

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, October 17, 2014**

The Finance Commission of Texas met Friday, October 17, 2014, in the Finance Commission Building, William F. Aldridge Hearing Room, 2601 North Lamar Boulevard, Austin, Texas.

Finance Commission Members in attendance:

Bill White, Chairman
Susan Burton
Stacy London
Will Lucas
Lori McCool
Cindy Lyons
Jonathan Newton
Larry Patton
Jay Shands

Finance Commission Members Absent:

Paul Plunket
Victor Leal

Others in attendance:

Leslie Pettijohn, Commissioner, Office of Consumer Credit Commissioner (OCCC)
Charles G. Cooper, Executive Director of the Texas Finance Commission, and
Commissioner, Texas Department of Banking (TXDOB)
Caroline C. Jones, Commissioner, Texas Department of Savings and Mortgage Lending (TDSML)
Jim Crowson, Assistant Attorney General, Office of the Attorney General

Finance Commission Chairman Bill White announced a quorum with nine members present and called the meeting to order at 9:06 a.m.

Discussion of and Possible Vote to Excuse the Absence of a Commission Member

Chairman Bill White made a motion to excuse Paul Plunket from the Finance Commission meeting held on October 17, 2014. There were no objections and the motion passed.

FINANCE COMMISSION MATTERS

General Public Comment

Consent Agenda

Jay Shands made a motion to approve Consent Agenda Items A1, A9, and C2. Will Lucas seconded and the motion passed.

Finance Commission Operations

Stephanie Newberg and Wendy Rodriguez gave instructions on using an iPad with the new electronic agenda.

Study Committee Report

Jay Shands gave an update on the Study Committee activities regarding the Finance Commission Policies and Procedures. A few non-substantive changes will be made to the document, but the Study Committee recommends the Finance Commission approve the policies and procedures as discussed. Coming upon recommendation from the Study Committee, no second is needed and the motion passed.

Jay Shands recognized Charles Cooper as recently being honored by IBAT with the Chairman's Award for outstanding service promoting community banking.

Audit Committee Report

Cindy Lyons gave an update on the Audit Committee activities.

The Audit Committee recommended that the Finance Commission approve the agencies' 2014 Investment Officer Reports. Coming upon recommendation from the Audit Committee, no second is needed and the motion passed.

The Audit Committee recommended that the Finance Commission approve the agencies' fourth quarter financial statements. Coming upon recommendation from the Audit Committee, no second is needed and the motion passed.

Discussion of and Possible Vote to Accept the Report on the Financial Condition of the State Banking System (NOTE: Report provided separately)

DOB Director Wendy Rodriguez gave an overview of the *Report on the Financial Condition of the State Banking System* with financial data as of June 30, 2014. Nationally, there is some anticipation that the economy may be faltering. However, at the state level the economy continues to be strong. Most Texas banks and thrifts have improved their balance sheets and are experiencing improvements in their earnings and asset quality.

Larry Patton made a motion to approve the *Report on the Financial Condition of the State Banking System*. Jay Shands seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Accomplishment Reports for Fiscal Year 2014 for the Commissioners of the Office of Consumer Credit Commissioner, Texas Department of Banking, and Department of Savings and Mortgage Lending

Commissioner Pettijohn gave highlights on the accomplishments for OCCC in FY14. Under Credit Access Businesses, the staff exceeded an internal goal for examinations, launched a new online licensing system, awarded grants from the Financial Education Endowment Fund to eight organizations in an aggregate amount of \$250,000 and worked to build staff and maintain turnover within a 15% benchmark.

Commissioner Cooper gave highlights on accomplishments for DOB. The agency continues to be active in legislative matters both nationally and at the state level. The NMLS system went online in September for Money Transmitter Businesses making licensing in numerous states more efficient. Staff continues to be active in national associations, monitoring illegal activity and issuing press releases when necessary. An information security officer was hired and the auditors have reviewed this function.

Commissioner Jones gave highlights of TDSML's accomplishments. Ninety-six percent of consumer complaints were addressed in 90 days or less. Staff participated in a CFPB examination and attended a field office hearing in El Paso. Issued orders relating to failure to file or non-timely filings of mortgage call reports and met or exceeded 8 of 11 performance measures.

Stacy London made a motion to approve the Accomplishment Reports for Fiscal Year 2014. Lori McCool seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Adoption of New 7 TAC §5.101, Concerning Finance Agency Employees Training and Education Assistance Programs
CONSENT ITEM

Discussion of and Possible Vote to Adopt Amendments to 7 TAC, Part 8, Joint Financial Regulatory Agencies, §§153.1, 153.15, and 153.51, Concerning Home Equity Lending

Matt Nance, assistant general counsel for the OCCC, asked that this item be taken up at the December meeting of the Finance Commission. Section 153.5 was inadvertently omitted from the agenda caption posted to the Texas Register.

Discussion of Legislative Recommendations of the Office of Consumer Credit Commissioner, Texas Department of Banking, and the Department of Savings and Mortgage Lending

Commissioner Pettijohn gave highlights of OCCC's legislative recommendations. There are several technical changes and clarifications of statutes related to criminal history access, Credit Access Businesses, Crafted Precious Metal Dealers and Property Tax Lenders. Some of these recommendations stem from legislative proposals of last session that were not passed, but are still important recommendations.

Commissioner Cooper gave highlights of DOB's legislative recommendations. Under administration, there are some minor statutory cleanup items. On the Bank and Trust side, the DOB would like to request authority to remove an employee from a bank who has committed a felony, establish remedies to correct non-compliance with debit card surcharges and some clarification of statutes. Under Money Service Businesses expand license requirements to include certain physical transport of currency, respond to possible legislative inquiries related to virtual currency and under Perpetual Care Cemeteries create remedies for small cemeteries to withdraw from PCC regulations.

Commissioner Jones stated TDSML currently would not be seeking any changes to statute or submitting any recommendations. Staff will monitor bills closely during the session.

Chairman Bill White announced a break at 9:56 a.m.

Chairman Bill White reconvened the open meeting of the Finance Commission meeting at 10:14 a.m.

Discussion of and Possible Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties of Persons Holding the Position of Agency Commissioner Positions, and Other Staff

No discussion.

Discussion of and Possible Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property

No discussion.

Discussion of and Possible Action Regarding Anticipated and Pending Litigation Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys regarding pending and contemplated litigation

No discussion.

OFFICE OF CONSUMER CREDIT COMMISSIONER

Industry Status and Departmental Operations: a) Consumer Protection; b) Consumer Assistance; c) Licensing; d) Credit Education; e) Financial and Administration; f) Legal Activity; and g) Legislative Activity

Commissioner Pettijohn gave an update on the status of operations at the OCCC. As a primary focus of FY14, the OCCC worked on building the examination staff and will continue to strengthen staff in FY15. Staff performed fewer motor vehicle examinations than initial projections in FY14, but more credit access business examinations.

Larry Patton asked about work being done toward driving better compliance and what effect more examinations would have on compliance.

Commissioner Pettijohn explained that motor vehicle examinations are moving up on the trend line and with training of more experienced examiners the compliance rate will continue to go up. In FY14, licensees returned to consumers \$23 million as a result of agency action.

Complaints and licensing have fallen slightly; there is a shift in the market due to anticipation of some CFPB rules. Work continues on the new online portal and will eventually incorporate examinations, complaints, investigations, and open records.

Will Lucas commented that property tax lenders have the highest complaint ratio of all the industries and asked for clarification.

Commissioner Pettijohn explained that field investigations for property tax lenders decreased due to staff handling complaints through the complaint process without the need for field investigation as well as an increase in examinations addressing compliance issues. A common complaint on property tax loans relates to payoff requests and amounts. A detailed report on complaints on property tax lenders will be provided at the December meeting.

Discussion of and Possible Vote to Take Action on the Publication for Comment of Proposed Amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802 Concerning Property Tax Lenders

Commissioner Pettijohn gave highlights of the proposed amendments to rules concerning property tax lenders. The statute requires that closing costs of property tax loans be reasonable. Revisions were necessary to revise the tier structure to create a more competitive marketplace and ensure that abuses are less common.

OCCC Assistant General Counsel, Laurie Hobbs, gave additional detail on the proposed rule changes. There are three key areas that need updating, removal of the five-tier structure and addition of a maximum fee limit, disclosure of affiliated businesses, and guidelines on legitimate discount points.

Public comments regarding these rule changes were provided by Jim Arnold, Executive Director of Protect My Texas Property, Peter Squire of Texas Property Tax Lienholders Association, and Christina Carney - Director of Operations of Propel Financial Services. Generally, the commenters were supportive of the rule proposal and offered some suggestions for further consideration.

Stacy London made a motion to publish for comment proposed amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802 Concerning Property Tax Lenders. Susan Burton seconded and the motion passed.

Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Lynn Rowell d/b/a Beaumont Greenery, MPC Data and Communications, Inc., Micah Cooksey, NXT Properties, Inc., Mark Harken, Montgomery Chandler, Inc., Paula Cook, Townsley Designs, LLC, and Shonda Townsley v. Leslie L. Pettijohn, in her official capacity as Commissioner of the Office of Consumer Credit Commissioner of the State of Texas; Cause No. 1:14-cv-00190-LY, in the United States District Court, Western District of Texas, Austin Division.

DEPARTMENT OF BANKING

Industry Status and Departmental Operations: a) Items of Interest from the Commissioner's Office; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Fiscal Division Activities; f) Strategic Support Division Activities; g) Legal Division Activities; h) Legislative Activity; and i) General Items of Interest

Commissioner Cooper gave an update on CSBS meetings with FDIC Chairman Marty Gruenberg and Comptroller of the Currency Tom Curry regarding cybersecurity and de novo bank charters. He also mentioned that TBA and IBAT are co-sponsoring a meeting in December regarding cybersecurity. Sarah Bloom Raskin, Deputy Secretary of the Treasury will be the keynote speaker. Consolidation of banks continues and Texas is down to 273. There are no past due bank examinations. In September, the Community Banking in the 21st Century Symposium was held in St. Louis. Survey and town hall feedback was presented and a report was disseminated relating to these findings. Each member was provided a copy of this report.

Special Audits Director Russell Reese updated members on performance measures. All measures related to examination were met. One consent order was presented to a funeral home due to prepaid funds being withheld from consumers. A \$120,000 penalty was assessed and received and the funds have all been reinstated.

Commissioner Cooper continued his update with staffing. As of 8/31 there were 187 employees of 200 budgeted FTE. Nine new staff were hired since and nine staff were promoted to commissioned examiners.

Discussion of and Possible Vote to Take Action on the Re-adoption of the Completed Rule Reviews of: **CONSENT ITEM**

- A. 7 TAC, Part 2, Chapter 11, Concerning Complaint Filing Procedures***
- B. 7 TAC, Part 2, Chapter 26, Concerning Perpetual Care Cemeteries***
- C. 7 TAC, Part 2, Chapter 27, Concerning Applications***
- D. 7 TAC, Part 2, Chapter 31, Concerning Child Support Enforcement Agencies***

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §§31.11, 31.14 and 31.32, Concerning Child Support Enforcement Agencies
Catherine Reyer, General Counsel stated that the child support rule was merely administrative in nature and nothing controversial. We received no input from industry.

Jonathan Newton made a motion to approve amendments to 7 TAC §§31.11, 31.14 and 31.32, Concerning Child Support Enforcement Agencies. Susan Burton second and the motion passed.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §§26.2 and 26.4, Concerning Perpetual Care Cemetery Operations

Catherine Reyer, General Counsel, stated that this rule is being updated to clarify recordkeeping requirements.

Jay Shands made a motion to approve amendments to 7 TAC §§26.2 and 26.4, Concerning Perpetual Care Cemetery Operations. Will Lucas seconded and the motion passed.

Discussion of and Possible Action Regarding Anticipated and Pending Litigation

Antioch St. Johns Cemetery Co. v. The Texas Department of Banking Commissioner, Cause No. D-1-GN-14-000367, In the 261st District Court of Travis County, Texas.

Department of Banking v. Greg Abbott, Attorney General of Texas; Cause No. D-1-GV-11-001906, In the 53rd District Court of Travis County, Texas.

State of Texas v. Myrtlewood Memorial Services d/b/a Harlingen-Combes Memorial Cemetery, Cause No. 2013-DCL-2248-B, in the 138th Judicial District Court of Cameron County, Texas.

Catherine Reyer, General Counsel, gave an update on pending litigation. A consent order was issued to Smart Payment Plan. They have been doing business unlicensed in Texas since 2009. They have been assessed a penalty of \$130,000, they must submit a complete application and they cannot take on any new clients. If their application is denied, they have 120 days to wind down business in Texas.

DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; b) State Savings Bank Charter and Application Activity; c) Recap of Problem Institutions/Enforcement Issues; and d) Other Items

Commissioner Jones provided an update on the thrift industry indicating it has continued to improve overall. Non-performing assets remain low at 0.74% of total assets. Additionally, savings banks profitability has increased over the past year. Largely, the industries are well rated, with 93% of thrifts being rated either 1 or 2.

Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; c) Consumer Complaints/Legal Activity; d) Mortgage Industry Advisory Committee Minutes; and e) Other Items

Commissioner Jones provided an update relating to the mortgage industry. As of September 30, 2014, there were 1,639 entities licensed with 144 of them being mortgage servicers. Additionally, there were 18,105 individuals licensed. In FY14 there were 7,356 license applications received by the Department. Recently, the Department issued orders to mortgage companies that had not filed or did not timely file their mortgage call reports and or financial condition report for calendar year 2013. The penalty amounts assessed were \$100 for the first report and \$250 for each additional report, for a range of penalties of \$100 – \$1,100.

The Department is seeing improvement in compliance by the mortgage entities. On consumer complaints the majority of complaints continue to relate to loan servicing issues. For FY14, the Department stayed within its target for processing complaints. Commissioner Jones explained that some complaints were in areas we have no jurisdiction over, for example a complaint about a national bank.

Fiscal/Operations Activity: a) Funding Status/Audits/Financial Reporting; b) Staffing; and c) Other Items

Commissioner Jones presented an overview of the Department's performance measures for FY14. Additionally, she updated the Commission on some of her goals she has established since becoming Commissioner. The focus of these goals relate to internal communications, such as quarterly staff meetings, regular manager meetings and continuing the Department's newsletter.

Discussion of and Possible Action Regarding Anticipated and Pending Litigation

No discussion occurred.

Khosrow Khani v. Texas SML; Cause No. D-1-GN-13-000207, 200th Judicial District Court of Travis County, Texas.

Chairman Bill White called for an Executive Session at 11:40 a.m.

Chairman Bill White reconvened the Open Meeting of the Finance Commission at 12:19 p.m.

There being no further business, Commission Chairman Bill White adjourned the meeting of the Finance Commission at 12:20pm.

Bill White, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Judy E. Schooling, Executive Assistant
Finance Commission of Texas