

# JOINT LEGISLATIVE STUDY COMMISSION ON THE MODERNIZATION OF NORTH CAROLINA BANKING LAWS

## OCOB Proposed Substantive Corrections January 20, 2012

The recommendations set forth below for substantive changes in the first three articles of the proposed rewrite are derived from OCOB staff analysis and discussion at the December Commission meeting. Commissioner Smith will explain recommendations for substantive changes in Articles 4A and 5A as part of his review of those Articles.

- § 53-1-4: Changes to the definitions of “Practical Banker” and “Public Member” were discussed at the December meeting with concern expressed that a bank employee might be appointed to serve as a public member. In reviewing the matter, it was observed that principal shareholders should be included as practical bankers, if they are to serve on the Banking Commission. OCOB recommends the following changes.
  - Amend § 53-1-4(55) to read: “(55) Practical Banker. – An individual who at the time of appointment to the Commission, and at all times thereafter, is, or has been during the five years preceding the appointment, a president, chief executive officer, ~~or~~ director, or holder of 5% or more of any class of voting securities of a North Carolina financial institution.”
  - Amend § 53-1-4(57) to read: “(57) Public Member. – A member of the Commission who is not a practical banker and who is not at the time of appointment to the Commission, nor was within the five years preceding the appointment, an employee of a North Carolina financial institution.”
- § 53-2-1: Subsection (e) of this Section and subsection (b) of § 53-2-6 cover much of the same territory. The correction should be to delete the second sentence of (e) and rewrite the first sentence to read: “The Commission is hereby vested with full power and authority to supervise, direct and review

the exercise by the Commissioner of all powers, duties and functions vested in or exercised by the Commissioner under the laws of this State.”

- §53C-2-2: The current draft omits the statement from current law that the Commissioner acts as executive officer of the Commission. The correction is to add the following sentence at the end of § 53-2-2(b) to read: “The Commissioner shall act as the executive officer of the Commission.”
- § 53-2-6(b): This is the second half of the issue raised in § 53-2-1 above. The first sentence should be deleted to be consistent with the change made above. In addition, the following sentence should be added: “The Commission has the authority to conduct public hearings on matters within its purview.”
- § 53-2-7: A question was raised by Ms. Young at the last meeting about the reason for making examination information about mortgage servicers confidential. Commissioner Smith promised to investigate the issue and report back. Based upon the CSBS Model SAFE Act language, which was incorporated into the NC SAFE Act in § 53-244.120, OCOB has signed agreements such as the CSBS/AARMR Nationwide Cooperative Agreement for Mortgage Supervision (Cooperative Agreement). In Article 4 of the Protocol/Cooperative Agreement (available if desired), OCOB is required to keep confidential any confidential supervisory information that is shared by other regulators. To participate in inter-state enforcement activities, which we believe are extremely important, we must be in a position to keep this information confidential.
- § 53-3-4:
  - Mr. Kukla questioned the change in § 53-3-4(a)(6) that would require the principles in the proposed bank to command the confidence of the “market” the bank plans to serve instead of the “community.” OCOB recommends using the word “public” as follows: Amend § 53-3-4(a)(6) by deleting the phrase “market that the bank intends to serve” at the end of that subdivision and substituting the word “public”.

- It would be prudent to provide explicit authority to the Commissioner to add conditions to his order of approval of a charter. The following sentence should be added at the end of § 53-3-4(c): “The Commissioner may, in the order approving the proposed bank’s charter, impose other reasonable conditions or restrictions upon the proposed bank or the new bank, consistent with this Chapter.”
- Current law permits an exception to the rule of non-disclosure of CAMELS ratings for a bank informing its insurance company of its rating. Elimination of this provision was an oversight that should be corrected by adding to § 53-2-7 a new subsection (e) replacing the omitted language from current § 53-99: “(e) Nothing in this section shall prohibit a bank, upon approval of the Commissioner, from disclosing to an insurance carrier, for the purpose of obtaining insurance coverage required by this Chapter, the bank's regulatory rating prepared by OCOB; provided however, that the insurance carrier must agree in writing to maintain the confidentiality of such information and to not disclose it in any manner whatsoever.”