

BILL ANALYSIS

S.B. 1647
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Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Current law provides for both regulatory oversight and corporate governance of credit unions. This bill amends the Finance Code to provide for additional regulatory oversight of credit union activities and addresses provisions concerning corporate governance. This bill adds provisions to the Finance Code for regulatory coordination between state and federal agencies.

S.B. 1647 provides the credit union commissioner additional regulatory and supervisory oversight of credit union activities and amends various provisions relating to the administration and operation of credit unions.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Credit Union Commission in SECTIONS 4, 10, 14, 23, 25, 26, and 32 of this bill.

ANALYSIS

S.B. 1647 amends the Finance Code to remove provisions making the credit union commissioner's appointment of a deputy credit union commissioner subject to approval by the Credit Union Commission and requiring the deputy commissioner to have the qualifications required of the commissioner. The bill makes the deputy commissioner an employee of the Credit Union Department (TCUD), rather than the commission, and makes the deputy commissioner subject to the commissioner's orders and directions, rather than those of the commission. The bill authorizes the commissioner to appoint assistant deputy commissioners and limits the deputy commissioner's powers to the powers, duties, or functions set forth in the appointment.

S.B. 1647 prohibits a person who is required to register as a lobbyist, because of the person's activities for compensation on behalf of a profession related to the operation of the commission, from serving as general counsel either to the commission or to TCUD.

S.B. 1647 removes provisions requiring the commission to set the compensation of the deputy credit union commissioner and exempting the deputy commissioner from the Position Classification Act.

S.B. 1647 requires the commission to establish, by rule, reasonable and necessary fees to be paid by a credit union to recover the costs of maintaining and operating TCUD and enforcing statutes relating to credit union activities. The bill provides that a credit union is not entitled to a refund of any unused portion of the fee, charge, or revenue.

S.B. 1647 exempts corporate central credit unions from commission rules requiring a credit union to provide share and deposit insurance protection for credit union members and depositors.

S.B. 1647 authorizes the commissioner to enter into cooperative, coordinating, or information-sharing agreements with other state and federal agencies to ensure effective coordination among and between TCUD and those agencies. The bill authorizes the commissioner to enter into cooperative, coordinating, or information-sharing agreements with credit unions or credit union trade associations or other organizations affiliated with or representing one or more credit unions to further the rapid restoration of credit union services after an emergency. The bill provides that disclosure of information by or to TCUD for these purposes does not constitute a waiver of or otherwise affect or diminish any legal privilege to which the information is otherwise subject, even if the disclosure is not governed by a confidentiality agreement. The bill requires a party to an agreement to execute, honor, and comply with requirements to maintain confidentiality and oppose disclosure of information obtained from TCUD and to treat as confidential any information obtained from TCUD that is entitled to confidential treatment under applicable state or federal law.

S.B. 1647 requires each credit union to promptly pay the fees, charges, and revenues established by the commission to recover the cost of examination, the credit union's equitable or proportionate share of the costs of TCUD's maintenance and operation, and the costs of enforcement of provisions governing TCUD's supervision and regulation and the activities of the credit union commission and TCUD. The bill requires the commission to adjust those fees, charges, and revenues so that the amount collected during the fiscal year equals the total amount appropriated, including amounts appropriated for both direct and indirect costs for that fiscal year.

S.B. 1647 requires a credit union, before it is authorized to do business, to create a fund from which operating expenses may be paid until earnings, together with net worth allocations and dividends that may be declared and credited, are sufficient to cover operating expenses. The bill provides that the amounts contributed to the expense fund are not a liability of the credit union. The bill authorizes the credit union to pay dividends to contributors to the expense fund on amounts contributed to the same extent the credit union pays dividends to a member and provides that any amount contributed to the expense fund is considered a deposit of the credit union, which the credit union's board is authorized to reduce pro rata as operating expenses are paid from the fund. The bill authorizes the contributions to the expense fund, with the prior written consent of the commissioner, to be repaid to the contributors from the net earnings of the credit union after the credit union has attained a net worth ratio greater than six percent. The bill authorizes the board at the close of each dividend period to pay or credit the accounts of the contributors an amount that is not more than one percent of the credit union's net earnings during that period until the contributors have been repaid in full. The bill requires any portion of contributions not needed for the payment of the expenses of liquidation and for the payment of depositors in full, if the credit union is liquidated before the contributions to the expense fund have been fully repaid, to be paid to the contributors in proportion to their contributions until they have been repaid in full. The bill authorizes the commission to adopt reasonable rules necessary to administer the expense fund and to accomplish its purposes.

S.B. 1647 changes the deadline for an appeal to the commission of the commissioner's order on an application to incorporate a credit union from the 60th to the 30th day after the date of that order.

S.B. 1647 authorizes the commissioner to suspend or revoke a foreign credit union's authority to do business in Texas if the commissioner finds that the foreign credit union has failed to conduct its business in Texas in a manner consistent with the laws of this state, refuses to comply with an order of the commissioner, refuses to comply with a request by the commissioner to review the books and records of the credit union, or has not met or does not meet a requirement imposed by commission rules. The bill removes provisions authorizing the commissioner to suspend or revoke a foreign credit union's authority to do business in Texas if the commissioner finds that the foreign credit union has violated an applicable rule or is engaged in a pattern of unsafe or unsound practices.

S.B. 1647 authorizes the commissioner, on a request by the credit union regulatory agency of a state contiguous to Texas, to authorize one or more credit unions located in that state to open temporary offices in Texas to more promptly restore credit union services to their members if that state experiences an emergency. The bill requires the commissioner to issue an order permitting the temporary office and specifying the period of time the office may remain open. The bill authorizes the commissioner to extend the period the office may remain open on a finding that the conditions requiring the temporary office continue to exist. The bill authorizes a credit union to convert a temporary office to a permanent location if it qualifies to do business in Texas as a foreign credit union.

S.B. 1647 authorizes a person's membership in a credit union to be terminated, suspended, or restricted under the conditions and in accordance with the procedures provided in the bylaws for having done any of the following: violated the membership agreement or any policy adopted by the board, been physically or verbally abusive to credit union members or staff, caused a financial loss to the credit union, been involved in suspicious or unusual account activity, or committed any other act or engaged in any activity proscribed by rules adopted by the commission. The bill removes a provision authorizing termination or suspension of a person's membership in a credit union, or the discontinuation of all services to a member without such termination or suspension, for good cause and makes conforming changes.

S.B. 1647 requires that the terms of the directors of the board of directors of a credit union be staggered so that an approximately equal number expire each year if the terms are longer than one year. The bill makes the requirement for a meeting at least once a month applicable so that either the board or the board's executive committee may satisfy that requirement and authorizes the board to permit the executive committee to act on its behalf in all except one meeting per calendar quarter. The bill requires the board to have no fewer than four regularly scheduled meetings each year. The bill clarifies provisions for a member's participation in a board meeting by means of electronic communications equipment. The bill requires each director to physically attend at least one meeting each calendar year. The bill provides that a director of a credit union who is present at a meeting of its board of directors at which action on any matter is taken is presumed to have assented to the action taken unless the minutes of the meeting specifically indicate otherwise. The bill requires the directors, officers, and employees to hold in confidence all matters presented to the board for deliberation and determination, except if disclosure of a matter is permitted by applicable law. The bill requires the board to adopt a code of ethics for all directors, officers, and honorary or advisory directors and requires the code of ethics to include standards that are reasonably necessary to promote honest and ethical conduct, including the ethical handling of actual and apparent conflicts of interest between personal and professional relationships, and compliance with applicable laws.

S.B. 1647 authorizes action required or permitted to be taken at a board meeting to be taken without a meeting if the action is consented to by all members of the board, unless the articles of incorporation or bylaws provide otherwise. The bill requires the action to be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken. The bill provides that an action is effective when the last director signs the consent, unless the consent specifies a different effective date. The bill provides that a written consent has the effect of a meeting vote and authorizes it to be described as such in any document.

S.B. 1647 removes a provision limiting the board's appointment of honorary or advisory directors to no more than three individuals and requires an honorary or advisory director to hold in confidence all matters presented to the board. The bill expands conflict of interest provisions to prohibit a person, while serving as a director, honorary director, advisory director, committee member, officer, or employee of a credit union, from participating, directly or indirectly, in the deliberation on or determination of a question affecting the person's pecuniary interest or the pecuniary interest of a member of the person's immediate family. The bill defines "member of a

person's immediate family" for these purposes to mean a person's parents, spouse, children, or siblings.

S.B. 1647 provides that directors and officers are considered to have a fiduciary relationship with the credit union, as an entity, and are required to discharge the duties of their respective positions in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director or officer believes to be in the best interests of the credit union. The bill authorizes a director or officer, in discharging the director's or officer's duties to the credit union, to rely on information, opinions, reports, or statements prepared or presented by certain credit union officers or employees, legal counsel, a certified public accountant, or another person the director or officer believes in good faith has expertise in the matter or competence, or, in the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence, unless the director or officer has knowledge that makes reliance unwarranted. The bill authorizes information, opinions, reports, or statements on which a director or officer may rely to be written or oral or formal or informal.

S.B. 1647 authorizes a credit union, with the prior written approval of the commissioner, to purchase all or substantially all of the assets of another entity. The bill provides that the purchase of all or part of the assets of the selling entity do not make the purchasing credit union responsible for any liability or obligation of the selling entity not expressly assumed by the purchasing credit union.

S.B. 1647 authorizes a mutual savings institution to convert to a state credit union by complying with the laws of the original chartered authority and on the approval of the commissioner. The bill requires application for approval of the conversion to a state credit union to be submitted to TCUD in the form prescribed by the commissioner. The bill authorizes the commissioner to cause an examination to be made of any converting mutual savings institution and requires the converting mutual savings institution to pay all fees and charges prescribed by the commission.

S.B. 1647 authorizes the commissioner, if the commissioner finds that a credit union or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the credit union has engaged, is engaging, or is about to engage in misconduct, to issue an order directing the credit union or any other person participating in the conduct of its affairs to cease and desist from engaging in the act, practice, or transaction that constitutes the misconduct or from doing any act in furtherance of the act, practice, or transaction, and to take appropriate affirmative action within a reasonable period, as prescribed by the commissioner, to correct the conditions resulting from the act, practice, or transaction and makes conforming changes.

S.B. 1647 requires a credit union that intends to engage in an activity, exercise a power, or make a loan or investment permissible for a credit union organized under federal law or the law of another state, to submit written notice to the commissioner describing the activity, power, loan, or investment and the specific federal or state authority on which the credit union is relying. The bill authorizes the credit union to proceed as described in the notice on or after the 30th day following submission of the notice, unless the commissioner extends the period or prohibits the activity, power, loan, or investment. The bill authorizes the commissioner to prohibit the credit union from engaging in an activity, exercising a power, or making a loan or investment as described in the notice only if the commissioner finds that specific authority does not exist or the engagement, exercise, or making would adversely affect the safety and soundness of the credit union. The bill authorizes the commissioner to extend the 30-day period if the commissioner determines that the credit union's notice raises issues requiring additional information or additional time for analysis. The bill prohibits the credit union from proceeding without the commissioner's prior written approval if the 30-day period is extended and requires the commissioner to issue either an approval or prohibition letter not later than the 60th day after the date the notice is submitted. The bill authorizes the commission to adopt rules relating to the exercise of powers or authorities granted under these provisions and removes provisions granting

a credit union the powers and authorities of a foreign credit union operating a branch in Texas on a finding by the commissioner that the exercise of such powers and authorities is convenient for and affords an advantage to its members and maintains fairness of competition and parity between the credit union and a foreign credit union.

S.B. 1647 authorizes any number of credit unions to apply to organize a corporate central credit union to engage exclusively in corporate financial and operational activities that are part of or incidental to the credit union business. The bill provides that membership in the corporate central credit union consists of and is limited to credit unions incorporated under state law, the Federal Credit Union Act or any other law applicable to credit unions, and organizations owned by credit unions. The bill provides that a corporate central credit union has the powers and privileges of any other incorporated credit union and, subject to rules adopted by the commission, enumerates specific powers a corporate central credit union may have.

S.B. 1647 authorizes the commissioner to prohibit, as an alternative to restricting, the payment of a dividend under certain circumstances.

S.B. 1647 authorizes a credit union to pay taxes, assessments, insurance premiums, and similar charges for the protection of the credit union's interest in property that secures a loan of the credit union, provides that this payment is an advance, and authorizes the credit union to carry the payment on the credit union's books as an asset for which the credit union may charge interest, or to add the payment to the unpaid balance of the loan to which it applies as of the first day of the month in which the payment is made. The bill provides that this payment is a lien against the property that secures the loan for which it is made, with the exception of a loan secured by an encumbrance against the equity in a homestead property. The bill provides that for an extension of credit as defined and authorized by provisions in the Texas Constitution relating to the protection of homesteads from forced sale, additional terms and conditions apply for the payment to become a lien against the property.

S.B. 1647 requires that if, at any time, application of a contract interest rate to the outstanding unpaid balance results in a charge of less than \$1, the lawful interest charge is \$1. The bill authorizes a prepayment penalty to be charged on a business loan and provides that, for these purposes, "business loan" means a loan other than a loan made primarily for personal, family, or household purposes.

S.B. 1647 authorizes a credit union to hold a nonworking mineral or royalty interest under certain circumstances and conditions. The bill authorizes the commissioner to order a credit union that holds a nonworking mineral or royalty interest to divest the interest at any time if the commissioner determines that continued ownership of the interest is detrimental to the credit union, and provides that, subject to certain conditions, nonworking mineral or royalty interests are not considered to be real property.

S.B. 1647 requires the directors, officers, committee members, and employees and any honorary or advisory directors of a credit union to hold in confidence all information regarding transactions of the credit union, including information concerning transactions with the credit union's members and the members' personal affairs, except to the extent necessary in connection with making, extending, or collecting a loan or extension of credit, or as otherwise authorized by commission rules or other applicable law. The bill adds the adoption of reasonable rules relating to the permissible disclosure of nonpublic personal information about the accounts of credit union members to the commission's rulemaking authority. The bill adds a share insuring organization to the entities to which the commission is authorized to disclose information obtained directly or indirectly by TCUD concerning the financial condition or business affairs of a credit union and the files and records of TCUD relating to that information, if the commissioner finds the disclosure necessary for certain law enforcement purposes.

S.B. 1647 requires TCUD, through examiners it appoints and in accordance with commission rules, to examine the condition and affairs of each credit union, rather than to periodically examine the credit union's books and records, and authorizes TCUD to examine the condition and affairs of any subsidiary wholly owned or controlled by a credit union, at least once during each 24-month period. The bill authorizes TCUD to examine a credit union or its subsidiaries more frequently if the commissioner considers it necessary or advisable to safeguard the interest of depositors, creditors, and members or to efficiently enforce applicable law.

S.B. 1647 amends the definition of "credit union" and defines "share insuring organization" to mean a cooperative share insurance fund, guaranty corporation, or credit union that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty to protect or guarantee against loss the share and deposit accounts in the credit union up to a specified level for each account.

EFFECTIVE DATE

September 1, 2009.