

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 2238  
By: Zaffirini  
Business & Commerce  
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Committee Report (Substituted)

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

C.S.S.B. 2238 relates to the self-directed and semi-independent status of state financial regulatory agencies and makes an appropriation.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the financial regulatory agency in SECTION 1 (Section 16.003, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 2, Finance Code, by adding Chapter 16, as follows:

#### CHAPTER 16. FINANCIAL REGULATORY AGENCIES: SELF-DIRECTED AND SEMI-INDEPENDENT

Sec. 16.001. DEFINITIONS. Defines "financial regulatory agency" (agency) and "policy-making body."

Sec. 16.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF FINANCIAL REGULATORY AGENCIES. Provides that notwithstanding any other provision of law, a financial regulatory agency (agency) is self-directed and semi-independent as specified by this chapter. Authorizes any Act of the 81st Legislature that relates to an agency and that is inconsistent with the agency being self-directed and semi-independent to be implemented by the agency only on authorization by the policy-making body of the agency.

Sec. 16.003. BUDGET, REVENUES, AND EXPENSES. (a) Requires an agency to submit to the policy-making body of the agency a budget annually using generally accepted accounting principles. Requires that the budget, notwithstanding any other provision of law, including the General Appropriations Act, be adopted and approved only by the policy-making body of the agency.

(b) Requires an agency to be 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.

(c) Authorizes an agency, subject to any limitations in an agency's enabling legislation, to set the amounts of fees, penalties, charges, and revenues required or permitted by statute or rule as necessary for the purpose of carrying out the functions of the agency and funding the budget adopted and approved under Subsection (a).

(d) Requires that all fees and funds collected by an agency and any funds appropriated to the agency be deposited in interest-bearing deposit accounts in the Texas Treasury Safekeeping Trust Company. Requires the comptroller of public accounts (comptroller) to contract with the agency for the maintenance of the deposit accounts under terms comparable to a contract between a commercial banking institution and the institution's customers.

(e) Requires each agency periodically to submit to the agency's policy-making body, as directed by the policy-making body, a report of the receipts and expenditures of the agency.

(f) Provides that the fiscal year for an agency begins on September 1 and ends on August 31.

Sec. 16.004. AUDITS. Provides that this chapter 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, including financial reports and performance audits. 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.

Sec. 16.005. RECORDS; REPORTING REQUIREMENTS. (a) Requires an agency to keep financial and statistical information as necessary to disclose completely and accurately the financial condition and results of operations of the agency.

(b) Requires each agency, before the beginning of each regular session of the legislature, to submit to the legislature and the governor a report describing all of the agency's activities in the previous biennium. Sets forth the required content of the report.

(c) Requires each agency, in addition to the reporting requirements of Subsection (b), not later than November 1 of each year, to submit to the governor, the committee of each house of the legislature that has jurisdiction over appropriations, and the Legislative Budget Board a report that contains certain information.

Sec. 16.006. ABILITY TO CONTRACT. (a) Authorizes an agency, to carry out and promote the objectives of this chapter, to enter into contracts and do all other acts incidental to those contracts that are necessary for the administration of the agency's affairs and for the attainment of the agency's purposes, except as limited by Subsection (b).

(b) Prohibits any indebtedness, liability, or obligation of the agency incurred under this section from creating a debt or other liability of this state or another entity other than the agency or from creating any personal liability on the part of the members of the policy-making body or the body's or agency's employees.

Sec. 16.007. PROPERTY. Authorizes an agency to:

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

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

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

(4) borrow money, as may be authorized from time to time by an affirmative vote of a two-thirds majority of the policy-making body of the agency, for a period not to exceed five years if necessary or convenient to the exercise of the agency's powers, rights, privileges, or functions.

Sec. 16.008. SUITS. Requires the office of the attorney general to represent an agency in any litigation. Authorizes the attorney general to assess and collect from the agency reasonable attorney's fees associated with any litigation under this section.

Sec. 16.009. POST-PARTICIPATION LIABILITY. (a) Requires the agency, if an agency no longer has status under this chapter as a self-directed semi-independent agency for any reason, to be liable for any expenses or debts incurred by the agency during the time the agency was a self-directed semi-independent agency. Provides that the agency's liability under this section includes liability for any lease entered into by the agency. Provides that this state is not liable for any expense or debt covered by this subsection, and prohibits money from the general revenue fund from being used to repay the expense or debt.

(b) Requires that ownership of any property or other asset acquired by the agency during the time the agency was a self-directed semi-independent agency, including unexpended fees in a deposit account in the Texas Treasury Safekeeping Trust Company, be transferred to this state if an agency no longer has status under this chapter as a self-directed semi-independent agency for any reason.

Sec. 16.010. DUE PROCESS; OPEN GOVERNMENT. Establishes that an agency is a governmental body for purposes of Chapters 551 (Open Meetings) and 552 (Public Information), Government Code, and a state agency for purposes of Chapters 2001 (Administrative Procedure) and 2005 (Miscellaneous Provisions Relating to State Licenses and Permits), Government Code.

Sec. 16.011. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. Provides that employees of the agencies are members of the Employees Retirement System of Texas under Chapter 812 (Membership), Government Code, and the agencies' transition to independent status as provided by this chapter has no effect on their membership or any benefits under that system.

Sec. 16.012. GIFTS. (a) Prohibits an agency, notwithstanding any other law, from accepting a gift, grant, or donation from a party to an enforcement action or to pursue a specific investigation or enforcement action.

(b) Requires that an agency report each gift, grant, or donation that the agency receives as a separate item in the agency's report required under Section 16.005(b) and include with the report a statement indicating the purpose for which each gift, grant, or donation was donated and used.

SECTION 2. Amends Section 11.104, Finance Code, to entitle a member of the Finance Commission of Texas (finance commission) to a per diem, rather than a per diem as set by legislative appropriation, for each day that the member engages in the business of the finance commission.

SECTION 3. Amends Section 11.110(c), Finance Code, to entitle a person appointed to the finance commission to reimbursement under Section 11.104, as if the person were a member of the finance commission, rather than to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 4. Amends Section 11.204, Finance Code, by adding Subsection (c), to require the finance commission to have charge and control of property known as the Finance Commission Building and use of staff, equipment, and facilities of the finance agencies. Provides that the Finance Commission Building refers to the property located in the city of Austin and titled in the name of the Banking Section of the Finance Commission of Texas, as described by the deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

SECTION 5. Amends Section 15.2041(c), Finance Code, to entitle a person appointed to the Credit Union Commission (CUC) to reimbursement under Section 15.207 (Expenses and

Compensation of Commission Members), as if the person were a member of CUC, for travel expenses incurred in attending the training program, regardless of whether the attendance at the program occurs before or after the person qualifies for office, rather than as provided by the General Appropriations Act and as if the person were a member of CUC.

SECTION 6. Amends Subchapter E, Chapter 15, Finance Code, by adding Section 15.4011, as follows:

Sec. 15.4011. CREDIT UNION DEPARTMENT BUILDING. Requires CUC to have charge and control of the property known as the Credit Union Department Building and use of staff, equipment, and facilities of the credit union department. Provides that the Credit Union Department Building refers to the property located in the city of Austin and titled in the name of the State of Texas for the use and benefit of the Credit Union Department, as described by deed recorded in Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

SECTION 7. Amends Section 156.101(a), Finance Code, to require the savings and mortgage lending commissioner (commissioner) to administer and enforce this chapter.

SECTION 8. Amends Section 2165.007(b), Government Code, to provide that the Texas Facilities Commission's duty does not apply to certain facilities, including the property known as the Finance Commission Building described by deed recorded in Volume 5080, Page 1099, of the Deed Records of Travis County, Texas, or the property known as the Credit Union Department Building described by deed recorded in Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

SECTION 9. Repealers: Sections 12.103 (Compensation of Employees or Department), 13.005 (Compensation of Officers and Employees), 13.008 (Fees, Revenue, and Expenses; Audit), 14.053 (Compensation of Employees of Office), 14.060 (Financial Oversight), 15.104 (Fiscal Report), 15.207(c) (relating to entitlement of compensation and expenses required to be in the amount set by legislative appropriation), 15.308 (Compensation of Employees), 15.408 (Collection of Money), and 156.101(b) (relating to authorizing the commissioner to hire employees as necessary) and (c) (relating to authorizing the commissioner to employ certain staff), Finance Code.

SECTION 10. Provides that to provide a reasonable period for each agency, as defined by Section 16.001, Finance Code, as added by this Act, to establish itself as a self-directed and semi-independent agency, for the two-year period following the effective date of this Act, each agency is appropriated out of the general revenue fund an amount equal to 50 percent of the of general revenue appropriated to that agency for the state fiscal year ending August 31, 2009. Authorizes this appropriation, subject to Section 16.003, Finance Code, as added by this Act, to be spent as the agency directs and requires it to be repaid to the general revenue fund by the agency as funds become available.

SECTION 11. Prohibits the transfer of an agency, as defined by Section 16.001, Finance Code, as added by this Act, to self-directed and semi-independent status under Chapter 16, Finance Code, as added by this Act, and the expiration of self-directed and semi-independent status from acting to cancel, suspend, or prevent 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.

SECTION 12. Requires each agency, as defined by Section 16.001, Finance Code, as added by this Act, to continue to have and exercise the powers and duties allocated to the agency in the agency's enabling legislation, except as specifically amended by this Act.

SECTION 13. Provides that title to all supplies, materials, records, equipment, books, papers, and facilities used by each agency, as defined by Section 16.001, Finance Code, as added by this Act, is transferred to each respective agency in fee simple. Requires that nothing in this Act have an effect on property owned by an agency on or before the effective date of this Act.

SECTION 14. Provides that if a conflict exists between this Act and another Act of the 81st Legislature, Regular Session, 2009, that relates to the self-directed and semi-independent status of a state agency, this Act controls without regard to the relative dates of the enactment.

SECTION 15. Effective date: September 1, 2009.