the FDIC determines that the activity would pose no significant risk to the deposit insurance fund, and the bank is in compliance with FDIC capital standards. Significantly restricts state statutory powers related to state banks in Texas.
12 USC §§371c, 371c-1, 375, 1828(j)(1).	Restrictions on transactions with affiliates of insured banks, generally more restrictive than state law.
12 USC §§375a, 375b, 1828(j)(2); 12 CFR part 215 (Reg O), §337.3.	Restrictions on loans to officers, directors, and principal shareholders of insured banks. The stricter limits apply in lieu of general state lending limits, see 7 TAC §12.1.
12 USC §1817(j); 12 CFR §§225.41 et seq., 303.4.	Regardless of whether the commissioner approves, a person may not acquire control of an insured state bank without the approval of the responsible federal regulator.
12 USC 1820(d); 12 CFR §208.26	Federal examination requirements imposed on insured state banks; coordination of federal and state examinations if state examinations meet certain standards of competency; reduced examination frequency to 18 months for certain “small” institutions.
12 USC §1828(c), (d), (I), (l).	Regardless of whether the commissioner approves, an insured state bank may not, without the approval of the responsible federal regulator: (1) merge, acquire or be acquired by another depository institution, (2) establish or relocate a branch, (3) reduce its capital, or (4) acquire any ownership interest in a foreign bank.
12 USC §1831i; 12 CFR §§225.71 et seq., 303.14.	Regardless of whether the commissioner approves, an insured state bank may not add a director or senior executive officer without prior notice to and opportunity to disapprove by the responsible federal regulator.

Citation/Title	Authority/Impact on Agency
<p>12 USC §1828(o); 12 CFR §§208.51-.52, part 365 (lending standards). 12 USC §§3331 et seq.; 12 CFR §§225.61 et seq., part 323 (appraisals).</p>	<p>Federal real estate lending standards and appraisal requirements are applicable to real estate loans made by insured state banks.</p>
<p>12 USC §1831o; 12 CFR §§208.13, 208.30 et seq., part 325</p>	<p>Regardless of whether the commissioner concurs in the need for additional capital or for an enforcement action, an insured state bank must satisfy federal minimum capital requirements, and the responsible federal regulator must take “prompt corrective action” against an insured state bank that is not adequately capitalized.</p>
<p>12 USC §1831p-1; 12 CFR part 364, and §208.60.</p>	<p>Federal guidelines for safety and soundness applicable to insured state banks.</p>
<p>12 USC §§3101 et seq. (International Banking Act of 1978); 12 CFR parts 211 (Reg K), 346, 347.</p>	<p>Federal law governing foreign activities of domestic banks, varying slightly for member and nonmember banks. Source and extent of federal authority for foreign banks to have state branches, agencies, and representative offices. See Fin. Code Chapter 204.</p>
<p>12 USC §§1841 et seq. (Bank Holding Company Act of 1956); 12 CFR part 225 (Reg Y).</p>	<p>Federal law governing acquisition of banks by holding companies. See Fin. Code Chapter 202.</p>
<p>12 USC §§24 (Seventh), 78, 335, 377, 378 (Part of Glass-Steagall Act); 12 CFR §225.28(b)(7), (8), part 250, §337.4.</p>	<p>Restrictions against mixing the banking business and the securities business.</p>
<p>31 USC §§5311 et seq. (Bank Secrecy Act); 12 CFR parts 326, 353, §§208.14 and 208.20.</p>	<p>Reporting requirements for currency and coin transactions and suspicious activities, for the purpose of combating money laundering. Requires money transmitting business to register with the Treasury, regardless of state licensing. Also see Fin. Code Chapters 153, 271. Provides for grants to states to combat money laundering. The Department receives an annual grant to assist in funding regulation and examination under the state’s Currency Exchange Act.</p>
<p>12 USC §36 (excluding §36(d)-(g) as amended in 1994, relating to interstate branching, see below).</p>	<p>Relating to national bank branches. Underlying doctrine and policy of competitive equality permits branching authority for a national bank equal to that authorized by state law for a “state bank.” <i>But see Texas v. Clarke</i>, 690 F.Supp. 573 (W.D. Tex. 1988).</p>

Citation/Title	Authority/Impact on Agency
12 USC §§36, 1820(h), 1828(d), 1831a(j), 1831u, 1842(d).	Relating to interstate acquisitions, mergers, and branching; <i>also see Ghiglieri v. Sun World, N.A.</i> , 117 F.3d 309 (5th Cir.), <i>cert. denied</i> , 118 S.Ct. 1361 (1997); <i>Ghiglieri v. Ludwig</i> , 125 F.3d 941 (5th Cir.), <i>cert. denied</i> , 118 S.Ct. 1361 (1997); <i>contra, McQueen v. Williams</i> , 177 F.3d 523 (6th Cir. 1999). Preempts Tex. Const. Art. XVI, §16(a), cl. 3; also preempted Fin. Code §32.0095, now repealed by H.B. 2066. Fin. Code, Title 3, Subtitle G, as enacted by H.B. 2066, is designed to comply with the import of these statutes and cases.
12 USC §1823(f), (k).	Federal regulatory authority to preempt otherwise permitted state restrictions on interstate branching to resolve a failing bank.
12 USC §1831r-1.	Regardless of whether commissioner approves a branch closing, prior notice of branch closing must be submitted to the responsible federal regulator.
12 USC §§3201 et seq. (Depository Institution Management Interlocks Act); 12 CFR parts 212, 348.	Generally prohibits a management official of one depository institution from serving as a management official for another depository institution in the same market, subject to exceptions.
12 USC §§1861 et seq. (Bank Service Company Act)	Limited permission for a bank to make a minority or greater investment in a company providing specified services for depository institutions, provided all shareholders or members must be insured banks. <i>But see</i> Fin. Code §34.103(d)(2); 12 CFR §362.4(c)(3).
12 USC §1971 et seq.	Prohibits tying arrangements, subject to exceptions.
12 USC §92a; 12 CFR part 9; OCC Interpretive Letter No. 695 (Dec. 1995).	Provides for national bank fiduciary powers equal to those of state-chartered competitors where the bank is “located.” IL 695 is an OCC interpretation that an out-of-state national bank may establish trust offices in other states without meeting branching requirements, purporting to preempt V.T.C.S. art. 342a-9.002(a)(2), Fin. Code §154.253, and Probate Code §105A, as amended eff. Sept. 1, 1999, among others. The states generally disagree with this interpretation as contrary to the doctrine of competitive equality underlying 12 USC §92a and controlling state law. Attempted preemption of the notice/registration requirement of V.T.C.S. art. 342a-9.202 can be expected.
12 USC §1464(n); 12 CFR part 550; Office of Thrift Supervision (OTS) Chief Counsel Opinions dated March 28, 1996, June 21, 1996, August 8, 1996, July 1, 1998, and January 4, 1999, among others.	Provides for federal savings bank fiduciary powers equal to those of state-chartered competitors where the bank is “located.” The referenced OTS opinions declare that any state laws of “non-location” states purporting to prohibit or restrict entry or marketing by out-of-state fiduciaries are preempted with respect to federal savings banks with trust powers. In this state, preempted statutes would include V.T.C.S. art. 342a-9.002(a)(2), Fin. Code §154.253, and Probate Code §105A, as amended eff. Sept. 1, 1999, among others. The states generally disagree with this interpretation as contrary to the intent of 12 USC §1464(n) and controlling state law. This agency has received two letters specifically purporting to preempt Fin. Code §154.253, both of which were rejected. Attempted preemption of the notice/registration requirement of V.T.C.S. art. 342a-9.202 can be expected.

Citation/Title	Authority/Impact on Agency
Employee Retirement Income Security Act of 1974, 29 USC §§1001 et seq.; 29 CFR parts 2509-2570, and related provisions of the Internal Revenue Code of 1986, generally 26 USC §§401-420; 26 CFR §§1.401 et seq.	Provisions governing retirement funds held by a fiduciary, including pension and profit-sharing plans and individual accounts like IRAs. These types of accounts represent a principal part of the business of banks and trust companies acting in a fiduciary capacity. While all the cited provisions must be understood by trust examiners and staff attorneys called upon to render opinions, fiduciary responsibilities in particular are governed by 29 USC §§1101-1114 and 12 CFR part 2550.
Attorney General Opinions	
Attorney General Opinion No.	Impact on Agency
DM-489 (1998)	Funds a state agency possesses merely as custodian are not state funds. The Public Funds Investment Act does not apply to or provide investment authority for corporate and trust funds of a bank or trust company in receivership or conservatorship, perpetual care cemetery liquidation funds, seized prepaid funeral contract trust funds, or the prepaid funeral contract Guaranty Fund.
DM-442 (1997)	The Department lacks authority to enforce the Currency Exchange Act against the non-Indian management company of a casino owned by the Texas Band of Kickapoo Indians on their reservation in Eagle Pass, Texas.
DM-329 (1995)	State and private university debit card programs, holding funds on behalf of students, faculty, and staff, are not subject to the Sale of Checks Act and do not constitute unauthorized banking.
Letter Opinion No. 92-70 (October 29, 1992)	Neither article XVI, section 40 of the Texas Constitution nor the common-law doctrine of incompatibility would prevent the commissioner of a department subordinate to the Finance Commission from also serving as executive director of the Finance Commission. The executive director of the Finance Commission has no statutory powers, and the Finance Commission may not delegate governmental powers to that position.
JM-1175 (1990)	Because hiring decisions of the banking commissioner are not subject to the control of the Finance Commission, the nepotism statute does not prohibit the Department of Banking from hiring the son of a member of the Finance Commission.

**H. Please fill in the following chart:**

<b>Texas Department of Banking Exhibit 2: Agency Contacts</b>			
	<b>Name</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
<b>Agency Head</b>	Randall S. James Acting Banking Commissioner	2601 North Lamar Austin, Texas 78705	512-475-1323 (voice) 512-475-1313 (fax) randall.james@banking.state.tx.us
<b>Agency's Sunset Liaison</b>	Cynthia Shea Director of Admin. Services and Policy	Same as above	512-475-1333 (voice) 512-475-1313 (fax) cynthia.shea@banking.state.tx.us

## II. History and Major Events

**Provide a timeline discussion of the agency's history, briefly describing the key events in the development of the agency, including:**

- C the date the agency was established;
- C the original purpose and responsibilities of the agency;
- C major changes in responsibilities or statutory authority;
- C agency/policymaking body name and composition changes;
- C the impact of state/federal legislation, mandates, and funding;
- C the impact of significant state/federal litigation that specifically affects the agency's operations; and
- C key organizational events and areas of change and impact on the agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

See History and Major Events Examples or [click here to link directly to the examples](#).

In 1845, the first Constitution of the State of Texas provided that "[n]o corporate body shall hereafter be created, renewed, or extended, with banking or discounting privileges," and this prohibition against the chartering of banks was carried forward into the Constitutions of 1861 and 1866, deleted in the Constitution of 1869, and added back into the present-day Constitution of 1876 as Article XVI, Section 16. Banking certainly existed during these periods but was dominated by private, unincorporated banks, many of which issued their own currency.

In 1865, the first national bank in Texas was organized in Galveston.

During the period 1869-1876, a number of state-chartered banks were created by special acts of the Legislature. Ten additional state banks were established under a general law passed in 1874. Only a few of these banks ever actually opened for business. From 1876 to 1900, banking in Texas was conducted by private banks, existing state banks, and national banks.

As of 1890, 148 private banks were operating in Texas.

As of 1900, 440 national banks existed in Texas.

In 1904, Article XVI, Section 16, of the Constitution was amended to permit state-chartered banks, by permitting the Legislature to authorize the incorporation and regulation of corporate bodies with banking and discounting privileges. The amendment imposed personal liability on stockholders for debts of such corporate bodies at the time of stock purchase, and prohibited foreign corporations from exercising banking or discounting privileges in this state.

In 1905, the 29th Legislature adopted by general law a system of corporate state bank chartering and regulation, as authorized by constitutional amendment. State bank charters were obtained by filing articles with the Secretary of State, and supervision of state banks was assigned to the Commissioner of Agriculture, Insurance, Statistics, and History, under the title of Superintendent of Banking (for which duties the commissioner was paid an additional \$500 annually). Bank examinations were directed to be conducted once each year. The Superintendent was given authority to direct the discontinuance of "illegal and unsafe and unauthorized practices," the correction of improper entries, and the repayment of illegal disbursements (essentially the

equivalent of the modern "cease and desist order.") The failure of an entity to comply with the directions given would be referred to the Attorney General for appropriate action.

In 1907, the 30th Legislature created the Department of Agriculture and the former agency was renamed the state Department of Insurance and Banking.

By the end of 1907, there were more than 300 state banks operating in Texas.

In 1909, due to public agitation created by the 1907 panic, the 31st Legislature passed the Texas Guaranty Law to implement a bank deposit protection system with mandatory bank participation. The Texas Guaranty Law was administered by the newly created State Banking Board, comprised of the Attorney General, the State Treasurer, and the Commissioner of Insurance and Banking. Charters were still obtained without investigation from the Secretary of State. This act placed the duty on the Commissioner of Insurance and Banking to examine each bank every three months and authorized the Commissioner to hire bank examiners. No employee of the Department of Insurance and Banking could have a direct or indirect financial interest in a supervised entity.

In 1909, the 31st Legislature created the Texas Library and Historical Commission, transferring to it the duties of statistical and historical work from the Insurance and Banking Commissioner.

In 1913, in response to overcrowded banking and unsafe practices, the 33rd Legislature enacted revisions that transferred chartering authority to the State Banking Board. The Board was required to investigate and verify the financial and moral integrity of the incorporators and make findings very similar to those in the law today, i.e., that a public necessity existed for the bank and that the incorporators were acting in good faith.

In 1913, the 33rd Legislature enacted laws relating to the incorporation and regulation of state building and loan associations, assigning responsibility to the Commissioner of Insurance and Banking. State building and loan associations existed prior to 1913 but had all been created by special acts of the Legislature.

In 1913, the 33rd Legislature authorized formation of "rural credit unions," and assigned chartering and supervisory authority to the bank commissioner and the State Bank Commission. At this point, there was no "Bank Commissioner" with that title, so presumably it was the Commissioner of Insurance and Banking which was intended.

In 1915, the banking division staff of the Banking and Insurance Department consisted of five clerical employees and 17 field examiners.

In 1917, the 35th Legislature created loan and investment companies and placed supervisory authority with the Commissioner of Insurance and Banking.

In 1923, the 38th Legislature created the office of banking commissioner and the state Department of Banking, formerly part of the state Department of Banking and Insurance. This is the origin of the present Texas Department of Banking. The banking commissioner was appointed by the governor to a two year term with the advice and consent of the Senate. Examination frequency was reduced to at least once every four months. Perhaps due to an oversight, state building and loan associations were not mentioned in the act. Accordingly, regulation of these entities was not transferred to the Department of Banking.

In 1923, Department staff numbered 38, with 950 state banks having \$377 million in total state bank assets.

In 1923, the Legislature prohibited the operation of private banks, but enacted a grandfather clause allowing the continued operation of certain existing private banks notwithstanding the general prohibition on that type of institution.

In 1925, the legislature amended the requirements for a grandfathered private bank, as originally enacted in 1923, but retained the general prohibition on private banks. The Department liquidated the last known private banks in the early 1990s, and is unaware of any remaining private banks. At least theoretically, a private bank could still exist if it was (a) in operation on June 16, 1923, or (b) operated for any period of 20 years prior to June 16, 1923, and resumed operations not later than June 23, 1924. See Fin. Code §31.004(b).

In 1927, the 40th Legislature repealed the Texas Guaranty Law. The opportunity for repeal had existed in 1925 but the bill failed, ultimately damaging the state bank system. The crucial problem had been a provision for annual special assessments against member banks, which created concern because the guaranty fund had been technically insolvent since the business depression of 1921. Many state banks converted to national banks during the period 1925-1927.

In 1929, the 41st Legislature revised the law relating to regulation of state building and loan associations, and transferred regulatory jurisdiction to the Department of Banking.

In 1929, the 41st Legislature modified bank examination frequency to require two examinations annually.

In 1933, Congress amended the Federal Reserve Act to institute the system of federal deposit insurance on a temporary basis, and created the Federal Deposit Insurance Corporation ("FDIC"), owned by the Federal Reserve System. Historically, all banks which were members of the Federal Reserve System on or before July 1, 1934 were required to become stockholders of the FDIC by such date. No state bank was eligible for membership in the Federal Reserve System until it became a stockholder of the FDIC, and thereby became an insured institution, with required membership by national banks and voluntary membership by state banks.

In 1935, Congress amended the Federal Reserve Act to provide for a permanent insurance fund; the stock of the FDIC to be purchased by the Secretary of the Treasury on behalf of the United States, and the deposit insurance system to be maintained through assessments directly on the insured institutions.

In 1937, Article XVI, Section 16, of the Constitution was amended to eliminate personal liability of stockholders, an attribute deemed no longer necessary because of federal deposit insurance.

In 1943, the 48th Legislature enacted The Texas Banking Code of 1943 and created the Finance Commission of Texas. The Finance Commission appointed the banking commissioner with the advice and consent of the Senate. The banking commissioner served at the pleasure of the Finance Commission, and was statutorily labeled as both an employee of the Finance Commission, subject to its orders and directions, and the chief executive officer of the Banking Department, a pre-existing agency. The nine members of the Finance Commission were appointed by the governor to six year terms, one-third of which expired every two years. The Finance Commission consisted of two sections, a six-member Banking Section, and a three-member Building and Loan Section. These sections were at least "quasi-state agencies" in that each section had rulemaking authority over its related industry. Examination frequency of state banks was at least twice a year. The banking commissioner was given authority: to conduct charter investigations and report findings to the State Banking Board, (who acted on the application); to investigate and act on merger applications; and to declare financial moratoriums or impose state-wide withdrawal limitations on all financial institutions (with the consent of the Governor). The commissioner was also given authority to remove officers, directors, and employees of state banks as an enforcement tool. (Art. 342-101 et seq., Vernon's Texas Civil Statutes.)

In 1945, the 49th Legislature granted authority to the banking commissioner to demand statements under oath regarding trust fund investments of perpetual care cemetery associations, to review those statements, and to report violations to the Attorney General. (Art. 912a, Vernon's Texas Civil Statutes).

In 1950, Congress passed the Federal Deposit Insurance Act and removed deposit insurance law from the Federal Reserve Act.

In 1955, the 54th Legislature expanded the authority of the banking commissioner over trust funds of perpetual care cemetery associations, including the power to examine trust fund records.

In 1955, the 54th Legislature granted authority to the Banking Department to license, examine, and regulate the sale of prepaid funeral services and merchandise. (Art. 548b, Vernon's Texas Civil Statutes).

In 1956, Texas Attorney General Will Wilson issued his Opinion No. WW-324, holding that Senate confirmation of the Insurance Commissioner's appointment by the Insurance Board violated the separation of powers principles of Tex. Const. Art. II, §1. However, this confirmation practice apparently continued with respect to statutory confirmation requirements applicable to other state officers, including the banking commissioner's appointment by the Finance Commission.

In 1956, Congress enacted the Bank Holding Company Act of 1956, to bring bank holding companies under the jurisdiction of the Federal Reserve System for the purpose of limiting the activities of a bank holding company to those of a financial nature, i.e., "closely related to banking," to prevent unsafe or unsound practices, and to prevent the undue concentration of banking resources in the hands of a few companies.

In 1957, the 55th Legislature enacted Article 1513a regarding trust companies and repealed former trust company provisions in Chapter 7 of the Insurance Code. The banking commissioner was granted limited authority to approve securities deposited with the State Treasurer.

In 1962, the Banking Department supervised 4,013 institutions, of which 553 were banks with assets of \$3.4 billion.

In 1963, the 58th Legislature replaced the Attorney General as a member of the State Banking Board with a citizen appointed by the Governor to a two year term with the advice and consent of the Senate. The other members of the State Banking Board continued to be the State Treasurer and the banking commissioner as chairman.

In 1963, the 58th Legislature granted authority to the banking commissioner to license, examine, and regulate sellers of money orders, travelers checks, and similar instruments, under the Sale of Checks Act (Art. 489d, Vernon's Texas Civil Statutes).

In 1963, the 58th Legislature created the Texas Savings and Loan Department, formerly part of the Banking Department. (Art. 852a, Vernon's Texas Civil Statutes.) The Savings and Loan Department became a sister agency to the Banking Department, both under the jurisdiction of the Finance Commission.

In 1963, the 58th Legislature passed the Texas Regulatory Loan Act, creating the Office of Regulatory Loan Commissioner to license, examine, and regulate the business of consumer lending. A regulated loan was essentially a secured or unsecured loan involving a cash advance of \$1,500 or less. Former law subjected these lenders to fee-based examination by the banking commissioner but did not require a license. The Office of

Regulatory Loan Commissioner became a sister agency to the Banking Department, both under the jurisdiction of the Finance Commission.

In 1967, the 60th Legislature amended Article 1513a regarding trust companies and provided for examination authority of the banking commissioner, but subject to an exemption from examination if the company did not sell its securities to the public, requiring the banking commissioner to accept a filed financial statement instead.

In 1969, the 61st Legislature revised the examination frequency applicable to state banks to three times in 24 months and no more, except as otherwise deemed necessary.

In 1969, the 61st Legislature created the Texas Credit Union Commission and transferred responsibilities over credit unions from the Banking Department. This was a complete split, with no continuing role for the Finance Commission. (Art. 2461-1.01 et seq., Vernon's Texas Civil Statutes.)

In 1974, the Texas Bankers Association donated the State Finance Commission building, at 2601 North Lamar Boulevard, to the Banking Section of the Finance Commission of Texas. Prior to that, the agency's headquarters office was located in the state's John H. Reagan Building on 15th Street in Austin.

In 1974, the Department created its Corporate Activities Division, to process applications affecting bank corporate structure and ownership and to serve as the repository of permanent bank files.

In 1980, Congress enacted the Depository Institutions Deregulation and Monetary Control Act of 1980. The problems in the thrift industry were already becoming apparent, and DIDMCA was an attempt to alleviate them, by lifting interest rate ceilings, authorizing thrifts to offer checking and NOW accounts, and granting powers to thrifts formerly reserved to commercial banks, including allowing savings and loans to enter into consumer loans and credit card businesses and mutual savings banks to make business loans and accept demand deposits. The Act also preempted state usury laws concerning several kinds of loans, including new 12 USC §1821d, the "most favored lender" doctrine for state banks. Largely overlooked at the time but crucial to later developments was the increase in deposit insurance from \$40,000 to \$100,000.

In 1980, the OCC significantly changed its chartering policy for national banks to focus more on the organizing group and its business plan and less on the ability of the community to support a new bank, which led over the next few years to an immediate and substantial increase in new national bank charters, many of which were in Texas. While state bank chartering fluctuated within a narrow range, the OCC granted over 25 Texas-based charters in 1980, over 50 in 1981, almost 70 in 1982, almost 120 in 1983 and 1984, and 75 in 1985. The FDIC was required to approve deposit insurance for state charters, a factor which had a limiting effect on state regulator ability to match OCC chartering enthusiasm.

In 1980, Article XVI, Section 16, of the Constitution was amended to add bank authority to have "unmanned teller machines" within the city or county of its domicile.

In 1981, Congress enacted the Economic Recovery Tax Act of 1981, which included several provisions that improved the rate of return on commercial real estate and increased demand for these investments, by lowering marginal income tax rates (the highest rate was reduced from 70 to 50 percent), lowering capital gains rates (from 28 to 20 percent), and by permitting the use of accelerated depreciation for commercial properties.

In 1981, oil prices peaked at \$36.95 per barrel, up from \$2.75 per barrel in 1973.

In 1982, Congress enacted the Garn-St. Germain Depository Institutions Act of 1982. The thrift industry was now perceived as in crisis. The Act broadened sources of funds for thrifts, mandated creation of money market accounts, allowed federal, state, and local governments to hold NOW accounts, allowed federally chartered S&Ls to offer demand deposits, eliminated remaining interest rate differentials between what banks and thrifts could offer for deposits, and granted additional powers to federal thrifts, including the power to invest up to five percent of assets in commercial loans. S&Ls were also allowed to invest up to 30 percent of assets in consumer loans. With respect to national banks, the Act liberalized lending limits and removed real estate lending restrictions. The Act also allowed the FDIC to authorize emergency interstate acquisitions of failed commercial banks, although it imposed some priorities tending to favor in-state bids. The significance of thrifts entering into areas formerly the province of commercial banks was the increase in competition that encouraged more aggressive practices to preserve market share. Bank market share losses in commercial loans began to be replaced by commercial real estate loans and energy loans.

In 1983, the 68th Legislature revised the examination frequency applicable to state banks to one examination annually and no more, except as otherwise deemed necessary.

In 1983, Article 1513a was amended to include two sections that provided the banking commissioner the power to invoke sanctions against a trust company as if it were a state bank. Chartering of trust companies remained through the Secretary of State's office. The Banking Department did not have a comprehensive list of those institutions, and many companies filed financial statements with the Banking Department annually in lieu of examinations.

In 1983, the 68th Legislature changed the number of members and composition of the Finance Commission to 12 by adding the three member Consumer Credit Section. This section had as members two individuals who held either a lending or pawnshop license and one member of the general public.

In 1983, Texas Attorney General Jim Mattox issued his opinion JM-38, confirming Opinion No. WW-324 through a broader holding that any attempt by the legislature to broaden its constitutional authority to confirm governor appointments of state officers, by extending it to state officers not appointed by the governor, violated the separation of powers principles of Tex. Const. Art. II, §1. Senate confirmation of the banking commissioner's appointment by the Finance Commission, as required by the Banking Code, is no longer required.

From 1979 to 1984, both the FDIC and the OCC reduced field examination staff by almost 20 percent. This substantial reduction in staff came about primarily through a series of freezes on new hires as a result of the agencies' policies of increased reliance on off-site surveillance and the desire of both the Carter and Reagan administrations to reduce the size of the federal government.

In 1984, Congress enacted the Secondary Mortgage Market Enhancement Act of 1984 (PL 98-440, 98 Stat. 1689), codified to 15 USC §§77d(5), 77r-1, 78c(a)(41). By this Act Congress removed perceived regulatory barriers inhibiting the development of a private market for residential mortgage-backed securities. The Act (Title I, §106) preempted blue sky laws requiring registration of mortgage-backed securities and other regulatory statutes restricting or otherwise affecting investment in mortgage-backed securities under state law, for trustees, governmental entities, corporations, etc., including state-chartered financial institutions. Congress included a provision reserving a seven year period during which the states could enact legislation overriding either or both of the federal preemptions. Texas did not act.

In 1984, Article XVI, Section 16, of the Constitution was amended to add new Subsection (c), granting state banks "the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State."

In 1985, the 69th Legislature revised the examination frequency applicable to state banks to permit the banking commissioner to defer an annual examination for up to six months if considered necessary to efficient administration. (This is generally the law in 1999.)

In 1986, Congress enacted the Tax Reform Act of 1986, eliminating accelerated depreciation on commercial real estate and prohibiting deduction of "passive losses." One effect was to dampen demand for commercial real estate investments, which acted to soften real estate prices. Real estate limited partnerships had emerged in 1980 as a major investment vehicle as a result of the Economic Recovery Tax Act of 1981, growing five-fold from 1980 to a high of \$16 billion in new capital in 1985, only to fall precipitously over the next few years, gathering only \$1.5 billion in new capital in 1989 (nationwide).

In 1986, Article XVI, Section 16, of the Constitution was amended to substitute "state banks" for "corporate bodies" throughout and to ease branching restrictions slightly.

In 1986, oil prices that had averaged approximately \$30 a barrel in November 1985 plunged to less than \$13 a barrel by March 1986 and to \$10 a barrel by August 1986, the lowest price for oil since 1974.

In 1986, to facilitate bank resolutions and ensure continued banking capital during a period of massive bank failures, the 69th Legislature authorized acquisition of Texas banks by out-of-state bank holding companies. From 1982 through 1986, 54 banks failed in Texas, 26 of which were state banks.

In 1986, the 69th Legislature amended Article 489d to increase the net worth and bonding requirements for a sale of checks licensee from \$10,000 to \$500,000, add permissible investment restrictions, add audit requirements, and impose a trust on monies held from sale of money orders pending disbursement. This action arose out of the failure and bankruptcy of a large money order company that resulted in extensive losses to money order purchasers.

In 1986, a case was decided that allowed one prepaid funeral benefits licensee to withdraw all earnings from trust on a monthly basis, based on a holding that the department did not have authority to reopen a prior final order based on changed circumstances. *Sexton v. Mount Olivet Cemetery Ass'n*, 720 S.W.2d 129 (Tex. App.--Austin 1986, writ ref'd n.r.e.). This unique treatment of this one licensee continues. MOCA withdraws, quarterly, all earnings on its prepaid funeral contract trust fund and uses those funds for its current operating purposes. It is the only company doing so.

In 1987, Congress enacted the Competitive Equality Banking Act of 1987. The primary motive was to aid the deteriorating FSLIC, but provisions affecting commercial banks were included. The "nonbank bank" provision in the Bank Holding Company Act was closed. (By limiting the authority of certain subsidiaries to exclude them from the definition of "bank" in the Bank Holding Company Act, banking institutions were evading interstate banking limitations.)

In 1987, Texas Attorney General Jim Mattox issued an opinion (JM-630) holding that the 1986 legislation authorizing acquisition of Texas banks by out-of-state bank holding companies was constitutional under Tex. Const. Art. XVI, §16(a). The opinion distinguished between foreign corporate "ownership" of a Texas bank (permitted) from foreign corporate "operation" of a Texas bank (prohibited).

In 1987, Article 1513a was repealed by the enactment of Chapter XI of the Texas Banking Code. Under Chapter XI, all trust companies were required to submit their charters to the Banking Department for substitution before September 1, 1990. During 1987 and 1988 the Secretary of State's Office delivered approximately 220 trust company charter files to the Banking Department. Prior to 1987 the majority of the Texas trust companies operated with minimum regulatory supervision. Only in the most critical situations would the Banking Department have become involved and that being under questionable authority.

In 1987, the 70th Legislature modernized the statutes governing the prepaid funeral industry, and created the Guaranty Fund to guarantee performance by sellers of prepaid funeral benefits contracts under their obligations to the purchasers. (Acts 1987, 70th Leg, ch 747, effective August 31, 1987.)

In 1988, restricted bank branching was federally preempted. *Texas v. Clarke*, 690 F. Supp. 573 (W.D. Tex. 1988). Underlying doctrine and policy of competitive equality permits branching authority for a national bank equal to that authorized by state law for a "state bank" under 12 USC §36, but the definition of "state bank" is a matter of federal law. Following *Department of Banking and Consumer Fin. v. Clarke*, 809 F.2d 266 (5th Cir.), cert. denied, 90 S.Ct. 3240 (1987), the court held that "state bank" must be defined "by a targeted functional analysis" and in accordance with federal law. Because essential banking business consists of receiving deposits, making commercial loans and negotiating checks and drafts, and because Texas savings associations operate as functional banks, they are "state banks" under 12 U.S.C. §36(c) and national banks could adopt the statewide branching pattern of the state savings associations. In response to arguments that competitive equality no longer existed for commercial state banks, the court noted that Tex. Const. Art. 16, §16, "governs the branching ability of Texas commercial state banks. Section 16(c) reads, "[a] state bank created by virtue of the power granted in this section, notwithstanding any other provision in this section, has the same rights and privileges that are or may be granted to national banks of the United States domiciled in this State." . . . A reasonable construction of section 16(c) results in the conclusion that commercial state banks may branch statewide because national banks also may branch Texas-wide."

In 1988, pursuant to Article XVI, Section 16(c), of the Constitution, the Finance Commission adopted a rule authorizing state-wide branching for state banks, notwithstanding constitutional and statutory provisions to the contrary. By implication, the case also affected permitted unmanned teller machine locations. Prior to this time, a bank could not have a second location; thus each bank office was its own charter, with its own president, board of directors, and capital base.

In 1988, 175 Texas banks with assets of \$47.3 billion (state and national) failed—25 percent of the state's 1987 year-end banking assets.

In 1989, 134 Texas banks with assets of \$23.2 billion failed—13.6 percent of the state's banking assets.

In 1989, Congress enacted the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, significantly restructuring the regulation of thrifts, abolishing the FSLIC, and transferring its insurance authority to the FDIC. The Act also significantly strengthened the enforcement authority of the FDIC, created cross-guarantee provisions making affiliated institutions in a bank holding company group liable for losses incurred by a failed institution in the group. The Act also mandated an increase in the newly created Bank Insurance Fund, resulting in a doubling of assessments imposed on commercial banks.

In 1989, the 71st Legislature enacted the Texas Health & Safety Code, a nonsubstantive codification of health and safety statutes. Regulatory provisions relating to cemeteries were codified as Chapters 711-714. Chapter

712 related to perpetual care cemeteries and incorporated the duties and responsibilities of the banking commissioner.

In 1989, the 71st Legislature eliminated the Banking Section and Building and Loan Section, which dated back to 1943, as well as the relatively new Consumer Credit Section (created in 1983), which were subdivisions of the Finance Commission of Texas, and reduced membership from 12 to nine.

Between 1985 and 1990, 440 banks failed in Texas, 38% of which were state banks. During that period, 22 trust companies were also closed. In addition, a number of trust companies failed to exchange their charters as required by 1987 legislation and therefore ceased to exist.

In 1991, Congress passed the Federal Deposit Insurance Act Improvement Act of 1991 (FDICIA). What began in 1980 as deregulation resulted in "reregulation" under FDICIA. The ability of the states to grant new banking powers to state banks was limited for the first time by preventing state bank activities as principal beyond those permitted to national banks unless the FDIC found the activity to be safe and sound. FDICIA added "prompt corrective action" provisions eliminating some regulatory discretion and requiring enforcement actions in certain circumstances, required annual on-site examinations by federal regulators and audited financial statements of institutions of more than \$150 million in assets, mandated the adoption of uniform standards for real estate lending by depository institutions, and put new restrictions on the use of brokered deposits.

In 1991, the 72nd Legislature amended the Texas Banking Code of 1943 to permit state-wide branching, as already permitted by rule and constitutional parity.

In 1991, the 72nd Legislature granted authority to the banking commissioner to license, examine, and regulate currency exchange and transmission businesses under the Currency Exchange Act (Art. 350, Vernon's Texas Civil Statutes).

In 1993, the 73rd Legislature expanded the enforcement authority of the Banking Department with respect to the sale of prepaid funeral services and merchandise, and imposed investment restrictions on prepaid funeral benefit trust funds. Expanded enforcement authority primarily included broader discretion to issue cease and desist orders.

In 1993, the Banking Department was officially accredited by the Conference of State Bank Supervisors.

In 1993, the method of revenue generation for the bank examination program changed from examination fees (per examiner day), to annual assessments billed quarterly based upon an institution's size and condition.

In 1993, the 73rd Legislature created the "limited banking association" as a charter option, modeled after limited liability company statutes, to allow bank owners to eliminate corporate double taxation and take advantage of pass-through features of federal income taxation of partnerships. Acts 1993, 73rd Leg., ch. 765, eff. Aug. 30, 1993.

In 1994, Congress enacted the Reigle Community Development and Regulatory Improvement Act of 1994 (PL 103-325). Sections 202-207 and 347, codified in part to 15 USC §§77r-1 and 78c(a)(41) and (53), added "small business related security" (securitized small business loans) and "commercial mortgage related security" to preempt blue sky and investment limit statutes (see discussion of 1984 Secondary Mortgage Market Enhancement Act above). States have a seven year period to override the additions and prohibit or set limits on these investments, expiring Sept. 23, 2001. The department added "opt out" language to the Texas Banking Act of 1995, see Fin. Code §34.101(d)(4) and (g). The full impact of this development is unknown. The Community

Development and Regulatory Improvement Act also reduced federal examination frequency to 18 months for certain "small" institutions. The department was required to similarly reduce exam frequency for reasons of competitive parity. See Commissioner Policy Memo No. 1003; Fin. Code §31.105.

In 1994, Congress enacted the Reigle-Neal Interstate Banking and Branching Efficiency Act of 1994 (PL 103-328). The Act broadly grants interstate branching rights by merger and preempts restrictive state branching law unless a state "opts out" in the manner permitted by the Act. The prohibition on foreign corporate banking set forth in Tex. Const. Art. XVI, §16(a) is preempted.

In 1995, the Internal Revenue Service issued a private letter ruling denying pass-through tax treatment to Texas limited banking associations. The IRS rejected the state's interpretation of its own constitution and imposed its own view that Texas was restricted by Art. XVI, §16(a), to creating only "corporate" banks. Priv. Ltr. Rul. 95-51-032 (Sept. 27, 1995).

In 1995, the 74th Legislature enacted the modernized Texas Banking Act and repealed the Texas Banking Code of 1943 (except for Chapter XI, relating to trust companies). The State Banking Board was eliminated and its responsibilities transferred to the banking commissioner. The Banking Department of Texas was renamed the Texas Department of Banking. The banking commissioner's authority to issue interpretive statements and legal opinions was reinforced by explicit statutory language, and the authority to investigate unauthorized activities was expanded. (Art. 342-1.001 et seq., Vernon's Texas Civil Statutes.)

In 1995, the 74th Legislature prohibited interstate mergers and branching in Texas until September 1, 1999, in a bill designed to comply with the federal Reigle-Neal Interstate Banking and Branching Act of 1994. (Art. 489f, Vernon's Texas Civil Statutes.)

In 1995, the 74th Legislature expanded the scope of the Currency Exchange Act to include currency transportation as an activity to be licensed and regulated by the banking commissioner.

In 1995, the Department began conducting annual customer surveys of banks and trust companies.

In 1996, the banking commissioner established the Commissioner's Council, an informal advisory group. The Commissioner's Council advises the banking commissioner regarding policy formulation, and provides input into the development of rules.

In 1996, although Texas was one of two states to "opt out" of interstate branching, in anticipation of future needs and to endorse the unified view of state regulators regarding multistate supervision of interstate state banks, the banking commissioner signed a Nationwide Cooperative Agreement and Nationwide State/Federal Supervisory Agreement for the coordinated supervision of multi-state, state-chartered banks. The FDIC and the Federal Reserve were also signatories.

In 1996, the Department established its Internet Web Site ([www.banking.state.tx.us](http://www.banking.state.tx.us)), which contains the statutes, rules, published interpretive opinions, and examination procedures used in the oversight of the supervised entities. The website also contains the text of testimony and speeches presented by agency employees, information on how to file a consumer complaint, answers to the most commonly asked consumer questions, and information on supervised entities.

In 1996, the banking commissioner sued Commercial National Bank, Texarkana, Arkansas, and the OCC for allowing a national bank to relocate its main office to Texas and retain branches in Arkansas, in violation of

Texas law opting out of interstate branching (Article 489f, Vernon's Texas Civil Statutes). The U.S. District Court ruled in favor of the commissioner. *Ghiglieri v. Ludwig*, 1996 WL 315947, 1996 U.S. Dist. LEXIS 8321 (N.D. Tex. 1996), *rev'd* 125 F.3d 941 (5th Cir. 1997), *cert. denied* 118 S.Ct. 1361 (1988).

In 1996, the banking commissioner sued Sun World National Bank (a subsidiary/affiliate of NationsBank) and the OCC for allowing a national bank to relocate its main office to New Mexico and retain branches in Texas. The U.S. District Court ruled in favor of the commissioner. *Ghiglieri v. Sun World, N.A.*, 942 F. Supp. 1111 (W.D. Tex. 1996), *rev'd* 117 F.3d 309 (5th Cir.1997), *cert. denied* 118 S.Ct. 1361 (1988).

In 1997, the 75th Legislature enacted the Texas Finance Code, a nonsubstantive codification of financial regulatory statutes. The regulatory provisions of the Texas Banking Act were codified as Subtitle A, Title 3, Finance Code (Chapters 31-39, 59). Regulation of sale of checks, currency exchange, and sale of prepaid funeral benefits was codified as Subtitle E, Title 3, Finance Code (Chapters 152-154). The agency's enabling statutes were codified to Chapter 12 in Title 2, Finance Code. Trust company statutes, formerly located in Chapter XI of the Texas Banking Code of 1943, were codified as Chapter 151, but the source law was simultaneously repealed and replaced by another bill.

In 1997, the 75th Legislature enacted the Texas Trust Company Act, a complete system of laws governing state trust companies. The banking commissioner continued to have chartering, examination, and regulatory authority over state trust companies. (Art. 342a-1.001 et seq., Vernon's Texas Civil Statutes.)

In 1997, the Finance Commission Salary Administration Plan was discontinued by action of the 75th Legislature.

In 1997, the Fifth Circuit overturned the District Court decisions (*Ghiglieri v. Ludwig* and *Ghiglieri v. Sun World*) and found in favor of the Comptroller of the Currency. The Supreme Court denied writ of certiorari in 1998. One ground for the decision was that federal law required all banks to be treated equally for an effective "opt out" statute, and the applicable definition in the Federal Deposit Insurance Act includes state savings banks. Article 489f did not mention state savings banks. This result is legally correct but not anticipated by Congress, as evidenced by statements to the contrary in the *Congressional Record*. However, a state (but not federal) savings bank had been added to the definition of "state bank" by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, originally for the narrow purpose of granting the FDIC regulatory jurisdiction over state savings banks and the Savings Association Insurance Fund in connection with the merger of the Federal Savings and Loan Insurance Corporation into FDIC.

In 1997, the banking commissioner filed a lawsuit against NationsBank of Texas, N.A. and NationsBank, N.A., Charlotte, North Carolina, to prevent the merger of the two banks in violation of Texas opt out law. In the 1996 *Sun World* litigation, Sun World National Bank was owned by NationsBank, and after the relocation, Sun World was merged into NationsBank, N.A., Charlotte, North Carolina. The result was that NationsBank, North Carolina, had branches in El Paso, Texas. It was argued that the merger was proper as an "intrastate" merger because both banks were "located" in Texas.

In 1997, Article XVI, Section 50, of the Constitution was amended to allow home equity loans, effective January 1, 1998. Because of extensive and complex consumer protection provisions directly in the Constitution, Department of Banking examiners began to closely monitor state bank home equity lending practices.

In 1998, in cooperation with the federal banking regulators, the Department began conducting Year 2000 Readiness assessments of state-chartered banks, in addition to the normal commercial examinations.

In 1998, the United States District Court for the Northern District of Texas issued an order denying a preliminary injunction, ruling that the state had not shown a likelihood of prevailing on the merits on its claim that the merger of NationsBank, North Carolina, and NationsBank of Texas was not an "intrastate" merger, because NationsBank, North Carolina, was clearly located in Texas through its El Paso branches (formerly SunWorld branches, acquired through merger). NationsBank, Texas became a branch of NationsBank, North Carolina.

In 1998, citing constitutional parity and the federal preemption of Article 489f for its failure to address state savings banks, the banking commissioner announced that the Department would accept applications for interstate merger and branching transactions for state-chartered banks.

In 1999, the Conference of State Bank Supervisors re-accredited the Texas Department of Banking. As of January 1, 1999, the Department of Banking had 135 employees, and exercised oversight responsibility over total assets of \$506 billion in 397 commercial banks, 33 trust companies doing business with the public, 14 foreign bank agencies, 447 prepaid funeral licensees, 226 perpetual care cemeteries, 39 sale of checks licensees, and 80 currency exchange licensees.

In 1999, the 76th Legislature passed H.B. 2066, enabling interstate mergers, branching, and fiduciary activities for financial institutions, including trust companies, effective September 1, 1999. The bill added new Subtitle G to Title 3, Finance Code (Chapters 201-204), to govern interstate acquisitions of banks, interstate mergers between banks, interstate branching of banks, and foreign bank branching in Texas, effective September 1, 1999. Regulation is committed to the banking commissioner with rulemaking authority and appellate jurisdiction vested in the Finance Commission. The bill also amended trust company statutes to authorize interstate fiduciary activities, and revised other laws regarding public deposits, probate, and civil process to conform to an interstate bank operating environment.

In 1999, the 76th Legislature passed H.B. 2320, expanding currency exchange, transmission, and transportation licensing requirements to transportation of financial instruments and non-bank owned ATMs, effective August 30, 1999.

*Note: For additional 1999 entries, see 76th Legislature, Part VII.*

### III. Policymaking Structure

**A. Please complete the following chart:**

<b>Finance Commission of Texas Exhibit 3: Policymaking Body</b>				
<b>Member Name</b>	<b>Term/ Appointment Dates/ All appointed by the Governor</b>	<b>Qualification (e.g., public member, industry representative)</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
W. D. Hilton, Jr. Chair	Term: 2/1/02 Apptmt. date: 10/11/95	Public member	NGC Settlement Trust Services, Inc. 2608 Eastland Ave. Ste.202 Greenville, TX 75402	903/454-3700 903/455-5830 dhilton@trustservices.org
Jeff Austin, Jr.	Term: 2/1/00 Apptmt. date: 5/3/94	Banking executive	Austin Bank, Texas N.A. P.O. Box 951 Jacksonville, TX 75766	903/586-1526 903/586-0643 austin16@ballistic.com
Steven C. Hastings, Jr.	Term: 2/1/00 Apptmt. date: 5/3/94	Public member CPA	Medcare Financial Solutions, Inc. 600 Six Flags Dr., #524 Arlington, TX 76011	817/695-1122 817/695-1228 shastings@medcarefin.com
Deborah H. Kovacevich	Term: 2/1/04 Apptmt. date: 5/29/98	Banking executive	State Bank of Jewett P.O. Box 125 Jewett, TX 75846-0125	903/626-4483 903/626-5816 sboj@risecom.net
Marlene Martin	Term: 2/1/02 Apptmt. date: 6/28/96	Public member	Attorney at Law 6243 W. IH 10, Ste 840 San Antonio, TX 78201	210/737-3997 210/737-3990 mmmjdcpa@aol.com
Manuel J. Mehos	Term: 2/1/02 Apptmt. date: 6/28/96	Savings executive	Coastal Banc ssb 5718 Westheimer, Ste 600 Houston, TX 77057	713/435-5315 713/435-7878 mehos@coastalbanc.com
Victor (Buddy) Puente, Jr.	Term: 2/1/04 Apptmt. date: 6/28/96	Public member	Southwest Office Systems P.O. Box 612248 Dallas-Ft. Worth Airport, TX 75261-2248	817/255-8602 817/255-8640 bpuente@sostexas.com
John Snider	Term: 2/1/00 Apptmt. date: 5/29/98	Savings executive	Shelby Savings Bank, SSB P.O. Box 1806 Center, TX 75935-0706	409/598-5688 409/598-5350 ssbank@sat.net

Member Name	Term/ Appointment Dates/ All appointed by the Governor	Qualification (e.g., public member, industry representative)	Address	Telephone Number Fax Number E-mail Address
Robert V. Wingo	Term: 2/1/04 Apptmt. date: 5/29/98	Public member	Sanders Wingo Galvin & Morton Advertising 4050 Rio Bravo, Ste 230 El Paso, TX 79902	915/533-9583 915/533-3601 bobwingo@swgm.com

**B. How is the chair of the policymaking body appointed?**

Under Fin. Code § 11.107 , the Governor appoints a member of the Finance Commission as the presiding officer.

**C. Describe the primary role and responsibilities of the policymaking body.**

The primary role of the Finance Commission is to appoint the savings and loan commissioner, the banking commissioner, and the consumer credit commissioner and oversee the operation of their respective agencies. The Commission also adopts rules implementing statutes for most but not all of the industries supervised by the three agencies. Appeals of certain actions taken by the consumer credit and banking commissioner may be heard by the Commission, and the Commission’s administrative law judge (ALJ) conducts hearings on behalf of the agency heads. The Commission also performs mandated studies on the availability, quality, and prices of financial services offered to agricultural, small business and individual consumers in the state and on home equity lending in Texas.

**D. List any special circumstances or unique features about the policymaking body or its responsibilities.**

The Finance Commission is an umbrella agency, or an oversight board, employing one full time employee (an ALJ) and a part-time executive director (currently filled by the banking commissioner). Commission members serve without remuneration. All administrative functions of the Commission are typically performed by the staff of the agency head who serves as executive director. Responsibility for the mandated legislative studies has been coordinated among the agency heads. Staff support and office space for the ALJ are provided by the Banking Department, with the other Finance Commission agencies billed for use of the ALJ’s services in proportion to the amount of time devoted to each agency’s business. The costs of the Finance Commission building and shared services are generally borne by the supervised agencies in proportion to their respective share (Section 11.204 of the Texas Finance Code).

The Finance Commission must comply with all laws and requirements applicable to state agencies (including reports) , although nearly all its activities are executed by its subsidiary agencies.

Although the banking and thrift industries have statutory representation on the Finance Commission, the majority of the Commission’s members are public members. Supervised institutions other than banks and

thrifts regulated by the Finance Commission agencies do not have statutorily mandated representation on the Commission.

**E. In general, how often does the policymaking body meet? How many times did it meet in FY 1998? in FY 1999?**

Fin. Code § 11.106 requires that the Finance Commission meet at least six times a year. In FY 1998, the Commission met six times. To date in FY 1999, the Commission has met five times, with a sixth meeting scheduled for August 20, 1999.

**F. What type of training do the agency's policymaking body members receive?**

A one-day orientation is conducted for new Finance Commission members, which includes a review of: statutory responsibilities of the Finance Commission and its members; open meetings procedures; open records laws; the Public Funds Investment Act; ethics; administrative law; state accounting procedures; and instructions on preparation of travel vouchers. Each of the commissioners also familiarizes the new members with the activities and policies of their respective agencies. Additionally, members are regularly notified of and encouraged to attend various seminars conducted by the Governor's Office and the Office of the Attorney General.

**G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.**

The roles of the Finance Commission members are outlined in Fin. Code §§ 11.101-107. In general, the Finance Commission adopts rules, reviews policy, and monitors performance of the Finance Commission agencies through its direct supervision of the commissioners. Each agency's commissioner operates as the chief executive officer of his/her respective agency, and is responsible for the agency's daily operations. The executive director of the Finance Commission is responsible for administrative support of the Commission and preparation of all required reports and records. The ALJ is an employee of the Finance Commission and reports to the Finance Commission through the Audit Committee. Under Fin. Code § 11.201 of the Finance Code, the executive director exercises administrative supervision over and prepares an annual evaluation of the ALJ for approval by the Finance Commission. The Finance Commission ALJ independently performs all quasi-judicial duties without direct supervision. Under Fin. Code § 11.203, the ALJ is not subject to the direction or control of the Department of Banking, Savings and Loan Department or Office of Consumer Credit Commissioner.

**H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart.**

<b>Finance Commission of Texas Exhibit 4: Subcommittees and Advisory Committees</b>			
<b>Name of Subcommittee or Advisory Committee</b>	<b>Size/Composition/How members are appointed</b>	<b>Purpose/Duties</b>	<b>Legal Basis for Committee</b>
<b>Audit Committee</b> (Standing Committee)	Three members appointed by Chair.	To contract for and review a risk evaluation of the agencies, set the scope and review findings of audits of selected internal operations. Also, to annually review the evaluation of the ALJ and make recommendations to the full Finance Commission with regard thereto.	Fin. Code §11.107 (c)(3)
<b>Home Equity Study Committee</b> (Ad Hoc Committee)	Three members appointed by Chair.	Contract for, set the scope of, and review findings of research on the availability, quality, and prices of financial services offered to agricultural businesses, small businesses, and individual consumers in Texas (currently home equity lending).	Fin. Code §11.107 (c)(3)
<b>Commissioner Search Committee</b> (Ad Hoc Committee)	Four members appointed by Chair.	To select search firm, set profile of successful candidate, and recommend final candidates for the position of banking commissioner.	Fin. Code §11.107 (c)(3)
<b>Sunset Committee</b> (Ad Hoc Committee)	Four members appointed by Chair.	To review and coordinate the agencies' response to the Sunset Advisory Commission.	Fin. Code §11.107 (c)(3)

Other Finance Commission committees may be appointed as the presiding officer considers necessary to carry out the business of the Commission.

While not a subcommittee or advisory committee to the policymaking board, Fin. Code §154.355 creates an advisory council (the Guaranty Fund Advisory Council) to supervise the operation and maintenance of the Prepaid Funeral Guaranty Fund. The banking commissioner (or his/her designee) is a member of the Council, as is the attorney general (or his/her designee), and one representative of the funeral industry and one

consumer representative (both of the latter are appointed by the Finance Commission). The Council does not report to the Finance Commission.

The Advisory Council meets on a periodic basis as determined by the banking commissioner, but not less than once annually, in order to fulfill the requirements of supervising the operation and maintenance of the Fund. The Advisory Council reviews prepaid funeral contract claims presented from Texas consumers wanting reimbursement of their contract funds from seized or insolvent prepaid funeral contract permit holders. If the claims are approved, the Council authorizes the Department of Banking to withdraw restitution from the Fund to settle the pending claims.

**I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?**

The Finance Commission obtains public input through its open meetings and the rulemaking process. Notice for Finance Commission and committee meetings is posted with the Secretary of State and on the Finance Commission website (<http://www.fc.state.tx.us>). Meetings are generally held in the Hearings Room at the Finance Commission Building, which can seat over 50 members of the public. Members of the public are able to address the Commission during the meetings through a sign-up procedure. Interested parties are also invited to participate in the Finance Commission studies of financial services and home equity lending.

All hearings conducted by the ALJ are open to the public except as to matters that are made confidential by law. Some sections of the Finance Code require public notice of particular types of hearings to be published in the newspaper, and sometimes for competitors of the applicant and law enforcement agencies, to be given notice of the application and an opportunity to be heard for or against the application. These requirements are carefully observed in the hearing process.

All rule proposals are published for comment in the *Texas Register*. Many proposals are also distributed by the agencies for pre-comment among identified interested parties as a means of achieving negotiated, consensus solutions. Pre-comments are summarized for the Finance Commission prior to a vote to propose the rule, and comments received on proposals are summarized for the Finance Commission before a vote to adopt.

The Finance Commission reviews the feedback received by its agencies through surveys made of their respective constituencies.

## IV. Funding

### A. Describe the agency's process for determining budgetary needs and priorities.

The primary component (85%) of the Department's budget is the expense of employing examiners to assess the condition of the regulated entities, as required by law. Therefore, the budget process is generally driven by projections of the number, type, size, and complexity of regulated entities and necessary examinations. This information is fed into a staffing model, resulting in projected staffing levels and distributions. Once an optimal staffing plan is determined, future expenses are projected, including anticipated travel and examination-related expenses. Assessment rates are adjusted to cover projected expenses, with the intent that each revenue-generating program be self-funding and cover its proportionate share of indirect expenses.

A total recasting of the budget (as described above) is done approximately once each biennium in preparation for submission of the Legislative Appropriations Request (LAR). Once the appropriations have been decided by the Legislature, the chief accountant, division heads, and regional directors develop line item operating budgets, including both revenues and expenditures for each division of the Department. Quarterly, division heads and regional directors receive financial statements which include quarterly and year-to-date activity compared to the budget for the applicable period. Division heads and regional directors are then required to submit budget variance explanation reports to the deputy commissioner and budget director for each line item variance in excess of 5% or \$500. New trends or expected changes are also included in the variance reports.

Since 1993, the Department has received, as part of its appropriations, a contingency rider which would enable the agency to increase appropriated funds in the event of an increase in regulated assets, supervisory problems, or workload. To date the agency has neither requested nor spent any of the contingency funds appropriated. Access to the contingency appropriation is formally controlled through the requirement that the Finance Commission make a finding of fact, and no disapproval is issued by either the Governor's Office of Budget and Planning or the Legislative Budget Board. Any and all contingency funds utilized would be fully funded by revenue generated by the Department from the regulated entities.

Since March 1992, the Department has received federal grants from the Office of National Drug Control Policy (ONDCP) to fund a portion of the agency's currency exchange program. Currency exchange personnel participate in the ONDCP's Houston High Intensity Drug Trafficking Area (HIDTA) Task Force, and since 1998, the South Texas High Intensity Drug Trafficking Area Task Force. Grants have diminished from initial funding of \$227 thousand to a current allotment of \$121 thousand for FY 1999 due to reallocation of federal budgets. As a result of the decline in grant money, the licensee examination fees have been raised. However, fees assessed to this industry remain substantially below the actual cost of supervision due to the subsidy provided by the federal grant.

**PLEASE FILL IN EACH OF THE CHARTS BELOW, USING EXACT DOLLAR AMOUNTS.**

**B. Show the agency's sources of revenue. Please include all local, state, and federal sources. See Exhibit 5 Example or [click here to link directly to the example.](#)**

<b>Texas Department of Banking Exhibit 5: Sources of Revenue — Fiscal Year 1998 (Actual)</b>	
Source	Amount
Legislative Appropriations	* \$10,641,893.75
Federal Revenues	\$175,512.73
Licenses Fees and Permits - General Revenue	\$6,476.20
Sales of Goods and Services - Appropriated Receipts	\$116,177.73
Other Revenues - General Revenue	\$14,288.65
<b>TOTAL</b>	<b>\$10,954,349.06</b>

\* The Department receives appropriations, but can only spend what is collected (regulatory assessments and fees from supervised entities.)

**C. If you receive funds from multiple federal programs, show the types of federal funding sources. See Exhibit 6 Example or [click here to link directly to the example.](#)**

<b>Texas Department of Banking Exhibit 6: Federal Funds — Fiscal Year 1998 (Actual)</b>				
Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
HIDTA Grant	0/100	0	\$175,512.73	\$175,512.73
<b>TOTAL</b>		<b>0</b>	<b>\$175,512.73</b>	<b>\$175,512.73</b>

Other federal assistance is received through an indirect subsidy in the area of examiner training. The FDIC and Federal Reserve Bank allow state examiners to attend their schools at a discounted rate.

**D. Show the agency's expenditures by strategy. See Exhibit 7 Example or [click here to link directly to the example.](#)**

<b>Texas Department of Banking Exhibit 7: Expenditures by Strategy — Fiscal Year 1998 (Actual)</b>	
Goal/Strategy	Amount
<b>Goal A - Effective Regulation</b>	Goal A: Total - \$7,072,617.21
Bank Examination	\$5,855,145.27

Goal/Strategy	Amount
Non-Bank Examination	Non-Bank Examination Total - \$872,459.30
Prepaid Funeral Contracts	\$350,112.29
Perpetual Care Cemeteries	\$183,742.82
Currency Exchange, Transmission, and Transportation	\$243,041.39
Sale of Checks	\$95,562.80
Application Processing	\$345,012.64
<b>Goal B - Indirect Administration</b>	Goal B : Total - \$2,191,240.31
Central Administration	\$486,489.93
Legal	\$532,521.43
Accounting	\$176,789.32
Personnel	\$191,715.67
Information Resources	\$310,678.43
Operations and Support	\$493,045.54
<b>GRAND TOTAL:</b>	\$9,263,857.52

**E. Show the agency's expenditures and FTEs by program. See Exhibit 8 Example or [click here to link directly to the example.](#)**

Texas Department of Banking Exhibit 8: Expenditures and FTEs by Program — Fiscal Year 1998 (Actual)					
Program	Budgeted FTEs, FY 1998	Actual FTEs as of August 31, 1998	Federal Funds Expended	State Funds Expended	Total Actual Expenditures
Bank Examination	108	86	0	\$5,855,145.27	\$5,855,145.27
Non-Bank Examination:					
Prepaid Funeral Contracts	8.5	8.5	0	\$350,112.29	\$350,112.29
Perpetual Care Cemeteries	*	*	0	\$183,742.82	\$183,742.82
Currency Exchange, Transmission and Transportation	5.5	5.5	\$175,512.73	\$67,528.66	\$243,041.39
Sale of Checks	**	**	0	\$95,562.80	\$95,562.80
Application Processing	6	6	0	\$345,012.64	\$345,012.64
<b>TOTAL</b>	128	106	\$175,512.73	\$6,897,104.48	\$7,072,617.21

**Note: this does not add up to total employees of the agency, since indirect administration is not included.**

\* Employees are shared between Prepaid Funeral Contracts and Perpetual Care Cemeteries

\*\* Employees are shared between Currency Exchange and Sale of Checks

**F. If applicable, please provide information on fees collected by the agency. See Exhibit 9 Example or [click here to link directly to the example.](#)**

<b>Texas Department of Banking Exhibit 9: Fee Revenue and Statutory Fee Levels — Fiscal Year 1998</b>				
<b>Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory maximum</b>	<b>Number of persons or entities paying fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
Bank Assessments/ Bank Examination/ FIN 31.003(a)(4), 31.106; 7 TAC 3.36-3.38	See Schedule at 7 TAC 3.37	459	\$7,607,631	General Revenue Fund
Trust Company Examination Fees/ Bank Examination/ 7 TAC 3.3, & TAC 17.22	\$500 per examiner day	29	\$373,884	General Revenue Fund
Foreign Bank Agency Examination Fees/ Bank Examination/ 7 TAC 3.36 & TAC 3.38	See Schedule at 7 TAC 3.37	14	\$510,805	General Revenue Fund
Foreign Bank Registered Office Examination Fees/ Bank Examination/ 7 TAC 3.36 & TAC 3.38	See Schedule at 7 TAC 3.37	27	\$2,853	General Revenue Fund
Bank & Trust Charter Investigation Fee/ Application Processing/ 7 TAC 15.2	\$5,000	3	\$15,000	General Revenue Fund
Annual Certification Fee for Exempt Trust Companies/ Bank Examination/ 7 TAC 3.36 & TAC 17.22	See Schedule at 7 TAC 3.36 and 17.22	43	\$4,450	General Revenue Fund
Call Report Filing Fee for Nonexempt Trust Companies/ Bank Examination/ 7 TAC 21.2(b)(21)	\$100	34	\$3,400	General Revenue Fund
Call Report Filing Fee for Exempt Trust Companies/ Bank Examination/ 7 TAC 21.2(b)(21)	\$100	42	\$4,200	General Revenue Fund

<b>Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory maximum</b>	<b>Number of persons or entities paying fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
Bank Charter Conversion Fee/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$5,000	17	\$85,000	General Revenue Fund
Bank Merger Application Fee/ Application Processing FIN 12.105, 7 TAC 15.2, 21.2	\$2,500 to \$4,000	31	\$93,500	General Revenue Fund
Branch Application/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$500 to \$1,500	87	\$49,500	General Revenue Fund
Branch Relocation/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$500 to \$1,500	11	\$12,000	General Revenue Fund
Subsidiary Application Fee/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$350	10	\$3,500	General Revenue Fund
Purchase and Assumption App. Fee/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$3,500	3	\$10,500	General Revenue Fund
Articles of Association Filing/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$200	23	\$4,600	General Revenue Fund
Change of Domicile Fee/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$200 to \$1,500	9	\$6,000	General Revenue Fund
Bank Holding Company - Bank Acquisition/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$500	67	\$33,500	General Revenue Fund
Bank Holding Company - Other Acquisition/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$500	6	\$3,000	General Revenue Fund
No Objection Letter/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$100	78	\$7,800	General Revenue Fund
Treasury Stock/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$350	18	\$6,700	General Revenue Fund

<b>Description/ Program/ Statutory Citation</b>	<b>Current Fee/ Statutory maximum</b>	<b>Number of persons or entities paying fee</b>	<b>Fee Revenue</b>	<b>Where Fee Revenue is Deposited (e.g., General Revenue Fund)</b>
Change of Control/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$5,000	5	\$20,000	General Revenue Fund
Trust Charter/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$5,000	3	\$15,000	General Revenue Fund
Capital Notes Filing Fee/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$500	1	\$500	General Revenue Fund
Registration of Loan Production Offices/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$100	1	\$100	General Revenue Fund
Trust Company Charter Conversion/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$600	1	\$600	General Revenue Fund
Additional Trust Office/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$200	1	\$200	General Revenue Fund
Additional Foreign Bank Representative Office/ Application Processing/ FIN 12.105, 7 TAC 15.2, 21.2	\$500	1	\$500	General Revenue Fund
Assessment/ Sale of Checks/ 7 TAC 29.2, FIN 152.205, 152.304, 152.104	.001 of instruments/.02 of instruments	37	\$93,735	General Revenue Fund
Examination Fee and Travel Reimbursement/ Sale of Checks/ 7 TAC 29.2, FIN 152.205, 152.304, 152.104	Actual travel costs/ actual travel costs	36	\$24,030	General Revenue Fund
Application Fee Sale of Checks/ 7 TAC 29.2, FIN 152.205, 152.304, 152.104	\$2,500	6	\$15,000	General Revenue Fund
Licence Renewal Fee/ Sale of Checks/ 7 TAC 29.2, FIN 152.205, 152.304, 152.104	\$500	33	\$16,500	General Revenue Fund

Description/ Program/ Statutory Citation	Current Fee/ Statutory maximum	Number of persons or entities paying fee	Fee Revenue	Where Fee Revenue is Deposited (e.g., General Revenue Fund)
Application Fee/ Currency Exchange/ FIN 153.303, 7 TAC 4.11	\$2,500 plus actual travel costs/ \$500 each additional location	24	\$58,272	General Revenue Fund
License Renewal Fee/ Currency Exchange/ FIN 153.303, 7 TAC 4.11	\$500 plus actual travel costs/ \$100 each additional location	62	\$46,100	General Revenue Fund
Examination Fee/ Currency Exchange/ FIN 153.303, 7 TAC 4.11	\$40 per hour plus actual travel costs/\$400 per day plus actual travel costs	77	\$77,817	General Revenue Fund
Application Fee/ Prepaid Funeral/ FIN 154.051, 7 TAC 25.23, 25.24	\$500	14	\$7,000	General Revenue Fund
License Renewal Fee/ Prepaid Funeral/ FIN 154.051, 7 TAC 25.23, 25.24	\$100 plus \$1 for each outstanding contract, up to \$1,500	442	\$194,206	General Revenue Fund
Assessments/ Prepaid Funeral/ FIN 154.051, 7 TAC 25.23, 25.24	\$.55 per outstanding contract/\$3 per outstanding contract	450	\$240,522	General Revenue Fund
Fund Conversion Fee/ Prepaid Funeral/ FIN 154.051, 7 TAC 25.23, 25.24	\$500/\$1,000	13	\$11,500	General Revenue Fund
Examination Fee/ Prepaid Funeral/ FIN 154.051, 7 TAC 25.23, 25.24	\$500 per day plus actual travel costs	16	\$50,929	General Revenue Fund
Application Fee/ Perpetual Care Cemetery/ Texas Health and Safety Code 712.042, 7 TAC 26.1	\$500	1	\$500	General Revenue Fund

Description/ Program/ Statutory Citation	Current Fee/ Statutory maximum	Number of persons or entities paying fee	Fee Revenue	Where Fee Revenue is Deposited (e.g., General Revenue Fund)
License Renewal Fee/ Perpetual Care Cemetery/ Texas Health and Safety Code 712.042, 7 TAC 26.1	\$500	225	\$109,735	General Revenue Fund
Assessment Fee/ Perpetual Care Cemetery/ Texas Health and Safety Code 712.042, 7 TAC 26.1	\$.00098 of deposits/\$.026 of deposits	226	\$86,247	General Revenue Fund
Examination Fee/ Perpetual Care Cemetery/ Texas Health and Safety Code 712.042, 7 TAC 26.1	\$500 per day plus actual travel costs	11	\$7,141	General Revenue Fund

**G. Please fill in the following chart. See Exhibit 10 Example or [click here to link directly to the example](#).**

Texas Department of Banking Exhibit 10: Purchases from HUBs				
FISCAL YEAR 1996				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0	11.9%
Building Construction	0	0	0	26.1%
Special Trade	\$700,789*	\$25,480	4%	57.2%
Professional Services	\$50,231	\$16,499	32%	20.0%
Other Services	\$340,063	\$35,345	10%	33.0%
Commodities	\$195,171	\$142,834	73%	12.6%
<b>TOTAL</b>	<b>\$1,286,254</b>	<b>\$220,158</b>	<b>17%</b>	
FISCAL YEAR 1997				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	0	0	0	11.9%
Building Construction	0	0	0	26.1%
Special Trade	\$241,765*	0	0%	57.2%
Professional Services	\$19,655	\$18,315	95%	20.0%
Other Services	\$194,160	\$1,383	1%	33.0%
Commodities	\$127,120	\$25,834	20%	12.6%
<b>TOTAL</b>	<b>\$582,700</b>	<b>\$45,532</b>	<b>8%</b>	

Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
<b>FISCAL YEAR 1998</b>				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
<b>Heavy Construction</b>	0	0	0	11.9%
<b>Building Construction</b>	0	0	0	26.1%
<b>Special Trade</b>	\$26,026	\$6,712	23%	57.2%
<b>Professional Services</b>	\$20,104	\$19,829	95%	20.0%
<b>Other Services</b>	\$178,396	\$9,997	5%	33.0%
<b>Commodities</b>	\$56,902	\$14,137	25%	12.6%
<b>TOTAL</b>	\$281,428	\$50,675	18%	

\* The agency expended approximately \$1 million in “special trade” funds in 1996 and 1997 to repair its building and parking lot. Contracting for this project was executed by GSC, therefore the Department did not have control over awarding of bids.

**H. Does the agency have a HUB policy? How does the agency address performance shortfalls related to the policy?**

The agency has a policy on the utilization of HUBs. It is the policy of the Department to make a good faith effort to award at least 30% of the total annual value of all contracts for the purchase of goods or services to certified HUBs.

## V. Organization

**A. Please fill in the chart below. If applicable, list field or regional offices. See Exhibit 11 Example or [click here to link directly to the example](#).**

Texas Department of Banking Exhibit 11: FTEs by Location — Fiscal Year 1998			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 1998	Number of Actual FTEs as of August 31, 1998
Headquarters	Austin	55	52
Regional Office	Austin	18	13
Regional Office	Houston	31	27
Regional Office	Arlington	27	24
Regional Office	Lubbock	14	14
Subregional Office	San Antonio	7	7
Special Audits Examiner	McAllen	1	1
<b>TOTAL</b>		<b>153</b>	<b>138</b>

**B. What was the agency’s FTE cap for FY 1998?**

The Department’s FTE cap for FYs 1998 and 1999 was 184.5 FTEs. The cap drops to 150 for FYs 2000 and 2001. As of June 30, 1999, the agency has 146 employees and has posted to fill the remaining four slots.

**C. How many temporary or contract employees did the agency have as of August 31, 1998?**

The Department had two temporary employees as of August 31, 1998.

The agency has numerous contracts related to the administration of its building (i.e., janitorial service, lawn maintenance) and a contract for the internal audit function (through the Finance Commission). However, these are contracts for identified services, not personnel.

**D. Please fill in the chart below.**

Texas Department of Banking Exhibit 12: Equal Employment Opportunity Statistics							
FISCAL YEAR 1996							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	12	0%	5%	0%	8%	42%	26%
Professional	110	8%	7%	12%	7%	31%	44%
Technical	3	0%	13%	33%	14%	33%	41%
Protective Services	0	NA	13%	NA	18%	NA	15%
Para-Professionals	0	NA	25%	NA	30%	NA	55%
Administrative Support	30	10%	16%	23%	17%	93%	84%
Skilled Craft	0	NA	11%	NA	20%	NA	8%
Service/Maintenance	0	NA	19%	NA	32%	NA	27%

Texas Department of Banking Exhibit 12: Equal Employment Opportunity Statistics (cont.)							
FISCAL YEAR 1997							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	12	0%	5%	0%	8%	42%	26%
Professional	107	7%	7%	15%	7%	32%	44%
Technical	3	0%	13%	33%	14%	33%	41%
Protective Services	0	NA	13%	NA	18%	NA	15%
Para-Professionals	0	NA	25%	NA	30%	NA	55%
Administrative Support	30	13%	16%	23%	17%	93%	84%
Skilled Craft	0	NA	11%	NA	20%	NA	8%
Service/Maintenance	0	NA	19%	NA	32%	NA	27%

Texas Department of Banking Exhibit 12: Equal Employment Opportunity Statistics (cont.)							
FISCAL YEAR 1998							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	12	0%	5%	0%	8%	42%	26%
Professional	91	10%	7%	12%	7%	33%	44%
Technical	3	0%	13%	0%	14%	33%	41%
Protective Services	0	NA	13%	NA	18%	NA	15%
Para-Professionals	0	NA	25%	NA	30%	NA	55%
Administrative Support	30	17%	16%	20%	17%	90%	84%
Skilled Craft	0	NA	11%	NA	20%	NA	8%
Service/Maintenance	0	NA	19%	NA	32%	NA	27%

**E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?**

The Texas Department of Banking has an equal employment opportunity policy. As reflected in the preceding chart, women were underrepresented by 12% (or 10 people) within the professional category at FYE 1998, when compared to the civilian labor force. As of July 31, 1999, this number is reduced to a deficiency of three professional females. The Department of Banking actively seeks qualified applicants, especially women and minorities, in order to have a workforce that reflects the civilian labor force by job category. The agency maintains contact with 30 career and placement offices of colleges and universities across the state, concentrating on schools with a high enrollment of minorities and women. On-campus recruiting is conducted on those campuses to attract qualified applicants. The agency also maintains contact with minority and women's organizations in order to attract qualified applicants.

## VI. Guide to Agency Programs

Please complete this section for each agency program (or each agency function, activity, or service). Copy and paste the question boxes as many times as needed to discuss each program. Please contact Sunset staff with any questions about applying this section to the agency.

### Bank Examination

**A. Please complete the following chart.**

<b>Texas Department of Banking Exhibit 13: Program Information — Fiscal Year 1998</b>	
<b>Name of Program</b>	Bank Examination
<b>Location/Division</b>	Headquarters, four regional offices (Arlington, Houston, Austin, Lubbock) and one subregional office (San Antonio)
<b>Contact Name</b>	Gayle L. Griffin, Director of Bank and Trust Examination
<b>Number of Budgeted FTEs, FY 1998</b>	97
<b>Number of Actual FTEs as of August 31, 1998</b>	86

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

The primary function of the Bank Examination program is to examine and supervise banks and trust companies chartered by the state of Texas. The Bank and Trust Examination Division also examines and supervises Foreign Bank Agencies (FBAs), Foreign Bank Representative Offices and Information Systems (IS) providers. Each of these entities has a separate rating system and examination schedule.

The condition of the banking system and individual entities is monitored through offsite analysis of quarterly call report data.

An ombudsman function is available for regulated entities to appeal the findings, ratings or violations cited in examinations.

The Department's consumer complaints coordinator provides general information to Texas citizens regarding banking and trust laws, and in conjunction with the Legal Division, attempts to mediate and resolve complaints against banks and trust companies regulated by the agency.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

The purpose of the Bank Examination Program is to ensure the safety of depositors', beneficiaries', and shareholders' money in the banking and trust system. This is done through examinations of the regulated entities to determine their condition and verify compliance with certain state laws. Supervision includes issuing policies and procedures for sound practices, maintaining contact with entity management, and reviewing proposed activities.

Bank examinations were mandated in 1905 through the adoption of a general law creating a system of state bank chartering and regulation. Section 31.105 of the Finance Code currently requires the examination of state banks at least once every 18 months. The examination function was performed by various agencies (starting with the Commissioner of Agriculture, Insurance, Statistics and History, and Banking) until the Banking Department was created in 1923 (see History Section). The examination function has historically been supplemented by various forms of offsite monitoring. The current program was implemented in 1998 and uses data screening to identify banks which may be experiencing adverse change or conditions warranting attention.

In 1987, the Banking Department assumed complete responsibility for the chartering and examination of trust companies. Section 2.002 of the Texas Trust Company Act mandates an annual examination of trust companies that do business with the general public.

In 1985 and 1995, respectively, the Department was authorized, though not mandated, to examine foreign bank agencies (under Section 31.101 of the Finance Code) and representative offices of foreign banks (under 39.206 of the Finance Code).

Information systems providers are examined under Section 31.107 of the Texas Finance Code.

The mandate for the consumer information function (now Section 12.108 of the Texas Finance Code) was added by the 68th Legislature in 1983.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

During the banking crisis of the 1980's, the Department began to more extensively use its statutory enforcement authority to place supervisors and conservators in troubled banks. This enforcement authority provided much more regulatory supervision over an institution needing corrective action. During the period of 1982 to 1990, the Commissioner appointed supervisors in 127 problem bank situations and conservators in another 10. Although the commissioner's authority to appoint such individuals had existed for many years, it was rarely used until that time. The banking crisis of the 1980's found state and federal banking regulators searching for a means to stem the deteriorating trends in the industry. The Department began regularly exercising authority granted under the Texas Banking Code of 1943, by installing supervisors and conservators in those banks with serious financial and/or managerial deficiencies. In hindsight, the supervisors and conservators were placed in the institutions too late to have a remedial impact and ultimately they served as caretakers until the banks failed.

A reevaluation of the supervisor/conservator program in the early 1990's led to changes which resulted in supervisors and conservators being utilized much earlier in the corrective process associated with problem banks. As a result, supervisors and conservators appointed post 1990 have had much more success in affecting corrective action and fewer banks placed under supervision or conservatorship have failed; however, there have been more frequent ownership changes involved in the corrective effort.

In 1987, the 70th Legislature transferred full regulatory and supervisory responsibility of Texas trust companies to the Department due to problems rapidly becoming public and in an effort to improve the effectiveness of regulatory supervision and increase the accountability of the industry. Since 1987, the Department of Banking has closed 27 state-chartered trust companies, with 22 closures occurring between 1987 and 1991. The vast majority of these earlier closures involved fraud and poor management practices that were revealed as a result of the Department's increased regulatory and enforcement activities. Of the trust companies liquidated between 1988 and 1991, only 15.9% of account holder claims were paid from assets seized from the trust company. In comparison, 94.7% of account holder claims were paid from the closures and subsequent liquidations occurring after 1991. The higher recovery ratio reflects the advantage of strong oversight, timely problem identification, and effective enforcement action, which ultimately limit exposure to trust account holders.

In 1989, the Finance Commission Salary Administration Program was established by S.B. 607 enacted by the 71st Legislature. The program resulted from a study initiated in response to the banking and thrift crisis of the 1980's of staffing levels, turnover rates, education credentials and experience levels of the employees of the Finance Commission agencies. The consensus at that time was that the state's Job Classifications Act was not adequately flexible to allow the Finance Commission agencies to attract and retain competent employees, which contributed to reduced effective and early supervision of the state banking system and subsequent harm to the public through massive closures and subsequent constriction in credit. The inability to hire experienced examiners during this period damaged the Department's credibility and diminished its effectiveness as a regulator, both of which have taken years to rebuild. Under S.B. 607, the Finance Commission had authority to set the salaries and determine the number of employees for the Finance Commission agencies, subject to the limits of each agency's total appropriations under the General Appropriations Act. In 1997, the Legislature ended the Salary Administration Program and the agency came under a mandated FTE cap. All positions, except those specifically exempted, were classified under the state's classification matrix. An informal survey as of July 1999 indicates that the Banking Department pays less than both the industry and the federal bank regulators for employees with similar experience in a market increasingly competitive for their expertise and experience (see Exhibit IV).

Since 1993, the Department has had a contingency appropriations rider to allow for additional expenditures and FTEs in the event of unforeseen changes in the agency's examination responsibility. The general circumstances under which the rider might be accessed are: (1) a massive influx of assets into the state system due to conversions or new charters; (2) a substantial decline in the condition of the entities currently under supervision; or (3) a diversion of federal regulatory resources or a change in the federal regulatory structure. The large difference in resources required to examine healthy institutions (on an 18-month examination cycle) versus problem banks (on a six-month examination cycle) means that any downward shift in bank conditions could exponentially expand the Department's examination responsibility and attendant staffing, travel, and equipment costs. In the 1980's and again in the late 1990's, the Department had difficulty meeting its examination mandate when the FDIC shifted its examiners out of the commercial examination function in Texas. The rider allows the agency to staff up to compensate for the loss of FDIC examinations in the alternate examination program. To date, the Department has been able to reduce staff levels even as regulated assets have grown; however, much of this is a result of the current well-being of the state's economy. The agency operates with no staffing margin to react to adverse economic changes.

In 1994, certain duties and responsibilities were carved out of the Bank and Trust Examination Division into a new division (currently called Administrative Services and Policy Development). This division, while separate from Bank and Trust, is funded under the Bank Examination strategy and provides support to Bank and Trust through training, financial analysis, consumer complaints, handling development of policies and procedures, and maintenance of reference materials. In addition, the ombudsman function (discussed in detail in Section VII.G.) acting directly for the commissioner is housed in this division. Primary among the reasons for the change was the need to ensure separation between the examination and ombudsman functions.

In 1995, in recognition of the lower risk in the banking system, the Department extended the examination cycle from 12 to 18 months for smaller, healthy institutions. A revised offsite monitoring program was implemented in 1998 in order to monitor the condition of banks between the extended examinations. The program uses automated filters to detect trends or changes based on quarterly financial reports. Offsite analysis is also performed on identified problem institutions (on an internal watchlist), and institutions which failed previous filters and for which continued observation is needed. The monitoring is conducted in the regional offices, and includes review of submitted information, correspondence, and phone contact with bank management.

Starting in January 1998, a program of Y2K readiness assessments was undertaken in the Bank Examination program. This initiative has diverted resources from the commercial safety/soundness examination schedule and resulted in reductions in the number of commercial safety/soundness examinations performed. The Y2K program will be completed after the first quarter of calendar year 2000, at which time it is anticipated that resources will be redirected to commercial bank and trust examination.

In 1998, the Department's alternate examination program with the Federal Deposit Insurance Corporation was modified in reaction to the inability of the FDIC to conduct its allocated examinations in a timely manner. FDIC examination resources were diverted into Year 2000 assessments, which made it unable to meet its mandates of the alternate examination program. The program was revised to allow the Banking Department to perform two sequential examinations at the same bank. Prior to the revision, the FDIC might have refused to accept the second examination by the Department, which could have resulted in a second, redundant examination of the bank by the FDIC.

It is anticipated that the services and functions of the Bank Examination program will be continue to be needed in the future. Although the manner in which the agency performs its mission may change as financial activities evolve and become more global in nature, the chartering and supervision of financial entities will continue to be important to the economic health of the state and protection of its citizens.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

The principal beneficiary of this program is the Texas consumer that uses the services of banks and/or trust companies chartered in the state of Texas. The program goal is to ensure safe and sound financial services so that the individuals who use those services have some assurance that the entities are operating under the laws and standards applicable to the industry. The program also serves the entities we supervise, which currently includes 380 state-chartered banks, 33 trust companies doing business with the public, 50 exempt trust companies, 12 foreign bank agencies, 33 representative offices and 19 IS providers, by providing a regulatory program that promotes a safe, competitive and lawful environment for the industry.

The Ombudsman serves any regulated entity that seeks to informally appeal an examination rating or finding. The ombudsman gathers information from both the appealing entity and the examining division, performs

an independent analysis, and recommends action to the commissioner, who makes a final determination. As a general rule, the initiation of a reasonable and material appeal acts to stay related agency enforcement actions until the issue can be resolved. Enforcement actions, appointments of conservators/supervisors, and corporate decisions are not subject to appeal under the ombudsman, but must be resolved through separately established procedures. Very few appeals have been filed over the last several years, perhaps reflecting the strong condition of the regulated entities, effectiveness of the examination process and level of communication between the examination staff and the regulated entities.

The consumer complaint portion of the program serves the citizens of Texas who maintain banking and trust relationships. Through this office, consumers are provided consistent information to harmonize state and federal laws and regulations. The complaints coordinator answers inquiries by phone, E-mail, or through written correspondence. The agency does not have the authority to directly intervene on complaints against entities not regulated by the Department (i.e. mortgage companies and national banks). However, the coordinator works with the other state regulator to resolve a complaint when it is filed on the Texas branch of an out-of-state state-chartered bank. Complaints on other entities not directly supervised by the agency are directed to the appropriate regulator. A total of 451 complaints were responded to in fiscal year 1998, while substantially more inquiries were directed toward other supervisory authorities.

**F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.**

The Bank Examination Program is executed by the Bank & Trust Examination Division, which is overseen by a director reporting to the deputy commissioner. Four regional directors report to the division director. There are three assistant regional directors who assist in the management of the four regional offices (due to its size, the Lubbock Regional Office does not have an assistant regional director). Each regional office is staffed with a combination of commercial bank examiners and specialty examiners (trust, information systems (IS), and foreign bank offices).

Examinations are performed by field examiners under the supervision of the regional directors. Examiners generally spend some time in the regional office reviewing data submitted by the regulated entity, then spend up to six weeks, depending upon size and complexity, in an institution sampling records and verifying financial systems. A final week is spent outside of the regulated entity preparing a report on the findings of the examination. The report is issued to the institution's board of directors, with whom a meeting is also held to discuss the examination's findings.

Review examiners in the headquarters office review examination reports of problem and larger institutions. In cases where enforcement action is needed, review examiners are responsible for drafting (with the assistance of the legal division) and administering agreements with the problem institution. Due to the alternate examination program, the agency also coordinates on possible enforcement actions by the federal regulators. A financial analyst in the headquarters office manages and analyzes industry data and assists in the administration of the division. Administrative staff includes ad-techs at each of the regional offices, and an ad-tech and file clerk at the headquarters office.

The Department employs a variety of techniques to maintain awareness of, and contact with, state-chartered banks between onsite examinations. The Institution Review Process consists of three distinct components: The Offsite Monitoring Program; the Watchlist; and the Call Program.

The Offsite Monitoring Program identifies banks which may be experiencing one or more material balance sheet changes or adverse trends. This review is accomplished using quarterly financial data on each bank to do comparative analysis and running sophisticated predictive models.

A watchlist of banks that warrant close monitoring is generated quarterly by the Bank and Trust Examination Division. The Watchlist includes, but is not limited to institutions rated as "less than satisfactory" under the Uniform Financial Institutions Rating System; banks identified as potential problems through offsite monitoring; and, institutions arising as concerns through the call program. Currently, the list also contains any banks which have been rated less-than-satisfactory for Y2K preparedness.

It is the policy of the Department of Banking to maintain informal contact with bank management between examinations through its Call Program. To accomplish this, all banks are contacted by regional management at least once between examinations. The purpose of the Call Program is to obtain feedback about general industry and local developments, and to identify any adverse trends or risk exposure for an institution.

The consumer complaints coordinator operates independently from the Bank and Trust Examination Division, as an employee reporting directly to the director of Administrative Services and Policy.

**G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The Bank Examination Program is coordinated with local units of the federal banking regulators and the chartering authorities of out-of-state state-chartered institutions with offices in Texas. Interagency agreements are in place between the Department the Federal Reserve Board of Dallas, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, which outline the alternate examination program and the grounds for sharing of confidential information.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

Funds for fiscal 1998 were derived from commercial bank assessments (\$7.5 million), foreign bank agency assessments and representative office examination fees (\$514 thousand), trust company/trust department examination fees (\$494 thousand), other investigation and examination fees (\$26 thousand), sales of publications (\$22 thousand), and other miscellaneous revenue (\$12 thousand). All funds are considered general revenue funds. This program is self-funding including all indirect payroll costs.

Fees and assessments are set out in 7 TAC 3.36 - 3.38. Banks assessments (set annually and billed quarterly) are calculated based upon the size and condition of the institution, with problem institutions paying a premium for their increased supervision. Foreign bank agencies also pay assessments based upon the amount of assets held in their Texas office. Trust companies, trust departments of commercial banks, and representative offices of foreign banks are charged a fee of \$500 per examiner day, plus travel expenses, to cover the cost of their supervision. The agency does not collect separate fees for IS examinations since these services are used by all regulated entities and are considered in the assessment and fee charges.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

The current and future funding resources are appropriate. As the predominant program and funding source for the Department, revenues from the Bank Examination program cover not only the program's direct and indirect costs, but also fund a proportionate share of the agency's indirect administration (which substantially relates to the bank examination program.)

Assessments and fees, set by Finance Commission rule, are reviewed periodically to ensure they will generate sufficient revenue to support the division's operations and objectives. A revision to the assessment rule was proposed in June 1999 which, if adopted, would result in an increase in the assessments paid by state banks. The increase is responsive to the consolidation in the banking industry, and the introduction of interstate branching. Despite the proposed increase, the state regulatory system continues to offer efficiencies not available in the national banking system, and state-chartered banks would continue to pay approximately 40% (on average) less in assessments than nationally chartered institutions.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

Federal banking authorities (the FDIC and Federal Reserve Bank of Dallas) conduct examinations of state-chartered banks, state bank trust departments, information systems providers, and foreign bank agencies and representative offices. These examinations are substantially similar to the examinations conducted by the Department of Banking. All of the agencies share a rating system and examination procedures are similar, with the exception that the federal authorities do not review for compliance with most state banking laws.

Although the federal banking authorities review the condition of three of the 33 trust companies in Texas offering their services to the public (by virtue of the companies' ownership by banks), the Department of Banking is solely responsible for the examination and supervision of the remaining 30 publicly oriented non-depository trust companies, and a unique rating system is used to assess the condition of these entities.

Neither the FDIC nor the Federal Reserve are empowered to charter a bank or trust company, nor can they adopt laws or rules which relate specifically to Texas institutions.

The Texas Savings and Loan Department and the Texas Credit Union Department perform a similar function as the Department of Banking in the chartering, examination and supervision of other types of depository institutions. Their rating systems and examination approach differ slightly from that used for the banks; however, in general, the the examination and support functions are consistent.

Although the federal banking regulators have complaints functions, the Department's consumer complaints coordinator has proven to be a frequently-used, publicly available source of general information on Texas banking laws.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

The Department of Banking alternates examinations with the federal banking regulators to ensure that shared institutions are not burdened by duplicative examinations. Examination schedules are coordinated on an annual basis. Large and problem institutions, and all IS providers and foreign bank offices, are examined jointly, with a single written report produced. The regulators coordinate enforcement actions.

To the extent that regulated entities perform functions which require licensing and supervision by another authority (i.e. securities brokerage activities), the Department allows the licensing authority to examine for compliance with its respective statutes. In general, such examinations are the result of specific complaints filed by the public. The findings of these reviews are shared under appropriate agreements.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

Texas experienced a banking crisis from the mid-1980's through the early 1990's, during which 488 Texas banks failed (187 state charters, 298 national charters, and three private banks). The crisis is generally attributed to over-dependence on the oil and gas and real estate markets, plus high risk-taking spurred by the deregulation of interest rates and federal real estate tax law changes. By the mid-1990s, bank conditions had stabilized, and currently, 97% of the banks examined by the Department are in good condition, being rated in the top two tiers of the five-tiered rating system. Bank assets have grown at an annual rate of approximately 10% in each of the last several years.

During the period of difficulty in the banking industry, the demands on agency examination staff were substantial. Training and standardized formal examination procedures, necessary for long-term development and stability of the agency, suffered due to the necessary expediency of managing problem institutions, meeting examination mandates, and generating sufficient examination fees (the agency did not adopt assessments until 1993). The Department was challenged to hire and retain adequate qualified staff to manage the crisis. Subsequent to the crisis, during the 1990's, emphasis has been directed on stabilizing staffing levels, increasing expertise, and formalizing examination and administrative systems. A full reworking of statutes and rules was undertaken to reduce regulatory burden, expand bank powers where prudent, and ensure health and competition within the industry.

Nationally, the banking industry is moving toward consolidation through mergers and acquisitions, and the collapsing of charters into interstate branches. The volume of Texas state bank charters declined from 514 as of 12/31/93 to 396 as of 12/31/98. With the introduction of interstate branching in 1998, 18 state and national bank charters in Texas have converted to branches of out-of-state banks. Despite the decline in number of charters, the volume of banking assets in the state continues to rise. In conjunction with a cooperative agreement among state bank supervisors, the Department retains some responsibility for examining the Texas branches of out-of-state state banks. Yet these entities are not within the assessment base of the agency. The Department has signed a revenue sharing agreement with the State of Alabama calculated upon total Texas deposits held by Alabama state-chartered banks and for the support services of Texas Department of Banking's examination, corporate, legal and consumer assistance in supervising interstate branches of Alabama-based banks. The first revenues are to be received in 2000.

The volume of fiduciary assets and trust charters is seeing substantial growth, spurred in part by growth in the stock market, expansion in the mutual fund industry, changes in tax laws, and retirement planning by "baby boomers." In response, the agency has developed trust specialists and formalized trust examination procedures. Trust laws have been updated and recodified to meet the needs of this industry while maintaining a strong measure of safety.

The condition of trust institutions is currently considered strong. However, the Department expects the condition of some institutions to suffer in the event of a decline in the stock market, as previously identified administrative deficiencies become more pronounced. The management and liquidation of problem trust companies requires substantial resources which the agency is not currently staffed to handle.

Mergers in the trust industry are expected to lead to a decline in Texas state-chartered trust companies, but the numbers of offices of trust companies serving Texas customers is expected to increase because of the 1999 legislation which authorizes the establishment of interstate branches and representative offices.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

Regulation of banks, trust companies, foreign bank offices in Texas, and IS providers is necessary to ensure the safety and soundness of the financial services system in Texas, and to sustain confidence in the banking system.

All regulated banks are examined at least every 18 months. Banks which are over \$250 million in total assets, or which exhibit management weaknesses, are examined on an annual basis. Banks which are in less-than-satisfactory condition are examined every six months. Problem institutions are monitored quarterly and required to send in periodic reports indicating the action taken to correct deficiencies.

The Department has published its formal, risk-tiered examination procedures which assist the examiner in rating a bank's capital, asset quality, management, earnings, liquidity, and interest rate sensitivity (CAMELS rating). Compliance with state laws and regulations is also assessed. A composite rating of 1 to 5 is assigned to the institution, with 1 being good and 5 being poor condition. Examination findings and recommendations for corrective action, as well as management's responses thereto, are discussed in the written report. A board meeting is held to present the report, and management is required to respond to any negative findings in writing.

The Banking Department monitors the condition of banks between examinations through quarterly screens of financial data, and informal calls to bank management. A confidential "watch-list" of institutions which appear to merit close attention is updated and circulated to senior management quarterly. Currently, the list also contains any banks which have been rated less-than-satisfactory for Y2K preparedness.

The agency also has its published formal examination procedures for trust companies, which assist the examiner in assigning a rating for both the corporate entity and its fiduciary practices. Trust companies doing business with the public and family trust companies are examined on an annual basis. Trust companies which do not service the public and have been certified as exempt under the statute are not subject to an annual examination; however, they must receive recertification of their non-public status on an annual basis. Problem trust companies are generally examined every six months.

Foreign banking offices, trust departments, and IS providers are examined using the joint federal examination procedures and rating system.

The agency has a policy on administrative and enforcement actions which requires that an informal agreement be placed on any institution rated a composite 3 or worse. A formal action such as a cease and desist order will be taken against an institution rated 4 or 5. A cease and desist order may be made public. The Department also has the authority to install a supervisor or conservator to manage the affairs of an entity for which there is significant concern. While in the past supervisors and conservators were installed late in an institution's deterioration, the agency's current posture is to install supervisors or conservators earlier upon evidence of serious problems. This earlier intervention has allowed more orderly resolution of problem situations.

The commissioner may close a state bank under Subchapter C of Chapter 36 of the Finance Code. This action is taken when the bank is found to be close to insolvency (or insolvent), and the action is in the best interests of depositors and creditors. In these cases, the FDIC is appointed as receiver of the institution. Similar action can be taken against a state-chartered trust company under Section 7.201 of the Trust Company Act, except that in those cases the Department acts as receiver.

Section 35.003 of the Finance Code and Section 6.003 of the Trust Company Act, respectively, allow the commissioner to remove a present or former officer of a state bank or trust company from office or employment in a state bank or trust company. In addition, administrative penalties of \$500/day may be assessed against a bank or trust company that violates an order issued by the commissioner.

Subchapter C of Section 35 of the Finance Code provides the commissioner the authority to investigate and take enforcement action against unauthorized banking activity. Action can be taken against unauthorized trust activity under Section 6.201 of the Trust Company Act.

Complaints against entities examined and supervised under the Bank Examination program are administered by the agency's consumer complaints coordinator. Complaints are sent to the regulated entity for response within 15 working days. Once a response is received back, the coordinator analyzes the information and provides a summary closure letter to the complainant. In general, sanctions are not pursued as a result of complaints activity. However, follow-up investigations of apparent improper activity may be performed at the next scheduled examination of an institution.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

<b>Texas Department of Banking Bank Examination Program Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1997 and 1998</b>		
	<b>FY 1997</b>	<b>FY 1998</b>
<b>Number of complaints received</b>	559	451
<b>Number of complaints resolved</b>	559	451
<b>Number of complaints dropped/found to be without merit</b>	NA	NA

<b>Number of sanctions</b>	NA	NA
<b>Number of complaints pending from prior years</b>	NA	NA
<b>Average time period for resolution of a complaint</b>	21 days (for written complaints)	20 days (for written complaints)
<b>Number of entities inspected or audited by the agency</b>	NA - onsite inspections are not complaint-driven	NA - onsite inspections are not complaint-driven
<b>Total number of entities regulated by the agency</b>	569	535

**A. Please complete the following chart.**

**Application Processing**

<b>Texas Department of Banking Exhibit 13: Program Information — Fiscal Year 1998</b>	
<b>Name of Program</b>	Application Processing
<b>Location/Division</b>	Headquarter/Corporate Activities Division
<b>Contact Name</b>	Lynda A. Drake, Director for Corporate Activities
<b>Number of Budgeted FTEs, FY 1998</b>	6
<b>Number of Actual FTEs as of August 31, 1998</b>	6

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

The Application Processing Program performs two key functions: 1) The review and processing of all application and notice filings by state banks, foreign banks, trust companies, and bank holding companies that operate in Texas; and, 2) the receipt and review of all statutory document filings (i.e., Articles of Association, Articles of Merger, Amendments to Articles of Association) for these institutions.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

The purpose of the Application Processing Program is to ensure that the entities entrusted with public deposits and assets meet minimum qualifying criteria in terms of financial and business capacity and good character. Application and notice requirements exist to ensure that changes in the regulated entity’s activities or locations are prudent and do not cause undue safety and soundness concerns. Also, the program serves as the state’s repository of state bank corporate records.

In 1905, the Legislature adopted a general law of state bank chartering and regulation. The program has existed in several incarnations since that time, with additional licensing functions added as the statutes have been amended to provide for additional bank and trust powers. Chapter 32 of the Finance Code sets out the licensing requirements for bank and trust activities, including the application for a charter, the establishment of bank offices, mergers, sales of assets, etc. The program also reviews notices required under the law.

In 1987, the Department was authorized to issue trust company charters under the current Section 3.003 of the Trust Company Act. In 1985, foreign bank corporations were given the authority to establish agency offices in Texas provided they obtained the banking commissioner’s approval and were licensed by the Department of Banking (currently provided in Section 39.103 of the Finance Code). Registration of foreign bank representative offices was added in 1995 under Section 39.202 of the Code. In 1989, the Legislature provided that bank holding

companies would be subject to certain limitations on their activities in Texas and that certain filings would be made with the Department (Chapter 38 of the Finance Code).

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

Prior to 1984, applications were processed by personnel in the Bank and Trust and Executive Divisions. The Corporate Activities Division was established in 1984 to provide designated, independent staff for the review and processing of applications.

The Applications Processing program has changed in reaction to changes in law and an effort to reduce regulatory burden when possible and consistent with prudence. Many statutory filings have been streamlined, and notice-only provisions have been enacted, where possible, in lieu of applications. In 1997, the agency revised its rules to allow qualifying entities to submit expedited application filings for certain activities. Application fees are prescribed by rule and updated frequently.

As long as the state charter is available, the Application Processing program will be needed to manage the licensing and document review process.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

This program's primary contact customers are the 380 state banks, 33 trust companies servicing the general public, 50 exempt trust companies, 12 foreign bank agencies and 33 foreign bank representative offices in Texas. Other customers include entities in Texas who must obtain a "no objection" letter from the agency in order to use the word "bank" or "trust" in their name.

The Application Processing program also serves the citizens of Texas by maintaining the only comprehensive record of bank and trust histories in Texas. Large volumes of calls are answered monthly as consumers try to track down accounts that were at banks that have been purchased, merged, or assumed other names. The bank and trust company history lists are also available on the Department's website.

**F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.**

The Director of Corporate Activities is responsible for the operations of the Applications Processing program. The director reports to the deputy commissioner. An assistant director of corporate activities and a corporate analyst assist in the review of applications, notices, and filings. Three administrative technicians assist in the administration and support of the program.

The timing and flow of individual applications, notices and filings is dictated by the various statutes and rules. In general, a submission is made to the Department for review. Staff reviews the submission to determine if filing is complete. If not, the applicant is notified of missing information. Once a complete submission is obtained, a review and summary including a recommendation for decision, is submitted to the party within the agency

responsible for approving or denying the submission. The decision is generally implemented by the Application Processing staff.

All activities are handled under time frames set out in Department rules from at the Headquarters Office except for certain meetings held with new charter and conversion applicants. In those instances, applications program personnel participate in a field meeting with the proposed board of directors and principals, along with an assigned Bank and Trust examiner/analyst.

**G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The program provides information to the Department of Insurance (DOI) in instances which involve the licensing of banks and their subsidiaries by the DOI. Information is shared under an agreement entered into by the commissioners of both agencies. The program also coordinates certain filings with the Secretary of State's office.

Staff in Application Processing coordinates licensing activity with other federal and state banking authorities when an application is submitted on an entity for which supervision is shared. This includes applications for most state-chartered bank activities, including activities taken by out-of-state state banks with branches in Texas. The commissioner has entered into information sharing agreements with these authorities.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

The funding for the Application Processing Program comes from fees charged for applications and filings. In FY 1998, application fees totaled \$352 thousand and fees for copies and bulletin subscriptions came to \$2 thousand. For a complete breakdown, see Exhibit 9.

In general, fee income from the program covers all of the program's direct costs. Indirect costs are covered by assessments and fees generated under the Bank Examination program.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

Funding is adequate and appropriate, but is reducing as merger and consolidation activity in the industry continues.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

Federal and other state's banking authorities have substantially similar application processing functions, although statutory requirements, fees, and time frames vary. The Department of Banking is the only issuer of state bank

and trust company charters in the state of Texas. The FDIC, as the insurer of deposits, must also approve state bank charter applications for insurance purposes, however it has no authority to issue a charter.

To the extent that certain statutory filings are handled by the program, it is similar in function to the Statutory Filings section of the Secretary of State. However, the Secretary of State does not review the documents to ensure compliance with other applicable law and the effect of the filing on the safety or soundness of the entity or the industry.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

Certain state bank applications must be approved by both the Department of Banking and the bank's primary federal regulator (either the FDIC or Federal Reserve). The Department coordinates work on parallel applications with the other reviewing agency. In many instances, the Department accepts copies of the other regulators' applications and notice filings in lieu of requiring a separate application for state review. In addition, the agency has adopted various Uniform Interagency Application Forms to facilitate joint filings. Comments on applications and the principals involved are shared between the various federal and state regulatory agencies.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

As a result of bank merger and expansion activity, the Application Processing program experienced an extremely high volume of applications during the latter part of the 1990's. The increased workload was handled through the temporary use of Bank & Trust Examination Division personnel to assist in applications processing. Application activity subsided during FY 1998, and the program is currently able to meet statutory time frames with existing staff.

The consolidation within the banking and trust industries is expected to contribute to a continued decline in applications. However, the complexity of applications is increasing as banks and trust companies enter new lines of business, experiment with different corporate structures, and establish interstate branches.

Beginning in 1997, the Department made sweeping changes in the corporate rules to streamline and expedite work in the applications area. The revised process reduces the regulatory burden and cost for many transactions, and allows for more productive use of the existing Corporate personnel.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

Because the banking and trust industries involve the transfer of monies and assets from the public to these entities, it is imperative that the persons who are involved in their ownership and management have sufficient experience, ability, standing, trustworthiness and integrity to operate the bank or trust company in compliance

with law. Because these regulated entities are the engines for economic health and growth, the economic stability of the state is at risk should these entities lack sufficient financial and managerial resources to honor customer demands and to safeguard the assets of the public.

(Note: The last four bullet points under this question are addressed in the Bank Examination Program section.)

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

Complaints information is contained in the Bank Examination Program section above.

<b>Texas Department of Banking                      Application Processing                      Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1997 and 1998</b>		
	FY 1997	FY 1998
<b>Number of complaints received</b>	Not applicable. See Bank Examination Program above.	
<b>Number of complaints resolved</b>		
<b>Number of complaints dropped/found to be without merit</b>		
<b>Number of sanctions</b>		
<b>Number of complaints pending from prior years</b>		
<b>Average time period for resolution of a complaint</b>		
<b>Number of entities inspected or audited by the agency</b>		
<b>Total number of entities regulated by the agency</b>		

## Prepaid Funeral Contract Program

**A. Please complete the following chart.**

<b>Texas Department of Banking Exhibit 13: Program Information — Fiscal Year 1998</b>	
<b>Name of Program</b>	<b>Prepaid Funeral Contract Program</b>
<b>Location/Division</b>	Austin, Arlington, Houston, Lubbock/Special Audits
<b>Contact Name</b>	Stephanie Newberg, Director of Special Audits and Budget
<b>Number of Budgeted FTEs, FY 1998</b>	8.5*
<b>Number of Actual FTEs as of August 31, 1998</b>	8.5*

\* Personnel are shared with Perpetual Care Cemetery program

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

The main function of the Prepaid Funeral Contract program is the licensing, regulation and examination of prepaid funeral contract sellers to ensure compliance with the Finance and Administrative Codes. Examinations are performed to ensure that: timely deposits of collected funds are made into the trust fund; funds are invested according to prescribed investment guidelines in the Finance and Administrative Codes; only withdrawals allowed by the Finance and Administrative Codes are made from the trust; the seller issues all contracts on approved forms in accordance with prescribed guidelines; and, all record-keeping and required documentation is maintained properly by the seller.

The program also pursues unlicensed sellers of prepaid funeral contracts and refers these to the Attorney General's Office or District Attorney's Office if improper activity continues or licensing does not occur after notice to the offender.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

The Prepaid Funeral Contract program was created in 1955 with the passage of the Prepaid Funeral Services and Merchandise Act, to protect the purchasers of prepaid funerals from potential fraud and loss of funds. Prior to that time, there was evidence of industry abuse of the contract purchaser. Failure of a seller to correctly trust and invest the revenues from contract sales can result in the consumer losing substantial funds due to the seller's inability to fulfil the contract upon the time of need.

Section 154.054 of the Texas Finance Code (Finance Code) stipulates that all prepaid contract sellers are subject to an annual examination by the Department. Chapter 154 also requires that a license be issued to a funeral home, insurance company, or other entity which sells prepaid funeral contracts, and that these businesses must qualify each year in order to renew their license. In order to receive a license, an applicant must demonstrate that its financial condition, business experience, character, and general fitness are such that issuing a license is in the public interest. Licenses are for a one-year term; licensees must file an Annual Report and pay a filing fee to qualify for license renewal.

The Department has limited and sometimes ambiguous enforcement powers to pursue entities which violate the Finance and Administrative Codes, conduct unlicensed activities, and/or misappropriate fiduciary funds.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

Beginning in the mid-1990's, some prepaid contract sellers began to convert the funding of contracts from trust investments to insurance (a conversion allowed in a 1963 amendment to the statutes). The Department of Banking worked closely with the Texas Department of Insurance to facilitate these conversions, and new rules were developed to ensure the safety of the new activity.

In 1993, the Department began bidding out seized prepaid funeral contract funds and records to successor permit holders. The bid premiums paid by the successor permit holders are placed in the Prepaid Funeral Contract Guaranty Fund to help offset future contract shortages.

No wholesale changes in the prepaid funeral industry, or its consumers, are expected. Due to the large amount of funds received by contract sellers frequently years prior to fulfillment of the contractual obligations, the Department remains concerned about funeral providers' capacity to honor all outstanding contracts. Furthermore, there is substantial opportunity for non-licensed sellers of prepaid funeral goods and services to redirect or fail to deposit contract funds or deceive contract purchasers. Therefore, oversight is required to ensure that the retained funds and prepaid funeral contracts with Texas consumers are honored as intended.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

In addition to serving and regulating the businesses that sell and provide goods and services under prepaid funeral contracts, the Department also serves the principal beneficiary of the program which is the Texas consumer who purchases a prepaid funeral contract. These individuals can have assurance that the products and services that they purchase will be provided as per their agreement at a future date. In addition, the program also serves the current 446 prepaid funeral licensees by providing these companies regulatory oversight that sets a high standard of conduct for the industry.

**F. Describe how the program is administered. Include flowcharts, timelines, or other illustrations as necessary. List any field or regional services.**

The Director of Special Audits and Budget is responsible for administration of the program. Staff is shared with the Perpetual Care Cemeteries program. An assistant director in the headquarters office oversees a staff of seven field examiners located in Austin (1), Houston (3), Lubbock (1), and Dallas (2). The examiners work out of the agency's regional offices and their homes. An administrative supervisor and two administrative assistants in the headquarters office assist with complaints, licensing, recordkeeping and examination report preparation.

The examiners conduct annual on-site examinations of the licensed prepaid funeral contract sellers (including several out-of-state insurance companies which are authorized to sell prepaid funeral contracts in Texas), and produce written reports which contain the examination findings. The examinations include a statistical sampling of new, matured and canceled contracts. Confidential ratings are assigned to each license holder which reflect the degree of compliance with applicable laws and the soundness of the prepaid funeral trust fund. If an examination finds compliance problems, and the condition of the licensee's records and handling of funds is found to be unacceptable, a follow-up examination is performed in three months.

The Department has limited authority to compel corrective action and ongoing compliance with the law. The Department can hold administrative hearings, and assess administrative penalties and fines for noncompliance with prepaid funeral contract statutes. However, punitive fines can not be assessed if the licensee corrects a violation within a 30-day period after the agency has notified the licensee of the violation. As a result, many licensees wait until a notice of deficiency is given before fully funding the prepaid trust funds, resulting in constant underfunding of the funds between examinations. Over 50% of the examinations performed each year contain repeat violations of this nature.

If an examination identifies substantial recordkeeping violations or deficiencies in a prepaid trust fund, the Department may seize the prepaid funeral contract fund and records from both licensed and unlicensed sellers. However, this is less a corrective measure meant for improvement than a regulatory response to an existing substantial loss in a trust fund. Since January 1988, there have been 44 seizures of prepaid funeral trust funds. Occasionally, losses to the prepaid trust fund may be repaid by the licensee or replenished by a purchaser arranged by the Department. In many cases, however, losses must be borne by the Prepaid Funeral Contract Guaranty Fund. Since its creation in 1987, the Fund has paid out claims of \$117 thousand. Seized funds and records are administered by the Department until such time as an acceptable bid is received from a successor funeral provider. The disposition of the seized funds can only be granted to a licensed seller.

Unlicensed sellers of prepaid funeral contracts are notified by certified letter or in person of the licensing requirements. Follow-up is done to ensure that a license is obtained or the misleading representations and misapplication of funds have ceased, and the consumer's funds are protected.

**G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

The Prepaid Funeral Contract program works closely with the Texas Department of Insurance and the Texas Funeral Service Commission under a Joint Memorandum of Understanding (MOU) (pursuant to §25.22 of the Administrative Code), when a situation arises which crosses into their line of authority (i.e. an insurance funded prepaid funeral trust or at-need funeral services). Under the MOU, the three agencies share: complaint information concerning prepaid funeral contracts; examination reports; and investigative

data concerning sellers of prepaid funeral contracts. The agencies coordinate examination activities of commonly-regulated entities where possible.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

Funds for FY 1998 for the program were derived from: assessment fees (\$241 thousand), renewal fees (\$194 thousand), examination fees (\$51 thousand), insurance conversion fees (\$12 thousand), initial license application fees (\$7 thousand), and penalties (\$7 thousand). This program is self-funding including all indirect payroll and administrative costs.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

While funding sources are appropriate, funding levels need to be increased to ensure adequate supervision of the industry. Currently, examination performance targets are not being met due to the agency's difficulty in attracting and retaining qualified examiners. In addition, there is some evidence of deterioration in statutory compliance, which results in the need for additional supervisory efforts. Appropriations should increase to provide funding for additional examiner positions and increased pay to ensure that annual examination mandates can be met.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

No other agency performs this type of examination and licensing function in Texas. However, see comments which explain areas of supervisory overlap in the death care industry.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

Supervision of the death care industry is fragmented among various state agencies. While the Banking Department licenses and reviews prepaid funeral sellers and perpetual care cemeteries, the Funeral Service Commission deals with at-need funeral issues; the Texas Department of Insurance is involved when prepaid funeral trusts are funded with insurance policies; and the Texas Department of Health intervenes when embalming or burial activities create a health hazard. Although there is no direct overlap or conflict between the programs, consumers must frequently call several agencies to receive an answer to a question or file a complaint.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

The agency has difficulty achieving its mission of protecting consumer funds due to ambiguity in the statutes. Also, the inability of the agency to assess fines when violations are first noted and to take preemptive action has resulted in losses to the Prepaid Funeral Contract Guaranty Fund, which otherwise may have been avoided.

Some aspects of current law should be reviewed to address activities which, while currently lawful, conflict with the spirit of the statute. For example, under current law, contract sellers (generally funeral homes) may retain earned interest upon cancellation of a contract. As a result, consumers who cancel their contracts may not receive the income that was earned on money which was being held in trust for their benefit.

Statutes do not specifically require that the cost of the prepaid funeral merchandise be held constant once the contract is executed. Therefore, some consumers may not receive the value of the items they purchased due to an increase in the cost of the goods between the time they were purchased and the time they are needed. For example, a consumer may specify a certain type of coffin in his/her preneed funeral contract. However, under current law, the seller could instead possibly deliver a coffin of lesser value at the time of need. This appears to be inconsistent with the intent of regulation of the industry.

Also, statutes currently allow unrealized gains from appreciation in the trust fund to be included in the withdrawals of earned income from a prepaid funeral trust upon death maturity or cancellation. The intent of the statute is for the trust to hold and invest the paid-in contract funds, and generate earnings or other appreciation to cover any increase in the costs of the products/services between the time the contract is purchased until the time of need. Such withdrawal activity could deplete a trust fund and render it unable to service future contracts.

A Prepaid Funeral Contract Guaranty Fund ("Fund") was created by the Legislature in 1987 (currently under Subchapter H of Chapter 154 of the Texas Finance Code) to guarantee the performance of sellers of prepaid funeral benefits contracts under their obligations to the purchasers. The Fund is supported by annual assessments to licensees, and is administered by the Department of Banking. For every trust contract sold each year, a licensee is required to submit \$1.00 to the Fund. When the Fund reaches a balance of \$1 million, the assessments stop. The Fund is supervised by the Guaranty Fund Advisory Council comprised of the banking commissioner (or representative thereof), who sits as the chairman of the Council; the attorney general (or representative thereof); one representative of the funeral industry appointed by the Finance Commission; and one consumer representative appointed by the Finance Commission. The consumer representative serves a two-year term beginning on January 1 of an even-numbered year. The industry representative serves a two-year term beginning on January 1 of an odd-numbered year. Neither the industry nor the consumer representative may serve more than two terms on the Council.

The Guaranty Fund Advisory Council meets on a periodic basis as determined by the banking commissioner, but not less than once annually, in order to fulfill the requirements of supervising the operation and maintenance of the Fund. The Guaranty Fund Advisory Council reviews prepaid funeral contract claims against the Fund presented from Texas consumers wanting reimbursement of their contract funds from seized or insolvent prepaid funeral contract permit holders. If the claims are approved, the Council authorizes the Department of Banking to withdraw restitution from the Fund to settle the pending claims.

As of May 31, 1999, the balance of the Fund was \$851 thousand, after paying out claims of \$117 thousand since its inception. Investment of the funds is subject to an investment policy approved by the Guaranty Fund Advisory Council, and all funds are currently held with the Texas Treasury Safekeeping Trust Company at the State Comptroller's Office.

Over the last several years, the Department has seen a significant consolidation in the sellers of prepaid funeral contracts in Texas. A large portion of Texas' preneed licensees are owned by two of the nation's largest funeral companies. The nature of supervision has become more in-depth and difficult due to the larger and more complex operations of the remaining, larger consolidated sellers. Also, the larger nationwide companies have

proven more challenging to supervise due to compliance and enforcement issues raised by their lack of familiarity with Texas laws.

The examiner force for the Prepaid Funeral Contract program also performs examinations for the Perpetual Care Cemetery program. Because these two industries are so closely related, and often owned by the same corporations, it is cost effective to combine the functions.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

Regulation of prepaid funeral contracts is needed to ensure the protection of Texas consumers who purchase prepaid funeral contracts. Without this regulation, almost two billion dollars of trust fund assets and insurance policy benefits would go virtually unmonitored.

All licensed entities are subject to annual on-site examinations by the Department of Banking. Written examination procedures are used to determine compliance with the statute's requirements, and to verify prudence of trust fund investments. Upon receipt of the written report of examination, management of the licensee must provide a written response addressing any problem areas or weaknesses noted.

Limited scope examinations are performed on problem licensees to follow up on previously identified problems. A written report detailing the visitation findings is provided to management and a written response is required if problems continue. Subsequent follow-up examinations may be conducted if improvement is not noted.

The banking commissioner may assess administrative penalties for uncorrected violations of the Finance and Administrative Codes. The commissioner may also seize the prepaid funeral contract records, including the trust fund assets. Further action could include the possible revocation of the prepaid funeral contract license. Seized funds may be bid out and transferred to another funeral home or licensee; however the agency has had difficulty locating a willing private industry successor in some instances where shortages or unknown liabilities are significant.

For those entities selling, and accepting funds on behalf of, prepaid funeral contracts without proper licensing, the Banking Department can refer the case for prosecution to the Attorney General's Office, or the District Attorney in the county where the illegal activity is occurring.

All consumer complaints must be received by the Special Audits Division in writing in order to be formally addressed. The licensed entity is allowed 30 days to respond to the complaint. The complainant is provided a copy of the response received from the licensed entity, and the Division personnel assist the parties in resolving the matter.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

<b>Texas Department of Banking                      Prepaid Funeral Contract Program                      Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1997 and 1998</b>		
	FY 1997	FY 1998
<b>Number of complaints received</b>	97	66
<b>Number of complaints resolved</b>	86	62
<b>Number of complaints dropped/found to be without merit</b>	0	0
<b>Number of sanctions</b>	8	9
<b>Number of complaints pending from prior years</b>	11	14
<b>Average time period for resolution of a complaint</b>	30 days	30 days
<b>Number of entities inspected or audited by the agency</b>	445	355
<b>Total number of entities regulated by the agency</b>	485	450

## Perpetual Care Cemetery Program

**A. Please complete the following chart.**

<b>Texas Department of Banking Exhibit 13: Program Information — Fiscal Year 1998</b>	
<b>Name of Program</b>	<b>Perpetual Care Cemetery Program</b>
<b>Location/Division</b>	Austin, Arlington, Houston, Lubbock/Special Audits and Accounting
<b>Contact Name</b>	Stephanie Newberg, Director of Special Audits and Budget
<b>Number of Budgeted FTEs, FY 1998</b>	8.5*
<b>Number of Actual FTEs as of August 31, 1998</b>	8.5*

\* Personnel are shared with Prepaid Funeral Contract program

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

The main function of the Perpetual Care Cemetery program is the oversight of perpetual care cemetery funds to ensure compliance with the Texas Health and Safety Code. Examinations are performed to ensure that: the required perpetual care fees have been deposited in a timely manner; trust funds are prudently invested; property is properly dedicated, platted and filed with the county clerk’s office; lawn crypts are properly constructed; and contracts contain required disclosures and signatures.

The program also pursues unlicensed operators of perpetual care cemeteries.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

In 1934, Chapters 711 and 712 of the Texas Health and Safety Code were passed to provide a mechanism for the review of perpetual care cemetery trust assets. In 1955, the Department of Banking was given authority over trust funds of perpetual care cemetery associations, including the power to examine trust fund records. The program’s primary purpose is to ensure that the funds collected for perpetual care of grave sites, mausoleum and lawn crypts, and niches are properly trusted and invested. Also, the program ensures that property being used for interment has been dedicated (i.e. is not general real estate subject to possible later development for other purposes) and that the property has been properly platted (i.e. grave sites are designated to avoid multiple use of the same plot or random interment across the property).

Section 712.044 of the Health and Safety Code stipulates that the books and records relating to perpetual care funds are subject to an annual examination by the Department. Under Section 712.0031 of the Health and

Safety Code, a perpetual care corporation must file a notice with the Department prior to operating a perpetual care cemetery. In order to receive a license to operate a perpetual care cemetery, an applicant must meet the minimum net worth and location limitations in the Code, and provide the required initial perpetual care deposit. An applicant must also demonstrate that its financial condition, business experience, character, and general fitness are such that issuing a license is in the public interest. The statutes require that an annual statement be filed by each licensed company.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

The statutes have been amended several times to provide greater protection to the consumer and clarify the law. For example, the minimum requirements for lawn crypts were added by the 75th Legislature to prevent deceptive trade practices in the sale of this product.

No wholesale changes in this industry, or its consumers, are expected. There is substantial opportunity for nonregulated cemeteries to fail to deposit required perpetual care funds or deceive purchasers. Therefore, oversight is required to ensure that the funds held in perpetuity are appropriately maintained.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

In addition to serving and regulating perpetual care cemeteries, the Department also serves the principal beneficiary of the program who is the Texas consumer that purchases the right of interment in a perpetual care cemetery. These individuals, and their families, can have assurance that the perpetual care fee they pay for a perpetually maintained plot, crypt, or niche will be expended for the maintenance of the cemetery. In addition, the agency also serves the operators of perpetual care cemeteries (currently 226 licensees) by providing these entities a regulatory program that promotes a high standard of entry and conduct for the industry.

**F. Describe how the program is administered. Include flowcharts, time lines, or other illustrations as necessary. List any field or regional services.**

The Director of Special Audits and Budget is responsible for administration of this program, and staff is shared with the Prepaid Funerals program. An assistant director in the headquarters office oversees a staff of seven field examiners, located in Austin (1), Houston (3), Lubbock (1), and Dallas (2). The examiners work out of the agency's regional offices and their homes. An administrative supervisor and two administrative assistants in the headquarters assist with licensing, recordkeeping and examination report preparation.

The examiners conduct on-site examinations of the licensed cemeteries on an annual basis and produce written reports which contain the examination findings. If examination findings reflect significant problems, a follow-up examination is performed in three months. The agency is not authorized under the law to examine any other aspect of the perpetual care cemetery other than the books and records of the perpetual care trust funds. This limitation makes review for compliance with other parts of the law difficult, and allows possible unlawful activity to go undetected.

The Department has limited powers to enforce compliance to the statutes. The agency's enforcement authority is limited to the cancellation of a charter, or the issuance of a fine for violations after 30-days notice (i.e. for late deposits, failure to pay a fee to the agency, or failure to file an Annual Statement). The agency can not take action against licensees that sell unplatted land, crypts, and niches. Because of the 30-day notice period and lack of enforcement action for repeat violations, numerous licensees await an agency notice of deficiency, rather than maintaining adequate funding in the perpetual care funds between examinations.

Unlicensed sellers of perpetual care cemetery property are notified by certified letter or in person of the licensing requirements. Follow-up is performed to ensure that a license is obtained or the misleading representations are ceased.

**G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

N/A - This branch does not work with any local units of government.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

Funds for FY 1998 for the program were derived from: renewal fees (\$110 thousand), assessments (\$86 thousand), examination fees (\$7 thousand), penalties (\$3 thousand), and initial license application fees (\$500). All funds are considered general revenue funds. This program is self-funding including all indirect payroll and administrative costs.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

While funding sources are appropriate, funding levels need to be increased to ensure adequate supervision of the regulated entities. Currently, performance targets are not being met due to the agency's difficulty in attracting and retaining qualified examiners. In addition, there is some evidence of deterioration in statutory compliance, which results in the need for additional examiners. Appropriations will need to increase to provide funding for additional examiner positions and increased salaries to ensure that annual examination mandates can be met.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

There are approximately 30,000 cemeteries in Texas. Of this, only 226 (or less than 1%) are licensed perpetual care cemeteries. Municipal and church cemeteries are exempt from licensing with the Department, and are not examined by any enforcement authority. Because the public perceives perpetual care cemeteries to be licensed and held to a higher fiduciary standard, the perpetual care cemetery owner enjoys a marketing advantage over other cemeteries. However, current laws do not support this to the extent necessary for full protection of the consumer.

No other agency performs this type of examination and licensing function in Texas.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

N.A. No other agency performs this examination and licensing function in Texas.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

Very limited enforcement authority and lack of specificity in the law contribute to continued consumer deception and possible abuse in the industry.

The agency has numerous licensees that continue to sell unplatted land, crypts, and niches and make late deposits to the trust fund. Under existing statutes, the Department can not take administrative or enforcement action against these practices. The only current possible action to address willful disregard of the consumer protection aspects of the law is the cancellation of a charter, which may be exceedingly drastic and ultimately to the detriment of the consumer. The agency does not have the resources to administer a seized cemetery and it is difficult to locate an industry successor, particularly when perpetual care funds have been depleted.

In some cases, lack of powers under the law has resulted in cemeteries remaining in unresolved status for a prolonged period. The agency currently has a cemetery in foreclosure proceedings with a lender which could not be resolved until a violation of the statutes had occurred. In the past, the agency was unable to take any action to resolve an abandoned cemetery until the licensee failed to file an annual license renewal (which provided the Department the technical authority necessary to act.)

The statute currently does not address all potential abuses in the industry. The law does not currently limit a cemetery's ability to sell rights to mausoleums or lawn crypts which have not yet been constructed. As a result, consumers may purchase such an interment package but never receive such an interment if the mausoleum or crypt is never constructed. Also, because preconstruction funds are not required to be trusted, a refund of monies paid is not assured.

The law also does not clearly define who can use the term perpetual care. Cemeteries which are exempt under the law (i.e. church and municipality cemeteries) may define themselves as perpetual care, and yet they do not have to trust funds for the future maintenance of the property.

Statutes also currently fail to specific investment criteria for perpetual care funds, nor are there specific limitations on the use of trust fund income. As a result, funds may be invested in speculative or inappropriate vehicles, and income is used for purposes other than park maintenance. Many funds are distributing out capital gains as income, thus impeding fund growth needed to keep up with inflation. The current statutory deposit rates are not sufficient to build a perpetual care fund that will generate adequate income for park maintenance throughout time.

In addition, the statute does not address perpetual care rates for the second rights of interment for all types of property conveyed.

Although the number of perpetual care cemeteries is fairly constant, there is consolidation in the ownership of these businesses across the state. The Department is concerned that this concentration of cemetery ownership in Texas will create public policy concerns for the continued protection of Texas consumers.

The examiner force for the Perpetual Care Cemetery program also performs examinations for the Prepaid Funeral Contract program. Because the two industries are so closely related and often owned by the same corporations, it is cost effective to combine the functions.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

Regulation of perpetual care cemeteries is needed to protect Texas consumers purchasing perpetual care cemetery property. Without this regulation, millions of dollars of trust fund assets would go completely unmonitored.

All licensed entities are examined on-site at least once every 12 months by an examiner of the Department of Banking. Formal examination procedures are used to determine if the trust fund is being effectively maintained, and evaluate the cemetery's compliance with the statute's deposit, reporting, and record-keeping requirements. Upon receipt of the written examination report, cemetery management must provide a written response addressing any problem areas or weaknesses noted.

Limited scope examinations are conducted to follow-up on problem licensees. A written report detailing the visitation findings is provided to management and a written response is required if problems continue. Subsequent follow-up examinations may be conducted if improvement is not noted.

The Department's enforcement authority in this area is very limited. Under existing law, the agency can fine licensees for only three items: late deposits, failure to pay a fee to the agency, and failure to file an Annual Statement. The agency has no authority to fine a cemetery that violates the statute on a repeated basis. Under certain circumstances, a cemetery may be placed in receivership. However, receivership is difficult to administer and very rarely results in an improved situation. The agency has no authority against a cemetery that is selling spaces in a cemetery section that has not been dedicated or platted. As a result, interments could occur on private land that may later be sold to an owner that would have the right to disinter the remains. Interments on unplatted ground can result in indiscriminate burials and possible multiple use of single grave sites.

All consumer complaints by the Special Audits must be received in writing in order to be formally addressed. The licensed entity is allowed 30 days to respond to the complaint. Upon receipt of a response from the licensed entity, the party filing the complaint is provided a copy of the response and the Division continues to assist the parties in resolving the matter.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

<b>Texas Department of Banking                      Perpetual Care Cemeteries                      Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1997 and 1998</b>		
	FY 1997	FY 1998
<b>Number of complaints received</b>	44	30
<b>Number of complaints resolved</b>	31	37
<b>Number of complaints dropped/found to be without merit</b>	0	0
<b>Number of sanctions</b>	0	3
<b>Number of complaints pending from prior years</b>	7	4
<b>Average time period for resolution of a complaint</b>	30 days	30 days
<b>Number of entities inspected or audited by the agency</b>	164	194
<b>Total number of entities regulated by the agency</b>	226	226

## Currency Exchange Program

**A. Please complete the following chart.**

Texas Department of Banking Exhibit 13: Program Information — Fiscal Year 1998	
<b>Name of Program</b>	<b>Currency Exchange Program</b>
<b>Location/Division</b>	Austin, Houston, McAllen/Special Audits and Accounting
<b>Contact Name</b>	Stephanie Newberg, Director of Special Audits and Budget
<b>Number of Budgeted FTEs, FY 1998</b>	5.5*
<b>Number of Actual FTEs as of August 31, 1998</b>	5.5*

\* Personnel shared with Sale of Checks program

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

The main function of the Currency Exchange program is the identification, licensing, and on-going regulation of businesses offering currency exchange, currency transmission, and currency transportation services. This program also supports law enforcement efforts aimed at curbing money laundering.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

The Currency Exchange Program was created in 1991 with the passage of the Currency Exchange Act, codified in 1997 as Chapter 153 of the Texas Finance Code. The purpose of the program is to combat money laundering and protect the consumers entrusting their money to businesses for transmission/transportation.

The statute requires that an entity offering currency exchange, transmission, or transportation services be licensed, and that the entity qualify each year to renew the license. In order to receive a license, an applicant must demonstrate that its financial condition, business experience, character, and general fitness are such that issuing a license is in the public interest. Licensees are examined at least once every twelve months to determine compliance with the requirements of the Finance Code. Licensees are also required to file quarterly reports with the agency containing financial data, transaction totals, and other information pertaining to the business.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

Prior to regulation, many currency exchange businesses were actually fronts for money laundering activity. Since the industry came under regulation in 1991, many of the questionable currency exchange and transmission operators have been eliminated. Through the sharing of confidential information contained in criminal referrals and other communications with law enforcement, cases have been developed which have led to the seizure of assets by law enforcement agencies and ultimately the closing of a number of businesses involved in money laundering activities.

The volume of licensees increased in 1997 due to a change in the statute which brought currency transporters under the Department's regulation. The 1999 Legislature added the transportation of *monetary instruments* as a regulated activity, which will likely result in further increases in licenses issued. Monetary instruments are defined as any instrument which can be used as a form of cash, such as money orders or checks. The scope of the law was expanded to specifically prohibit the practice of some transporters of turning currency into money orders for transportation across the border, then reconverting the money orders into currency on the other side.

Rules addressing bonding requirements, mobile currency businesses, and fees have been adopted by the Finance Commission over the last several years.

Currency transmission and transportation continues as a growing business susceptible to fraud and abuse. It is anticipated that this will continue to be a regulated industry for the foreseeable future.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

The principal beneficiary of the program is the Texas consumer who utilizes the services offered by businesses engaged in currency exchange, transmission, and transportation. These individuals can have some confidence that the entity promising to transmit their funds will honor its commitment. In addition, the program serves the individuals who own and operate the currency businesses (currently 82 licensees) by providing these people a regulatory program that promotes a safe and lawful environment for the industry.

**F. Describe how the program is administered. Include flowcharts, time lines, or other illustrations as necessary. List any field or regional services.**

The Director of Special Audits and Budget is responsible for administration of this program, and staff is shared with the Sale of Checks program. An assistant director in the headquarters office oversees a staff of three field examiners, located in Houston (1), Austin (1), and McAllen (1). The examiners work out of the agency's regional offices and their homes. A bilingual administrative technician in the headquarters assists with the processing of complaints, licenses, correspondence and examination reports. The administrative technician also answers calls from the public, maintains a database, and provides administrative support to the field examiners and assistant director.

On-site examinations of the licensed entities are conducted on an annual basis and produce written reports containing the examination findings. If an examination finds significant problems, a follow-up examination is required in three months.

Unlicensed operators are notified by certified letter or in person of the licensing requirements and follow-up is done to ensure that transactions are not conducted until a license is obtained by the offender.

**G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

Since 1992, the program has participated in the Houston High Intensity Drug Trafficking Area (HIDTA) Task Force comprised of various local, state, and federal law enforcement agencies. The examiner assigned to the Task Force shares information with these agencies and assists in analyzing financial information when needed. Beginning in June 1998, the program also began participating with the South Texas HIDTA in Brownsville, Texas.

If a licensed entity is suspected of engaging in illegal activities (such as money laundering or other illegal transactions), a criminal referral is provided to law enforcement authorities such as the Texas Attorney General's Office Financial Crimes Division, the United States Custom Service, or the Internal Revenue Service Criminal Investigation Division. Since the program was created, 30 criminal referrals regarding money laundering activity have been forwarded to law enforcement agencies.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

Funds for FY 1998 for the program were derived from: federal grant funds (\$176 thousand), examination fees (\$78 thousand), initial license application fees (\$58 thousand), renewal fees (\$46 thousand), and penalties (\$1 thousand). This program is self-funding including all indirect payroll and administrative costs.

All funds except for the federal grant are considered general revenue funds. Since March 1992, the Department has received federal grants from the Office of National Drug Control Policy (ONDCP) to fund a portion of the agency's currency exchange program. Currency exchange personnel participate in the ONDCP's Houston High Intensity Drug Trafficking Area (HIDTA) Task Force, and since 1998, the South Texas High Intensity Drug Trafficking Area Task Force. Grants have diminished from initial funding of \$227 thousand to a current allotment of \$121 thousand for FY '99 due to reallocation of federal budgets. As a result of the decline in grant money, the licensee examination fees have been raised. However, fees assessed to this industry remain substantially below the actual cost of supervision due to the subsidy provided by the federal grant.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

While funding sources are appropriate, appropriations levels need to be increased to ensure adequate supervision of the industry. Currently, performance targets are not being met due to an increase in the number of licensed entities. The increase in licensed entities is expected to continue due to the recent amendment of the Finance Code which requires regulation of businesses engaged in the transportation of monetary instruments. Appropriations will need to increase to provide funding for additional examiner positions to ensure that examination mandates are met.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

No other entity performs this examination and licensing function in Texas.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

N.A.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

N.A.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

The licensing and examination of currency exchangers, transmitters, and transporters is needed to ensure that Texas consumers utilizing these services are protected and to provide a safe environment for consumers. In addition, these businesses have historically been used to launder money that has been derived from illegal activities. Continued regulatory oversight should aid in curbing money laundering activities in Texas and in other parts of the world.

All licensed entities are examined at least once every 12 months by an examiner of the Department of Banking. Formal examination procedures are used to determine compliance with the statute's reporting, recordkeeping, bonding and net worth requirements. Examiners also assess compliance with federal recordkeeping requirements under 12 USC Title 31. Upon receipt of the examination report, management must provide a written response addressing any problem areas or weaknesses noted.

Limited scope examinations are performed to follow up on corrective action. A written report detailing the visitation findings is provided to management and a written response is required if problems continue. Subsequent follow-up examinations may be conducted if improvement is not noted.

The banking commissioner may assess administrative penalties for violations of the Finance Code and may also issue cease and desist orders. In addition, a license may be denied, revoked, or suspended by the commissioner.

All consumer complaints must be received by the Special Audits Division in writing in order to be formally accepted. The licensed entity is allowed 30 days to respond to the complaint. Upon receipt of a response from the licensed entity, the complainant is provided a copy of the response and the Division assists the parties in resolving the matter.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

<b>Texas Department of Banking Currency Exchange Program Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1997 and 1998</b>		
	<b>FY 1997</b>	<b>FY 1998</b>
<b>Number of complaints received</b>	0	0
<b>Number of complaints resolved</b>	N/A	N/A
<b>Number of complaints dropped/found to be without merit</b>	N/A	N/A
<b>Number of sanctions</b>	10*	42*
<b>Number of complaints pending from prior years</b>	0	0
<b>Average time period for resolution of a complaint</b>	N/A	N/A
<b>Number of entities inspected or audited by the agency</b>	77	87
<b>Total number of entities regulated by the agency</b>	67	77

\*Includes cease and desist letters sent to unlicensed operators.

## Sale of Checks Program

**A. Please complete the following chart.**

<b>Texas Department of Banking Exhibit 13: Program Information — Fiscal Year 1998</b>	
<b>Name of Program</b>	<b>Sale of Checks Program</b>
<b>Location/Division</b>	Austin, Houston, McAllen/Special Audits
<b>Contact Name</b>	Stephanie Newberg, Director of Special Audits and Budget
<b>Number of Budgeted FTEs, FY 1998</b>	5.5*
<b>Number of Actual FTEs as of August 31, 1998</b>	5.5*

\* Personnel shared with the Currency Exchange program

**B. What are the key services and functions of this program? Describe the major program activities involved in providing all services or functions.**

The main function of the Sale of Checks program is the identification, licensing, and examination of businesses selling or issuing money orders, travelers checks, foreign currency drafts, and third party gift certificates.

**C. When and for what purpose was the program created? Describe any statutory or other requirements for this program.**

The Sale of Checks Act was originally passed in 1963 as Article 489d, Vernon’s Texas Civil Statutes, and was codified in 1997 as Chapter 152 of the Texas Finance Code. The purpose is to protect the money of the consumers who purchase money orders, travelers checks and draft instruments. The statute requires that a check-selling business be licensed, and that the business qualify each year to renew the license. An applicant must demonstrate that its financial condition, business experience, character, and general fitness are such that issuing a license is in the public interest. Licensees are examined at least once every 12 months to determine compliance with the requirements of the Finance Code. Licensees are also required to file quarterly reports containing investment and financial information.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program will no longer be needed?**

Beginning in 1986 (after the failures of two large sale-of-check entities causing significant losses to Texas citizens), the statute was amended to enhance the regulation of check selling businesses and require more financial stability of the businesses involved in holding consumers’ funds. The Department of Banking has actively promulgated rules under Title 7 of the Texas Administrative Code to assist in administering the

statute. Rules addressing permissible investments, fees and assessments, and exemption for commercial transactions have been adopted by the Finance Commission over the last several years.

The security of funds in the hands of a third party remains an important issue, even as technological advances may render many early paper check products obsolete. Recent legal opinions have expanded the scope of the statute to include electronic travelers checks and third party vendors of gift certificates. It is anticipated that state supervisory oversight of issuers of payment instruments will continue to be needed to protect the public's funds and promote confidence in electronic commerce.

**E. Describe who this program serves. How many people or entities are served? List any qualifications or eligibility requirements for receiving services or benefits.**

The principal beneficiary of the program is the Texas consumer who uses the services offered by businesses selling or issuing payment instruments. These individuals can have confidence that the entity issuing a promise will honor its commitment to pay out funds at a future date. In addition, the individuals who own and operate the check selling businesses are served by the promotion of a safe and lawful environment for the industry.

**F. Describe how the program is administered. Include flowcharts, time lines, or other illustrations as necessary. List any field or regional services.**

The Director of Special Audits and Budget is responsible for administration of this program, and staff is shared with the Currency Exchange program. An assistant director in the headquarters office oversees a staff of three field examiners, located in Houston (1), Austin (1), and McAllen (1). The examiners work out of the agency's regional offices and their homes. Examiners may at times conduct concurrent examinations with other states that also regulate check sellers. An administrative technician in the headquarters assists with processing of licenses, correspondence and examination reports. The administrative technician also receives telephone inquiries, maintains a database, and provides administrative support to the field examiners and assistant director.

The examiners conduct examinations of the licensed entities on an annual basis and produce written reports which contain the examination findings. If an examination finds significant problems, a follow-up examination is performed in three months. Unlicensed operators are notified by certified letter or in person of the licensing requirements and follow-up is done to ensure that transactions are not conducted until a license is obtained.

If a serious consumer complaint is received and the agency is unable to achieve resolution through its normal process, the complaint is forwarded to the Texas Attorney General's Office or an appropriate law enforcement agency.

**G. If the program works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency. Briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

Because many of the licensees in the Sale of Checks Program are multi-state entities, examinations of license holders are often coordinated with regulators in other states. Information sharing and confidentiality agreements exist in these instances. The agency's joint efforts with other states reduces the total expense and regulatory burden to the licensees.

**H. Identify all funding sources and amounts for the program, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

Funds for FY 1998 for the program were derived from: assessment fees (\$94 thousand), examination fees (\$24 thousand), renewal fees (\$17 thousand), and initial license application fees (\$15 thousand). All funds are considered general revenue funds. This program is self-funding including all indirect payroll and administration costs.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

While funding sources are appropriate, funding levels need to be increased to ensure adequate supervision. Currently, performance targets are not being met due to a continued increase in the number of licensed entities. Appropriations will need to increase to provide funding for additional examiner positions to ensure that annual examination mandates are met.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

No other entity performs this examination and licensing function in Texas.

**K. Discuss how the program is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers.**

N.A.

**L. Please provide any additional information needed to gain a preliminary understanding of the program.**

The sale of checks industry is shifting from a paper-based system to an electronic medium, as the volume of money transmitted via travelers checks, money orders, etc., is overtaken by the amount transmitted through wire transfer or by "value added" cards. The minimal paper trail associated with electronic transmissions increases the challenge of examining these entities. A continued increase in the number of licensees is expected due to the emergence of new technologies and services - such as some types of electronic bill-paying services and certain varieties of gift certificates - which fall under the Sale of Checks Act.

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- C why the regulation is needed;
- C the scope of, and procedures for, inspections or audits of regulated entities;
- C follow-up activities conducted when non-compliance is identified;
- C sanctions available to the agency to ensure compliance; and
- C procedures for handling consumer/public complaints against regulated entities.

Regulation of check sellers is needed to protect the Texas consumers utilizing these services. The law requires that all check issuers disclose an address or provide a telephone number for consumers to contact

the check issuer. In addition, the Department investigates consumer complaints relating to check issuers. Through licensing, examination, supervision and regulation, the Department can ensure that only competent and fiscally sound providers are engaged in this business.

All licensed entities are examined at least once every 12 months by an examiner of the Department of Banking. Formal examination procedures determine compliance with the statute’s investment, bonding and net worth requirements. Upon receipt of the written examination report, management must provide a written response addressing any problem areas or weaknesses noted.

The banking commissioner may assess administrative penalties for violations of the Finance Code and may also issue cease and desist orders. In addition, a license may be denied, revoked, or suspended by the commissioner.

All consumer complaints must be received by the Special Audits Division in writing in order to be formally accepted. The licensed entity is allowed 30 days to respond to the complaint. Upon receipt of a response from the licensed entity, the complainant is provided a copy of the response and the Division assists the parties in resolving the matter.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency’s practices.**

<b>Texas Department of Banking                      Sale of Checks                      Exhibit 14: Complaints Against Regulated Entities – Fiscal Years 1997 and 1998</b>		
	<b>FY 1997</b>	<b>FY 1998</b>
<b>Number of complaints received</b>	0	0
<b>Number of complaints resolved</b>	0	0
<b>Number of complaints dropped/found to be without merit</b>	0	0
<b>Number of sanctions</b>	0	0
<b>Number of complaints pending from prior years</b>	0	0
<b>Average time period for resolution of a complaint</b>	30 days	30 days
<b>Number of entities inspected or audited by the agency</b>	31	37
<b>Total number of entities regulated by the agency</b>	34	37

## VII. Agency Performance Evaluation

### A. What are the agency's most significant accomplishments?

The Texas Department of Banking is considered one of the foremost bank regulatory bodies in the nation. The agency has enjoyed a succession of highly qualified commissioners, whose direction has led to high stature and a strong program. The following represent the most important accomplishments during the last several years.

#### < Stabilization in the Banking Industry

The banking crisis of the 1980's substantially weakened the state's economy and led to the curtailment of credit opportunities. The Department acted responsibly during the crisis to identify and close banks that were not solvent and viable. Since that time, considerable efforts have been taken to foster a banking environment that is both conducive to credit expansion and sound economic growth, as well as safe and sound banking practices. In addition, laws have been amended to expand business opportunities for banks, and ensure the competitiveness of the Texas bank charter. Current supervisory methodology includes frequent informal contact with the banks to monitor trends and provide feedback.

#### < Accreditation

In 1993, the agency was accredited by the Conference of State Bank Supervisors. This distinction indicates that the Department meets high national standards. The accreditation team considers the adequacy and effectiveness of the agency's bank and trust examination program, as well as the administration and rule-making capacity of the agency. A recent (1998) reaccreditation of the agency had nominal suggestions for continued improvement.

#### < Texas Banking Act of 1995

In 1994, the agency formed a task force comprised of industry representatives, banking attorneys and senior staff in order to review and rewrite Texas' obsolete and confusing banking laws. The resulting statute was a complete modernization of banking powers and activities, which has served as a model to other states. Efforts were subsequently directed toward a complete overhaul of the banking rules, which provided an opportunity to reduce regulatory burden and enhance efficiencies in agency operations.

#### < Publication of Laws

Following enactment of the Texas Banking Act of 1995, the Department undertook compilation into one volume, the publication and distribution of all laws, rules, policies, commissioner interpretive statements and legal opinions affecting all Department regulated entities. These publications were distributed to all supervised entities, federal regulators, agency supervisors and law firms that have an interest. Concomitantly, all information was posted to the Department website ([www.banking.state.tx.us](http://www.banking.state.tx.us)) for immediate access by anyone interested.

#### < Texas Trust Company Act of 1997

The Trust Company Act, passed in 1997, provides a more cohesive and comprehensive set of statutes to govern this growing activity. Previously, trust companies generally functioned under banking statutes. While this placement of supervisory laws had the effect of curtailing undesirable activity, many laws were inapplicable or difficult to interpret concerning fiduciary activities. The Trust Company Act provides for a more well-reasoned and clear statute, and allows for expansion in trust activities where consistent with

prudence. The Act, which also provides depository powers for trust companies, is being used as a model for other states' efforts to overhaul and modernize fiduciary statutes.

< **The Interstate Branching and Banking Act of 1999**

In 1998, the agency formed a task force comprised of industry representatives, banking attorneys and senior staff in order identify all of the existing state laws that were confusing or inconsistent in an interstate environment. The group also sought to revise some of the powers of the state bank and trust charters, to enhance and secure the value of state charter in the evolving world of financial services. The result was a highly successful bill which ensures that interstate banking activities are consistent with the Legislature's intent and the good of the state.

< **Reduced Regulatory Burden**

Over the last several years, the agency has reduced regulatory burden in the corporate application processing and bank examination functions. The Department has eliminated redundant rules, revised overly burdensome rules, and sought opportunities to provide more efficiency in application processing. Expedited applications have been established for qualifying entities. Duplicative applications have been eliminated in favor of a shared application review by multiple approving authorities. Approval requirements have been converted to notice provisions whenever consistent with safety and soundness. During this same period, the agency extended the interval between examinations for smaller, strong banks from 12 to 18 months. The volume of materials requested from examined institutions has been honed to eliminate nonessential submissions. The amount of time to process an examination report was reduced through delegation of report review and signing authority to the regional offices. The industry has reacted very favorably to these changes, which have additionally allowed for more efficient operations within the agency.

< **Increased Efficiency in Agency Operations**

A staffing model has assisted the agency in optimizing the volume and levels of examiners in the field. Travel time and expense were trimmed when the agency adopted a program of performing the first portion of a bank examination at the regional office rather than at the institution. This change was welcomed by examination staff, who previously spent up to 70% of their time in travel status. The allocation and volume of staff in examinations has been refocused through a risk-oriented examination process, which incorporates pre-planning and a modified sampling technique to avoid undue time spent in review of low-risk assets.

Administrative tasks have been combined through the elimination of two divisions and reallocation of responsibilities at the headquarters office. This has resulted in a higher manager/staff ratio and optimizes synergies between personnel. Quarterly internal budget discussions emphasize accountability and assist in the management of assessments.

< **Improved Staff Morale**

Surveys of agency employees by the University of Texas' Survey of Organizational Excellence show that employees are increasingly satisfied with the agency, and feel more connected to the planning and policy process. Improved E-mail and LAN systems have facilitated better intra- agency communications, as has the resumption of annual staff conferences. An Examiners Council assists in the development and annual revision of examination procedures, and provides input to senior management on policy-making decisions. Employees throughout the agency were included in a strategic planning task force beginning in 1997, a process which will continue going forward. In response to high turnover among examiners, the agency revised the examiner salary structure to make salaries more competitive with the industry and federal regulators. Most recently, the agency instituted a flex day option for office personnel, which had previously only been available to field examiners. The adoption of full-time casual dress in the offices has also contributed to an improved atmosphere in the workplace. In 1998, the agency initiated an annual internal

customer satisfaction survey to obtain employee input on services provided internally (i.e., Human Resources, Accounting, Purchasing, MIS, Copy Center). As a result of this information, changes have been made to programs and systems to provide better internal service.

#### < **Improved Customer Relations**

The agency has worked to develop a good relationship with its regulated entities and their representatives. Beginning in 1995, a customer satisfaction survey has been sent annually to all entities regulated by the Department as a means of obtaining feedback on examination, application processing, and legal services. Changes were made to address some early areas of weakness, and recent surveys indicate overall industry satisfaction with the agency and its programs. An Ombudsman Program was adopted in 1994 to provide regulated entities a means to appeal examination findings outside of the formal hearings process. For the past three years the Legal and Corporate Divisions have conducted outreach programs to introduce regulated entities to new rules and processes, and obtain their input into proposed revisions. Industry members and representatives participate in agency task forces and strategic planning. A Commissioner's Council consisting of various banking and legal representatives that do business with this Department provides input into policy decisions and advises the agency on industry trends. The agency's examination procedures, laws and rules, and legal opinions have been published and distributed to all regulated entities.

#### < **Successful Use of Technology**

The Department has an in-house MIS staff devoted to developing and maintaining internal programs. Examination activity is becoming more computer-based, which results in more efficient processing and database maintenance. The agency uses the Internet to access federal bank data bases and download important supervisory information. The Department has had a website for over three years, on which all applicable statutes, rules, and policy statements are available. The website is an important interface with regulated entities and their consumers in Texas and elsewhere. The agency recently received appropriations to implement an imaging program, which will facilitate the storage, access, and sharing of documents.

#### < **Formalized Policies and Procedures**

Examination policies and procedures have been formalized, risk-focused, and automated to the extent possible. A Personnel Manual was distributed in 1992 which contains comprehensive guidance to agency programs and personnel policies. The Manual is updated at least annually. These resources are available in searchable electronic format.

#### < **Resolution of Closed Trust Companies**

Since 1987, when the 70th Legislature assigned the then-existing Trust Company crises to the Department, the Department of Banking has closed 27 state-chartered trust companies with 22 of these occurring between 1987 and 1991. The vast majority of these closures involved fraud which would not have been discovered until much later had it not been for direct and immediate intervention by the Department of Banking. The remaining closures occurring during 1992, 1993, and 1994 involved economic conditions or mismanagement which was discovered by the Department of Banking. All but one of the closures have been brought to resolution and the remaining liquidation estate should be complete during 2000. Of the trust companies liquidated between 1988 and 1991, only 15.9% of account holder claims were paid from assets seized from the trust company. In comparison, 94.7% of account holder claims were paid from the closures and subsequent liquidations occurring after 1991. Such a comparison evidences the effectiveness of the agency's supervision and regulation of the trust industry. Since 1991, trust assets held in state-chartered trust companies have increased from approximately \$11 billion to over \$53 billion. Of the 33 state-chartered trust companies doing business with the public, 97% are currently rated as satisfactory or better under the Uniform Trust Rating System.

**< Improved Cooperative Regulatory Relationship with FDIC**

In February of 1999, the Texas Department of Banking and the Federal Deposit Insurance Corporation (FDIC) entered into an agreement that benefited both agencies by allowing resources to be allocated to a delinquent examination when needed. The substance of the agreement allowed the Department of Banking to conduct successive examinations on non-problem institutions, with the report being fully accepted by the FDIC in lieu of its own. This agreement highlighted the level of confidence that the FDIC has in the expertise and competence of the Department of Banking. Few other state-banking regulatory agencies have achieved such an endorsement of confidence. This agreement has continued in practice since that date, and is now being documented in an updated Cooperative Examination Agreement with the FDIC

**B. Describe the internal process used to evaluate agency performance, including how often performance is formally evaluated and how the resulting information is used by the policymaking body, management, the public, and customers.**

Compliance with performance measures and internal operating budgets is evaluated through quarterly reports to division heads and executive management. Explanations for variances are required, and subsequently discussed in senior management meetings. When performance in a program falls short of the identified goals, executive management has shifted resources from one program to another, i.e. temporarily assigned bank examiners to assist in application processing or special audits examinations.

Banks are assessed quarterly, thus financial performance is monitored to determine whether a full or partial assessment is needed to cover expenses. The agency attempts to manage cash balances down toward the end of each biennium, to avoid sweeping excess funds into general revenue (which is prohibited by the statutes which mandate that only the cost of regulation shall be covered by assessments). Finance Commission packets contain quarterly information on performance measures and financial performance.

Although the Department is not required by legislative mandate to have an internal audit, the agency has chosen to continue this practice. The internal audit program, which is outsourced to an external CPA firm, was adopted in 1996 to identify areas of potential risk, and perform audits of selected activities/functions. Audit reports are made to a committee of the Finance Commission. When an audit identifies weaknesses, management responds by instituting appropriate corrective measures.

**C. What are the agency's biggest opportunities for improvement?**

**< Reduce Turnover**

The agency experienced 25% turnover in FY 1998, including 30% turnover among the bank examination staff. A number of initiatives have been taken to stem the outflow, including raising salary levels (to the extent possible under the current job classifications) for examiners and reducing the amount of travel. Despite the increased pay levels, an informal survey of federal banking regulators as of July 1999 (see Exhibit IV) indicates that the Department's starting salaries for examiners remain \$700 - \$10 thousand behind the other regulators, who are also actively recruiting. At the precommissioned level (five years and less), the agency is approximately \$6 thousand below the minimum and \$15 thousand below the maximum for the comparable federal examiner position. Experienced examiners can get up to \$28 thousand more in annual salary for performing the same duties for the federal banking authorities.

While there has been a noticeable decrease in examiner turnover, the agency continues to experience prolonged vacancies which adversely affect its ability to achieve performance measures.

Adoption of casual dress and flex days in the office have improved administrative morale; however, turnover in office staff continues to be high. The Department has the advantage of efficient and well-trained administrative staff. Because there is limited opportunity for upward mobility due to the agency's size, many employees must take positions in federal or industry offices to obtain a higher level of pay. Therefore, the agency is challenged to find ways to deal with competition for staff.

#### < **Improve Achievement of Performance Measures**

High examiner turnover and the diversion of resources into Y2K assessments have adversely affected the agency's ability to achieve commercial bank examination-related performance targets. Turnover in examiners in the perpetual care cemetery and prepaid funeral programs have impaired the agency's ability to meet targets in those areas. The addition of more and increasingly complicated regulated entities has also hampered efforts to perform mandated examinations.

#### < **Promote the Dual Banking System**

The Department of Banking believes that promoting a strong state bank charter is an essential part of its mission of ensuring the safety and soundness of the Texas financial services system. Therefore, it is the Department's strategy to promote and strengthen the state bank charter by encouraging the Legislature to augment the powers of the state bank charter, where consistent with safety and soundness; by reducing undue regulatory burden; by operating at the highest level of efficiency and professionalism; and by considering all requests for parity with national banks, as allowed by the Texas Constitution.

Changes in federal law and interpretation have increasingly challenged the state banking system. For example, the federal unitary thrift charter allows for a mix of banking and commerce, which is prohibited to other state-chartered entities. Although the Interstate Branching and Banking Act of 1999 includes a "super-parity" provision granting state banks the power to engage in an activity allowed to any other financial charter in the nation, the agency's regulated entities have historically demonstrated reluctance to rush into new activities.

#### < **Implement Document Imaging**

The agency received appropriations from the 76th Legislature to implement a program of document imaging among the Finance Commission agencies. This is a significant administrative undertaking, requiring a careful investment in technology and personnel. If the system is to be successful, all potential options and attributes must be explored. It will be a challenge for the agency to perform research and analysis, identify and purchase the most effective system, and implement the imaging process over the next biennium.

#### **D. How does the agency ensure its functions do not duplicate those of other entities?**

The agency maintains close contact with the regulated entities and other regulatory authorities. Adjustments are made whenever necessary to avoid duplicative oversight or reporting.

#### **E. Are there any other entities that could perform any of the agency's functions?**

The FDIC and Federal Reserve perform similar corporate licensing, regulation and examination functions for state banks. While these entities do not have the statutory authority to approve applications on behalf of the

state or enact state banking regulations, their examiners could execute the Department's examination procedures if given proper training.

The Texas Savings and Loan Department and Credit Union Department perform similar chartering, corporate licensing, regulation and examination functions for their respective regulated entities. However, the staffing level of those agencies is currently not sufficient to administer this agency's bank examination and licensing program.

With training and using the Department's examination procedures, other financial regulators could perform examinations of trust companies, although substantial expertise is needed to evaluate complex fiduciary activities.

There are no federal or Texas agencies that could perform the Department's role in the areas of perpetual care cemeteries, prepaid funerals, sale of checks or currency exchange.

**F. What process does the agency use to determine customer satisfaction and how does the agency use this information?**

Since 1995, the Department has performed annual customer satisfaction assessments of the banks, trust companies, and foreign bank agencies under its regulation. In 1996, customer satisfaction surveys were instituted for the Department's perpetual care cemetery, prepaid funeral, sale of check and currency exchange licensees. The Department initiated a survey of individuals and entities using our corporate and legal services in 1997.

Feedback from the surveys has assisted the agency in identifying areas requiring improvement, and in further enhancing examination policies and procedures. Training emphasis has been shifted, and the need to maintain high levels of communication has been reinforced from the top, down. Survey results are provided to the Finance Commission and shared with the industries through newsletters.

To provide ongoing input into the Department's policies, rulemaking, and strategic initiatives, a "Commissioner's Council" of state bankers was established in 1995. The Council acts as a liaison between the commissioner and the banking institutions throughout the state.

**G. Describe the agency's process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.**

A formal appeals function was established in 1994 which allows the entities regulated by the Department to work through an ombudsman to appeal examination findings. The Director of Administrative Services and Policy serves as the ombudsman. While the volume of appeals has been low, the accessibility and independence of this function provide an effective forum for hearing industry concerns and identifying potential problems in the implementation of Department policies. Since the program was initiated, 17 appeals have been made to the ombudsman, with resolutions upholding examination findings in 65% of the cases. In some cases, examination findings were overturned when a more thorough review of legal and accounting standards resulted in a change in the agency's policy toward an issue.

Policy Memorandum 1006 outlines the procedures for filing an appeal. In general, an institution wishing to appeal directly to the commissioner contacts the Department’s ombudsman. The ombudsman gathers information from both the appealing entity and the examining division, performs an independent analysis, and recommends action to the commissioner, who makes a final determination. Depending on the nature of the dispute, the appealing entity may be asked to provide a written summary of facts and/or supporting documents to substantiate its case. As a general rule, the initiation of a reasonable and material appeal acts to stay related agency enforcement actions until the issue can be resolved.

The ombudsman reports to the Finance Commission a record of the volume of formal appeals received, and the general nature of the resolutions. Enforcement actions, appointments of conservators/supervisors, and corporate decisions are not subject to appeal under the ombudsman, but must be resolved through separately established procedures.

Complete files are kept of all appeals. It is the goal of the ombudsman to resolve all appeals within 60 days.

**H. Please fill in the following chart. The chart headings may be changed if needed to better reflect the agency’s practices.**

<b>Texas Department of Banking</b>		
<b>Exhibit 15: Complaints Against the Agency – Fiscal Years 1997 and 1998</b>		
	<b>FY 1997</b>	<b>FY 1998</b>
<b>Number of complaints received</b>	1	1
<b>Number of complaints resolved</b>	1	1
<b>Number of complaints dropped/found to be without merit</b>	1	1
<b>Number of complaints pending from prior years</b>	0	0
<b>Average time period for resolution of a complaint</b>	60 days	120 days

**I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?**

The agency’s procedure for handling open records requests is outlined in 7 TAC Section 11.27. An administrative technician in the Legal Division is the agency’s open records coordinator. All requests that are reasonably identifiable as a request for public information or records are forwarded to the coordinator. The coordinator reviews the request and logs it in. The coordinator is responsible for locating the requested information, and reviewing it to determine if it is responsive to the request. If the documents contain information that the coordinator believes may be confidential, the documents are reviewed by an attorney, and confidential information is redacted as necessary. If necessary, an opinion on the propriety of withholding information is requested from the Attorney General within the time frames specified in Chapter 552, Government Code, unless a previous opinion has been issued that deals with the material in question.

If copies need to be certified, the certifying official signs the certificate.

If charges are permitted pursuant to Chapter 552, Government Code, and they are above the department's de minimis amount of \$10.00, a bill is prepared based upon the number of copies made and time spent fulfilling the request.

A final version of the response letter and material is reviewed by one of the agency's assistant general counsels to ascertain that all confidential information has been redacted and that the material properly responds to the request.

**J. Please fill in the following chart:**

<b>Texas Department of Banking Exhibit 16: Contacts</b>		
<b>INTEREST GROUPS</b> (groups affected by agency actions or that represent others served by or affected by agency actions)		
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
Commissioner's Council/ Gary L. Nelon, Chairman	P.O. Box 649 Georgetown, TX 78627	Phone: 512/930-4554 Fax: 512/869-2697 Email: gnelon@aol.com
Interstate Branching Task Force/ Everette D. Jobe General Counsel	2601 N. Lamar Austin, TX 78705	Phone: 512/475-1321 Fax: 512/475-1313 Email: everette.jobebanking.state.tx.us
Consumers Union/ Robert F. Schneider Senior Staff Attorney	Southwest Regional Office 1300 Guadalupe, Suite 100 Austin, TX 78701	Phone: 512/477-4431 Fax: 512/477-8934 Email: schnro@consumer.org
AARP / Roy Ray, Jr.	7612 Shoal Creek Austin, Texas 78757	Phone: 512/459-9756
Guaranty Fund Advisory Council/ Arvin Harrell, Industry Representative	Harrell Funeral Home 4435 Frontier Trail Austin, Texas 78745-1513	Phone: 512/443-1366
Guaranty Fund Advisory Council/ Pierson Ralph, Consumer Representative	9733 Shorewood Road Dallas Texas 75238-4238	Phone: 214/528-6006

Funeral & Memorial Societies of America / Lamar Hankins, President	317 Bishop Street San Marcos, Texas 78666	Phone: 512/396-0317 Fax: 512/353-1467
Non-Bank Funds Transmitters Group/ Ezra C. Levine	Howrey & Simon, Attorney at Law 1299 Penn. Ave. N. W. Washington, D. C. 20004-2402	Phone: 202/383-7055 Fax: 202/383-6610 Email: LevineE@howrey.com
Federal Reserve Bank of Dallas/ Robert D. Hankins Senior Vice President	2220 N. Pearl Street Dallas, TX 75201	Phone: 214/922 5057 Fax: 214/922 5039 Email: bobhankins@dal.frb.org
Federal Deposit Insurance Corporation/ Keith Seibold, Regional Director - Bank Supervision	1910 Pacific Avenue Suite 1900 Dallas, TX 75201	Phone: 972/761-2032 Fax: 972/761-2082 Email: kseibold@fdic.gov
Office of the Comptroller of the Currency/ John Bodnar, Deputy Comptroller	1600 Lincoln Plaza 500 N. Akard Dallas, TX 75201-3394	Phone: 214/720-7003 Fax: 214/720-7000 Email:
U. S. Customs / John Patriarca, Group Supervisor	1800 Paredes Line Road Brownsville, Texas 78521	Phone: 956/542-7831
Internal Revenue Service / William Kurak, Group Manager	1919 Smith, Stop 9122 HOU Houston, Texas 77002	Phone: 713/209-4671

**INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS**  
(that serve as an information clearinghouse or regularly interact with the agency)

<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
Conference of State Bank Supervisors/ Neil Milner, President	1015 18th Street, N.W., Suite 1100 Washington, DC 20036-5725	Phone: 202/728-5702 Fax: 202/296-1928 Email: nmilner@csbsdc.org
Independent Bankers Association of Texas (IBAT)/ Chris Williston	408 West 14th Street Austin, TX 78701-1691	Phone: 512/474-6889 Fax: 512/322-9004 Email: c_williston@ibat.org
Texas Bankers Assn. (TBA)/ Rick Smith, President	203 West Tenth Street Austin, TX 78701	Phone: 512/472-8388 Fax: 512/473-2560 Email: rick@texasbankers.com

<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
Texas Bankers Assn. (TBA), Trust Financial Services Div./ Michelle Roberts, Executive Director	700 Lavaca, Suite 601 Austin, TX 78701-3102	Phone: 512/472-7391 Fax: 512/472-0130 Email: michelle@txba.com
Money Transmitter Regulators Association / Nicholas Kyrus, President	Virginia Bureau of Financial Institutions P. O. Box 640 Richmond, VA 23218	Phone: 804/371-9690 Fax: 804/371-9416 Email: NKyrus@scc.state.va.us
North American Cemetery Regulators Association / Dennis Britson, President	Iowa Securities Board 340 Maple Street Des Moines, IA 50319- 0066	Phone: 515/281-4441
Texas Cemetery Association / Jess Fields, President	Rosewood Memorial Park P. O. Box 2375 Humble, Texas 77347	Phone: 281/441-2171 Fax: 281/441-9752 Email: jfiwlds805@aol.com
Texas Funeral Directors Association / Jim Garrison, Executive Director	1513 South Interstate 35 Austin, Texas 78741	Phone: 512/442-2304 Fax: 512/443-3559
Texas Financial Services Association/ Robert Power, President	106 E. 6 <sup>th</sup> , Suite 650 Austin, TX 78701-3638	Phone: 512/477-5735 Fax: 512/477-1993 Email: rjpower@ccsi.com
Texas Mortgage Bankers Association/ Dianne Hughes, Executive Vice President	823 Congress Ave. Suite 700 Austin, TX 78701	Phone: 512/480.8621 Fax: 512/480.8621 Email: dhughes@texasmba.org
Texas Mortgage Bankers Association/ Larry Temple, General Counsel	400 West 15th Street Suite 1510 Austin, TX 78701	Phone: 512/477-4467 Fax: 512/477-4478 Email: letemple@onr.com
<b>LIAISONS AT OTHER STATE AGENCIES</b> (with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)		
<b>Agency Name/ Relationship/ Contact Person</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
Legislative Budget Board/ Greta Rymal, Assistant Director	105 W. 15th, Ste 300 Austin, TX 78701	Phone: 512/ 475-2927 Fax: 512/475-2902 Email: greta.rymal@lbb.state.tx.us

<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone Number Fax Number E-mail Address</b>
Comptroller of Public Accounts/ Pat Sheehan, Appropriations Control Officer	P.O. Box 13528 Austin, TX 78711-3528	Phone: 512 463-4524 Fax: 512 475-0527 Email: pat.sheehan@cpa.state.tx.us
Comptroller of Public Accounts/ Doug Freer, Analyst	P.O. Box 13528 Austin, TX 78711-3528	Phone: 512/475-0452 Fax: 512/463-4965 Email: doug.freer@cpa.state.tx.us
Office of the Governor/ Wayne Kelley, Budget and Planning	P.O. Box 12428 Austin, TX 78711	Phone: 512/463-1778 Fax: 512/463-1880 Email:wayne.kelley@governor.state.tx.us
Office of the Attorney General/ David Mattax, Chief Financial Litigation Section	300 W. 15th, 8th Floor Austin, TX 78701	Phone: 512/463-2018 Fax: 512/477-2348 Email: david.mattax@oag.state.tx.us
Texas Department of Insurance/ Rose Ann Reeser	333 Guadalupe P. O. Box 149104 Austin, Texas 78714-9104	Phone: 512 322-3402 Fax: 512 322-3506 Email: Beth_Hill@tdi.state.tx.us
Texas Funeral Service Commission / Acting Executive Director	510 S. Congress, Suite 206 Austin, Texas 78704-1716	Phone: 512/936-2474 Fax: 512/legis479-5064
Office of the Attorney General/ Financial Crimes and Specialized Prosecutors Don Clemmer, Chief	P.O. Box 12548 Austin, Texas 78711-0074	Phone: 512/463-0074 Fax: 512/479-8067

**VIII. 76th Legislative Session Chart**

Fill in the chart below or attach information if it is already available in an agency-developed format. In addition to summarizing the key provisions, please provide the intent of the legislation. For example, if a bill establishes a new regulatory program, please explain why the new program is necessary (e.g., to address specific health and safety concerns, or to meet federal mandates). For bills that did not pass, please briefly explain the issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation).

<b>Texas Department of Banking Exhibit 17: 76th Legislative Session Chart</b>		
<b>Legislation Enacted in the 76th Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions/Intent</b>
H.B. 1475	Thompson	Effective September 1, 1999. The Act affects trustees in two respects. First, a trustee is authorized to delegate investment decisions to an investment agent, and is not liable for investment decisions made by the agent if certain conditions are met. Notice of such delegation must be sent to all beneficiaries. Secondly, a written agreement between a trustee and the beneficiaries of a trust is given binding effect under certain conditions, including a release, consent, or other agreement relating to a trustee's duty, power, responsibility, restriction, or liability.
H.B. 2066	Marchant	Effective September 1, 1999. H.B. 2066 is a 193 page bill that passed both houses by a unanimous record vote. The Act implements interstate banking and branching in Texas, foreign bank branch and agency authority to the fullest extent permitted by federal law, and multistate trust business for corporate fiduciaries. In addition, the Act amends laws regarding public deposits, civil process, and trust, to conform these laws to the new interstate bank and trust environment. The banking commissioner is granted regulatory authority over interstate branching to the extent allowed by federal law, except with respect to state-chartered savings banks and credit unions, in which case authority is delegated to the savings and loan commissioner and credit union commissioner, respectively.
H.B. 2067	Marchant	Effective January 1, 2000. This bill eliminated a special franchise tax rule applicable to banks that deemed the source of all revenues to be the bank's "domicile," and will result in banks being taxed as any other corporation. The net effect will slightly reduce taxes for most Texas banks and impose taxes on out-of-state banks with branches in Texas, banks that paid no franchise tax under the former special rule.

S.B. 1368	Harris	Effective September 1, 1999. A 784 page bill, this Act relates to nonsubstantive additions to and corrections in enacted codes, including the nonsubstantive codification of various laws omitted from enacted codes, and to conforming codifications enacted by the 75th Legislature to other Acts of that Legislature. Extensive additions and amendments to the Finance Code are contained in Article 7 of the Act. Public confusion will exist over the next biennium because of extensive amendments made to the Texas Trust Company Act, V.T.C.S. art. 342a-1.001 et seq., at the same time as the Trust Company Act was codified as Fin. Code, Title 3, Subtitle F, by §7.16 of this bill.
H.B. 2223	Solomons	Effective September 1, 1999. This bill eliminated certain licensee reporting requirements that the department considered to be unnecessary. The bill was properly characterized as reducing regulatory burden.
H.B. 2320	Cuellar	Effective August 30, 1999. This Act relates to the licensing and regulation of currency exchange, transmission, and transportation businesses. While the statute could previously be interpreted to include non-bank owned ATMs, the bill explicitly includes such ATMs. The bill also strengthened and streamlined the Department's enforcement authority. These changes, and the expansion of the definition of "currency" to include financial instruments, were supported by the law enforcement community who believe that ATMs and transportation of money orders are facilitating the laundering of drug money. Because at least 30%-35% of ATMs are not bank-owned, and because the bill did not include a common carrier exemption with respect to financial instruments, the Department plans to ask the Finance Commission to adopt rules creating exemptions from licensing to eliminate classes of persons that do not need to be regulated for public safety and monitored for money laundering violations.
<b>Legislation Not Passed in the 76th Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions/Intent/Reason the Bill did not Pass</b>
H.B. 1553	Craddick	This bill attempted to eliminate the Rule Against Perpetuities to allow creation of perpetual trusts. The bill died in committee after the Department advised the committee and author that the Rule Against Perpetuities had a constitutional foundation and its elimination would require a constitutional amendment.
H.B. 1635	Hupp	The bill attempted to treat use of a different funeral provider from one named in a prepaid funeral contract as a voluntary cancellation, with consequent forfeiture of accumulated earnings. The bill died in committee after the Department raised concerns regarding forfeiture of earnings under a matured contract.

Bill Number	Author	Summary of Key Provisions/Intent/Reason the Bill did not Pass
S.B. 485	Whitmire	This bill attempted to exempt prepaid floral arrangements from the definition of “prepaid funeral benefits” in Fin. Code Chapter 154. The bill died in committee, because a prepaid floral arrangement is in a fact a prepaid funeral benefit.
S.B. 689	Carona	This bill represented an attempt to create an exemption from licensing under the Sale of Checks Act (Fin. Code Chapter 152) for a public corporation with at least \$100 million equity, engaged in the business of electronic payments, both directly for consumers and indirectly through contracts with banks. A national trade association of the largest check sellers and money transmitters, including American Express and Travelers, testified against the bill in the House committee. The bill was not reported out of committee.
H.J.R. 1/ S.J.R. 1	Junell/ Ratliff	New constitution. Died in committee. Banking was addressed in proposed §10.14, which in large part copied Tex. Const. Art. XVI, §16(a), by prohibiting foreign corporations from engaging in the banking business in Texas. The constitutional parity provision of §16(c) was not included in the proposal. As the Department advised the authors, the proposed prohibition on out-of-state banks was already preempted by 12 USC §1831u.
H.J.R. 31	Hupp/Dutton	This proposed constitutional amendment would have stated that “a right of every individual to privacy is recognized and may not be infringed without the showing of a compelling state interest that may not be achieved in a less intrusive and more reasonable manner.” Bankers were extremely concerned because it was not limited to government action, and could have resulted in creating causes of actions against banks and other lenders dealing in “private” data required to make credit decisions.

## IX. Policy Issues

The purpose of this section is to briefly describe any potential policy issues that would help the agency operate better and improve service delivery. This section is intended to give the Sunset Commission a basic understanding of the issues so staff can develop more information during our detailed research on the agency. Some questions to ask in preparing this section may include: (1) How can the agency do a better job in meeting the needs of clients or in achieving agency goals? (2) What barriers exist that limit the agency's ability to get the job done?

Emphasis should be given to major policy issues and issues appropriate for resolution through changes in state law. Issues related to funding or actions by other governmental entities (federal, local, quasi-governmental, etc.) may be included, but the Sunset Commission has no authority in the appropriations process or with other units of government. If these types of issues are included, the focus should be on solutions which can be enacted in state law. Focus should also be given to areas where the agency can improve its interaction with other state agencies.

The policy issues presented should not be limited to issues the agency supports, and inclusion of issues in this document will not be interpreted as an endorsement by the agency.

This section contains three components:

1. Brief Description of Issue. Often, the issue is best presented as a question, e.g., "Should the agency be required to . . . ?"
2. Discussion. Include enough background information to give context for the issue. Information helpful in building context includes:

What is the general scope of the issue?

What is the agency's authority (statutory or other) related to the issue?

What is the current practice or situation related to the issue?

C Any previous legislative action related to the issue?

3. Possible Solutions and Impact. Provide specific recommendations to solve the problem. Keep in mind each issue may have multiple and/or competing solutions. Feel free to include a more detailed discussion of each proposed solution. This section should also include the impact of the proposed solution, including:

C Will the proposed change impact any entities or interest groups?

C How will the performance of the agency be impacted by the proposed change?

C What are the benefits of the recommended change?

C What are the possible drawbacks of the recommended change?

C What is the fiscal impact of the proposed change?

Please complete this section for each policy issue. Copy and paste boxes A through C as many times as needed to discuss each issue. See Policy Issue Example or [click here to link directly to the example](#).

**I. A. Brief Description of Issue:**

Would the licensing, regulation, supervision, and examination of the death care industry be improved through restructuring of supervision, increased specificity in the statutes, and redesigned agency authority to encourage compliance with the statutes?

**I. B. Discussion**

Currently, the regulation and oversight of the death care industry is fragmented among several state agencies. In addition to the Banking Department's role in licensing and reviewing prepaid funeral sellers and perpetual care cemeteries, the Funeral Service Commission deals with at-need funeral issues; the Texas Department of Insurance is involved when prepaid funeral trusts are funded with insurance policies; and the Texas Department of Health intervenes when embalming or burial activities create a health hazard. While the agencies coordinate their efforts to avoid duplication, the process does not optimize efficiency. Consumers must frequently call several agencies to receive an answer to a question or file a complaint. In addition, the death care industries do not have representation on the Banking Department's oversight board, the Texas Finance Commission.

Additionally, the statutes over both prepaid funeral contract sales and perpetual care cemetery trust fund activity are not adequately specific to deter activities that appear to conflict with the intent of the law. Relatedly, enforcement authorities do not provide sufficient alternatives for adequate, timely resolution, especially of recurring problems. (See discussion in the program description sections for these areas.) The statutes were initially consumer protection driven and oriented, to provide industry oversight and protection for consumers. Ambiguities and current problem resolution alternatives seem to detract from that orientation. Joint participation by all interested parties in an effort to provide clarity and resolution to these questions would improve the statutes.

**I. C. Possible Solutions and Impact**

**i. Merge all the licensing and regulation activities over the death care industry into a single agency with adequate staff and power to provide effective oversight.**

While there would be new costs attendant to setting up a new agency, the ensuing regulation of the industry may be more effective and efficient. Consumers would have "one-stop shopping" for death care issues. With revisions in the statutes, the agency would be able to identify and take action to correct violations of law and inappropriate practices. Consumers would benefit from improved safeguards over their funds.

One question is whether the resulting agency would be of sufficient capacity to provide effective results.

**ii. Leave all activities and programs as they are currently disbursed.**

While this maintains the overlapping authorities, the current structure is operational.

**iii. Combine all related programs and activities into an existing agency.**

This would provide one-stop shopping for the consumer, and also house the programs in a larger agency than if it stood alone.

**X. Comments**

Please provide any additional information needed to gain a preliminary understanding of the agency.

N.A.