

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 1 OF 30**

**TITLE 7. BANKING AND SECURITIES**

**PART 4. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING**

**CHAPTER 76. MISCELLANEOUS**

The Finance Commission of Texas (commission), on behalf of the Department of Savings and Mortgage Lending (department), proposes to repeal the following rules in 7 Texas Administrative Code (TAC) Chapter 76: Subchapter A, §76.3; Subchapter D, §76.61; Subchapter E, §§76.71 - 76.73; and Subchapter G, §76.121. The commission further proposes amendments to existing rules in 7 TAC Chapter 76, as follows: Subchapter A, §§76.1, 76.2, 76.4 - 76.7, and 76.12; Subchapter B, §§76.21 - 76.26; Subchapter C, §§76.41 - 76.47; Subchapter F, §§76.91 - 76.97, 76.99 - 76.103, and 76.105 - 76.110; and Subchapter H, §76.122. This proposal and the rules as repealed or amended by this proposal are referred to collectively as the "proposed rules."

**Explanation of and Justification for the Rules**

The existing rules under 7 TAC Chapter 76 partially implement Finance Code Subtitle C, the Texas Savings Bank Act. The proposed rules were identified during the department's periodic review of 7 TAC Chapter 76 conducted pursuant to Government Code §2001.039.

*Notice to Consumers Changes*

Existing §76.122, concerning Savings Bank Complaint Notices, requires Texas-chartered savings banks to make a disclosure to

consumers concerning the department's regulatory oversight and the ability to file complaints with the department. The proposed rules, if adopted, would clarify the existing requirement directing a savings bank to make a disclosure on its website by clarifying that the requirement applies only to websites accessible by the public and further clarifying how to conspicuously display such notice on a website in order to comply with the rule.

*Books and Records Changes*

Existing §76.1, concerning Location of Books and Records, addresses how and where a savings bank keeps its books and records. The proposed rules, if adopted, would amend §76.1 to clarify that a savings bank must comply with the applicable requirements of federal law in making and keeping its books and records, and require that records be kept in accordance with established best practices of the Federal Financial Institution Examination Council. Amended §76.3 further clarifies that, while records may be kept at a location other than the savings bank's home office, the savings bank must ensure that a complete set of its records is readily accessible at the home office. The title of §76.1 is also amended to better reflect the subject matter of the rule as amended. Existing §76.3, concerning Reproduction and Destruction of Records, authorizes a savings bank to keep copies of its records, including by electronic means. The proposed rules, if adopted, would repeal existing §76.3, and consolidate its subject matter in amended §76.1, which provides that records may be kept in an electronic, digital, or magnetic format.

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 2 OF 30**

*Changes Concerning Reports from a Holding Company*

Existing §76.42, concerning Reports, requires holding companies and their subsidiaries to file reports with the commissioner including any reports or other information it is required to file with the appropriate federal banking agency. The proposed rules, if adopted, would clarify that a holding company need not file with the department's commissioner reports it has filed with the appropriate federal banking agency that are publicly available.

*Change of Control Fee Changes*

Existing §76.101, concerning Fee for Change of Control, establishes the fee for making an application for change of control of a savings bank in accordance with Finance Code Chapter 92, Subchapter L. The proposed rules, if adopted, would lower the applicable fee from \$10,000 to \$5,000.

*Changes Concerning Hearings on Applications*

Existing §§76.71 - 76.73, concerning Hearings Officer, Rules of Procedure for Contested Hearings, and Publication of Hearing Notice, respectively, establish certain processes and procedures governing adjudicative hearings (contested cases) on applications filed with the commissioner. The proposed rules, if adopted, would repeal the rules to coincide with a separate rulemaking action proposed for 7 TAC Chapter 75, wherein the subject matter of existing §§76.71 - 76.73 would, if the proposed changes to 7 TAC Chapter 75 are adopted, be addressed in such chapter.

*Other Modernization and Update Changes*

The proposed rules, if adopted, would make changes to modernize and update the rules including: adding and replacing language to improve clarity and readability; removing unnecessary or duplicative provisions; and updating terminology.

*Summary of Changes*

The proposed rules include a repeal and amendments to existing rules in Subchapter A, Books, Records, Accounting Practices, Financial Statements and Reserves.

The proposed rules, if adopted, would amend §76.1, concerning Location of Books and Records. The title of the section is renamed Books and Records to better describe its subject matter as amended. The existing language of subsection (a) (implied) is eliminated and replaced. New subsection (a) differs from the requirements of existing subsection (a) by clarifying that a savings bank must create and maintain records of its operations. New subsection (a) further differs from the requirements of existing subsection (a) by clarifying that records must be maintained in compliance with applicable federal law, and established industry best practices promoted by the Federal Financial Institution Examination Counsel. New subsection (a) further differs from the requirements of existing subsection (a) by clarifying that a savings bank's records maintained for examination purposes must be accurate, complete, current, legible, readily accessible, and readily sortable. New subsection (a) further differs from the requirements of existing subsection (a) by clarifying that, while a savings bank may store records offsite, it

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 3 OF 30**

must ensure that a complete set of its books and records is readily accessible at its home office in order to facilitate its examination by the department's commissioner. (Books and Records Changes.)

The proposed rules, if adopted, would amend §76.2, concerning Accounting Practices, by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would repeal §76.3, concerning Reproduction and Destruction of Records. The subject matter of existing §76.3 is addressed in proposed new §76.1, concerning Books and Records, creating a consolidated rules section concerning the requirements for books and records, included in the proposed rules and discussed *supra*. (Books and Records Changes.)

The proposed rules, if adopted, would amend §76.4, concerning Financial Statements; Annual Reports; Audits. Subsection (a) (implied) is amended to clarify that the savings bank must submit to the department the results and findings of an independent audit. Subsection (a) is further amended to provide a specific citation to applicable federal law governing the requirements for conducting the audit. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.5, concerning Misdescription of Transactions, by restating language to improve clarity and readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.6, concerning Charging Off or Setting Up Reserves against Bad Debts. The title of the section is renamed to capitalize the word "against" in the title. Existing §76.6 is further amended by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.7, concerning Examinations. Existing subsection (b) is amended to eliminate a reference specifically identifying the Federal Deposit Insurance Corporation, and instead, use the term "appropriate federal banking agency," which also includes the Board of Governors of the Federal Reserve. Existing §76.7 is further amended by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.12, concerning Bylaws, by: replacing the term "articles of incorporation" with updated terminology (certificate of formation) from the Business and Commerce code; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules include amendments to existing rules in Subchapter B, Capital and Capital Obligations.

The proposed rules, if adopted, would amend §76.21, concerning Capital Requirements, by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 4 OF 30**

terms "must" or "will" instead of "shall."  
(Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.22, concerning Increase or Decrease of Minimum Capital Requirements, by: replacing the term "articles of incorporation" with updated terminology (certificate of formation) from the Business and Commerce code; capitalizing the term "commissioner" to improve readability; and restating existing language to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.23, concerning Business Plans, by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.24, concerning Capital Notes and Debentures, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.25, concerning Provisions for Issuance of Secured or Unsecured Capital Obligations, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.26, concerning Joint Issuance of Capital Obligations, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules include amendments to existing rules in Subchapter C, Holding Companies.

The proposed rules, if adopted, would amend §76.41, concerning Registration, by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.42, concerning Reports. Subsection (a) (implied) is amended to clarify that a holding company need not file with the department's commissioner reports it has filed with the appropriate federal banking agency that are publicly available. (Changes Concerning Reports from a Holding Company.) Existing §76.42 is further amended by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.43, concerning Books and Records. Subsection (a) is amended to clarify that books and records of a holding company must be created and maintained in accordance with the requirements of proposed amended §76.1, concerning Books and Records, included in the proposed rules and discussed *supra*. (Books and Records Changes.) Existing §76.43 is further amended by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 5 OF 30**

The proposed rules, if adopted, would amend §76.44, concerning Examinations, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.45, concerning Agent for Service of Process, by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.46, concerning Registration by capitalizing the term "commissioner" to improve readability. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.47, concerning Mutual Holding Companies. Subsection (a) is amended to restate the citations to the Finance Code. Subsection (a) is further amended to eliminate the existing requirement directing the applicant to provide multiple copies of documents as being unnecessary. Existing §76.47 is further amended by: replacing the term "articles of incorporation" with updated terminology (certificate of formation) from the Business and Commerce code; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules include a repeal in Subchapter D, Foreign Savings Banks.

The proposed rules, if adopted, would repeal §76.61, concerning Foreign Savings Banks as being unnecessary and outmoded in the

modern era of interstate banking. (Other Modernization and Update Changes.)

The proposed rules include repeals and amendments to existing rules in Subchapter E, Hearings.

The proposed rules, if adopted, would repeal §76.71, concerning Hearings Officer. Existing §76.71 addresses a defunct provision in the Finance Code for the commission to hire a hearings officer. The requirements of existing §76.71 are therefore of no force or effect and can be eliminated. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would repeal §76.72, concerning Rules of Procedure for Contested Hearings. Existing §76.72 adopts by reference the commission's rules for contested cases contained in 7 TAC Chapter 9. The applicability of the commission's rules in 7 TAC 9 is not affected by the rule. Moreover, in a related rulemaking action the commission proposes to consolidate rule requirements governing contested case hearings pertaining to the department concerning savings banks and Finance Code Subtitle C within the department's rules contained in 7 TAC Chapter 75, entitled Applications. Taking the foregoing into consideration, existing §76.72 may be repealed. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would repeal §76.73, concerning Publication of Hearing Notice. Existing §76.73 addresses authority for the commissioner to modify the public notice an applicant is required to effect in connection with certain applications filed with the department's commissioner. As

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 6 OF 30**

addressed in existing §76.73, the requirements governing such notices is dealt with in the department's rules contained in 7 TAC Chapter 75, and in a related rulemaking action the commission proposes to consolidate rule requirements governing the various procedures for filing applications with the department's commissioner in Chapter 75. Taking the foregoing into consideration, existing §76.73 may be repealed. (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.91, concerning Fee for Charter Application, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.92, concerning Fee for Branch Office, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.93, Fee for Mobile Facility, by: eliminating language stating that the filing

fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.94, Fee for Change of Name or of Location, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.95, Fee for Special Examination or Audit, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the terms "department" and "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.96, Fee for Charter and Bylaw Amendments. The title for §76.96 is renamed to Fee for Certificate of Formation and Bylaw Amendments to utilize updated

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 7 OF 30**

terminology used in the Business and Commerce Code. Subsection (a) (implied) is further amended to also utilize such terminology, and to clarify that the application is a request for approval of such amendments. Existing §76.96 is further amended by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.97, Fee for Permission To Issue Capital Obligations, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.99, Fee for Reorganization, Merger, and Consolidation. Existing §76.99 is amended to restate and fully cite to the relevant sections of the Finance Code. Existing §76.99 is further amended by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110;

capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.100, Fees for Expedited Applications, by reorganizing and breaking the list of fees described by the rule out into subparagraphs under existing subsection (a) (implied). Existing §76.100 is further amended by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.101, concerning Fee for Change of Control. Existing subsection (a) (implied) is amended to reduce the applicable fee amount for an application for change of control of a savings bank from \$10,000 to \$5,000, and is further amended to correct citations to the relevant sections of 7 TAC Chapter 75 pertaining to such application. Existing §76.101 is further amended by: capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.102, concerning Fee for Subsidiaries, by eliminating language stating that the filing fee must include the cost of filing and processing the application

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 8 OF 30**

described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.103, concerning Fee for Charter Application under 7 TAC §75.36, by eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.105, concerning Fee for Conversion into a Savings Bank, by: reorganizing and breaking the list of fees described by the rule out into subparagraphs under existing subsection (a) (implied) to improve readability. Existing §76.105 is further amended by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.106, concerning Fee for Mutual to Stock Conversion, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.107, concerning Fee for Holding Company Registration, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.108, concerning Fees for Public Information Requests, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 9 OF 30**

The proposed rules, if adopted, would amend §76.109, concerning Fee for Protest Filing, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "department" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules, if adopted, would amend §76.110, concerning Fees Nonrefundable, by: eliminating language stating that the filing fee must include the cost of filing and processing the application described by the rule as being unnecessary and duplicative of the requirements of existing 7 TAC §76.110; capitalizing the term "commissioner" to improve readability; and using the simpler and more commonly used terms "must" or "will" instead of "shall." (Other Modernization and Update Changes.)

The proposed rules include a repeal in Subchapter G, Statements of Policy.

The proposed rules, if adopted, would repeal §76.121, concerning Application of the Statutory Parity Provision. Existing §76.121 addresses what powers a savings bank enjoys relative to financial institutions organized under federal law or the laws of another state pursuant to Finance Code §93.008. Existing §76.121 describes such statutory provisions without offering additional clarity or guidance and is therefore unnecessary and may be repealed. (Other Modernization and Update Changes.)

The proposed rules include amendments to existing rules Subchapter H, Complaint Procedures.

The proposed rules, if adopted, would amend §76.122, concerning Savings Bank Complaint Notices. Existing §76.122 requires savings banks to make a disclosure to consumers concerning the department's regulatory oversight and of a consumer's ability to file complaints with the department. Subsection (b), paragraph (4), subparagraph (C), which requires a savings bank to post the notice on its website, is amended to clarify that the requirement only applies to a website that is accessible by the public and used to conduct business, and further clarifies the manner in which the notice can be posted in order to comply with the rule. Subsection (b), paragraph (1) is amended to restate the department's contact information to use updated terminology and to refer to the department's base-level domain of its website in order to limit the potential need to amend the rule in the event the department later sees fit to alter its website and change the web address for the webpage maintained for purposes of allowing consumers to file complaints. (Notice to Consumers Changes.)

**Fiscal Impact on State and Local Government**

Antonia Antov, director of operations for the department (director), has determined that for the first five-year period the proposed rules are in effect, there are no foreseeable increases or reductions in costs to the state or local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five-year period the proposed rules are

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 10 OF 30**

in effect, there will be no foreseeable losses or increases in revenue for local governments as a result of enforcing or administering the proposed rules. The director has further determined that for the first five years the proposed rules are in effect there will be no foreseeable losses or increases in revenue to the state overall and that would impact the general revenue fund. Implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the department because the department is a self-directed, semi-independent agency that does not receive legislative appropriations. The foregoing notwithstanding, the director has further determined that for the first five-year period the proposed rules are in effect, there will be a probable decrease in revenue to the department in connection with the proposed rules related to Change of Control Fee Changes because, if the proposed rules are adopted, the department will collect fewer fees in connection with applications for change of control of a savings bank. The department, on average over the previous ten years, has received one application for change of control of a savings bank per year. Assuming the department continues to receive and process an average of one application for change of a control of a savings bank per year, the department estimates that it will realize a reduction in revenue of approximately \$5,000 in each of the first five years the proposed rules are in effect, and \$25,000 in the first five-year period the proposed rules are in effect. The anticipated reduction in fees collected by the department in connection with such applications will not hinder the department's operations or require increases in other fees imposed by the department, or

commensurate reductions in staff or other resources of the department.

#### Public Benefits

Stephany Trotti, deputy commissioner and director of thrift for the department (deputy commissioner) has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to have rules that are easier to read and understand.

#### Probable Economic Costs to Persons Required to Comply with the Proposed Rules

The deputy commissioner has determined that for the first five years the proposed rules are in effect, there are no substantial economic costs anticipated to persons required to comply with the proposed rules.

#### One-for-One Rule Analysis

Pursuant to Finance Code §16.002, the department is a self-directed and semi-independent agency and thus not subject to the requirements of Government Code §2001.0045.

#### Government Growth Impact Statement

For each of the first five years the proposed rules are in effect, the department has determined the following: (1) the proposed rules do not create or eliminate a government program; (2) implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions; (3) implementation of the proposed rules

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 11 OF 30**

does not require an increase or decrease in future legislative appropriations to the agency; (4) the proposed rules do require an increase or decrease in fees paid to the agency. The proposed rules related to Change of Control Fee Changes lower the fee for filing an application for change of control of a savings bank from \$10,000 to \$5,000, thereby decreasing fees paid to the agency for such applications; (5) the proposed rules do create a new regulation (rule requirement). The proposed rules related to Books and Records Change create a new requirement directing a savings bank to comply with applicable federal law and the requirements of the appropriate federal banking agency with respect to making and maintaining its books and records. The requirement is a new rule requirement, but merely imposes by rule an existing requirement imposed by federal law and the appropriate federal banking agency; (6) the proposed rules do expand, limit, or repeal an existing regulation (rule requirement). The proposed rules related to Changes Concerning Hearings on Applications repeal existing requirements within such rules governing contested cases, however, such requirements merely restate or reassert requirements existing elsewhere by rule or statute, and as a result, such requirements will continue to exist should the proposed rules be adopted. The proposed rules repeal the requirements of existing 7 TAC §76.61, concerning Foreign Savings Banks. The proposed rules repeal the requirements of existing §76.121, concerning Application of the Statutory Parity Provision, however, such requirements merely restate or reassert the statutory provisions of Finance Code §93.008, without providing any additional clarity or guidance; (7) the proposed rules do not increase or decrease the number of

individuals subject to the rules' applicability; and (8) the proposed rules do not positively or adversely affect this state's economy.

#### Local Employment Impact Statement

No local economies are substantially affected by the proposed rules. As a result, preparation of a local employment impact statement pursuant to Government Code §2001.022 is not required.

#### Fiscal Impact on Small and Micro-Businesses, and Rural Communities

The proposed rules will not have an adverse effect on small or micro-businesses, or rural communities because there are no substantial economic costs anticipated to persons required to comply with the proposed rules. As a result, preparation of an economic impact statement and a regulatory flexibility analysis as provided by Government Code §2006.002 are not required.

#### Takings Impact Assessment

There are no private real property interests affected by the proposed rules. As a result, preparation of a takings impact assessment as provided by Government Code §2007.043 is not required.

#### Public Comments

Written comments regarding the proposed rules may be submitted by mail to Iain A. Berry, Associate General Counsel, at 2601 North Lamar Blvd., Suite 201, Austin, Texas 78705-4294, or by email to [rules.comments@sml.texas.gov](mailto:rules.comments@sml.texas.gov). All

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 12 OF 30**

comments must be received within 30 days of publication of this proposal.

**SUBCHAPTER A. BOOKS, RECORDS,  
ACCOUNTING PRACTICES,  
FINANCIAL STATEMENTS AND  
RESERVES**

**7 TAC §§76.1, 76.2, 76.4 - 76.7, 76.12**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.1 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (5) of that subsection; §92.201; and §96.056. 7 TAC §76.2 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (3) and (4) of that subsection; and §92.201. 7 TAC §76.4 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (7) and (11) of that subsection; §96.051; and §96.053. 7 TAC §76.5 is proposed under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection. 7 TAC §76.6 is proposed under the authority of, and to implement, Finance Code §96.002(a), for

those specific subject matters outlined in paragraph (9) of that subsection. 7 TAC §76.7 is proposed under the authority of, and to implement, Finance Code §96.002(a), for those specific subject matters set forth in paragraph (11) of that subsection. 7 TAC §76.12 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection; §92.051(b)(2); §92.058(c)(2); §92.062; §92.157; and §92.205.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

*§76.1. [~~Location of~~] Books and Records.*

A savings bank must create and maintain books and records of its operations, including complete minutes of the meetings of its members and the board of directors, and actions taken by written consent in lieu of such meetings. Records must be maintained in compliance with the applicable requirements of the appropriate federal banking agency and established industry best practices promoted by the Federal Financial Institution Examination Counsel. Records must be accurate, complete, current, legible, readily accessible, and readily sortable. A state savings bank may store original records or copies of records at a location other than the home office; however, a savings bank must ensure that a complete set of its books and records is readily accessible at the home office at all times so as to facilitate the examination of the savings bank by the Commissioner at the home office. A savings bank may maintain copies of its books and records in an electronic, digital, or magnetic

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 13 OF 30**

format. A true and correct copy of an original record stored in an electronic, digital, or magnetic format is deemed to be an original record.

~~[Unless otherwise authorized by the commissioner, a savings bank shall keep at its home office correct and complete books of account and minutes of the meeting of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Records of business transacted at any branch or agency office may be kept at such branch or agency office; provided, that control records of all business transacted at any branch or agency office shall be kept at the home office. A savings bank may keep duplicate electronic records offsite as a part of its business continuity planning if done in a manner meets applicable regulatory requirements, including those provided by the Federal Deposit Insurance Corporation and the Federal Financial Institution Examination Council.]~~

*§76.2.Accounting Practices.*

Every savings bank must ~~[shall]~~ use such forms and observe such accounting principles and practices as the Commissioner ~~[commissioner]~~ may require from time to time.

*§76.4.Financial Statements; Annual Reports; Audits.*

For safety and soundness purposes, within 90 days of its fiscal year end, each savings bank ~~[, regardless of asset size,]~~ is required to submit to the Department the results and findings of an independent audit of its financial statements and all correspondence

reasonably related to the audit. The audit is to be performed in accordance with generally accepted auditing standards and the provisions of the FDIC set forth in 12 C.F.R. §363.2 and §363.3 ~~[12-CFR]~~, with the exception of any matters specifically addressed by this section, the Texas Savings Bank Act, or its related rules.

*§76.5.Misdescription of Transactions.*

No savings bank may ~~[by any system of account or any device of bookkeeping shall]~~, either directly or indirectly, knowingly make any entry on ~~[upon]~~ its books that is not accurate or otherwise fails to appropriately describe the transaction, or withholds information material to the transaction ~~[truly descriptive of the transaction which causes the entry].~~

*§76.6.Charging Off or Setting Up Reserves Against ~~[against]~~ Bad Debts.*

The Commissioner ~~[commissioner]~~, after a determination of value, may order that assets in the aggregate, to the extent that such assets have depreciated in value, or to the extent the value of such assets, including loans, are overstated in value for any reason, be charged off, or that a special reserve or reserves equal to such depreciation or overstated value be established in accordance with Generally Accepted Accounting Principles (GAAP).

*§76.7.Examinations.*

(a) The Commissioner will ~~[commissioner shall]~~ examine every state savings bank once in each year, or more frequently if the Commissioner ~~[commissioner]~~ determines that the condition of the savings bank

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 14 OF 30**

justifies more frequent attention to enforce the Texas Savings Bank Act. The Commissioner [~~commissioner~~] may defer an examination for not more than six months if the Commissioner [~~commissioner~~] considers the deferment appropriate to the efficient enforcement of the Texas Savings Bank Act and consistent with the safe and sound operation of the institution.

(b) An examination under this section may be performed jointly or in conjunction with an examination by the saving bank's appropriate federal banking agency. The Commissioner [~~Federal Deposit Insurance Corporation or any other federal depository institutions regulatory agency having jurisdiction over a savings bank, and/or the commissioner~~] may accept an examination made by such federal banking agency in lieu of an examination pursuant to this section.

*§76.12.Bylaws*

(a) The bylaws of a [state] savings bank must [~~shall~~] contain sufficient provisions to govern the institution in accordance with the Texas Savings Bank Act, the Texas Business Organizations Code, and other applicable laws, rules and regulations, or the certificate of formation [~~articles of incorporation~~]. Bylaws may contain a provision which permits such bylaws to be adopted, amended, or repealed by either a majority of the shareholders or a majority of the board of directors of the savings bank. Bylaw amendments may not take effect before being filed with and approved by the Commissioner [~~commissioner~~].

(b) A [state] savings bank is specifically authorized to adopt in its bylaws a provision which limits the liability of directors as

contained in the Texas Business Organizations Code to the same extent permitted under state law for banks and savings and loan associations. Such bylaw provision is optional and within the discretion of the [state] savings bank.

(c) Other optional bylaws may be adopted by a state savings bank with the approval of the Commissioner [~~commissioner~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005669

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: February 7, 2021

For further information, please call: (512) 475-1535

**7 TAC §76.3**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 15 OF 30**

made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

*§76.3.Reproduction and Destruction of Records.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005668

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: February 7, 2021

For further information, please call: (512) 475-1535

**SUBCHAPTER B. CAPITAL AND CAPITAL OBLIGATIONS**

**7 TAC §§76.21 - 76.26**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.21 and §76.22 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters set forth in paragraphs (1) and (11) of that subsection; §92.052(b); §92.053(b); §92.054; §92.102; and §92.203. 7 TAC §76.23 is proposed under the authority of, and to implement, Finance Code: 96.002(a), for those specific subject matters set forth in paragraphs (1) and (11) of that subsection; §92.203; and Chapter 96, Subchapter C. 7 TAC §§76.24 - 76.26 is proposed under the authority of, and to implement, Finance Code: 96.002(a), for those subject matters set forth in paragraph (11); and §93.004(b).

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

*§76.21.Capital Requirements.*

(a) Unless the context clearly indicates otherwise, when used in this chapter, "Capital" for a savings bank includes (as applicable) the amount of its issued and outstanding common stock, preferred stock (to the extent such preferred stock may be considered a part of the savings bank's capital under Generally Accepted

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 16 OF 30**

Accounting Principles) plus any retained earnings and additional paid-in capital as well as such other items as the Commissioner [~~commissioner~~] may approve in writing for inclusion as capital.

(b) Minimum capital requirement. Each savings bank must [~~shall~~] maintain capital at levels which are required for institutions whose accounts are insured by the Federal Deposit Insurance Corporation.

*§76.22. Increase or Decrease of Minimum Capital Requirements.*

(a) The Commissioner [~~commissioner~~] may increase or decrease the minimum capital requirement set forth in this chapter[~~7~~] upon written application by a savings bank or by supervisory directive if the Commissioner determines [~~commissioner shall have affirmatively found from the data available and/or the application and supplementary information submitted therewith~~] that:

(1) the savings bank's failure to meet the minimum capital requirement, if applicable, is not due to unsafe and unsound practices in the conduct of the affairs of the savings bank, a violation of any provision of the certificate of formation [~~articles of incorporation~~] or bylaws of the savings bank, or a violation of any law, rule, or supervisory action [~~order~~] applicable to the savings bank or any condition that the Commissioner [~~commissioner~~] has imposed on the savings bank by written order or agreement. For purposes of this chapter, unsafe and unsound practices means [~~shall mean~~], with respect to the operation of a savings bank, any action or inaction that is likely to cause insolvency or substantial dissipation of assets or earnings or to

otherwise reduce the ability of the savings bank to timely satisfy withdrawal requests of savings account holders, including, without being limited to, excessive operating expenses, excessive growth, high-risk or undiversified investment positions [~~highly speculative ventures, excessive concentrations of lending in any one area~~], and non-existent or poorly followed lending and underwriting policies, procedures, and guidelines;

(2) the savings bank is well managed. In determining whether the [~~applying~~] savings bank is well managed, the Commissioner [~~commissioner~~] may consider:

(A) management's record of operating the savings bank;

(B) management's record of compliance with laws, regulations, directives, orders, and agreements;

(C) management's timely recognition and correction of regulatory violations, unsafe and unsound practices, or other weaknesses identified through the examination or supervisory process;

(D) management's ability to operate the savings bank in changing economic conditions; and

(E) such other factors as the Commissioner [~~commissioner~~] may deem necessary to properly evaluate the quality of the savings bank's management; and

(3) the savings bank has submitted a plan acceptable to the Commissioner [~~commissioner~~] for restoring capital within a reasonable period of time. Such plan must

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 17 OF 30**

[~~shall~~] describe the means and schedule by which capital will be increased. The plan must [~~shall~~] also specifically address restrictions on dividend levels; compensation of directors, executive officers, or individuals having a controlling interest; asset and liability growth; and payment for services or products furnished by affiliated persons as defined in Chapter 77 of this title. The plan must [~~shall~~] provide for improvement in the savings bank's capital on a continuous or periodic basis from earnings, capital infusions, liability and asset shrinkage, or any combination thereof. A plan that projects no significant improvement in capital until near the end of the waiver or variance period or that does not appear to the Commissioner [~~commissioner~~] to be reasonably feasible will not be acceptable. The Commissioner [~~commissioner~~] may require modification of the savings bank's plan in order for the institution to receive or to continue to receive such waiver or variance.

(b) Any savings bank which receives an increase or decrease of its minimum capital requirement from the Commissioner [~~commissioner~~] must file quarterly progress reports regarding compliance with its capital plan. The Commissioner [~~commissioner~~] may require more frequent reports. Any contemplated action that would represent a material variance from the plan that must be submitted to the Commissioner [~~commissioner~~] for approval.

(c) With respect to the granting of any waiver or variance of the minimum capital requirement, the Commissioner [~~commissioner~~] may impose any condition, limitation, or restriction on such increase or decrease as the Commissioner

[~~commissioner~~] may deem necessary to ensure compliance with law and regulations and to prevent unsafe and unsound practices.

(d) The Commissioner [~~commissioner~~] may withdraw or modify any increase or decrease granted pursuant to this section if:

(1) the institution fails to comply with its capital plan;

(2) the increase or decrease was granted contingent upon the occurrence of events that do not subsequently occur;

(3) the savings bank undergoes a change of control or a material change in management that was not approved by the Commissioner [~~commissioner~~];

(4) the savings bank engages in practices inconsistent with achieving its minimum capital requirement;

(5) information is discovered that was not made available to the Commissioner [~~commissioner~~] at the time that the increase or decrease was granted and that indicates that the increase or decrease should not have been granted;

(6) the savings bank engages in unsafe and unsound practices, violates any provision of its certificate of formation [~~articles of incorporation~~] or bylaws, or violates any law, rule, or supervisory order applicable to the savings bank or any condition that the Commissioner [~~commissioner~~] has imposed upon the savings bank by written order or agreement;

(7) the savings bank fails to submit the reports required by this section.

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 18 OF 30**

*§76.23. Business Plans.*

(a) All savings banks whose operations are considered by the Commissioner [~~commissioner~~] unsafe or unsound pursuant to the Texas Savings Bank Act or which have total capital less than the amount required under §76.21 of this title (relating to Capital Requirements) or §76.22 of this title (relating to Increase or Decrease of Minimum Capital Requirements) must [~~shall~~] develop a business plan and have such business plan available for review by the examiners. The period covered by the business plan must be at least one year [~~shall not be less than one year~~], but may be for so long as the Commissioner [~~any greater number of periods that the commissioner~~] may require.

(b) The savings bank's business plan will [~~shall~~] be reviewed to determine its continued viability in accordance with current economic conditions and approved or revised, as determined by its board of directors, at least annually.

*§76.24. Capital Notes and Debentures.*

No savings bank may issue and sell its capital notes or debentures without the prior written approval of the Commissioner [~~commissioner~~] and subject to any conditions the Commissioner [~~commissioner~~] may impose with regard to safety and soundness and maintenance of adequate financial condition particularly in areas of preservation of capital, quality of earnings, and adequacy of reserves.

*§76.25. Provisions for Issuance of Secured or Unsecured Capital Obligations.*

A savings bank may, by resolution of its board of directors and with prior approval of the Commissioner [~~commissioner~~], issue capital notes, debentures, bonds, or other secured or unsecured capital obligations, which may be convertible in whole or in part to shares of permanent reserve fund stock, or may be issued with warrants attached, to purchase at a future date, shares of permanent reserve fund stock of the issuing savings bank, provided:

- (1) the savings bank provides adequate proof to the satisfaction of the Commissioner [~~commissioner~~] that the holders of such obligations will receive properly amortized payments of both principal and interest at regularly stated intervals, or that proper provision is made for sinking fund allocations to retire all principal of and interest on such obligations; and
- (2) sufficient evidence is furnished to the Commissioner [~~commissioner~~] as to the need and utilization of such funds by the savings bank in a profitable manner.

*§76.26. Joint Issuance of Capital Obligations.*

On the same terms and conditions as stated in §76.25 of this title (relating to Provisions for Issuance of Secured or Unsecured Capital Obligations), a savings bank may, by resolution of its board of directors and with prior approval of the Commissioner [~~commissioner~~], join other savings banks in the joint issuance of capital notes, debentures, bonds, or other secured or unsecured capital obligations if it meets the terms and conditions of §76.25 of this title.

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 19 OF 30**

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005670

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: February 7, 2021

For further information, please call: (512) 475-1535

**SUBCHAPTER C. HOLDING COMPANIES**

**7 TAC §§76.41 - 76.47**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§76.41 - 76.47 are proposed under the authority of, and to implement,

Finance Code: §96.002(a), for those specific subject matters outlined in paragraphs (11) and (15) of that subsection; and §97.002. 7 TAC §76.41 is further proposed under the authority of, and to implement, Finance Code §97.002. 7 TAC §76.42 is further proposed under the authority of, and to implement, Finance Code §97.004. 7 TAC §76.43 is further proposed under the authority of, and to implement, Finance Code §97.005. 7 TAC §76.44 is further proposed under the authority, and to implement, Finance Code §97.006. 7 TAC §76.45 is further proposed under the authority of, and to implement, Finance Code §97.007. 7 TAC §76.46 is further proposed under the authority of, and to implement, Finance Code §97.003. 7 TAC §76.47 is further proposed under the authority of, and to implement, Finance Code, Chapter 98, Subchapter B.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

*§76.41.Registration.*

A holding company must [~~shall~~] register with the Commissioner [~~commissioner~~] on forms prescribed by the Commissioner [~~commissioner~~] within 90 days after the date of becoming a holding company. The forms must include information on the financial condition, ownership, operations, management, and intercompany relations of the holding company and its subsidiaries, and on related matters the Commissioner [~~commissioner~~] finds necessary and appropriate. On application, the Commissioner [~~commissioner~~] may extend the time within which a holding company is

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 20 OF 30**

required to [~~shall~~] register and file the required information.

*§76.42.Reports.*

Each holding company and each subsidiary of a holding company, other than a savings bank, must [~~shall~~] file with the Commissioner [~~commissioner~~] reports required by the Commissioner [~~commissioner~~]. The reports must be made under oath and must be in the form and for the periods prescribed by the Commissioner [~~commissioner~~]. Each report must contain information concerning the operations of the holding company and its subsidiaries as the Commissioner [~~commissioner~~] may require. A holding company must [~~shall~~] file with the Commissioner [~~commissioner~~] copies of any filings, documents, statements, or reports required to be filed with the appropriate federal banking agency, unless such filing, document, statement, or report is publicly available [~~regulatory authorities~~].

*§76.43.Books and Records.*

Each holding company must [~~shall~~] maintain books and records as may be prescribed by the Commissioner [~~commissioner~~]. The records must be created and maintained in accordance with the requirements of §76.1 of this title (relating to Books and Records), pertaining to savings banks.

*§76.44.Examinations.*

Each holding company and each subsidiary of a holding company is subject to examinations as the Commissioner [~~commissioner~~] may prescribe. The holding company must [~~shall~~] pay the cost of an examination. The confidentiality provisions

of Tex. Fin. Code §96.356 [~~the Texas Savings Bank Act, §96.356, shall~~] apply to this section. The Commissioner [~~commissioner~~] may furnish examination and other reports to any appropriate governmental department, agency, or instrumentality of this state, another state, or the United States. For purposes of this section, the Commissioner [~~commissioner~~], to the extent deemed feasible, may use reports filed with or examinations made by appropriate federal agencies or regulatory authorities of other states.

*§76.45.Agent for Service of Process.*

The Commissioner [~~commissioner~~] may require a holding company or a person, other than a corporation, connected with a holding company to execute and file a prescribed form of irrevocable appointment of agent for service of process.

*§76.46.Release from Registration.*

The Commissioner [~~commissioner~~] at any time, on the Commissioner's [~~commissioner's~~] own motion or on application, may release a registered holding company from a registration made by the company if the Commissioner [~~commissioner~~] determines that the company no longer controls a savings bank.

*§76.47.Mutual Holding Companies.*

(a) A savings bank may reorganize as a mutual holding company by complying with the provisions of Tex. Fin. Code §§97.051 - 97.053 [~~Finance Code Chapter 97, Subchapter B (Finance Code §97.051)~~]. The savings bank must [~~shall~~] provide to the Commissioner [~~commissioner~~] an

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 21 OF 30**

application to reorganize in a form specified by the Commissioner [~~commissioner~~]. The applicant must [~~shall~~] provide one signed original and at least one copy of the application together with complete exhibits. The application must [~~shall~~] include:

- (1) the proposed certificate of formation [~~two copies of the articles of incorporation~~] for the proposed subsidiary savings bank which must [~~shall~~] comply with the requirements of Tex. Fin. Code [~~Finance Code~~] §92.051 and §92.052 or §92.053, as applicable;
  - (2) the proposed [~~two copies of the~~] bylaws for the proposed subsidiary;
  - (3) [~~two copies of~~] the proposed restated certificate of formation [~~articles of incorporation~~] and bylaws of the mutual holding company;
  - (4) the complete plan of reorganization;
  - (5) a certification by the president or secretary as to how that the reorganization, including the amendments to the certificate of formation [~~articles of incorporation~~] and bylaws of the mutual holding company have been approved by a majority of the members or shareholders of the reorganizing savings bank in accordance with Finance Code Chapter 97, Subchapter B.
  - (6) A fee [~~which shall be~~] in the amount of the fee required for the conversion of a mutual savings bank into a stock savings bank under §76.106 of this title (relating to Fee for Mutual to Stock Conversion).
- (b) On receipt of the application, the Commissioner [~~commissioner~~] may conduct

an examination of the applicant savings bank.

(c) The Commissioner may [~~commissioner shall~~] approve the reorganization without a hearing if the Commissioner [~~commissioner~~] determines:

- (1) that the resulting savings bank will be in sound condition and meets all requirements of Finance Code Chapter 92, Subchapter B, and relevant rules of the Commissioner [~~commissioner~~] and the Finance Commission; and
  - (2) the applicant has received all approvals required under federal law for the creation of a bank or thrift holding company.
- (d) If the Commissioner [~~commissioner~~] denies an application to reorganize, the applicant may appeal in the same manner as provided in Tex. Fin. Code [~~Finance Code~~] §92.304.
- (e) A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100% of the stock of its savings bank subsidiary in accordance with the provisions of this subsection.
- (1) The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Commissioner [~~Department~~].
  - (2) For the purposes of Tex. Fin. Code [~~Finance Code~~] §97.053(a)(3) and (4), the subsidiary holding company will [~~shall~~] be treated as a savings bank issuing stock and must comply with [~~shall be subject to~~] the requirements of those sections. The mutual

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 22 OF 30**

holding company parent must at all times own more than fifty percent (50%) of the outstanding stock of the subsidiary holding company.

(3) The certificate of formation [~~charter~~] and by-laws of a subsidiary holding company must be approved by the Commissioner [~~Department~~] and may only be amended with the prior approval of the Commissioner [~~Department~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005671

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: February 7, 2021

For further information, please call: (512) 475-1535

**SUBCHAPTER D. FOREIGN SAVINGS BANKS**

**7 TAC §76.61**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code Subtitle C, the Texas State Savings Bank Act.

*§76.61.Foreign Savings Banks.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005672

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: February 7, 2021

For further information, please call: (512) 475-1535

**SUBCHAPTER E. HEARINGS**

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 23 OF 30**

**7 TAC §§76.71 - 76.73**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

*§76.71.Hearings Officer.*

*§76.72.Rules of Procedure for Contested Hearings.*

*§76.73.Publication of Hearing Notice.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005673

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: February 7, 2021

For further information, please call: (512) 475-1535

**SUBCHAPTER F. FEES AND CHARGES**

**7 TAC §§76.91 - 76.97, 76.99 - 76.103, 76.105 - 76.110**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §§76.91 - 76.97, 76.99 - 76.103, 76.105 - 76.110 are proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (2) of that subsection; §91.007; and 16.003(c). 7 TAC §76.91 is further proposed under the authority of, and to implement, Finance Code §92.051(a)(2). 7 TAC §76.92 is further proposed under the authority of, and to implement, Finance Code §92.063. 7 TAC §76.97 is further proposed under the authority of, and to implement, Finance Code §93.004(b). 7 TAC §76.107 is further

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 24 OF 30**

proposed under the authority of, and to implement, Finance Code §97.001.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

*§76.91.Fee for Charter Application.*

Applicants for new charters for savings banks must ~~[shall]~~ pay a fee of \$10,000. ~~[This fee shall be paid at the time of filing and shall include the cost of filing and processing of said application.]~~ In addition, the applicant must ~~[shall]~~ pay the cost of a formal record and any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation, and travel expenses.

*§76.92.Fee for Branch Office.*

Applicants for branch offices under §75.33 of this title (relating to Branch Office Applications) must ~~[shall]~~ pay a fee of \$1,500. ~~[This fee shall be paid at the time of filing and shall include the cost of filing, and processing of said application.]~~ In addition, the applicants must ~~[shall]~~ pay ~~[the cost of a formal record and]~~ any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation and travel expenses.

*§76.93.Fee for Mobile Facility.*

Applicants for a mobile facility under §75.35 of this title (relating to Mobile Facilities) must ~~[shall]~~ pay a fee of \$500 plus \$100 for each location. ~~[This fee shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application.]~~ In addition, the applicants

must ~~[shall]~~ pay the cost of a formal record and any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation, and travel expenses.

*§76.94.Fee for Change of Name or of Location.*

Applicants for change of name or change of location of any branch office, approved or existing, ~~[shall]~~ pay a fee of \$500. ~~[This fee shall be paid at the time of filing and shall include the cost for filing, processing, and hearing of said application.]~~ In addition, the applicants must ~~[shall]~~ pay ~~[the cost of a formal record]~~ and any cost incurred by the Department ~~[department]~~ in connection with the hearing, investigation and travel expenses.

*§76.95.Fee for Special Examination or Audit.*

Each savings bank subject to a special examination may be required to ~~[shall]~~ pay to the Department ~~[department]~~ an examination fee based upon a daily rate of \$325 for each examiner engaged in the examination of the affairs of such institution. For the purposes of this section, a special examination includes ~~[shall include]~~ only those examinations which the Commissioner ~~[commissioner]~~ conducts or causes to have conducted after the institution has completed one annual examination or such other additional examinations as the Commissioner ~~[commissioner]~~ deems to be necessary. This special examination fee will ~~[shall]~~ not be charged for an institution's annual regular examination.

*§76.96.Fee for Certificate of Formation [Charter] and Bylaw Amendments.*

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 25 OF 30**

The Commissioner will [~~commissioner shall~~] collect a filing fee of \$100 for each request for approval of amendments to the certificate of formation or [~~amendment to a charter or to~~] the bylaws of a savings bank.

*§76.97.Fee for Permission To Issue Capital Obligations.*

The Commissioner will [~~commissioner shall~~] collect a filing fee of \$1,000 for each application by a savings bank for permission to issue capital notes, debentures, bonds, or other capital obligations to cover processing and investigation of such applications.

*§76.99.Fee for Reorganization, Merger, and Consolidation.*

(a) Any savings bank seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act, Subchapter H, and §§75.81 - 75.83, 75.85, 75.87 and 75.88 of this title must [~~shall~~] pay to the Commissioner [~~commissioner~~], at time of filing its plan, a fee of \$2,500 for each financial institution involved in a plan of reorganization, merger and/or consolidation. For each financial institution involved in a plan filed for a purchase and assumption acquisition, a fee of \$2,000 must [~~shall~~] be paid to the Commissioner [~~commissioner~~]. No fee is required for a reorganization, merger, or consolidation pursuant to §75.89 of this title (relating to Reorganization, Merger or Conversion to Another Financial Institution Charter) where the resulting institution is not a state savings bank. No additional fee is required for an interim charter to facilitate a transaction under §§75.81 - 75.83, 75.85, 75.87 and 75.88 of this title.

(b) The fee set forth in subsection (a) of this section covers [~~shall cover~~] the cost of filing and processing with respect to the plan. In addition, such savings bank must [~~shall~~] pay [~~the cost of a formal record, if applicable,~~] any cost incurred by the Department [~~department~~] in connection with the hearing, investigation, and travel expenses.

*§76.100.Fees for Expedited Applications.*

Applicants for expedited applications under §75.26 of this title (relating to Expedited Applications) must [~~shall~~] pay the following fees:

(1) branch office - \$500;

(2) mobile facilities - \$500;

(3) office relocation - \$250;

(4) reorganization, merger or consolidation - \$2,500; and

(5) purchase and assumption transactions - \$2,000 [~~branch office \$500; mobile facilities \$500; office relocation \$250; reorganization, merger or consolidation \$2,500; and purchase and assumption transactions \$2,000. All fees shall be paid at the time of filing and shall include the cost of filing, processing, and hearing of said application~~]

*§76.101.Fee for Change of Control.*

The Commissioner will [~~commissioner shall~~] collect a filing fee of \$5,000 [~~\$10,000~~] for each change of control application filed pursuant to §75.122 [~~§§75.121—75.127~~] of this title (relating to Acquisition of a Savings Bank) [~~Change of Control~~] and

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 26 OF 30**

~~\$2,500 for rebuttal of control of a savings bank or rebuttal of concerted action].~~

*§76.102.Fee for Subsidiaries.*

The Commissioner will [~~commissioner shall~~] collect a fee of \$1,500 for each application by a savings bank for permission to make an initial investment in a subsidiary corporation pursuant to §§77.91 - 77.95 of this title (relating to Authorized Loans and Investments) to cover the processing and investigation of such applications, and an additional fee of \$100 for each office other than the home office of a subsidiary that is applied for. The Commissioner will [~~commissioner shall~~] collect a fee of \$500 for service corporation application to engage in a new activity; \$300 for redesignation of an operating subsidiary; and \$100 for each application by a savings bank to change the name of a subsidiary or the location of a subsidiary office.

*§76.103.Fee for Charter Application under 7 TAC §75.36.*

The Commissioner will [~~commissioner shall~~] collect a filing fee of \$500 for the processing of an application for a charter for a savings bank where the sole purpose of such application is the purchase of the assets, assumption of liabilities, and continuation of the business of any institution deemed by the Commissioner [~~commissioner~~] to be in an unsafe condition, pursuant to §75.36 of this title (relating to [~~Designation as and~~] Exemption for Supervisory Sale).

*§76.105.Fee for Conversion into a Savings Bank.*

The Commissioner will [~~commissioner shall~~] collect a filing fee for each application filed pursuant to §75.90 of this title (relating to Conversion into a Savings Bank) for conversion into a savings bank, as follows, based on the size of its total assets:

(1) \$0 - 125 million - \$2,500;

(2) \$125 - 500 million - \$5,000;

(3) \$500 million - 1 billion - \$10,000; and

(4) Over 1 billion - \$15,000 [~~pursuant to the following schedule: \$0 - 125 million \$2,500; \$125 - 500 million \$5,000; \$500 million - 1 billion \$10,000; and Over 1 billion \$15,000~~]. *§76.106.Fee for Mutual to Stock Conversion.*

The Commissioner will [~~commissioner shall~~] collect a filing fee of \$7,500 for each application filed pursuant to §75.91 of this title (relating to Mutual to Stock Conversion) for conversion into a stock savings bank.

*§76.107.Fee for Holding Company Registration.*

The Commissioner will [~~commissioner shall~~] collect a filing fee of \$2,000 for each application filed pursuant to §76.41 of this title (relating to Holding Companies) for [~~as~~] registration of a holding company.

*§76.108.Fees for Public Information Requests.*

(a) The fees for copies of records of the Department [~~department~~] which are subject to public examination pursuant to Chapter 552 of the Texas Government Code will be

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 27 OF 30**

assessed ~~[shall]~~ in accordance with Tex. Gov't Code ~~[Texas Government Code]~~ §552.262, be those adopted by rules of the attorney general.

(b) All requests will be treated equally. Charges may be waived at the Commissioner's ~~[commissioner's]~~ discretion.

(c) If records are requested to be inspected instead of receiving copies, access will be by appointment only during regular business hours of the Department ~~[department]~~ and will be at the discretion of the Commissioner ~~[commissioner]~~.

(d) Confidential documents will not be made available for examination or copying except under court order or as otherwise permitted or required by a rule adopted under this title or other applicable law.

(e) All public information requests will be referred to the Commissioner's ~~[commissioner's]~~ designee before the Department ~~[department]~~ will release the information.

*§76.109. Fee for Protest Filing.*

~~[(a)]~~ A person or entity filing a protest to an application must ~~[shall]~~ pay a fee of \$2,500 simultaneously with such protest filing. The purpose of this fee is to partially offset the Department's ~~[department's]~~ increased cost of processing an application and reduce costs incurred by the applicant that result solely from the protest.

~~[(b)]~~ Additionally, the Administrative Law Judge for a contested hearing may allocate costs incurred by the department to the parties pursuant §76.72 of this title (relating

to Rules of Procedure for Contested Hearings). In such cases, the fee paid pursuant to subsection (a) of this section shall be applied toward payment of the protestant's allocation of hearing costs; however, no amount will be refunded and any additional amounts will be billed.

~~(c) Notwithstanding the provisions of subsection (a) of this section, a member of the general public allowed to testify under oath or affirmation in a contested case, who is not deemed a party by the Administrative Law Judge under the provisions incorporated by §76.72 of this title is not subject to this fee.]~~

*§76.110. Fees Nonrefundable.*

All filing fees must be paid at the time of filing and are nonrefundable. Except for fees established by statute, the Commissioner ~~[commissioner]~~ may exercise discretion to reduce or waive any filing fee and will ~~[shall]~~ charge fees on a consistent and nondiscriminatory basis.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005674

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 28 OF 30**

Earliest possible date of adoption: February 7, 2021

For further information, please call: (512) 475-1535

**SUBCHAPTER G. STATEMENTS OF POLICY**

**7 TAC §76.121**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

*§76.121.Application of the Statutory Parity Provision.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005675

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage Lending

Earliest possible date of adoption: February 7, 2021

For further information, please call: (512) 475-1535

**SUBCHAPTER H. COMPLAINT PROCEDURES**

**7 TAC §76.122**

Statutory Authority

This proposal is made under the authority of Finance Code §11.302(a) which authorizes the commission to adopt rules applicable to state savings banks. This proposal is also made under the authority of Finance Code §96.002(a), which authorizes the commission to adopt rules necessary to supervise and regulate Texas-chartered savings banks and to protect public investment in Texas-chartered savings banks. 7 TAC §76.122 is proposed under the authority of, and to implement, Finance Code: §96.002(a), for those specific subject matters outlined in paragraph (11) of that subsection; §96.054; and Chapter 96, Subchapter C.

This proposal affects the statutes contained in Finance Code, Subtitle C, the Texas State Savings Bank Act.

*§76.122.Savings Bank Complaint Notices.*

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 29 OF 30**

(a) Definitions.

(1) Privacy notice means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) Required notice means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by [U.S.] Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Phone [~~Telephone No.:~~] (877) 276-5550, Fax [~~No.:~~] (512) 936-2003, or through [~~via electronic submission on~~] the Department's website at [www.sml.texas.gov](http://www.sml.texas.gov) [~~http://www.sml.texas.gov/consumerinformation/tdsml\_consumer\_complaints.html~~].

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its

consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) The required notice must be posted on each website of the savings bank that is accessible by the public and either used to conduct banking activities or from which the savings bank advertises to solicit such business. The required notice is deemed to be conspicuously posted on a website when it is displayed on the initial or home page of the website (typically the base-level domain name) or is otherwise contained in a linked page with the link to such page prominently displayed on such initial or home page. [~~If a state savings bank maintains a website, the required notice must be included in a screen~~

**PROPOSED REPEALS, AND AMENDMENTS**  
**7 TAC CHAPTER 76**  
**PAGE 30 OF 30**

~~which the consumer must view whenever the site is accessed].~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 22, 2020.

TRD-202005676

Iain A. Berry

Associate General Counsel

Department of Savings and Mortgage  
Lending

Earliest possible date of adoption: February  
7, 2021

For further information, please call: (512)  
475-1535