Executive Summary

Finance Commission of Texas
Texas Department of Banking
Office of Consumer Credit Commissioner
Department of Savings and Mortgage Lending

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Since their last Sunset review 17 years ago, the three finance agencies have weathered the storms of the financial crisis well and maintained transparent, accountable practices even with recent decreased legislative oversight. The current Sunset review focused on setting the agencies up for continued success over the next 12 years as they prepare for changes to federal regulations, continued consolidation of the banking industry, and the expanding influence of technology companies constantly bringing new financial products to the market.

Meeting minimum standards is not enough to reach the bar the Legislature sets for efficient regulation in Texas.

Sunset staff found the agencies have adapted well to the increased flexibility the Legislature granted in 2009 by removing them from the appropriations process through self-directed semi-independent status. Overall, both regulated industries and consumers have few complaints about the agencies' operations, and the agencies take their stewardship of state funds seriously. However, Sunset staff also took its work seriously to identify duplication and inefficiency in the overall regulatory structure. Sunset reviews place the burden of proof on justifying a continued need for each agency and regulatory function, with a focus on highlighting opportunities for smaller, smarter government. Staff recommends consolidating two agencies and eliminating three small regulatory programs, and focusing the Finance Commission on greater administrative efficiency and coordination between agencies.

While the Department of Savings and Mortgage Lending (SML) fulfills its responsibilities to regulate the state's savings banks and mortgage lenders, meeting minimum standards is not enough to reach the bar the Legislature sets for efficient, streamlined regulation in Texas. The agency's core functions largely duplicate those of the Texas Department of Banking (DOB) and fail to justify the need for a separate agency. A feature of self-directed semi-independent status is that the regulated industries can develop a sense of prerogative in relation to the agencies they fund and a preference to keep such agencies focused on their particular interests. For SML, this dynamic centers on just 26 banks and is not a justifiable reason to perpetuate a separate government bureaucracy. DOB has the sophisticated operations and infrastructure already in place to achieve greater economies of scale and hone the regulation of state savings banks and mortgage industry professionals to the minimum necessary to protect the public interest. While the two banking-related agencies would work better consolidated, Sunset staff concluded the Office of Consumer Credit Commissioner's (OCCC) distinct mission and regulatory scope focused on nonbank consumer lending continue to merit a separate agency.

Self-directed semi-independent status also places greater responsibility for oversight, coordination, and efficiency on the Finance Commission rather than the Legislature. Sunset staff paid special attention to comparing agency performance before and after the agencies gained self-directed semi-independent status and did not find significant concerns. However, Sunset staff concluded the Finance Commission has not sufficiently harnessed its coordination role over the three agencies to strongly press towards efficiency in operations. The Finance Commission also lacks several best practices for oversight to ensure state funds continue to be used effectively and programs are coordinated well between the closely related agencies under its purview.

Some stakeholders will note Sunset staff did not recommend changes to the state's regulation of credit access businesses, commonly known as payday or title loan providers. The regulatory landscape surrounding credit access businesses is uncertain and shifting at both the federal and municipal level, which is concerning to both the industry and consumer groups. However, Sunset staff focused on reviewing OCCC's operational responsibilities to enforce state statute as currently written, and found the agency is appropriately carrying out its current mandate.

A summary follows of the Sunset staff recommendations on the Finance Commission of Texas, Texas Department of Banking, Office of Consumer Credit Commissioner, and Department of Savings and Mortgage Lending.

Issues and Recommendations

Issue 1

While Regulation of the Finance Industry Is Necessary, Texas Does Not Need Two Agencies Regulating Banks.

DOB regulates 240 state-chartered banks with more than $250 billion in assets, in addition to trust companies, money services business, and other financial service providers. SML regulates 26 state savings banks with approximately $15 billion in assets, mortgage companies, and licensed residential mortgage loan originators. Differences between the banks regulated at each agency have diminished over time, and no other state regulates banks in two separate state agencies like Texas. Sunset staff concluded SML unnecessarily duplicates functions of DOB and is not needed to maintain Texas' healthy banking and mortgage lending industries. DOB examines banks ranging in size and business practice, including some of the largest mortgage lenders in the state, but retains a responsive and expert staff. Abolishing SML and transferring its functions to DOB would maintain and centralize expertise in mortgage lending regulation, develop economies of scale for banking regulation throughout the state, reduce bureaucratic duplication, and save the finance agencies at least $6.9 million over the next five fiscal years. Given its distinct nonbank regulatory scope and responsibilities, maintaining OCCC as a separate agency under the Finance Commission continues to make sense to promote a healthy, fair credit environment for Texas consumers.

Key Recommendations

- Abolish the Department of Savings and Mortgage Lending as a separate state agency and transfer regulation of state savings banks and the mortgage industry to the Texas Department of Banking.
- Continue the Texas Department of Banking for 12 years.
- Continue the Office of Consumer Credit Commissioner for 12 years.

Issue 2

The Agencies' Self-Directed Semi-Independent Status Calls For Greater Finance Commission Oversight and Coordination.

In 2009, the Legislature delegated great authority to the Finance Commission to actively oversee the finance agencies and serve as a primary point of coordination across the financial industries under its purview. While the finance agencies have overall used their self-directed semi-independent status in a responsible manner, the Finance Commission has taken a siloed view of each agency and has not taken advantage of the similarities across agencies to direct best practices, systematically identify areas for improvement, or drive agency efficiency. The Finance Commission has not pushed the agencies to consider consolidating obviously duplicative administrative functions and has overseen two similar financial literacy programs with limited demonstrable impact and virtually no shared resources. Directing the Finance Commission to develop better oversight tools would allow it to actively identify inefficiencies across the agencies, limit growth in reserve fund balances, and continue to push the agencies to demonstrate the best return on investment.

Key Recommendations

- Require the finance agencies to remit all administrative penalties to the General Revenue Fund.
- Direct the Finance Commission to evaluate and update the agencies' key performance measures.
- Direct the Finance Commission to update its fund balance policy to limit growth.
- Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies.

Issue 3

Three Finance-Related Regulatory Programs Are Not Necessary to Protect the Public.

In fiscal year 2017, the finance agencies together regulated 64,334 individuals and businesses, overseeing millions of loans and billions of assets. State law requires the Sunset Advisory Commission to perform a critical examination of regulatory programs under review. Given the broad range of financial services and products overseen by the agencies, Sunset staff identified programs at the finance agencies where the regulation imposed by the state exceeds the level of regulation necessary to protect the public.

Statute requires OCCC to license both pawnshops as well as all the employees that work in pawnshops. This duplication of licensure results almost entirely in paperwork violations that provide no additional consumer protections. State law ultimately holds pawnshops accountable for operating lawfully, including the actions of their employees. Statute also unnecessarily requires DOB to register cemetery brokers and private child support enforcement agencies. Both registrant groups have fewer than 15 registrants, generate few consumer complaints, and have other provisions in law sufficiently protecting consumers.

Key Recommendations

- Discontinue licensure of pawnshop employees.
- Discontinue registration of cemetery brokers.
- Discontinue registration of private child support enforcement agencies.

Issue 4

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

In reviewing DOB's regulatory authority, Sunset staff found some of the agency's statute and rules do not match best practices for regulatory agencies. Specifically, the agency's rules lack comprehensive detail to describe all aspects of its complaint process. DOB's statute also lacks updated language on complaints, proper forum for appeals of agency decisions, and flexibility to extend license term lengths for death care providers longer than one year. Updating these provisions would allow the agency to streamline regulation without compromising agency oversight and ensure consistent tracking and reporting of complaints to the Finance Commission.

Key Recommendations

- Authorize the agency to establish license terms in rule for death care service licensees.
- Update outdated appeals provisions to align with the Administrative Procedure Act.
- Direct DOB and the Finance Commission to develop an updated complaint process in rule.

Issue 5

Elements of the Office of Consumer Credit Commissioner's Statute and Rules Do Not Conform to Common Regulatory Standards.

Sunset staff found OCCC's statute lacks several standard provisions common for other regulatory agencies, impeding consistent investigation and enforcement across all the license and registration types the agency oversees. In particular, the agency lacks several standard provisions for its newest regulatory program recently transferred from the Department of Public Safety, crafted precious metal dealers. The agency also lacks flexibility to streamline license renewal, has outdated statutory avenues for appeal, and lacks comprehensive rules describing all aspects of its complaint investigation and resolution process. Updating these provisions would help the agency consistently and timely enforce state laws and rules, streamline regulation across the agency's programs, and improve tracking and reporting of complaints to the Finance Commission.

Key Recommendations

- Authorize the agency to provide biennial license renewals for its licensees and registrants.
- Authorize OCCC to open an investigation immediately upon reasonable suspicion of a violation.
- Remove an outdated, overly restrictive burden of proof for proving regulatory violations.
- Authorize OCCC to deny renewal applications for noncompliant licensees and registrants when appropriate.
- Update outdated appeals provisions to align with the Administrative Procedure Act.
- Direct OCCC and the Finance Commission to develop an updated complaint process in rule.

Issue 6

Elements of the Department of Savings and Mortgage Lending's Statute and Procedures Do Not Conform to Common Regulatory Standards.

If SML is not merged into DOB as recommended in Issue 1, several of SML's processes and rules need improvements to meet the Sunset Commission's best practices designed for effective regulation. The agency's penalty matrix lacks clear guidelines for the application of administrative penalties and the agency's complaint rules do not provide comprehensive information for complainants and licensees. Updating these provisions would promote consistent enforcement actions and ensure the Finance Commission receives comprehensive information about complaint activity.

Key Recommendations

- Update the agency's complaint processing provisions to meet Sunset's standard across-the-board requirements.
- Direct SML and the Finance Commission to develop an updated complaint process in rule.
- Direct the agency to modify its penalty matrix to ensure consistent application of administrative penalties.

Issue 7

The Finance Agencies' Statutes Do Not Reflect Standard Elements of Sunset Reviews.

Among the standard elements considered in a Sunset review are provisions that the Sunset Commission applies across the board to all state agencies under review designed to ensure open, responsive, and effective government. The finance agencies' governing statutes do not include standard provisions relating to alternative dispute resolution, which would help rulemaking, and commission member training, which would ensure members understand the scope of the Finance Commission's rulemaking authority. In addition, the Sunset Act states that advisory committees are abolished on the date set for abolition of an agency unless the committee is expressly continued by law. Sunset staff found that the agencies should have the authority to create advisory committees in rule, and should reestablish the existing advisory committees in rule as needed.

Key Recommendations

- Update the standard across-the-board requirement related to Finance Commission member training.
- Authorize the finance agencies to establish advisory committees in rule as needed.

Fiscal Implication Summary

Overall, recommendations in three issues would result in a $6,164,845 gain to the General Revenue Fund and $2,472,025 in savings to the finance agencies over the next five fiscal years. Since fees assessed to the regulated industries must cover the costs of regulation due to the agencies' self-directed semi-independent status, together the recommendations in this report would decrease costs to the industries by an estimated $9,591,295 over the next five fiscal years. The fiscal implication of each recommendation is summarized below.

Issue 1 — The recommendation to abolish SML and transfer its functions to DOB would result in a savings of $1,388,994 per year to the finance agencies beginning in fiscal year 2020.

Issue 2 — The recommendation to remit the finance agencies' administrative penalties to the General Revenue Fund would result in a gain to general revenue of approximately $1,232,969 per year, beginning in fiscal year 2020, with a corresponding decrease in revenue to the finance agencies. The recommendation to streamline administrative functions where appropriate would result in savings to the finance agencies of at least $422,975 per year, starting in fiscal year 2021.

Issue 3 — Deregulating three of the finance agencies' unneeded regulatory programs would decrease costs to the industry and thereby revenue to the finance agencies by $190,885 per year, but the decrease in revenue would be offset by an equal decrease in costs to administer the programs.

Finance Agencies

Fiscal Year	Gain to the General Revenue Fund	Decrease in Revenue to the Finance Agencies	Savings to the Finance Agencies
2020	$1,232,969	$1,423,854	$1,579,879
2021	$1,232,969	$1,423,854	$2,002,854
2022	$1,232,969	$1,423,854	$2,002,854
2023	$1,232,969	$1,423,854	$2,002,854
2024	$1,232,969	$1,423,854	$2,002,854