

By: Darby, Flynn, Raymond, Pitts, Cook

H.B. No. 3870

Substitute the following for H.B. No. 3870:

By: Flynn

C.S.H.B. No. 3870

A BILL TO BE ENTITLED

AN ACT

relating to self-directed and semi-independent status of state financial regulatory agencies; making an appropriation.

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

SECTION 1. Title 2, Finance Code, is amended by adding Chapter 16 to read as follows:

CHAPTER 16. FINANCIAL REGULATORY AGENCIES: SELF-DIRECTED AND

SEMI-INDEPENDENT

Sec. 16.001. DEFINITIONS. In this chapter:

(1) "Financial regulatory agency" means:

(A) the Texas Department of Banking;

(B) the Department of Savings and Mortgage

Lending;

(C) the Office of Consumer Credit Commissioner;

and

(D) the Credit Union Department.

(2) "Policy-making body" means:

(A) the Finance Commission of Texas for:

(i) the Texas Department of Banking;

(ii) the Department of Savings and Mortgage

Lending; and

(iii) the Office of Consumer Credit

Commissioner; and

(B) the Credit Union Commission for the Credit

1 Union Department.

2 Sec. 16.002. SELF-DIRECTED AND SEMI-INDEPENDENT STATUS OF
3 FINANCIAL REGULATORY AGENCIES. Notwithstanding any other
4 provision of law, a financial regulatory agency is self-directed
5 and semi-independent as specified by this chapter. Any Act of the
6 81st Legislature that relates to a financial regulatory agency and
7 that is inconsistent with the agency being self-directed and
8 semi-independent may be implemented by the financial regulatory
9 agency only on authorization by the policy-making body of the
10 financial regulatory agency.

11 Sec. 16.003. BUDGET, REVENUES, AND EXPENSES. (a) A
12 financial regulatory agency shall submit to the policy-making body
13 of the financial regulatory agency a budget annually using
14 generally accepted accounting principles. Notwithstanding any
15 other provision of law, including the General Appropriations Act,
16 the budget shall be adopted and approved only by the policy-making
17 body of the financial regulatory agency.

18 (b) A financial regulatory agency shall be responsible for
19 all direct and indirect costs of the agency's existence and
20 operation. The financial regulatory agency may not directly or
21 indirectly cause the general revenue fund to incur any cost.

22 (c) Subject to any limitations in a financial regulatory
23 agency's enabling legislation, a financial regulatory agency may
24 set the amounts of fees, penalties, charges, and revenues required
25 or permitted by statute or rule as necessary for the purpose of
26 carrying out the functions of the financial regulatory agency and
27 funding the budget adopted and approved under Subsection (a).

1 (d) All fees and funds collected by a financial regulatory
2 agency and any funds appropriated to the financial regulatory
3 agency shall be deposited in interest-bearing deposit accounts in
4 the Texas Treasury Safekeeping Trust Company. The comptroller
5 shall contract with the financial regulatory agency for the
6 maintenance of the deposit accounts under terms comparable to a
7 contract between a commercial banking institution and the
8 institution's customers.

9 (e) Periodically, each financial regulatory agency shall
10 submit to the agency's policy-making body, as directed by the
11 policy-making body, a report of the receipts and expenditures of
12 the financial regulatory agency.

13 (f) The fiscal year for a financial regulatory agency begins
14 on September 1 and ends on August 31.

15 Sec. 16.004. AUDITS. This chapter does not affect the duty
16 of the state auditor to audit a financial regulatory agency. The
17 state auditor shall enter into a contract and schedule with each
18 financial regulatory agency to conduct audits, including financial
19 reports and performance audits. The financial regulatory agency
20 shall reimburse the state auditor for all costs incurred in
21 performing the audits and shall provide to the governor a copy of
22 any audit performed.

23 Sec. 16.005. RECORDS; REPORTING REQUIREMENTS. (a) A
24 financial regulatory agency shall keep financial and statistical
25 information as necessary to disclose completely and accurately the
26 financial condition and results of operations of the agency.

27 (b) Before the beginning of each regular session of the

1 legislature, each financial regulatory agency shall submit to the
2 legislature and the governor a report describing all of the
3 agency's activities in the previous biennium. The report must
4 include:

5 (1) an audit as required by Section 16.004;

6 (2) a financial report of the previous fiscal year,
7 including reports on financial condition and results of operations;

8 (3) a description of all changes in fees imposed on
9 regulated industries;

10 (4) a report on changes in the regulatory jurisdiction
11 of the agency, including the number of chartered financial
12 instructions, license holders, and registrants subject to the
13 agency's jurisdiction and any changes in those figures; and

14 (5) a list of all new rules adopted or repealed.

15 (c) In addition to the reporting requirements of Subsection
16 (b), not later than November 1 of each year, each financial
17 regulatory agency shall submit to the governor, the committee of
18 each house of the legislature that has jurisdiction over
19 appropriations, and the Legislative Budget Board a report that
20 contains:

21 (1) the salary for all financial regulatory agency
22 personnel and the total amount of per diem expenses and travel
23 expenses paid for all agency employees;

24 (2) the total amount of per diem expenses and travel
25 expenses paid for each member of the agency's policy-making body,
26 provided that only one report must be submitted regarding the
27 Finance Commission of Texas;

1 (3) the agency's operating plan and annual budget; and

2 (4) a detailed report of all revenue received and all
3 expenses incurred by the financial regulatory agency in the
4 previous 12 months.

5 Sec. 16.006. ABILITY TO CONTRACT. (a) To carry out and
6 promote the objectives of this chapter, a financial regulatory
7 agency may enter into contracts and do all other acts incidental to
8 those contracts that are necessary for the administration of the
9 agency's affairs and for the attainment of the agency's purposes,
10 except as limited by Subsection (b).

11 (b) Any indebtedness, liability, or obligation of the
12 financial regulatory agency incurred under this section may not:

13 (1) create a debt or other liability of this state or
14 another entity other than the financial regulatory agency; or

15 (2) create any personal liability on the part of the
16 members of the policy-making body or the body's or agency's
17 employees.

18 Sec. 16.007. PROPERTY. A financial regulatory agency may:

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

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

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

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

12 Sec. 16.008. SUITS. The office of the attorney general
13 shall represent a financial regulatory agency in any litigation.
14 The attorney general may assess and collect from the financial
15 regulatory agency reasonable attorney's fees associated with any
16 litigation under this section.

17 Sec. 16.009. POST-PARTICIPATION LIABILITY. (a) If a
18 financial regulatory agency no longer has status under this chapter
19 as a self-directed semi-independent financial regulatory agency
20 for any reason, the agency shall be liable for any expenses or debts
21 incurred by the agency during the time the agency was a
22 self-directed semi-independent financial regulatory agency. The
23 agency's liability under this section includes liability for any
24 lease entered into by the agency. This state is not liable for any
25 expense or debt covered by this subsection, and money from the
26 general revenue fund may not be used to repay the expense or debt.

27 (b) If a financial regulatory agency no longer has status

1 under this chapter as a self-directed semi-independent financial
2 regulatory agency for any reason, ownership of any property or
3 other asset acquired by the agency during the time the agency was a
4 self-directed semi-independent financial regulatory agency,
5 including unexpended fees in a deposit account in the Texas
6 Treasury Safekeeping Trust Company, shall be transferred to this
7 state.

8 Sec. 16.010. DUE PROCESS; OPEN GOVERNMENT. A financial
9 regulatory agency is:

10 (1) a governmental body for purposes of Chapters 551
11 and 552, Government Code; and

12 (2) a state agency for purposes of Chapters 2001 and
13 2005, Government Code.

14 Sec. 16.011. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM.
15 Employees of the financial regulatory agencies are members of the
16 Employees Retirement System of Texas under Chapter 812, Government
17 Code, and the agencies' transition to independent status as
18 provided by this chapter has no effect on their membership or any
19 benefits under that system.

20 Sec. 16.012. GIFTS. (a) Notwithstanding any other law, a
21 financial regulatory agency may not accept a gift, grant, or
22 donation:

23 (1) from a party to an enforcement action; or

24 (2) to pursue a specific investigation or enforcement
25 action.

26 (b) A financial regulatory agency must:

27 (1) report each gift, grant, or donation that the

1 agency receives as a separate item in the agency's report required
2 under Section 16.005(b); and

3 (2) include with the report a statement indicating the
4 purpose for which each gift, grant, or donation was donated and
5 used.

6 SECTION 2. Section 11.104, Finance Code, is amended to read
7 as follows:

8 Sec. 11.104. EXPENSES AND COMPENSATION OF MEMBERS. A
9 member of the finance commission is entitled to:

10 (1) the reimbursement for reasonable and necessary
11 expenses incidental to travel incurred in connection with the
12 performance of official duties; and

13 (2) a per diem [~~as set by legislative appropriation~~]
14 for each day that the member engages in the business of the finance
15 commission.

16 SECTION 3. Section 11.110(c), Finance Code, is amended to
17 read as follows:

18 (c) A person appointed to the finance commission is entitled
19 to reimbursement under Section 11.104, as if the person were a
20 member of the finance commission, [~~as provided by the General~~
21 Appropriations Act,] for the travel expenses incurred in attending
22 the training program regardless of whether the attendance at the
23 program occurs before or after the person qualifies for office.

24 SECTION 4. Section 11.204, Finance Code, is amended by
25 adding Subsection (c) to read as follows:

26 (c) The finance commission shall have charge and control of
27 the property known as the Finance Commission Building and use of

1 staff, equipment, and facilities of the finance agencies. The
2 Finance Commission Building refers to the property located in the
3 city of Austin and titled in the name of the Banking Section of the
4 Finance Commission of Texas, as described by deed recorded in
5 Volume 5080, Page 1099, of the Deed Records of Travis County, Texas.

6 SECTION 5. Section 15.2041(c), Finance Code, is amended to
7 read as follows:

8 (c) A person appointed to the commission is entitled to
9 reimbursement under Section 15.207, as if the person were a member
10 of the commission, for travel expenses incurred in attending the
11 training program, regardless of whether the attendance at the
12 program occurs before or after the person qualifies for office~~[, as~~
13 ~~provided by the General Appropriations Act and as if the person were~~
14 ~~a member of the commission].~~

15 SECTION 6. Subchapter E, Chapter 15, Finance Code, is
16 amended by adding Section 15.4011 to read as follows:

17 Sec. 15.4011. CREDIT UNION DEPARTMENT BUILDING. The
18 commission shall have charge and control of the property known as
19 the Credit Union Department Building and use of staff, equipment,
20 and facilities of the department. The Credit Union Department
21 Building refers to the property located in the city of Austin and
22 titled in the name of the State of Texas for the use and benefit of
23 the Credit Union Department, as described by deed recorded in
24 Volume 6126, Page 27, of the Deed Records of Travis County, Texas.

25 SECTION 7. Section 156.101(a), Finance Code, is amended to
26 read as follows:

27 (a) The commissioner shall administer and enforce this

1 chapter.

2 SECTION 8. Section 2165.007(b), Government Code, is amended
3 to read as follows:

4 (b) Notwithstanding any other law, the commission shall
5 provide facilities management services in relation to all state
6 agency facilities in Travis County or a county adjacent to Travis
7 County. The commission's duty does not apply to:

8 (1) a facility owned or operated by an institution of
9 higher education;

10 (2) military facilities;

11 (3) facilities owned or operated by the Texas
12 Department of Criminal Justice;

13 (4) facilities owned or operated by the Texas Youth
14 Commission;

15 (5) facilities owned or operated by the Texas
16 Department of Transportation;

17 (6) the Capitol, including the Capitol Extension, the
18 General Land Office building, the Bob Bullock Texas State History
19 Museum, any museum located on the Capitol grounds, the Governor's
20 Mansion, and any property maintained by the Texas Historical
21 Commission under Sections 442.0072 and 442.0073;

22 (7) a facility determined by the commission to be
23 completely residential;

24 (8) a regional or field office of a state agency; [~~or~~]

25 (9) a facility located within or on state park
26 property;

27 (10) the property known as the Finance Commission

1 Building described by deed recorded in Volume 5080, Page 1099, of
2 the Deed Records of Travis County, Texas; or

3 (11) the property known as the Credit Union Department
4 Building described by deed recorded in Volume 6126, Page 27, of the
5 Deed Records of Travis County, Texas.

6 SECTION 9. Sections 12.103, 13.005, 13.008, 14.053, 14.060,
7 15.104, 15.207(c), 15.308, 15.408, and 156.101(b) and (c), Finance
8 Code, are repealed.

9 SECTION 10. To provide a reasonable period for each
10 financial regulatory agency, as defined by Section 16.001, Finance
11 Code, as added by this Act, to establish itself as a self-directed
12 and semi-independent agency, for the two-year period following the
13 effective date of this Act, each financial regulatory agency is
14 appropriated out of the general revenue fund an amount equal to 50
15 percent of the amount of general revenue appropriated to that
16 agency for the state fiscal year ending August 31, 2009. Subject to
17 Section 16.003, Finance Code, as added by this Act, this
18 appropriation may be spent as the financial regulatory agency
19 directs and shall be repaid to the general revenue fund by the
20 agency as funds become available.

21 SECTION 11. The transfer of a financial regulatory agency,
22 as defined by Section 16.001, Finance Code, as added by this Act, to
23 self-directed and semi-independent status under Chapter 16,
24 Finance Code, as added by this Act, and the expiration of
25 self-directed and semi-independent status may not act to cancel,
26 suspend, or prevent:

27 (1) any debt owed to or by the financial regulatory

1 agency;

2 (2) any fine, tax, penalty, or obligation of any
3 party;

4 (3) any contract or other obligation of any party; or

5 (4) any action taken by the financial regulatory
6 agency in the administration or enforcement of the agency's duties.

7 SECTION 12. Each financial regulatory agency, as defined by
8 Section 16.001, Finance Code, as added by this Act, shall continue
9 to have and exercise the powers and duties allocated to the agency
10 in the agency's enabling legislation, except as specifically
11 amended by this Act.

12 SECTION 13. Title to all supplies, materials, records,
13 equipment, books, papers, and facilities used by each financial
14 regulatory agency, as defined by Section 16.001, Finance Code, as
15 added by this Act, is transferred to each respective financial
16 regulatory agency in fee simple. Nothing in this Act shall have an
17 effect on property owned by a financial regulatory agency on or
18 before the effective date of this Act.

19 SECTION 14. If a conflict exists between this Act and
20 another Act of the 81st Legislature, Regular Session, 2009, that
21 relates to the self-directed and semi-independent status of a state
22 financial regulatory agency, this Act controls without regard to
23 the relative dates of the enactment.

24 SECTION 15. This Act takes effect September 1, 2009.