

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1647  
By: Averitt  
Business & Commerce  
4/10/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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.

C.S.S.B. 1647 provides the credit union commissioner (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**

Rulemaking authority is expressly granted to the Credit Union Commission in SECTION 10 (Section 121.0011, Finance Code) and SECTION 25 (Section 123.1041, Finance Code) of this bill.

Rulemaking authority previously granted to the Credit Union Commission is modified in SECTION 4 (Section 15.402, Finance Code), SECTION 6 (Section 15.410, Finance Code), SECTION 23 (Section 123.003, Finance Code), and SECTION 32 (Section 125.402, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 15.303, Finance Code, as follows:

Sec. 15.303. DEPUTY COMMISSIONER. (a) Authorizes the credit union commissioner (commissioner) to appoint a deputy credit union commissioner (deputy commissioner), rather than authorizing the commissioner, subject to the Credit Union Commission's (commission) approval, to appoint a deputy commissioner, who must have the qualifications required of the commissioner.

(b) Redesignates Subsection (c) as Subsection (b). Provides that the deputy commissioner is an employee of the Credit Union Department (department), rather than the commission, and is subject to the commissioner's, rather than commission's, orders and directions.

(c) Redesignates Subsection (d) as Subsection (c). Makes no changes to this subsection.

(d) Authorizes the commissioner to appoint assistant deputy commissioners, whose powers are required to be limited to the powers, duties, or functions set forth in the appointment.

SECTION 2. Amends Section 15.305, Finance Code, to provide that a person who is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission, is prohibited from serving as general counsel to the commission or the department.

SECTION 3. Amends Section 15.308, Finance Code, as follows:

Sec. 15.308. COMPENSATION OF EMPLOYEES. (a) Requires the commission to set the compensation of the commissioner, rather than the commissioner and the deputy commissioner.

(b) Provides that Chapter 654 (Position Classification), Government Code, applies to any department position except the commissioner, rather than any position except the commissioner and the deputy commissioner.

SECTION 4. Amends Section 15.402(c), Finance Code, to require the commission by rule to establish reasonable and necessary fees to recover the costs of maintaining and operating the department and enforcing, rather than for the administration of, this chapter and Subtitle D (Confidentiality of Information), Title 3 (Financial Institutions and Businesses).

SECTION 5. Amends Section 15.408, Finance Code, to provide that a credit union is not entitled to a refund of any unused portion of the fee, charge, or revenue.

SECTION 6. Amends Section 15.410(a), Finance Code, to require the commission to adopt, and require the commissioner to enforce, reasonable rules requiring a credit union, except a corporate central credit union, to provide share and deposit insurance protection for credit union members and depositors.

SECTION 7. Amends Subchapter E, Chapter 15, Finance Code, by adding Section 15.4111, as follows:

Sec. 15.4111. REGULATORY COORDINATION. (a) Authorizes the commissioner, to ensure effective coordination among and between the department and other state and federal agencies, to enter into cooperative, coordinating, or information-sharing agreements with those agencies.

(b) Authorizes the commissioner, to further the rapid restoration of credit union services after an emergency, 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.

(c) Provides that disclosure of information by or to the department under this section 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. Provides that notwithstanding other applicable law, a party to an agreement described by this section is required to execute, honor, and comply with requirements to maintain confidentiality and oppose disclosure of information obtained from the department, and is required to treat as confidential any information obtained from the department that is entitled to confidential treatment under applicable state or federal law.

SECTION 8. Amends Section 121.002, Finance Code, by amending Subdivision (2) and adding Subdivision (10-a), to redefine "credit union" and define "share insuring organization."

SECTION 9. Amends Chapter 121, Finance Code, by adding Section 121.007, as follows:

Sec. 121.007. COST OF SUPERVISION AND REGULATION. (a) Requires each credit union to promptly pay the fees, charges, and revenues established by the commission under Section 15.402 (Adoption of Rules) to recover certain costs.

(b) 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.

SECTION 10. Amends Subchapter A, Chapter 122, Finance Code, by adding Section 122.0011, as follows:

Sec. 122.0011. EXPENSE FUND. (a) Requires a credit union, before the credit union organized under this subtitle is authorized to do business, to create a fund from which operating expenses are authorized to be paid until earnings, together with net worth allocations and dividends that may be declared and credited, are sufficient to cover operating expenses.

(b) Provides that, except as provided by this section, the amounts contributed to the expense fund are not a liability of the credit union.

(c) 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. 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.

(d) Authorizes contributions to the expense fund, with the prior written consent of the commissioner, to be repaid to the contributors in accordance with this subsection from the net earnings of the credit union after the credit union has attained a net worth ratio greater than six percent. Authorizes the board at the close of each divided period to pay or credit the accounts of the contributors an amount that is not more than one percent of the net earnings of the credit union during that period until the contributors have been repaid in full.

(e) Requires that any portion of the contributions not needed for the payment of the expenses of liquidation and for the payment of depositors in full be paid to the contributors in proportion to their contributions until they have been repaid in full if the credit union is liquidated before the contributions to the expense fund have been fully repaid.

(f) Authorizes the commission to adopt reasonable rules necessary to administer this section and to accomplish the purposes of this subchapter.

SECTION 11. Amends Section 122.007(b), Finance Code, to authorize the commissioner's order to be appealed to the commission not later than the 30th, rather than the 60th, day after the date of the order.

SECTION 12. Amends Sections 122.013(a) and (c), Finance Code, as follows:

(a) Authorizes a foreign credit union to do business in this state if it is organized in a state or county that allows any, rather than a, credit union organized under this subtitle to do business in that state or country.

(c) Authorizes the commissioner to suspend or revoke a foreign credit union's authority to do business in this state if the commissioner makes certain findings regarding the foreign credit union.

SECTION 13. Amends Subchapter A, Chapter 122, Finance Code, by adding Section 122.0131, as follows:

Sec. 122.0131. TEMPORARY FOREIGN CREDIT UNION OFFICE. Authorizes the commissioner, if a state contiguous to this state experiences an emergency, on a request by that state's credit union regulatory agency, to authorize one or more credit unions located in that state to open temporary offices in this state to more promptly restore credit union services to their members. Requires the commissioner to issue an order permitting the temporary office and specifying the period of time the office is authorized to be open. Authorizes the commissioner, on a finding that the conditions requiring the temporary office to continue to exist, to extend the period the office may remain open. Authorizes a credit union to convert a temporary office to a permanent location if it qualifies to do

business in this state as a foreign credit union under Section 122.013 (Foreign Credit Unions) and commission rules.

SECTION 14. Amends Section 122.051, Finance Code, by amending Subsections (a) and (d) and adding Subsection (d-1), as follows:

(a) Authorizes a person to be a member of a credit union only if the person is an incorporator or other person who has done one or both of the following: paid an entrance fee or membership fee, or both, as required by the bylaws; or met the minimum share or deposit account requirements or complied with other qualifying requirements that the board may establish, rather than complied with the minimum share, including membership share, requirements or other qualifying account requirements established by the board.

(d) Authorizes a person's membership in a credit union to be terminated, suspended, or restricted, rather than for good cause or for not maintaining membership requirements, 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. Deletes existing text defining "good cause."

(d-1) Deletes existing text authorizing a credit union to discontinue providing any or all services to a member for good cause without terminating or suspending the person's membership.

SECTION 15. Amends Section 122.053, Finance Code, by amending Subsections (d), (e), and (f) and adding Subsections (g), (h), and (i), as follows:

(d) Requires the board of directors of a credit union's (board) terms, if longer than one year, to be staggered so that an approximately equal number expire each year.

(e) Requires the board or its executive committee to meet at least once each month. Authorizes the board to permit the executive committee to act on its behalf in all except one meeting per calendar quarter. Requires the board to have no fewer than four regularly scheduled meetings each year.

(f) Authorizes a director, to the extent, rather than if and to the extent, provided in the bylaws, to participate in and act at any meeting of the board by means of electronic communications equipment through which all persons participating in the meeting may simultaneously hear each other and communicate during the meeting, rather than can communicate with each other. Requires each director, however, to physically attend at least one meeting each calendar year.

(g) 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.

(h) 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.

(i) Requires the board to adopt a code of ethics for all directors, officers, and honorary or advisory directors. Requires that the code of ethics 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.

SECTION 16. Amends Subchapter B, Chapter 122, Finance Code, by adding Section 122.0531, as follows:

Sec. 122.0531. ACTION BY BOARD OF DIRECTORS WITHOUT MEETING. (a) Authorizes action required or permitted to be taken under this subtitle at a board meeting, unless the articles of incorporation or bylaws provide otherwise, to be taken without a meeting if the action is consented to by all members of the board. Requires that the action 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.

(b) Provides that action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) Provides that a written consent signed under this section has the effect of a meeting vote and is authorized to be described as such in any document.

SECTION 17. Amends Sections 122.056(a) and (c), Finance Code, as follows:

(a) Authorizes the board to appoint individuals, rather than not more than three individuals, to serve at the board's pleasure as honorary or advisory directors to advise and consult with the board and otherwise aid the board in carrying out the board's duties and responsibilities.

(c) Requires an honorary or advisory director to hold in confidence all matters presented to the board.

SECTION 18. Amends Section 122.061, Finance Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Prohibits 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 or of a partnership, association, or corporation, other than the credit union, in which the person is directly or indirectly interested.

(c) Defines "member of a person's immediate family."

SECTION 19. Amends Subchapter B, Chapter 122, Finance Code, by adding Sections 122.065 and 122.066, as follows:

Sec. 122.065. FIDUCIARY RELATIONSHIP. 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.

Sec. 122.066. RELIANCE BY DIRECTORS OR OFFICERS. (a) Authorizes a director or officer, unless the director or officer has knowledge that makes reliance unwarranted, to rely on, in discharging the director's or officer's duties to the credit union, information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by: an officer or employee of the credit union whom the director or officer believes in good faith to be reliable and competent in the matters presented; legal counsel, a certified public accountant, or another person regarding a matter the director or officer believes in good faith is within the person's professional or expert 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.

(b) Authorizes information, opinions, reports, or statements on which a director or officer may rely under this section to be written or oral or formal or informal.

SECTION 20. Amends Subchapter D, Chapter 122, Finance Code, by adding Section 122.1511, as follows:

Sec. 122.1511. **AUTHORITY TO PURCHASE ASSETS.** (a) Authorizes a credit union, with the prior written approval of the commissioner, to purchase all or substantially all the assets of another entity.

(b) Provides that except as otherwise expressly provided by another statute, the purchase of all or part of the assets of the selling entity does not make the purchasing credit union responsible for any liability or obligation of the selling entity not expressly assumed by the purchasing credit union.

SECTION 21. Amends Subchapter E, Chapter 122, Finance Code, by adding Section 122.204, as follows:

Sec. 122.204. **CONVERSION OF MUTUAL SAVINGS INSTITUTION TO STATE CREDIT UNION.** (a) 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.

(b) Requires the application for approval of the conversion to a state credit union be submitted to the department in the form prescribed by the commissioner.

(c) Authorizes the commissioner to cause an examination to be made of any converting mutual savings institution. Requires the converting mutual savings institution to pay all fees and charges prescribed by the commission.

SECTION 22. Amends Section 122.257(a), Finance Code, as follows:

(a) 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 an act, practice, or transaction meeting any of the criteria listed in Section 122.255 (Determination of Misconduct), to issue an order directing the credit union or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the credit union to cease and desist from engaging in the act, practice, or transaction 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. Deletes existing text authorizing the commissioner, if the commissioner makes a finding listed in Section 122.255 and determines that an order to cease and desist is necessary and in the best interest of the credit union involved and its depositors, creditors, and members, to serve on the credit union, its board, and each offending person an order to cease and desist from a violation or practice specified in the order and to take affirmative action that the commissioner considers necessary to correct a condition resulting from a violation or unsafe or unsound practice found.

SECTION 23. Amends Section 123.003, Finance Code, as follows:

Sec. 123.003. **ENLARGEMENT OF POWERS.** (a) Provides that notwithstanding any other law, and subject to Subsection (b), a credit union is authorized to engage in any activity, exercise any power, or make any loan or investment permissible for a credit union organized under federal law or the law of another state. Deletes existing text authorizing a credit union to engage in any activity in which it could engage, exercise any power it could exercise, or make any loan or investment it could make, if it were operating as a federal credit union.

(a-1) Requires a credit union that intends to engage in an activity, exercise a power, or make a loan or investment authorized under Subsection (a) 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. 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 in accordance with this subsection, or prohibits the activity, power, loan, or investment.

(a-2) Authorizes the commissioner to prohibit the credit union from engaging in an activity, exercising a power, or making a loan of investment as described in the notice under Subsection (a-1) only if the commissioner finds specific authority does not exist, or the engagement, exercise, or making would adversely affect the safety and soundness of the credit union.

(a-3) Authorizes the commissioner to extend the 30-day period if the commissioner determines that the credit union's notice under Subsection (a-1) raises issues requiring additional information or additional time for analysis. Prohibits the credit union, if the 30-day period is extended, to proceed without the commissioner's prior written approval. Requires the commissioner to issue either an approval or prohibition letter not later than the 60th day after the date the notice is submitted.

(b) Authorizes the commission to adopt rules relating to the exercise of powers or authorities granted under this section. Deletes existing text providing that, notwithstanding any other law, and in addition to the powers and authorities conferred under Subsection (a), a credit union has the powers or authorities of a foreign credit union operating a branch in this state if the commissioner finds that exercise of those powers or authorities is convenient for and affords an advantage to the credit union's members and maintains the fairness of competition and parity between the credit union and any foreign credit union. Deletes existing text providing that a credit union does not have the field of membership powers or authorities of a foreign credit union operating a branch in this state.

SECTION 24. Amends Section 123.104, Finance Code, as follows:

Sec. 123.104. New heading: MEMBERSHIP IN OTHER ORGANIZATION; OPERATION AS CORPORATE CENTRAL CREDIT UNION. Authorizes a credit union to operate, with the commissioner's approval, as a corporate central credit union.

SECTION 25. Amends Subchapter B, Chapter 123, Finance Code, by adding Section 123.1041, as follows:

Sec. 123.1041. CORPORATE CENTRAL CREDIT UNION. (a) 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.

(b) Provides that membership in the corporate central credit union consists of and is limited to credit unions incorporated under this subtitle, the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.), or any other law applicable to credit unions, and organizations owned by credit unions.

(c) Provides that a corporate central credit union has the powers and privileges of any other credit union incorporated under this subtitle and, subject to rules adopted by the commission, may have the power to:

- (1) provide access for its members on a mutual basis to financial systems and the services and products of financial institutions;
- (2) provide its members with research and consulting services concerning financial matters, institutions, and products;
- (3) provide financial system support services and facilities;

(4) establish and execute financial programs to assist its members in meeting the members' needs;

(5) provide safekeeping or trustee services to or on behalf of its members; and

(6) issue uninsured share investments or classes of share investments in amounts in excess of \$250,000 with terms and conditions that may vary from other shares authorized by this subtitle as approved by the department.

SECTION 26. Amends Section 123.208(c), Finance Code, to authorize the commissioner to restrict or prohibit the payment of a dividend under certain circumstances.

SECTION 27. Amends Subchapter A, Chapter 124, Finance Code, by adding Section 124.006, as follows:

Sec. 124.006. **ADVANCES PAID BY CREDIT UNION.** (a) 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.

(b) Provides that a payment under Subsection (a) is an advance, and authorizes the credit union to carry the payment on the credit union's books as an asset of the credit union for which the credit union is authorized to charge interest, or 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.

(c) Provides that with the exception of a loan secured by an encumbrance against the equity in a homestead property, a payment under Subsection (a) is a lien against the property that secures the loan for which it is made. Provides that for an extension of credit as defined and authorized by Section 50(a)(6) (relating to the requirement that a homestead of a family, or of a single adult person is protect from forced sale, for the payment of all debts except an extension of credit under certain criteria), Article XVI (General Provisions), Texas Constitution, additional terms and conditions apply as provided by that section for the payment to become a lien against the property.

SECTION 28. Amends Section 124.051, Finance Code, as follows:

Sec. 124.051. **OPEN-END CREDIT PLAN.** (a) Creates this subsection from existing text.

(b) Requires that the lawful interest charge is \$1 if, at any time, application of the contract interest rate to the outstanding unpaid balance results in a charge of less than \$1.

SECTION 29. Amends Section 124.151, Finance Code, as follows:

Sec. 124.151. **PREPAYMENT PRIVILEGE.** (a) Creates this subsection from existing text. Authorizes a loan to be prepaid in whole or in part, without penalty, during regular working hours on any day on which the credit union is open for business, except as provided by Subsection (b) or Section 124.152 (Conditions for Prepayment of Loan Secured By Real Property).

(b) Authorizes a prepayment penalty to be charged on a business loan.

(c) Defines "business loan."



SECTION 30. Amends Section 124.351(a), Finance Code, to authorize a credit union to invest money not used in loans to members in loans to, shares of, or deposits in a corporate central credit union.

SECTION 31. Amends Subchapter H, Chapter 124, Finance Code, by adding Section 124.353, as follows:

Sec. 124.353. PASSIVE INVESTMENT IN MINERAL INTERESTS. (a) Authorizes a credit union to hold a nonworking mineral or royalty interest under certain conditions.

(b) 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.

(c) Provides that subject to compliance with this section, nonworking mineral or royalty interests are not considered to be real property for purposes of this subtitle.

SECTION 32. Amends Section 125.402, Finance Code, as follows:

Sec. 125.402. DISCLOSURE OF RECORDS OF MEMBER; CONFIDENTIALITY.

(a) 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 adopted under Subsection (d) or other applicable law.

(b) Creates this subsection from existing text.

(c) Redesignates Subsection (b) as Subsection (c).

(d) Redesignates Subsection (c) as Subsection (d). Authorizes the commission to adopt reasonable rules relating to the permissible disclosure of nonpublic personal information about, rather than confidentiality of, the accounts of credit union members, and duties of the credit union to maintain confidentiality, rather than maintain that confidentiality.

SECTION 33. Amends Section 126.002(c), Finance Code, to authorize the commissioner to disclose the information described by Subsection (a) to a share insuring organization.

SECTION 34. Amends Section 126.051(a), Finance Code, as follows:

(a) Requires the department to, through examiners it appoints and in accordance with commission rules, rather than periodically, examine the condition and affairs, rather than books and records, of each credit union, and authorizes the department 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. Authorizes the department 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.

SECTION 35. Effective date: September 1, 2009.