

## **BILL ANALYSIS**

C.S.H.B. 3870  
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Pensions, Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, state financial regulatory agencies overseeing financial institutions are at a competitive disadvantage compared to their federal counterparts who lure experienced examiners and essential personnel with higher salaries. Allowing the financial regulatory agencies to become self-directed and semi-independent would eliminate budget review, which absorbs an inordinate amount of time and resources.

C.S.H.B. 3870 establishes that a financial regulatory agency is self-directed and semi-independent.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3870 amends the Finance Code to establish that a financial regulatory agency is self-directed and semi-independent. The bill authorizes the financial regulatory agency to implement any relevant act of the 81st Legislature that is inconsistent with the agency's being self-directed and semi-independent only with authorization by its policy-making body. The bill requires a financial regulatory agency to submit an annual budget to its policy-making body and requires the budget to be adopted and approved only by that policy-making body. The bill makes a financial regulatory agency responsible for all direct and indirect costs of the agency's existence and operation; prohibits the agency from directly or indirectly causing the general revenue fund to incur any cost; and authorizes the agency to set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as necessary to carry out the agency's functions and to fund the budget adopted and approved above. The bill requires all fees and funds collected by a financial regulatory agency and any funds appropriated to the agency to be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company and requires the comptroller of public accounts to contract with the financial regulatory agency for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers. The bill requires each financial regulatory agency periodically to submit to the agency's policy-making body a report of the agency's receipts and expenditures. The bill establishes that a financial regulatory agency's fiscal year begins on September 1 and ends on August 31.

C.S.H.B. 3870 provides that establishment of financial regulatory agencies as self-directed and semi-independent does not affect the duty of the state auditor to audit an agency, requires the state auditor to enter into a contract and schedule with each agency to conduct audits, and requires the agency to reimburse the state auditor for all costs incurred in performing the audits and to provide to the governor a copy of any audit performed. The bill sets forth recording and reporting requirements for financial regulatory agencies relating to the maintenance of financial and statistical information, including the submission of biennial and annual reports to the

governor and the legislature describing all of the agency's financial activities and certain other information for specified periods of time.

C.S.H.B. 3870 authorizes a financial regulatory agency to enter into contracts and prohibits those contracts from creating a debt or liability to Texas, another entity, the agency's policy-making body, or employees of the agency or body. The bill sets forth provisions relating to the authority of a financial regulatory agency to acquire and sell property as necessary or convenient to the agency's exercise of its powers, rights, privileges, or functions.

C.S.H.B. 3870 requires the office of the attorney general to represent a financial regulatory agency in any litigation and authorizes the attorney general to assess and collect from the agency reasonable attorney's fees associated with any litigation. The bill makes a financial regulatory agency that no longer has self-directed and semi-independent status liable for any expenses or debts incurred by the agency while it maintained that status and requires the transfer to the state ownership of all property or other assets acquired by the agency while it was self-directed and semi-independent.

C.S.H.B. 3870 provides that a financial regulatory agency is a governmental body for the purposes of statutory open meetings and public information provisions and is a state agency for the purposes of the Administrative Procedures Act and miscellaneous statutory provisions relating to state licenses and permits. The bill provides that employees of financial regulatory agencies are members of the Employees Retirement System of Texas and that the agencies' transition to independent status has no effect on their membership or any benefits under that system. The bill prohibits a financial regulatory agency from accepting a gift, grant, or donation from a party to an enforcement action or to pursue a specific investigation or enforcement action, and sets forth requirements relating to the reporting of gifts, grants, or donations.

C.S.H.B. 3870 removes provisions making the per diem to which a member of the Finance Commission of Texas is entitled and the reimbursement for reasonable and necessary expenses incidental to travel incurred in connection with the performance of official duties or in attending a training program to which a person appointed to the finance commission or the credit union commission is entitled subject to legislative appropriation.

C.S.H.B. 3870 requires the finance commission to have charge and control of the property known as the Finance Commission Building and use of staff, equipment, and facilities of the finance agencies and sets forth the deed specifications of these properties. The bill requires the Credit Union Commission to have charge and control of the property known as the Credit Union Department Building and use of staff, equipment, and facilities of the department and sets forth the deed specifications of these properties.

C.S.H.B. 3870 adds a provision requiring the savings and mortgage lending commissioner to enforce, in addition to administer, the Mortgage Broker License Act.

C.S.H.B. 3870 amends the Government Code to exempt the property known as the Finance Commission Building and the property known as the Credit Union Department Building from the facilities management jurisdiction of the Texas Facilities Commission.

C.S.H.B. 3870 appropriates to each financial regulatory agency out of the general revenue fund for the two-year period following September 1, 2009, an amount equal to 50 percent of the amount of general revenue appropriated to that agency for the state fiscal year ending August 31, 2009, and authorizes expenditures of this appropriation as the financial regulatory agency directs. The bill requires the appropriation to be repaid to the general revenue fund by the agency as funds become available.

C.S.H.B. 3870 prohibits a transfer of a financial regulatory agency to self-directed and semi-independent status and the expiration of self-directed and semi-independent status from

canceling, suspending, or preventing any debt owed to or by the agency; any fine, tax, penalty, or obligation of any party; any contract or other obligation of any party; or any action taken by the agency in the administration or enforcement of the agency's duties. The bill requires each financial regulatory agency to continue to have and exercise the powers and duties allocated to the agency in the agency's enabling legislation. The bill establishes that title to all supplies, materials, records, equipment, books, papers, and facilities used by each financial regulatory agency is transferred to each respective financial regulatory agency in fee simple. The bill provides that if a conflict exists between its provisions and another relevant act of the 81st Legislature, Regular Session, 2009, the bill controls without regard to the relative dates of the enactment.

C.S.H.B. 3870 repeals the following sections in the Finance Code:

- Section 12.103
- Section 13.005
- Section 13.008
- Section 14.053
- Section 14.060
- Section 15.104
- Section 15.207(c)
- Section 15.308
- Section 15.408
- Section 156.101(b) and (c)

C.S.H.B. 3870 defines "financial regulatory agency" and "policy-making body."

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3870 differs from the original by enacting a new chapter in the Finance Code that establishes that a financial regulatory agency is self-directed and semi-independent and sets forth provisions relating to budget, revenues, expenses, audits, recordkeeping and recording requirements, the agency's ability to contract and to acquire and sell property, the role of the attorney general in suits against the agency, post-participation liability, applicability of due process and open government provisions to the agency, agency employee membership in the Employees Retirement System of Texas; amends existing provisions or enacts new provisions relating to acceptance of gifts, entitlement to per diem and reimbursement of expenses, charge and control of the finance commission and credit union department buildings; and provides for appropriations out of the state general revenue fund. The original instead amends existing provisions to remove the Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner from the appropriation process, and includes provisions relating to the administration of money paid to state financial regulatory agencies, auditing, reporting requirements, hiring of personnel, and authorized uses for money in the Department of Banking expense fund, the Department of Savings and Mortgage Lending expense fund, and the Office of Consumer Credit Commissioner expense fund.