



## FINANCE COMMISSION OF TEXAS

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May 10, 2018

Ken Levine, Director  
Texas Sunset Advisory Commission  
1501 N. Congress Avenue 6<sup>th</sup> Floor  
Austin, Texas 78701

RE: FINANCE COMMISSION AGENCIES SUNSET STAFF REPORT COMMENT LETTER

Thank you for the opportunity to submit written comments regarding the Sunset Advisory Commission Staff Report. We appreciate the professional manner of work performed throughout the process.

The Sunset Staff Report identifies seven issues with key recommendations. We are evaluating each staff recommendation to determine appropriate steps. Some staff recommendations offer opportunity for improvement and the Finance Commission believes additional consideration is warranted for certain staff recommendations made.

The Finance Commission met on May 2, 2018, at which nine members were present and two were absent, to establish the following positions for issues and recommendations listed in the Staff Report.

**Issue 1: While Regulation of the Finance Industry Is Necessary, Texas Does Not Need Two Agencies Regulating Banks**

The Commission's majority position on staff recommendation 1.1 supports the current agency structure regulating state thrifts and the mortgage lending industry, with eight members in support and only one member opposed. In the prior 2000 Sunset Staff Report recommending consolidation, the legislature maintained separate agency structure. All Finance Commission agencies are self-leveling and self-funded, granted self-directed semi-independent status (SDSI) in 2009. Current structure was stress tested during the 2008 Financial Crisis, which performed exemplary. Instead of Texas being an outlier, as Staff Report suggests, members feel the current structure is an asset. Members point to thrift and mortgage's strong support of maintaining separate structure, evidenced by their willingness to fund regulatory cost without taxpayer expense.

The Staff Report references small agency size concern and single depository regulator benefits. Yet, comprehensive scope is not achieved with consolidation, as Credit Unions remain a stand-alone depository agency, not under the Finance Agencies' umbrella, with fewer employees than the Department of Savings & Mortgage Lending. Commission members support both industries desire to have a stand-alone regulator with understanding and focus on thrift & mortgage specific needs. In addition, recent legislative sessions have added additional authority in mortgage regulation. Members expressed surprised that mortgage regulation is hardly mentioned in the Staff Report, which accounts for over half of the agency's activity and revenue. Members expressed concern over unintended consequences, especially flight of state-chartered thrifts to Federal charters. Community and Rural thrifts need no additional Federal regulatory burden.

The Commission unanimously supports staff recommendation 1.2 to continue Texas Department of Banking and with staff recommendation 1.3 to continue Office of Consumer Credit Commissioner.

**Issue 2:           The Agencies' Self-Directed Semi-Independent Status Calls for Greater Finance Commission Oversight and Coordination**

The Commission unanimously agrees with staff recommendation 2.2 to evaluate and update key performance measures and with staff recommendation 2.5 to develop policies regarding tracking and reporting on travel expenditures.

The Commission unanimously disagrees (9 opposed) with staff recommendation 2.1 to remit administrative penalties to General Revenue Fund. Penalty revenue is used to recoup costs, derived mostly from unlicensed activity. Members expressed concern over entity assessment increases required if enforcement cost cannot be recouped. Furthermore, it provides disincentive for whistleblowers to report unlicensed activity, primary method for agency knowledge.

The Commission unanimously disagrees (9 opposed) with staff recommendation 2.3 to develop budget policy for fee setting. Finance agencies have a stable and transparent budget policy developed in 2010 after SDSI. All members support current budget policy, which is not to budget with penalty revenue. Penalty revenue is first used to recoup enforcement costs. Secondly, unused funds are historically "returned" to industries during fourth quarter, through reduced fees and assessments. This practice has been in place for many years and provides the agencies' needed flexibility. Regulated industries review annual budgets to provide input and support. For additional transparency, public budget day is held annually for public input.

The Commission unanimously disagrees (9 opposed) with staff recommendation 2.4 to update fund balance policy. Fund balance policy has been in place since 2011. Policy was updated in 2018, which needs time for proper analysis.

The Commission neither agrees or disagrees with staff recommendation 2.6 on efficiency and duplication. The Commission authorized a study be conducted to evaluate shared resources and efficiencies. Members think the limited shared resource chart on report page 34 does not illustrate all current shared efficiencies. Furthermore, members feel the 10% target in the Staff Report is arbitrary and cannot be determined without formal analysis. With respect to a single complaint intake, members noted this as an example of a well-sounding efficiency that may ultimately result in higher cost.

Members disagree with the Staff Report finding that Commission has not met statutory direction to coordinate across agencies to minimize costs. Members believe the Staff Report does not accurately interpret Commission's statutory mandate. Texas Finance Code §11.204 Sharing of Staff, Equipment and Facilities:

*"The Finance Commission shall use the staff, equipment and facilities of the finance agencies to the extent necessary to carry out finance commission duties. To reduce administrative costs, the finance agencies shall share staff, equipment and facilities to the extent that the sharing contributes to cost efficiency without detracting from the staff expertise needed for individual areas of agency responsibility."*

**Issue 3: Three Finance-Related Regulatory Programs Are Not Necessary to Protect the Public**

The Commission unanimously agrees with staff recommendation 3.2 to discontinue registration of cemetery brokers and with staff recommendation 3.3 to discontinue registration of private child support enforcement agencies.

The Commission did not reach consensus on staff recommendation 3.1 to discontinue pawnshop employee licensure. Members in favor of licensure felt legislature intent was for licensure to protect Texas consumers. The Staff Report did not provide withdrawn license figures, which could evidence the deterrent effect of licensing to ward off bad actors. Members against licensure stated pawnshop companies must be responsible for actions of employees.

**Issue 4: Elements of the Department of Banking's Statute and Rules Do Not Conform to Common Licensing Standards**

The Commission unanimously agrees with staff recommendation 4.1 to establish license terms for death care service licensees, staff recommendation 4.2 to update complaint processing provisions, staff recommendation 4.3 to update outdated appeals provisions and with staff recommendation 4.4 to develop updated complaint process rule.

**Issue 5: Key Elements of the Office of Consumer Credit Commissioner's Statute and Rules Do Not Conform to Common Regulatory Standards**

The Commission unanimously agrees with staff recommendation 5.1 to remove subjective licensing provisions, staff recommendation 5.2 to authorize agency to provide biennial license renewals, staff recommendation 5.3 to update agency's complaint processing, staff recommendation 5.4 to authorize disclosure of summary complaint resolution, staff recommendation 5.5 to authorize investigations upon suspicion of violations, staff recommendation 5.6 to remove outdated burden of proof on violations, staff recommendation 5.7 to give authority for crafted metals action, staff recommendation 5.8 to authorize to deny applications for noncompliant, staff recommendation 5.9 to standardize restitution burden of proof, staff recommendation 5.10 to authorize restitution for crafted metals, staff recommendation 5.11 to update outdated appeals provisions, staff recommendation 5.12 to develop

updated compliant rule and with staff recommendation 5.13 to make enforcement actions available online.

**Issue 6: Elements of the Department of Savings and Mortgage Lending's Statute and Procedures Do Not Conform to Common Regulatory Standards**

The Commission unanimously agrees with staff recommendation 6.1 to remove unnecessary subjective licensing provisions, staff recommendation 6.2 to update complaint processing provisions, staff recommendation 6.3 to develop updated complaint process rule and with staff recommendation 6.4 to modify penalty matrix.

**Issue 7: The Finance Agencies' Statutes Do Not Reflect Standard Elements of Sunset Reviews**

The Commission unanimously agrees with staff recommendation 7.1 to update Commission member training, staff recommendation 7.2 to apply alternative dispute resolution recommendation, staff recommendation 7.3 to establish advisory committees in rule and with staff recommendation 7.4 to continue finance agencies' required reports.

Commission members expressed concern over a fifteen business day comment period. The Finance Commission conducted a special meeting to review and discuss the Sunset Staff Report and to submit comments. The Commission respectfully requests the opportunity to submit additional comments, after further review and consideration of the Staff Report.

Lastly, the Finance Commission extends their gratitude to the Sunset Advisory Commission. Recommendations made will enhance the Finance Commission Agencies and their regulated entities.

Respectfully,



Stacy G. London

Chairman

cc:

Members- Finance Commission of Texas  
Commissioner Charles Cooper  
Commissioner Leslie Pettijohn  
Commissioner Caroline Jones