

By: Hinojosa, et al.

S.B. No. 217

A BILL TO BE ENTITLED

AN ACT

relating to the self-directed and semi-independent status of certain agencies and to the requirements applicable to, and the oversight of, those agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 472.001 and 472.002, Government Code, are amended to read as follows:

Sec. 472.001. APPLICABILITY OF CHAPTER. This chapter applies to:

- (1) the Texas State Board of Public Accountancy;
- (2) the Texas Board of Professional Engineers; ~~and~~
- (3) the Texas Board of Architectural Examiners;
- (4) the Texas Real Estate Commission;
- (5) the Texas Appraiser Licensing and Certification Board;
- (6) the Texas Department of Banking;
- (7) the Department of Savings and Mortgage Lending;
- (8) the Office of Consumer Credit Commissioner; and
- (9) the Credit Union Department.

Sec. 472.002. DEFINITIONS ~~[DEFINITION]~~. In this chapter:

- (1) "Agency" ~~["agency"]~~ means an agency listed in Section 472.001.
- (2) "Board" means the Legislative Budget Board.
- (3) "Financial regulatory agency" means an agency

1 described by Sections 472.001(6)-(9).

2 SECTION 2. Subchapter A, Chapter 472, Government Code, is
3 amended by adding Sections 472.003, 472.004, 472.005, and 472.006
4 to read as follows:

5 Sec. 472.003. STATUS OF CERTAIN AGENCIES. This chapter
6 does not affect the Texas Appraiser Licensing and Certification
7 Board's status as an independent subdivision of the Texas Real
8 Estate Commission as provided by Section 1103.051, Occupations
9 Code.

10 Sec. 472.004. ROLE OF BOARD; RECOVERY OF COSTS. (a) The
11 board has responsibility under this chapter for developing and
12 administering the application process, monitoring agencies, and
13 performing other duties provided under this chapter.

14 (b) The board may recover from an agency the costs
15 associated with administering the application process for the
16 agency and the board's monitoring of the agency.

17 Sec. 472.005. APPLICATION FOR SELF-DIRECTED AND
18 SEMI-INDEPENDENT AGENCY STATUS; AUDIT REQUIRED. (a) Before a
19 state agency may be granted self-directed and semi-independent
20 status, the agency must:

21 (1) submit an application to the board; and
22 (2) undergo a financial audit and an effectiveness
23 audit as required under Subsection (e).

24 (b) A state agency may not submit the application required
25 under Subsection (a) until the agency's governing body:

26 (1) provides notice and holds a public hearing on the
27 application; and

1 (2) approves, by majority vote, the submission of the
2 application.

3 (c) The application must be submitted to the board as part
4 of the agency's legislative appropriations request.

5 (d) The application shall be in the form prescribed by the
6 board, which must require the agency applying for self-directed and
7 semi-independent status to:

8 (1) state the reasons for which the agency is seeking
9 self-directed and semi-independent status and address any
10 potential problems that may result from granting that status; and

11 (2) include, as relevant to the agency's application:

12 (A) information demonstrating the agency's
13 history of efficient operation and continuing ability to operate
14 efficiently and in a manner that protects the public interest;

15 (B) documentation of adequate budgetary
16 processes and controls; and

17 (C) an analysis of the fiscal effect on state
18 revenue and other state agencies demonstrating that the agency's
19 status as self-directed and semi-independent would be revenue
20 neutral.

21 (e) A state agency must undergo a financial audit and an
22 effectiveness audit by the state auditor during the four-year
23 period preceding the date the agency submits an application under
24 Subsection (a). The state auditor shall conduct the financial
25 audit and effectiveness audit and make the findings of the
26 completed audits available to the board.

27 (f) The board may require an agency to submit additional

1 information necessary to evaluate the agency's ability to operate
2 effectively as a self-directed and semi-independent agency.

3 Sec. 472.006. REVIEW OF APPLICATION AND RECOMMENDATION.

4 (a) The board's staff shall promptly review an application
5 submitted under Section 472.005. The staff review shall determine
6 whether the agency's application is sufficient and whether the
7 agency's application should be granted or denied.

8 (b) The staff shall submit to the committee of each house of
9 the legislature that has jurisdiction over appropriations the
10 staff's recommendation as to whether the agency's application
11 should be granted or denied. The board may recommend that
12 legislation be introduced to grant self-directed and
13 semi-independent status to the agency.

14 SECTION 3. Section 472.051(c), Government Code, is amended
15 to read as follows:

16 (c) The Sunset Advisory Commission shall examine each
17 agency's status and performance as a self-directed and
18 semi-independent agency and the agency's compliance with this
19 chapter as part of the commission's periodic review of the agency
20 under Chapter 325 (Texas Sunset Act).

21 SECTION 4. Subchapter B, Chapter 472, Government Code, is
22 amended by adding Sections 472.052 and 472.053 to read as follows:

23 Sec. 472.052. OVERSIGHT OF SELF-DIRECTED AND
24 SEMI-INDEPENDENT AGENCIES. (a) The board shall review each
25 agency's annual report submitted under Section 472.104(b) and any
26 additional information received from the agency to determine the
27 agency's compliance with this chapter.

(b) The board may require an agency to submit additional information necessary to determine the agency's compliance with this chapter. An agency shall comply with the board's request for additional information. The board may prescribe the form in which the agency must submit the additional information.

(c) The board's staff may make a recommendation to the committee of each house of the legislature that has jurisdiction over appropriations and to the legislature based on the review conducted under this section. The board may recommend that legislation be introduced to revoke an agency's self-directed and semi-independent status or otherwise address issues raised by the board.

Sec. 472.053. REVOCATION OF SELF-DIRECTED AND SEMI-INDEPENDENT STATUS. (a) The board may develop criteria for determining when a recommendation for the revocation of an agency's self-directed and semi-independent status is appropriate. The board may recommend the revocation of an agency's self-directed and semi-independent status to the legislature as provided by Section 472.052(c).

(b) The Sunset Advisory Commission may recommend revocation of an agency's self-directed and semi-independent status to the legislature as part of the commission's periodic review of the agency under Chapter 325 (Texas Sunset Act).

(c) The legislature may consider legislation to revoke an agency's self-directed and semi-independent status regardless of whether the revocation is recommended by the board's staff or the Sunset Advisory Commission.

1 (d) The board shall assist an agency in transitioning from
2 self-directed and semi-independent status if the agency's status is
3 revoked. The board may consider issues relating to appropriations
4 and financial planning for the agency, and an evaluation of the
5 status and disposition of agency contracts, facilities,
6 properties, and leases when assisting an agency under this
7 subsection.

8 SECTION 5. Section 472.102, Government Code, is amended by
9 adding Subsection (d) to read as follows:

10 (d) Not later than August 31 of each state fiscal year, the
11 Texas Real Estate Commission and the Texas Appraiser Licensing and
12 Certification Board together shall remit \$750,000 to the general
13 revenue fund.

14 SECTION 6. Section 472.103, Government Code, is amended to
15 read as follows:

16 Sec. 472.103. AUDITS. Nothing in this chapter shall affect
17 the duty of the state auditor to audit an agency. The state auditor
18 shall enter into a contract and schedule with each agency to conduct
19 audits, including financial audits [~~reports~~] and effectiveness
20 [~~performance~~] audits. The schedule must require an agency to
21 undergo a financial audit and an effectiveness audit at least once
22 every six years. The state auditor may conduct a risk-based audit
23 of an agency at any time. Costs incurred in performing such audits
24 shall be reimbursed by the agency.

25 SECTION 7. Section 472.104, Government Code, is amended by
26 amending Subsection (b) and adding Subsection (c) to read as
27 follows:

(b) In addition to the reporting requirements of Subsection (a), each agency shall, in the form prescribed by the board, report annually, not later than November 20 [~~1~~], to the governor, to the committee of each house of the legislature that has jurisdiction over appropriations, and to the board [~~Legislative Budget Board~~] the following:

(1) the salary for all agency personnel and the total amount of per diem expenses and travel expenses paid for all agency employees, including trend performance data for the preceding five fiscal years;

(2) the total amount of per diem expenses and travel expenses paid for each member of the governing body of each agency, including trend performance data for the preceding five fiscal years;

(3) each agency's operating plan covering a period of two fiscal years;

(4) each agency's operating budget, including revenues from all sources, an accounting of all expenditures, and a breakdown of expenditures by program and administrative expenses, showing:

(A) projected budget data for a period of two fiscal years; and

(B) trend performance data for the preceding five fiscal years; [~~and~~]

(5) the purchase or sale of any real property during the year;

(6) any lease and maintenance costs associated with

1 real property owned or leased by the agency;

2 (7) for an agency other than a financial regulatory
3 agency, trend performance data for the preceding five fiscal years
4 regarding:

5 (A) the number of full-time equivalent positions
6 at the agency;

7 (B) the number of complaints received from the
8 public and the number of complaints initiated by agency staff;

9 (C) the number of complaints dismissed and the
10 number of complaints resolved by enforcement action;

11 (D) the number of enforcement actions by sanction
12 type;

13 (E) the number of enforcement cases closed
14 through voluntary compliance;

15 (F) the amount of administrative penalties
16 assessed and the rate of collection of assessed administrative
17 penalties;

18 (G) the number of enforcement cases that allege a
19 threat to public health, safety, or welfare or a violation of
20 professional standards of care and the disposition of those cases;

21 (H) the average time to resolve a complaint;

22 (I) the number of license holders or regulated
23 persons broken down by type of license and license status,
24 including inactive status or retired status;

25 (J) the fee charged to issue and renew each type
26 of license, certificate, permit, or other similar authorization
27 issued by the agency;

(K) the average time to issue a license;

(L) litigation costs, broken down by administrative hearings, judicial proceedings, and outside counsel costs; and

(M) reserve fund balances; and

(8) for a financial regulatory agency, trend performance data for the preceding five fiscal years regarding:

(A) the number of full-time equivalent positions at the agency;

(B) the number of complaints received from the public and the number of complaints initiated by agency staff;

(C) the number of complaints dismissed and the number of complaints resolved by enforcement action;

(D) the number of enforcement actions by sanction type;

(E) the number of enforcement cases closed through voluntary compliance;

(F) the amount of administrative penalties assessed and the rate of collection of assessed administrative penalties;

(G) the number of entities regulated by the agency;

(H) the fee charged to issue and renew each type of license, certificate, permit, or other similar authorization issued by the agency;

(I) litigation costs, broken down by administrative hearings, judicial proceedings, and outside counsel

1 costs;

2 (J) reserve fund balances; and

3 (K) the key performance measures approved by the
4 governing board of the agency during the fiscal year for which the
5 report is due.

6 (c) The board may require an agency to submit, at any time,
7 information to the board demonstrating the agency's:

8 (1) ability to perform the activities the agency is
9 required by law to perform;

10 (2) financial soundness, including the agency's
11 ability to raise sufficient revenue, maintain sufficient operating
12 reserves, and meet all of the agency's financial obligations;

13 (3) compliance with the provisions of this chapter;
14 and

15 (4) satisfactory audit history, including a summary of
16 any corrective action taken by the agency in response to an audit.

17 SECTION 8. Section 472.105, Government Code, is amended to
18 read as follows:

19 Sec. 472.105. DISPOSITION OF CERTAIN FEES COLLECTED. (a)
20 Subject to Subsection (b), if [~~If~~] provided in an agency's enabling
21 legislation, the agency shall collect annually from its license
22 holders:

23 (1) a professional fee of \$200 [~~from its license~~
24 ~~holders annually~~], which shall be remitted to the state; and

25 (2) [~~. If provided in an agency's enabling~~
26 ~~legislation, the agency shall collect~~] a scholarship fee of \$10
27 [~~annually from its license holders~~].

1 (b) A fee increase described by Section 1101.153,
2 Occupations Code, shall be deposited as provided by Subsection (b)
3 of that section.

4 SECTION 9. Section 472.108, Government Code, is amended to
5 read as follows:

6 Sec. 472.108. PROPERTY. (a) An agency other than a
7 financial regulatory agency may acquire by lease, own and maintain,
8 use, and operate, any real, personal, or mixed property necessary
9 to the exercise of the powers, rights, privileges, and functions of
10 the agency.

11 (b) A financial regulatory agency may:

12 (1) acquire by purchase, lease, gift, or any other
13 manner provided by law and maintain, use, and operate any real,
14 personal, or mixed property, or any interest in property, necessary
15 or convenient to the exercise of the powers, rights, privileges, or
16 functions of the financial regulatory agency;

17 (2) sell or otherwise dispose of any real, personal,
18 or mixed property, or any interest in property, that the financial
19 regulatory agency determines is not necessary or convenient to the
20 exercise of the agency's powers, rights, privileges, or functions;

21 (3) construct, extend, improve, maintain, and
22 reconstruct, or cause to construct, extend, improve, maintain, and
23 reconstruct, and use and operate all facilities necessary or
24 convenient to the exercise of the powers, rights, privileges, or
25 functions of the financial regulatory agency; and

26 (4) borrow money, as may be authorized from time to
27 time by an affirmative vote of a two-thirds majority of the

1 policy-making body of the financial regulatory agency, for a period
2 not to exceed five years if necessary or convenient to the exercise
3 of the financial regulatory agency's powers, rights, privileges, or
4 functions.

5 SECTION 10. Sections 472.110(b) and (d), Government Code,
6 are amended to read as follows:

7 (b) Except as provided by Section 472.105, all ~~[All]~~ fees
8 and funds collected by an agency, any funds appropriated to the
9 agency, and any other funds belonging to or under the control of an
10 agency shall be deposited in interest-bearing deposit accounts in
11 the Texas Treasury Safekeeping Trust Company. The comptroller
12 shall contract with the agency for the maintenance of the deposit
13 accounts under terms comparable to a contract between a commercial
14 banking institution and its customers. An agency may not hold funds
15 in an account that is not under the control of the comptroller.

16 (d) An agency other than a financial regulatory agency shall
17 remit all administrative penalties collected by the agency to the
18 comptroller for deposit in the general revenue fund.

19 SECTION 11. The following are repealed:

20 (1) Chapter 16, Finance Code; and

21 (2) Chapter 1105, Occupations Code.

22 SECTION 12. Section 472.104, Government Code, as amended by
23 this Act, applies only to a report originally due on or after the
24 effective date of this Act. A report originally due before the
25 effective date of this Act is governed by the law in effect on the
26 date the report was originally due, and the former law is continued
27 in effect for that purpose.

1 SECTION 13. The repeal by this Act of Section 16.006,
2 Finance Code, and Section 1105.006, Occupations Code, does not
3 affect the validity of a contract entered into under those sections
4 before the effective date of this Act.

5 SECTION 14. This Act takes effect September 1, 2015.