

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, December 12, 2014**

The Finance Commission of Texas met Friday, December 12, 2014, in the Finance Commission Building, William F. Aldridge Hearing Room, 2601 North Lamar Boulevard, Austin, Texas.

Finance Commission Members in attendance:

Bill White, Chair
Paul Plunket, Vice Chair
Susan Burton
Victor Leal
Stacy London
Cindy Lyons
Lori McCool
Jonathan Newton
Larry Patton
Jay Shands

Finance Commission Members Absent:

Will Lucas

Others in attendance:

Charles G. Cooper, Executive Director of the Texas Finance Commission, and
Commissioner, Texas Department of Banking (TXDOB)
Leslie Pettijohn, Commissioner, Office of Consumer Credit Commissioner (OCCC)
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 ten members present and called the meeting to order at 8:45 a.m.

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

Chairman Bill White asked the members to excuse Will Lucas from the Finance Commission meeting held on December 12, 2014. A motion was made by Susan Burton to excuse Will Lucas. Stacy London seconded and the motion passed.

FINANCE COMMISSION MATTERS

General Public Comment

None

Consent Agenda

Stacy London made a motion to adopt the consent agenda, which includes items A1, A2, D3 and D4. Cindy Lyons seconded and the motion passed.

Finance Commission Operations

Commissioner Cooper reported that the 84th Legislative Session begins on January 13 at noon. Weekly bill tracking reports will be sent to the Finance Commission members beginning January 20 and each Monday thereafter.

Audit Committee Report

Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Fiscal Year 2015 Internal Auditor's Risk Assessment and Audit Plan for the Finance Commission Agencies

Cindy Lyons, Audit Committee Chair, reported that the FY2015 Internal Audit Plan was discussed at the Audit Committee meeting. The areas to be audited are: DOB – revenue accounting and perpetual care cemeteries; TDSML – mortgage examinations; and OCCC – the Texas Financial Education Endowment Fund. The Audit Committee recommended that the Finance Commission approve the FY2015 Internal Audit Plan.

Coming upon recommendation from the Audit Committee, no second was needed and the motion passed.

Discussion of and Possible Vote to Adopt Amendments to 7 TAC, Part 8, Joint Financial Regulatory Agencies, §§153.1, 153.5, 153.15, and 153.51, Concerning Home Equity Lending

Matthew Nance, Assistant General Counsel for the OCCC, reported that this item was delayed from the October meeting. This rule amends the definition of interest and when a power of attorney may be used. The Credit Union Department previously adopted this rule.

Larry Patton made a motion to adopt the amendments. Jay Shands seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Annual Evaluations of the Commissioners of the Department of Savings and Mortgage Lending Office, the Consumer Credit Commissioner, and the Texas Department of Banking

There was discussion with voting on this agenda item.

Stacy London, Chair of the Strategic Planning Committee asked Bill White to stand in as ex officio for Will Lucas in order to make the third member. She stated that the Strategic Planning Committee conducted the annual reviews and compiled data for the agency commissioners and the Strategic Planning Committee recommends that the Finance Commission accept the very satisfactory annual reviews.

Victor Leal made a motion to accept the annual reviews of the three agency commissioners. Stacy London seconded and the motion passed.

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

There was no discussion or vote on this agenda item.

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

There was no discussion or vote on this agenda item.

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

There was no discussion or vote on this agenda item.

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 updated the members on the thrift institutions stating that they are strong and assets continue to grow.

Jonathan Newton asked if the downturn in oil would affect the thrifts. Commissioner Jones replied that the Agency is monitoring interest rate risks and commercial real estate concentrations. The Agency has been in contact with banks that may be at risk in these areas. Commissioner Cooper added that he has asked the Federal Reserve to help determine lifting costs in specific fields that could affect the industry. The community banks are conservative in their loans, but the oil service industries need to be observed. The Texas economy is deep, but slumping oil prices may affect some areas.

Victor Leal mentioned that he spoke with a state representative recently and they are concerned about the drop in oil prices as it relates to the state budget, but the depth of the Texas economy is better than in the 80s and 90s.

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 reported on the numbers of licensees and registrants as of November 30, 2014. Additionally, she reported as of November 30, 2014, more companies and individuals had gone through the license renewal process than at the same time the prior year. However, renewal time does not end until December 31, 2014, so final numbers are not available until then. Consumer complaints for the first two months of FY15 were lower than the same time period the previous fiscal year; however, it is too early in the year to consider that to be a trend. The Agency issued 680 orders for untimely filing of mortgage call reports and less than 60 have appealed. The Agency held its second annual Mortgage Industry Seminar on November 19th in conjunction with Texas Mortgage Bankers Association's Education Seminar. Senior management and field examination staff made presentations on timely topics. With regard to the upcoming legislative session, Commissioner Jones reported the bills the Agency is tracking as of December 3, 2014.

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

Commissioner Jones reported the Agency has prepared and submitted to oversight agencies multiple financial reports.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §67.17, Concerning User Safety at Unmanned Teller Machines

Ernest Garcia, General Counsel for the Texas Department of Savings and Mortgage Lending, gave an overview of rules 67.17 and 77.115. The amendments to these rules updates recommended basic safety precautions and eliminates the requirement for an annual notice. An institution must furnish the notice when an access device is issued, renewed or replaced.

Paul Plunket inquired about national best practices. Everette Jobe, Assistant General Counsel for the DOB, stated that these state requirements apply to national banks. He noted that there are no comparable federal laws and that the Credit Union Department made these change seven or eight years ago.

Stacy London made a motion to publish for comment, amendments to 7 TAC §67.17, Concerning User Safety at Unmanned Teller Machines. Susan Burton seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §77.115, Concerning User Safety at Unmanned Teller Machines

Jay Shands made a motion to publish for comment amendments to 7 TAC §77.115, Concerning User Safety at Unmanned Teller Machines. Larry Patton seconded and the motion passed.

Discussion of and Possible Action Regarding Anticipated and Pending Litigation

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

Sammy Trantham v. Texas Department of Savings and Mortgage Lending and Caroline C. Jones; Cause No. D-1-GN-14-004497, 419th Judicial District Court of Travis County, Texas

Stacy London commended Commissioner Jones for a job well done at the Mortgage Industry Day.

OFFICE OF CONSUMER CREDIT COMMISSIONER

Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Communication, HR and Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activity

Commissioner Leslie Pettijohn gave an update on operations and stated that the number of examination performed in FYTD15 is already proportionately higher than FYTD14. The agency has hired new examiners and once their training is complete, they will add to the examination productivity. Compliance is up for motor vehicles and credit access businesses, but there are still issues and concerns. Complaints were up primarily in motor vehicle sales finance.

Rudy Aguilar, Director of Consumer Protection, OCCC, gave an update on property tax complaints at the request of members from the October meeting. Most of the complaints were in the area of payoff disputes.

Paul Plunket asked for more detail and possible solutions to the problem.

Commissioner Pettijohn stated her belief that changes were not recommended at this time. Of the 15,000 transactions, 28 were complaints and, of those, only four had these issues. She continued with her operations briefing stating that the OCCC is encouraging businesses to use the online licensing platform. The OCCC is evaluating proposals for phase two of the IT legacy modernization project. Concerning litigation, oral arguments have been heard on the *Rowell* credit card surcharge case, but no decision has been issued. She finished up by stating that they have added several items to their legislative recommendations including clarifications on obtaining criminal history information, the proper investment standard for the endowment fund, and clarifications on the prohibitions on criminal charges and debt collection laws.

Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act

Commissioner Pettijohn stated that this item and the next are completed rule reviews and the agency recommends that the Finance Commission adopt both.

Jonathan Newton made a motion to adopt the completed rule review of 7 TAC, Part 1, Chapter 2, Concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act. Jay Shands seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Adoption of the Completed Rule Review of 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors

Victor Leal made a motion to adopt the completed rule review of 7 TAC, Part 5, Chapter 86, Concerning Retail Creditors. Stacy London seconded and the motion passed.

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

Commissioner Pettijohn explained that these rule amendments have generated significant stakeholder input and comments. Because of some late concerns and to ensure that Finance Commission is able to fully consider all comments, she suggested re-proposing and re-publishing the rules for an additional 30-day comment period.

Larry Patton made a motion to approve for re-publication amendments to 7 TAC §§89.102, 89.207, 89.504, 89.601, and 89.802, Concerning Property Tax Lenders. Lori McCool seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §2.104, Concerning Application and Renewal Fees, for Office of Consumer Credit Commissioner Residential Mortgage Loan Originators

Laurie Hobbs, Assistant General Counsel for the OCCC, briefed the members on this amendment stating that language was added giving the OCCC permission to refund the state's portion of these fees if deemed appropriate.

Susan Burton made a motion to publish for comment, amendments to 7 TAC §2.104, Concerning Application and Renewal Fees, for Office of Consumer Credit Commissioner Residential Mortgage Loan Originators. Cindy Lyons seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §86.102, Concerning Annual Registration Fees, for Retail Creditors

Laurie Hobbs stated that this is a clean-up amendment to the rule because the agency no longer mails certificates to retailers.

Victor Leal made a motion to publish for comment amendments to 7 TAC §86.102, Concerning Annual Registration Fees, for Retail Creditors. Susan Burton seconded and the motion passed.

Victor Leal asked for an update on credit access businesses and municipalities adopting ordinances. Commissioner Pettijohn stated that roughly 20 municipalities have adopted ordinances to regulate payday lenders and credit access businesses within their districts. There has been some litigation from the industry and the agency will continue to have conversations with municipalities on the subject.

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

Chairman Bill White called for a recess at 10:08 a.m.

Chairman White reconvened the meeting at 10:23 a.m.

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 Charles Cooper, after introducing new Review Examiner Tanya Miller, stated that the Lame Duck Congress is winding down. The omnibus bill is in the Senate with a bill attached that requires the Federal Reserve to have a community banker or someone who has supervised a community bank to sit on their board. At the CSBS Board Meeting and Symposium, federal counterparts were invited for a dialogue in hopes to get a couple of bills passed, but to no avail.

Commissioner Cooper continued his update on operations stating that as of August 31, there were thirteen problem banks, but today it is down to ten.

Bob Bacon, Deputy Commissioner for DOB, gave an update on changes to the determination of past due examination dates. In the past, examinations were reported past due at a specific point in time, i.e. quarter end. Previously, if an examination was past due, but conducted during the quarter, it would not be reported as delinquent at quarter end. Under the revised process, this examination would be reported as past due for the quarter. This accumulative basis is considered more transparent.

Commissioner Cooper mentioned the well-received Executive Leadership on Cybersecurity (ELOC) meeting sponsored by IBAT and TBA. Over 300 bankers attended and Deputy Secretary of the Treasury, Sarah Bloom Raskin spoke about cyberthreats to the banking industry. Commissioner Cooper added that Phillip Hinkle, Director of IT Security Examinations at the DOB is key in keeping the DOB at the forefront of cybersecurity.

Larry Patton stated that it was obvious Texas was taking the lead through CSBS, and that Commissioner Cooper is recognized as a national leader in this effort.

The Commissioner continued with his update stating that Farmers National Bank of Newcastle became the latest national bank to convert to a state bank. A recent supervisory memorandum on money transmission license holders was issued that establishes criteria for determining an authorized delegate.

Catherine Reyer, General Counsel of the DOB, gave an update on various pending litigation.

Discussion of and Possible Vote to Take Action on the appointment of Wallace Jones to serve as the Trust-Funded Guaranty Fund Industry Representative for the period January 1, 2015 to December 31, 2017

Stacy London made a motion to appoint Wallace Jones to serve as the Trust-Funded Guaranty Fund Industry Representative. Susan Burton seconded and the motion passed.

Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §3.92, Concerning User Safety at Unmanned Teller Machines

Stacy London made a motion to publish for comment amendments to 7 TAC §3.92, Concerning User Safety at Unmanned Teller Machines. Cindy Lyons 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

Chairman Bill White called for an Executive Session at 10:45 a.m.

Chairman Bill White reconvened the Open Meeting of the Finance Commission at 12:30 p.m.

There being no further business, Commission Chairman Bill White adjourned the meeting of the Finance Commission at 12:32 p.m.

William J. White, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Judy E. Schooling, Executive Assistant
Finance Commission of Texas