

# **Finance Commission Policies and Procedures**

(updated December 2015)

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## **STRATEGIC PLANNING**

### ***Statute***

#### **Section 11.002. PURPOSE OF COMMISSION; STRATEGIC PLAN.**

(a) The finance commission is responsible for overseeing and coordinating the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner and serves as the primary point of accountability for ensuring that state depository and lending institutions function as a system, considering the broad scope of the financial services industry. The finance commission is the policy-making body for those finance agencies and is not a separate state agency. The finance commission shall carry out its functions in a manner that protects consumer interests, maintains a safe and sound banking system, and increases the economic prosperity of the state.

(b) The finance commission shall prepare and periodically update a strategic plan for coordination of the state financial system. Each finance agency shall cooperate in preparation of the plan.

### ***Policy Statement***

The Finance Commission recognizes the benefit of sound short-term and long-term planning and the need to provide oversight for the regulatory responsibilities of each Finance Commission agency (Finance agency) in a manner intended to protect the integrity of the state's financial system as well as to promote economic prosperity. In this regard, the Finance Commission will prepare and adopt a five-year strategic plan each biennium. Revisions and updates to the plan are permitted, but shall be limited to items that are material in nature and that will result in significant changes to the goals and objectives of the Finance Commission.

The Chair of the Finance Commission will appoint three members to serve on a Strategic Planning Committee. The Strategic Planning Committee shall be responsible for the oversight of the preparation and update of the strategic plan so that it encompasses the goals and objectives of the Finance Commission. The plan will embody the high level goals, objectives and discussions of the Finance agency plans.

## **PRESIDING OFFICER**

### ***Statute***

#### Section 11.107. PRESIDING OFFICER.

- (a) The governor shall appoint a member of the finance commission as presiding officer of the commission. The presiding officer serves at the will of the governor.
- (b) The presiding officer shall preside at and provide for the keeping of minutes of each public meeting of the finance commission.
- (c) The presiding officer may:
- (1) adopt rules and procedures as the presiding officer considers necessary for the orderly operation of the finance commission and for communication among the finance commission, the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner;
  - (2) adopt internal procedures governing the time and place of meetings, the type of notice for special public meetings, the manner in which public meetings are to be conducted, and other similar matters; and
  - (3) appoint committees composed of finance commission members as the presiding officer considers necessary to carry out the commission's business.

### ***Policy Statement***

Meetings of the Finance Commission will be conducted with decorum and respect for all parties attending and appearing before the Commission. In furtherance of providing for the orderly operations of the Commission, the presiding officer (Chair) may designate a Vice-Chair. In the Chair's absence, the Vice-Chair will conduct and complete all business before the Commission in accordance with applicable statutes, proper open meeting protocols and these Finance Commission policies. The rules contained within the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with these policies and any special rules the Finance Commission may adopt.

In furtherance of Section 11.103(a)(5), Texas Finance Code, each member of the Commission shall notify the Chair of an expected absence from a meeting of the Commission as soon as practicable after learning of the events that will cause the absence. The member shall also notify the Chair of the reasons for the expected absence. At the meeting where the member is absent, the Chair shall call for a vote of all members in attendance on whether the absence is excused.

The Chair will assign members to the Finance Commission committees. Standing committees are the Audit Committee, the Study Committee, and the Strategic Planning Committee. Committee membership will be

assigned or reaffirmed annually, to become effective September 1, upon member replacement, or as the Chair determines necessary or appropriate. Each committee's membership will normally be, but is not required to be, comprised of three members. From a committee's membership, the Chair will designate a Chairperson for each committee. All considerations of a committee, other than adoption of minutes, are recommendations for full Finance Commission action.

The Chair of the Finance Commission shall appoint members to serve on ad hoc committees as the need arises. The Chair shall designate a Chairperson for each such committee.

The Chair and Vice-Chair of the Finance Commission serve in an *ex officio* non-voting capacity on each standing committee and each ad hoc committee. However, when the Chairperson of a committee learns that one or more members of a committee will be unable to attend a scheduled meeting such Chairperson may request that either the Chair or Vice-Chair of the Finance Commission (or both if more than one member will be absent) serve on the committee in a voting capacity on a one-time basis at the scheduled meeting. The minutes of the scheduled meeting shall reflect the actual voting membership of the committee.

The Chair will designate Commission members to coordinate the annual evaluation process of the three Finance agency commissioners. This ad hoc committee will include at least one public member and three industry members (one industry member representing each Finance agency).

The Finance Commission reserves to itself as a body the responsibility for passing upon and prescribing the manner of communication of matters of policy which represent the official position of the Finance Commission. Accordingly, it would be inappropriate for individual members to communicate official positions of the Finance Commission unless instructed or authorized to do so by an action of the Commission.

The Audit Committee shall be responsible for:

- providing oversight of the Finance agencies' internal audit function, including:
  - interviewing and recommending the selection of an internal auditor,
  - reviewing and recommending the actions to be taken as a result of the annual risk assessments performed by the internal auditor,
  - reviewing, with the internal auditors, the audit scope and plan of the internal auditors,
  - reviewing and recommending the actions to be taken on the audit plan resulting from the annual internal audit reports, including management's responses thereto, and monitoring the Finance agencies' corrective actions.
- reviewing and monitoring the action plans resulting from external audits conducted by state and federal agencies, including management's responses thereto, and monitoring the Finance agencies' corrective actions.
- reviewing and recommending the actions to be taken if any on the annual operating budgets, quarterly financial statements, and investment reports of the Finance agencies.

- Providing oversight and administration of the Texas Financial Education Endowment, including recommending the actions to be taken on the investment of funds and awarding of grants that support the objectives of the endowment.

A Certified Public Accountant member of the Finance Commission shall be appointed as a member of the Committee unless specifically excluded by a majority vote of the Finance Commission.

The Study Committee shall be responsible for:

- coordinating and reviewing any statutorily-required or authorized research studies or projects decided to be undertaken, as well as those determined to be necessary by the Finance Commission.
- monitoring and overseeing Legislative Interim Studies as appropriate.
- monitoring and overseeing activities related to the self-directed, semi-independent (SDSI) status of the Finance agencies by conferring with the Finance agencies on material interests, issues and matters related to SDSI status, as well as monitoring general reporting requirements to governing bodies and the state legislature associated with the SDSI status, and exploring additional strategies with Finance agency heads regarding implementation and operational policies related to SDSI status.
- reviewing and making recommendations for updates to the policies and procedures of the Finance Commission every biennium.
- monitoring the Sunset Review process as appropriate, for the Finance Commission and its Finance agencies.

On recommendation of the Finance agencies or as required by law, the Study Committee may conduct research on:

- The availability, quality and prices of financial services, including lending and depository services offered to agricultural businesses, small businesses, and individual consumers in this state, and
- The practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

The Strategic Planning Committee shall be responsible for:

- providing direction for and review of the strategic plans developed by each of the Finance agencies under the Finance Commission.
- defining the scope and development of the Finance Commission's strategic plan ensuring alignment with legislative mandates, industry and economic indicators, and Finance agency strategic plans.
- playing an active role in legislative hearings and communications with elected officials.
- overseeing the selection of the Finance agency heads.

## STANDARDS OF CONDUCT

### *Statute*

#### Section 11.109. STANDARDS OF CONDUCT.

The presiding officer of the finance commission or the presiding officer's designee shall provide to members of the finance commission, as often as necessary, information regarding the requirements for office under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers.

### *Policy Statement*

Subchapter C, Chapter 572, Texas Government Code, specifically addresses **Standards of Conduct and Conflict of Interest** for state officers and employees. Members of the Finance Commission are committed to following these guidelines and abiding by the provisions therein. Portions of the statute applicable to Finance Commission members are found in [Exhibit A](#). Pursuant to §572.051, Texas Government Code the Finance Commission and each of the Finance agencies under its jurisdiction has adopted an ethics policy.

If a member of the Finance Commission or a Finance agency commissioner is made aware of a potential conflict of interest involving a member of the Finance Commission or a Finance agency commissioner as such conflicts are described in Exhibit A to these Policies and Procedures, it is the duty of that person to report the matter to the Chair of the Finance Commission, the Chair of the Audit Committee, and the Chair of the Strategic Planning Committee. The Chair of the Finance Commission, two committee Chairs, or a majority of the Finance Commission at a properly posted Finance Commission meeting may engage as deemed appropriate the services of one or more of the Office of the Attorney General, independent counsel (through prescribed procedures), its internal auditors, and/or the Office of the State Auditor to determine and report to the Finance Commission for its consideration the relevant facts and circumstances surrounding the potential conflict of interest.

## **Exhibit A**

### **Standards of Conduct**

*Subchapter C, Chapter 572, Texas Government Code, is headed "STANDARDS OF CONDUCT AND CONFLICT OF INTEREST PROVISIONS." It contains sections that are only applicable to members of the Legislature and these sections have been omitted.*

The following sections of Subchapter C are applicable to the Finance Commission:

#### **§ 572.051. Standards of Conduct; State Agency Ethics Policy**

*(a) A state officer or employee should not:*

*(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;*

*(2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;*

*(3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;*

*(4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or*

*(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.*

*(b) A state employee who violates Subsection (a) or an ethics policy adopted under Subsection (c) is subject to termination of the employee's state employment or another employment-related sanction. Notwithstanding this subsection, a state officer or employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.*

*(c) Each state agency shall:*

*(1) adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and*

*(2) distribute a copy of the ethics policy and this subchapter to:*

(A) each new employee not later than the third business day after the date the person begins employment with the agency; and

(B) each new officer not later than the third business day after the date the person qualifies for office.

(d) The office of the attorney general shall develop, in coordination with the commission, and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (c). A state agency is not required to adopt the model policy developed under this subsection.

(e) Subchapters E and F, Chapter 571, do not apply to a violation of this section.

(f) Notwithstanding Subsection (e), if a person with knowledge of a violation of an agency ethics policy adopted under Subsection (c) that also constitutes a criminal offense under another law of this state reports the violation to an appropriate prosecuting attorney, then, not later than the 60th day after the date a person notifies the prosecuting attorney under this subsection, the prosecuting attorney shall notify the commission of the status of the prosecuting attorney's investigation of the alleged violation. The commission shall, on the request of the prosecuting attorney, assist the prosecuting attorney in investigating the alleged violation. This subsection does not apply to an alleged violation by a member or employee of the commission.

**§ 572.054. Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense**

(a) A former member of the governing body or a former executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the second anniversary of the date the member or executive head ceased to be a member of the governing body or the executive head of the agency if the communication or appearance is made:

(1) with the intent to influence; and

(2) on behalf of any person in connection with any matter on which the person seeks official action.

(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility.

(c) Subsection (b) applies only to:

(1) a state officer of a regulatory agency; or

(2) a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary

*group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.*

*(d) Subsection (b) does not apply to a rulemaking proceeding that was concluded before the officer's or employee's service or employment ceased.*

*(e) Other law that restricts the representation of person before a particular state agency by a former state officer or employee of that agency prevails over this section.*

*(f) An individual commits an offense if the individual violates this section. An offense under this subsection is a Class A misdemeanor.*

*(g) In this section, the comptroller and the secretary of state are not excluded from the definition of "regulatory agency."*

*(g-1) For purposes of this section, the Department of Information Resources is a regulatory agency.*

*(h) In this section:*

*(1) "Participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.*

*(2) "Particular matter" means a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.*

#### **§ 572.056. Contracts by State Officers With Governmental Entities; Criminal Offense**

*(a) A state officer may not solicit or accept from a governmental entity a commission, fee, bonus, retainer, or rebate that is compensation for the officer's personal solicitation for the award of a contract for services or sale of goods to a governmental entity.*

*(b) This section does not apply to:*

*(1) a contract that is awarded by competitive bid as provided by law and that is not otherwise prohibited by law; or*

*(2) a court appointment.*

*(c) In this section, "governmental entity" means the state, a political subdivision of the state, or a governmental entity created under the Texas Constitution or a statute of this state.*

*(d) A state officer who violates this section commits an offense. An offense under this subsection is a Class A misdemeanor.*

**§ 572.057. Certain Leases Prohibited**

*(a) Except as provided by Subsection (d), a member of the legislature, an executive or judicial officer elected in a statewide election, or a business entity in which the legislator or officer has a substantial interest may not lease any office space or other real property to the state, a state agency, the legislature or a legislative agency, the Supreme Court of Texas, the Court of Criminal Appeals, or a state judicial agency.*

*(b) A lease made in violation of Subsection (a) is void.*

*(c) This section does not apply to an individual who is an elected officer on June 16, 1989, for as long as the officer holds that office.*

*(d) A member of the legislature or a business entity in which the legislator has a substantial interest may donate the use of office space that the member or entity owns and that is located in the member's district to the house of the legislature in which the member serves to be used for the member's official business. Office space donated under this subsection is not a contribution for purposes of Title 15, Election Code. Acceptance of a donation of office space under this subsection is not subject to Section 301.032.*

**§ 572.058. Private Interest in Measure or Decision; Disclosure; Removal From Office for Violation**

*(a) An elected or appointed officer, other than an officer subject to impeachment under Article XV, Section 2, of the Texas Constitution, who is a member of a board or commission having policy direction over a state agency and who has a personal or private interest in a measure, proposal, or decision pending before the board or commission shall publicly disclose the fact to the board or commission in a meeting called and held in compliance with Chapter 551. The officer may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.*

*(b) An individual who violates this section is subject to removal from office on the petition of the attorney general on the attorney general's own initiative or on the relation of a resident or of any other member of the board or commission. The suit must be brought in a district court of Travis County or of the county where the violation is alleged to have been committed.*

*(c) If the court or jury finds from a preponderance of the evidence that the defendant violated this section and that an ordinary prudent person would have known the individual's conduct to be a violation of this section, the court shall enter judgment removing the defendant from office.*

*(d) A suit under this section must be brought before the second anniversary of the date the violation is alleged to have been committed, or the suit is barred.*

*(e) The remedy provided by this section is cumulative of other methods of removal from office provided by the Texas Constitution or a statute of this state.*

*(f) In this section, "personal or private interest" has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution, governing the conduct of members of the legislature. For purposes of this section, an individual does not have a "personal or private interest" in a measure, proposal, or decision if*

*the individual is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation.*

**§ 572.060. Solicitation Of Or Recommendations Regarding Contributions To Charitable Organizations And Governmental Entities**

*(a) Unless otherwise prohibited by the Code of Judicial Conduct, a state officer or state employee may:*

*(1) solicit from any person a contribution to:*

*(A) an organization that:*

*(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;*

*(ii) does not attempt to influence legislation as a substantial part of the organization's activities; and*

*(iii) has not elected under Section 501(h), Internal Revenue Code of 1986, to have that subsection apply to the organization; or*

*(B) a governmental entity; or*

*(2) recommend to any person that the person make a contribution to an organization or entity described by Subdivision (1).*

*(b) A monetary contribution solicited or recommended as provided by Subsection (a) must:*

*(1) be paid or made directly to the charitable organization or governmental entity by the person making the contribution;*

*(2) be in the form of a check, money order, or similar instrument payable to the charitable organization or governmental entity; or*

*(3) be in the form of a deduction from a state employee's salary or wage payment under the state employee charitable campaign under Subchapter I, Chapter 659.*

*(c) A contribution solicited or recommended as provided by Subsection (a) that is not a monetary contribution must be delivered directly to the charitable organization or governmental entity by the person making the contribution.*

*(d) A contribution paid as provided by Subsection (b) or delivered as provided by Subsection (c) is not:*

*(1) a political contribution to, or political expenditure on behalf of, the state officer or state employee for purposes of Title 15, Election Code;*

*(2) an expenditure for purposes of Chapter 305; or*

*(3) a benefit to the state officer or state employee for purposes of Sections 36.08 and 36.09, Penal Code.*

## **ETHICS POLICY**

### ***Statute***

#### **Section 572.051. STANDARDS OF CONDUCT; STATE AGENCY ETHICS POLICY.**

(a) A state officer or employee should not:

(1) accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct;

(2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;

(4) make personal investments that could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the public interest; or

(5) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.

(b) A state employee who violates Subsection (a) or an ethics policy adopted under Subsection (c) is subject to termination of the employee's state employment or another employment-related sanction. Notwithstanding this subsection, a state officer or employee who violates Subsection (a) is subject to any applicable civil or criminal penalty if the violation also constitutes a violation of another statute or rule.

(c) Each state agency shall:

(1) adopt a written ethics policy for the agency's employees consistent with the standards prescribed by Subsection (a) and other provisions of this subchapter; and

(2) distribute a copy of the ethics policy and this subchapter to:

(A) each new employee not later than the third business day after the date the person begins employment with the agency; and

(B) each new officer not later than the third business day after the date the person qualifies for office.

(d) The office of the attorney general shall develop, in coordination with the commission, and distribute a model policy that state agencies may use in adopting an agency ethics policy under Subsection (c). A state agency is not required to adopt the model policy developed under this subsection.

(e) Subchapters E and F, Chapter 571, do not apply to a violation of this section.

(f) Notwithstanding Subsection (e), if a person with knowledge of a violation of an agency ethics policy adopted under Subsection (c) that also constitutes a criminal offense under another law of this state reports the violation to an appropriate prosecuting attorney, then, not later than the 60th day after the date a person notifies the prosecuting attorney under this subsection, the prosecuting attorney shall notify the commission of the status of the prosecuting attorney's investigation of the alleged violation. The commission shall, on the request of the prosecuting attorney, assist the prosecuting attorney in investigating the alleged violation. This subsection does not apply to an alleged violation by a member or employee of the commission.

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*Note:*

Under §572.051(d), the term “commission” means the Texas Ethics Commission. Under §572.051(e), Subchapters E and F, Chapter 571, Texas Government Code (made inapplicable to a violation of this Section) set out respectively the procedures (including hearings) for dealing with certain complaints by the Texas Ethics Commission and the institution by the Texas Ethics Commission of civil and enforcement procedures related to certain alleged violations of law.

## ***Policy Statement***

### I. OVERVIEW

Pursuant to Section 572.051(c) of the Texas Government Code, the Finance Commission promulgates the following ethics policy. This ethics policy prescribes standards of conduct for all Finance Commission members. This ethics policy does not supersede any applicable federal or Texas law or administrative rule. All Finance Commission members must familiarize themselves with this ethics policy. All Finance Commission members must abide by all applicable federal and Texas laws, administrative rules, and Finance Commission conduct policies, including this ethics policy. A Finance Commission member who violates any applicable federal or Texas law or rule may be subject to civil or criminal penalties.

### II. ETHICS POLICY

#### A. A Finance Commission member shall not:

- (1) accept or solicit any gift, favor, or service that might reasonably tend to influence the member in the discharge of official duties, or that the member knows or should know is being offered with the intent to influence the member's official conduct;

(2) intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his or her official powers or performed his or her official duties in favor of another;

(3) disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act (Tex. Gov't Code Ann. Ch. 552), or information that has been ordered sealed by a court, that was acquired by reason of the member's official position, or accept other employment, including self-employment, or engage in a business, charity, nonprofit organization, or professional activity that the member might reasonably expect would require or induce the member to disclose confidential information, information that is excepted from public disclosure under the Texas Public Information Act, or information that has been ordered sealed by a court, that was acquired by reason of the member's official position;

(4) accept other employment, including self-employment, or compensation or engage in a business, charity, nonprofit organization, or professional activity that could reasonably be expected to impair the member's independence of judgment in the performance of the member's official duties (Notwithstanding anything herein to the contrary, it is expected that members who are industry representatives will continue or accept employment that enables them to meet the qualifications required under Finance Code §11.102, relating to Qualifications of Members of the Texas Finance Commission);

(5) utilize state personnel, property, facilities, or equipment for any purpose other than official state business, unless such use is reasonable and incidental and does not result in any direct cost to the state, interfere with the member's official duties, and interfere with Finance Commission functions;

(6) utilize his or her official position, or state issued items, such as a badge, indicating such position for financial gain, obtaining privileges, or avoiding consequences of illegal acts;

(7) knowingly make misleading statements, either oral or written, or provide false information, in the course of official state business; or

(8) utilize state resources for any political activity.

B. A Finance Commission member shall:

(1) perform his or her official duties in a lawful, professional, and ethical manner befitting the state and the Finance Commission; and

(2) pursuant to the STANDARDS OF CONDUCT policy, report any conduct or activity that the member believes to be in violation of this ethics policy to the Chair of the Finance Commission, the Chair of Audit Committee, and the Chair of the Strategic Planning Committee.

C. Routinely in the performance of their duties as members of the Finance Commission, industry-representative members are required to vote on rules and take other actions that will have an impact on the industry they represent. Therefore, such cases are not conflicts of interest under this policy. However, if there is to be action on a matter that is specific to the Finance Commission member's employer or to an institution

in which the Finance Commission member has a substantial interest as described in §572.005 Texas Government Code, then the member must not participate in the action and shall recuse herself or himself from deliberating or voting on the matter.

## TRAINING

### *Statute*

#### Section 11.110. TRAINING.

(a) A person who is appointed to and qualifies for office as a member of the finance commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the finance commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the finance agencies and the finance commission;

(2) the programs operated by the finance agencies;

(3) the role and functions of the finance agencies;

(4) the rules of the finance commission with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget of the finance agencies;

(6) the results of the most recent formal audit of the finance agencies;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the finance commission or the Texas Ethics Commission.

(c) A person appointed to the finance commission is entitled to reimbursement under Section 11.104, as if the person were a member of the finance commission, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

## ***Policy Statement***

Finance Commission members acknowledge that state service is a privilege and duty that requires dedication and proper training. In this regard, members of the Finance Commission adopt the following training program that shall be administered by representatives of the Finance agencies. The three Finance agency commissioners will serve as the Finance Commission Training Committee. The Training Committee is charged with developing and preparing appropriate training material for new Finance Commission members that at a minimum includes items found in section 11.110 (b) of the Finance Code.

Periodically, the Training Committee shall revise and update the training material so that its content is consistent with applicable statutory rules and regulations.

The Training Committee will provide classroom instruction to new Commission members as soon after appointment as possible, but not later than the first scheduled meeting of the Finance Commission after their appointment. The Training Committee may utilize the expertise of other state agencies in providing this training, including the areas of ethics, conflicts of interest, and open government.

The Finance agencies will keep the Finance Commission members apprised of changes or developments in the law and recommend related training, if deemed appropriate.

## **SEPARATION OF FUNCTIONS**

### ***Statute***

#### **Section 11.111. SEPARATION OF FUNCTIONS.**

The finance commission shall develop and implement policies that clearly separate the policymaking responsibilities of the finance commission and the management responsibilities of the banking commissioner, savings and mortgage lending commissioner, and consumer credit commissioner and staff of the finance agencies.

### ***Policy Statement***

The Finance Commission is responsible for, but not limited to, implementing policies through its rulemaking authority carried out in accordance with the Administrative Procedures Act, Texas Government Code, Chapter 2001. The Finance Commission shall develop procedures to provide oversight and coordination of the Finance agencies including new legislative mandates and needs for statutory change.

The commissioners of the Finance agencies are responsible for managing staff and carrying out the administrative duties and statutory responsibilities of their Finance agencies. The Finance Commission may offer advice and direction to the commissioners.

Under the direction of the commissioners, the staff of the Finance agencies is responsible for managing programs that supervise and regulate entities in accordance with applicable statutes and Finance Commission rules. Confidential information of the Finance agencies may not be released to Finance Commission members, however, a file or record pertinent to a hearing or matter pending before the Finance Commission may be provided to the members.

The Finance Commission must remain adequately informed of activities occurring with respect to legislation affecting the Finance Commission or the Finance agencies. Given the rapid pace and fluidity of the legislative process, hard and fast procedures are difficult to develop and implement. Legislative reporting will include the following:

#### ***Legislation Activity Reporting***

The Finance agency commissioners will email the Finance Commission members a weekly update during the legislative session. The report will list recently filed legislation or developments with respect to previously filed legislation that proposes to or amends laws over which the Finance Commission or a Finance agency has jurisdiction or impacts the Finance Commission or its Finance agencies. The information should include an overview of the legislation, the author, and how the bill would affect the Finance agency or the affected regulated area.

Weekly updates would include any recent action on a bill previously reported in addition to other new legislation. If a bill is no longer viable due to legislative deadlines or other action, that fact shall also be reported and the bill removed from future reporting.

### *Testimony*

The Finance agency commissioners will send an email notice to the Commission members when they are requested to testify or appear as a resource witness for a legislative committee. During session the weekly update may include these scheduled appearances. If written testimony is to be provided, when it is available it will be forwarded to Commission members.

### *Agency Resource Information*

The Finance agency commissioners and their staff are routinely consulted on issues regarding pending or potential legislation. Oftentimes, these communications are informal and merely informational in nature. Many legislators involved in these communications expect and request confidentiality regarding their requests. The Finance agency heads will strive to report requests for legislative assistance in areas of substantial concern while balancing the need for confidentiality and maintenance of effective working relationships. Finance agency commissioners will maintain effective working relationships with the legislature by balancing confidentiality requests and appropriate reporting to the Finance Commission.

### *Legislative Communications with Finance Commission Members*

Finance Commission members who communicate with legislators regarding legislation that impacts the Finance Commission agencies or an affected area of regulation should strive to inform the rest of the Finance Commission regarding the nature of the communication.

## **PUBLIC TESTIMONY**

### ***Statute***

#### Section 11.112. PUBLIC TESTIMONY.

The finance commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the finance commission and to speak on any issue under the jurisdiction of the finance agencies.

### ***Policy Statement***

#### *Public Input on Non-Agenda Items*

Time will be set aside in regular meetings of the Finance Commission for the public to comment on any subject that is not a scheduled item on the agenda except for public testimony regarding an outstanding rule proposal for which the public comment period has expired. Persons wishing to comment must state their name and who they represent for the record. Unless authorized by a majority vote of the meeting quorum, comments will be limited to no more than five minutes.

#### *Public Input on Agenda Items*

Time will be set aside in regular meetings of the Finance Commission for the public to comment on agenda items. Persons wishing to comment must state their name and who they represent for the record. If multiple persons from an organization or affiliated group are present, one representative must be designated to speak on behalf of that organization or group. Unless authorized by a majority vote of the meeting quorum, comments will be limited to no more than ten minutes.

Public input is allowed on rule proposals before the Finance Commission where the Finance Commission is considering publication for comment or during the official comment period.

Public comment will not be allowed on agenda items related to final rule adoptions except upon majority vote of the commission, in which case comments will be limited to five minutes.

#### *Public Input on Rules Before the Commission*

The Finance agencies will provide time for public comment (written or oral) on all proposed rules by:

- Seeking pre-publication informal public comment by interested parties;
- Posting notice of the rule proposal in accordance with the Open Meetings Act, with notice in the *Texas Register*, for the date and time at which the Finance Commission will discuss and vote whether to officially publish the rule proposal for public comment. With the rule proposal at this stage, the Finance Commission will provide for and consider public comments in its deliberations.

- Posting notice of the rule proposal for a minimum of 30 days, or longer if directed by the Finance Commission, in the *Texas Register* following commission action to post for public comment; or
- Posting notice of and holding a special meeting at which public comment is received on a proposed rule.

## HEARINGS OFFICER AND AUDITOR

### ***Statute***

#### Section 11.202. HEARINGS OFFICER AND AUDITOR.

(a) The finance commission shall direct a finance agency to employ an internal auditor to provide services to and facilitate commission oversight and control over the finance agencies.

(b) The Texas Department of Banking may employ a hearings officer to serve the finance agencies as determined by interagency agreement. For the purposes of Section 2003.021, Government Code, a hearings officer employed under this section is considered to be an employee of each agency for which hearing services are provided. The hearings officer's duty is to preside over matters related to contested cases before a finance agency or the finance commission.

#### Section 11.203. LIMITATION ON DIRECTION OF AUDITOR.

The internal auditor reports to the finance commission and is not subject to direction by the employing finance agency.

### ***Policy Statement***

#### *Hearings Officer*

The Finance agencies may contract with the State Office of Administrative Hearings or a third-party for administrative law judge and hearings officer services to preside over contested cases brought before the Finance Commission or one of the Finance agencies. The contracted party must be a licensed attorney in good standing with the state bar and have experience presiding over administrative hearings or presiding over hearings as a judge or master of a court.

#### *Audit*

The Finance Commission, through the Audit Committee, supervises the internal auditor engaged to audit the Finance agencies. The internal auditor may be an external public accounting firm. Audits shall address areas as designated by the Finance Commission based upon statute, risk assessments or other concerns.

## **SHARING OF STAFF, EQUIPMENT, AND FACILITIES: ALLOCATION OF COSTS**

### ***Statute***

#### **Section 11.204. SHARING OF STAFF, EQUIPMENT, AND FACILITIES; ALLOCATION OF COSTS.**

(a) The finance commission shall use the staff, equipment, and facilities of the finance agencies to the extent necessary to carry out the finance commission's 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.

(b) An interagency agreement must provide that the cost of staff used by the finance commission, including the internal auditor, is to be charged to the finance agencies in proportion to the amount of each agency's business. All other costs of operation of the finance commission are to be shared by and included in the budgets of the finance agencies in proportion to the amount of cash receipts of each of those agencies.

(c) The finance commission shall have charge and control of the property known as the Finance Commission Building and use of staff, equipment, and facilities of the finance agencies. The Finance Commission Building refers to the property located in the city of Austin and titled in the name of the Banking Section of the Finance Commission of Texas, as described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

### ***Policy Statement***

On or before September 1 of each year, the Finance agencies shall enter into an interagency agreement that proportionally distributes all costs incurred by the Finance Commission or by one or more of the Finance agencies in administering the affairs of the Finance Commission. Costs shall include travel and expense reimbursements of the Finance Commission members along with administrative costs of one or more of the Finance agencies including personnel time, copying, and facilities.

The Finance Commission shall appoint one of the Finance agency commissioners as the executive director of the Finance Commission to facilitate the oversight of Finance Commission activities and shared resources of the Finance agencies. The Finance Commission shall review the appointment, the term of the appointment and possible reassignment of the appointment every two years, as well as review the executive director's performance annually when the Finance agency commissioners are reviewed. The executive director shall supervise, support, and coordinate the activities of the Finance Commission and activities jointly engaged in by the Finance agencies, including:

- meetings of the Finance Commission;
- shared personnel, equipment, and building resources of the Finance agencies;
- requests for information or reports;
- activities of Finance Commission committees;

- permanent records of the Finance Commission; and,
- other duties and responsibilities as assigned by the Finance Commission or its Chair.

The executive director for the Finance Commission will act as facilitator and coordinator on Finance Commission and joint Finance agency matters. The associated costs for the executive assistant and any salary supplement amount for the executive director will be equally allocated among the Finance agencies. As each commissioner retains their own substantive responsibilities that relate to the Finance Commission, these duties are considered offsetting as to their costs. The Finance agencies will allocate by interagency agreement those substantive costs of shared operations (e.g., building maintenance, Finance Commission administrative assistant, and utilities).

## RESEARCH

### *Statute*

#### Section 11.305. RESEARCH.

(a) The finance commission shall instruct the consumer credit commissioner to establish a program to address alternatives to high-cost lending in this state. The program shall:

- (1) study and report on the problem of high-cost lending, including without limitation the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state;
- (2) evaluate alternatives to high-cost lending and the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state;
- (3) develop models to provide lower-cost alternatives to assist borrowers who contract for high-cost loans; and
- (4) track the location of lenders who enter into loan contracts providing for an interest charge authorized by Section 342.201, map the location of the lenders by senatorial district and by any other appropriate areas, provide other demographic information relating to the loans and the location of the lenders, and provide information on the changes in the distribution of the lenders from 1997 through the date of the report.

(b) The program may:

- (1) apply for and receive public and private grants and gifts to conduct the research authorized by this section;
- (2) contract with public and private entities to carry out studies and analyses under this section;
- (3) provide funding for pilot programs; and
- (4) make grants to nonprofit institutions working to provide alternatives to high-cost loans.

(c) Not later than December 1 of each year, the consumer credit commissioner shall provide to the legislature a report detailing its findings and making recommendations to improve the availability, quality, and prices of financial services.

(d) The Texas Department of Banking and the Department of Savings and Mortgage Lending shall jointly conduct a continuing review of the condition of the state banking system. The review must include a review of all available national and state economic forecasts and an analysis of changing banking practices and new banking legislation. Periodically the departments shall submit a report to the finance commission on the

results of the review, including information relating to the condition of the state banking system at the time of the report and the predicted condition of that system in the future.

#### Section 11.3055. FINANCIAL SERVICES STUDY.

(a) The finance commission may assign the banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner to conduct research on:

(1) the availability, quality, and prices of financial services, including lending and depository services, offered in this state to agricultural businesses, small businesses, and individual consumers in this state; and

(2) the practices of business entities in this state that provide financial services to agricultural businesses, small businesses, and individual consumers in this state.

(b) The banking commissioner, savings and mortgage lending commissioner, or consumer credit commissioner may:

(1) apply for and receive public and private grants and gifts to conduct the research authorized by this section; and

(2) contract with public and private entities to carry out studies and analyses under this section.

### ***Policy Statement***

#### *Research*

From time to time, the Chair of the Finance Commission may appoint one or more of the commissioners of the Finance agencies the responsibility of coordinating and conducting research on the availability, quality, and prices of financial services as prescribed in Section 11.3055(a), Texas Finance Code, during the ensuing year.

The Study Committee of the Finance Commission shall decide on the nature of any of the above research studies or projects after considering relevant economic and legislative factors affecting the agricultural, small business and consumer financial systems in the state. The Study Committee's recommendation shall be presented to the Finance Commission which is responsible for approving the final nature or type of research or study projects. The Study Committee may also consider the prior reports issued and any resource or funding limitations in its consideration of future studies or projects.

#### *Reporting*

Pursuant to §11.305 (c), and TEX. CONST. art. XVI, §50(s), the Consumer Credit Commissioner shall issue a report no later than December 1 of each year providing information on the availability, quality, and pricing of financial services with a specific emphasis on home equity lending activity.

Pursuant to §11.305 (d), the Texas Department of Banking and the Department of Savings and Mortgage Lending shall periodically issue a joint report to the Finance Commission describing the following:

1. the financial condition of the state banking system, including but not limited to, a comparison to national and regional trends and conditions;
2. an analysis of relevant national and state economic forecasts;
3. an analysis of changing banking practices and their impact upon the state's banking system;
4. a summary analysis of enacted and proposed major financial services legislation and the probable effects upon the state's financial institutions; and
5. a forecast of the condition and composition of the state's banking system within the next 12 month period.

## CASH RESERVES POLICY

### *Policy Statement*

The long-term financial stability and health of the Finance agencies requires a cash reserve policy to ensure that the Finance agencies preserve the capacity to provide adequate regulatory oversight in the event of unforeseen financial shortages. The Finance agencies must maintain adequate levels of cash reserves (fund balance, free of restrictions, commitments and assignments) for the purpose of mitigating current and future risks and ensuring consistent and adequate levels of regulation of the industries and services provided to Texas citizens. As self-directed, semi-independent Finance agencies, it is essential that this reserve policy provide accountability and transparency in guiding the Finance agencies in setting goals and terms and conditions for cash reserves. Adequate levels of cash reserves should serve to position the Finance agencies to respond to increases in the need for regulatory action, avoid cash flow stress, make planned capital purchases and generally maintain financial flexibility and plan for future needs.

Reserve funds are accumulated from the Finance agencies' operating revenue streams. The amount of cash reserves for each Finance agency will differ depending on the Finance agency's predictability of revenues, volatility of expenditures, liquidity and timing of cash flows, and perceived exposure to significant one-time outlays.

Cash reserve funds should prudently include amounts for, but not be limited to:

1. contingency FTE(s) – amounts necessary to employ and retain additional staff as needed to address rapid growth in the regulated industries, increased incidents of regulatory and supervisory concerns regarding compliance or safety and soundness, state or federal mandates, or any other events that may occur in the industries under the Finance agencies' jurisdiction to the extent that additional staff is needed to maintain adequate regulation of the industries,
2. immediate capital outlays, including amounts for the building issues or maintenance,
3. any other necessary amounts to manage risk and cash flow or maintain adequate levels of regulation and services, including legal and other professional services, and employee payments, and
4. at least two, but no more than six, months of operating expenditures.

Unassigned funds may be assigned and reserved for a specific purpose, such as for capital expenditures or the acquisition of information technology. These funds may be assigned and set aside across more than a single fiscal year as budgeted and approved. Assigned funds are not calculated within the unassigned operating reserve ratio.

The amounts included in the cash reserve are based on each Finance agency's best estimate and should be reviewed and adjusted annually by Finance agency's staff. Measurement of the level of cash reserves should be applied within the context of long-term forecasting, thereby avoiding the risk of placing too much emphasis upon the level of unrestricted fund balance at any one time. Cash reserve balances as well as any

specific plans to increase or decrease the level of these reserves should be reported quarterly to the Finance Commission.

## **Finance Commission of Texas Expense Reimbursement Policy**

The Finance agencies are self-directed, semi-independent agencies. As such, the Finance agencies and the commission are not subject to the provisions of the General Appropriations Act that set limitations on rates of reimbursement for travel. The Finance Commission and its Finance agencies require a formal policy to guide the rates of reimbursement for travel.

### ***Statute***

#### **Section 11.104. EXPENSES AND COMPENSATION OF MEMBERS.**

A member of the finance commission is entitled to:

- (1) the reimbursement for reasonable and necessary expenses incidental to travel incurred in connection with the performance of official duties; and
- (2) a per diem for each day that the member engages in the business of the finance commission.

### ***Policy Statement***

The Finance Commission believes that its members should be reimbursed for reasonable expenses incurred in connection with the members performing their Finance Commission duties.

Finance Commission members may claim reimbursement of out-of-pocket expenses in accordance with this policy for official state Finance Commission business. Reimbursement for expenses related to attendance at events on behalf of the Finance Commission, other than Finance Commission meetings, require advance approval of the Finance Chairman. It is generally the policy of the Finance Commission to conserve funds to the extent possible by approximating the standard state limitations on travel unless specific circumstances warrant an exception. The Finance Commission encourages its members to minimize the amount of travel expenses incurred by ensuring that each travel arrangement is cost-effective considering all relevant circumstances.

(a) Meal reimbursement. Commission members may be reimbursed for actual expenses for meals not to exceed the maximum meal rates based on the federal travel regulations, as announced by the Comptroller. Alcohol and gratuity are not reimbursable expenses.

(b) Lodging reimbursement. Commission members should be guided by the maximum lodging rates based on the federal travel regulations and should use reasonable efforts to obtain a state rate. If a state rate is not available, a Commission member may be reimbursed for lodging at a rate of \$150 or the current federal city travel regulation rate per night, whichever is greater, exclusive of incidental expenses such as occupancy taxes and service fees.

(c) Transportation. Commission members may be reimbursed for transportation expenses, including:

(1) Personal motor vehicle. For the Commission member's use of a personally owned or leased motor vehicle, the mileage reimbursement rate equals the maximum fixed mileage allowance specified in the revenue rulings issued by the Internal Revenue Service under the federal income tax regulations as announced by the Comptroller. Mileage may be reimbursed, for instance, in conjunction with Finance Commission business, including travel to and from home and office, to and from the airport and to and from the location of any Finance Commission related meeting.

(2) Airfare and rental car. Commission members may be reimbursed for actual expenses for airfare and rental car expenses. A member should use reasonable efforts to obtain state contract rates, if available.

(d) Incidental expenses. A Commission member may be reimbursed for actual incidental expenses.

Reimbursement shall be subject to the Finance Commission member completing appropriate expense reimbursement forms and providing the Finance Commission receipts or other reasonable acceptable evidence of costs incurred.

The Chairman of the Finance Commission shall have the power to interpret, construe and implement this policy. In the absence of the Chairman, or in consultation with the Chairman, the Executive Director may exercise such power. This policy may be amended by simple majority vote of the entire Finance Commission.